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Jun 02 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Kyndra Sumter Ford, )  
)  
Appellant, )  
)  
v. )  
)  
South Carolina Department of Education, )  
)  
Respondent. )

Docket No. 24-ALJ-30-0192-AP

FINAL ORDER

This matter is before the Administrative Law Court (ALC or court) pursuant to a Notice of Appeal filed on June 14, 2024 by Kyndra Sumter Ford (Appellant) appealing the South Carolina Department of Education’s (Department or Respondent) decision to suspend the Appellant’s educator certificate for a period of one year for unprofessional conduct, breach of contract, willful neglect of duty, and failure to comply with the provisions of a contract without the written consent of the local school board.<sup>1</sup> After careful consideration of the parties’ briefs, the record, and the applicable law, the Department’s decision is affirmed.

**BACKGROUND**

The Appellant is a licensed Speech/Language Pathologist (SLP) with a doctorate and is a nationally Board Certified Teacher. The Appellant served as a SLP for seventeen (17) years at various schools within the Berkeley County School District (District), most recently at Nexton Elementary School beginning in the 2017-2018 school year. On December 3, 2018, the District notified the Appellant that she was being placed on administrative leave for alleged unprofessional conduct. On December 6, 2018 the Appellant was informed that the investigation into the actions

<sup>1</sup> The Notice of Appeal included an Order of Suspension dated May 14, 2024 that provided the reason for the Appellant’s suspension as “unprofessional conduct, breach of contract, willful neglect of duty, and failure to comply with provisions of a contract without the written consent of the local school board.” However, in its brief filed with the court on November 21, 2024, the Department conceded that the language in its Order of Suspension the Appellant was in error and included an inappropriate finding of breach of contract. The Respondent claimed that its final order was corrected for publication, however, inexplicably, the corrected final order was not made part of the record. On January 14, 2025 the court issued an Order to Supplement the Record on Appeal giving the Department fifteen (15) days to supplement the Record on Appeal with the Department’s corrected final order and giving the parties thirty (30) days from the date the Supplemental Record on Appeal is filed with the court to file supplemental briefs. On January 21, 2025 the Department filed the Supplemental Record on Appeal with the court. In the Appended Order of Suspension dated May 14, 2024, the Board found that the evidence supports its determination that just cause exists to suspend the Appellant’s educator certificate for one year. As of the date of this Order, neither party has filed a supplemental brief with the court.

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that had resulted in the Appellant's suspension had been completed. As a result of the investigation, the Appellant's employment with the District was being terminated for failure to perform her job in accordance with instructions and evident unfitness for teaching based on unprofessional conduct and dishonesty. The notice also informed the Appellant that she has fifteen days to request an evidentiary hearing in writing to challenge her termination.

On December 19, 2018, the Appellant resigned from her position with the District. On May 28, 2019, the Appellant sent a letter to the Department Deputy Superintendent of the Division of Legal Affairs to disclose information she reasonably believed demonstrated a violation of law, mismanagement, a gross waste of money and/or abuse of authority within the District. In her letter, the Appellant explained that around April 2015, she had expressed concern to senior leadership and the school board about the District's lack of transparency in how Medicaid funds in the form of the annual stipend amount are calculated and awarded to the Speech/Language Pathologists. The Appellant claimed that shortly thereafter, she began to experience increased scrutiny, a change in school assignment and unsubstantiated poor performance appraisals, including being placed on a Performance Improvement Plan (PIP). In addition, the Appellant asserted that the events involving her constructive discharge had triggered her legal requirement to report allegations of misconduct.

After receiving the Appellant's letter, the District initiated an investigation. As a result of the investigation, on May 28, 2020, the Department notified the Appellant that the South Carolina State Board of Education (State Board) would meet to make a determination regarding possible disciplinary action of the Appellant's South Carolina educator certificate based on unprofessional conduct. The Appellant timely requested a private hearing and on February 21, 2024 a hearing was held.<sup>2</sup> After considering the evidence and the testimony of the parties and witnesses, the Hearing Officer submitted a report and recommendation to the State Board of Education (State Board). The Hearing Officer recommended a permanent revocation of the Appellant's educator certificate.

The State Board reviewed the Hearing Officer's recommendation, the Appellant's objections, the evidence, and transcript from the hearing. The State Board voted to suspend the Appellant's educator certificate for one year, retroactively commencing on May 14, 2023 and

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<sup>2</sup> There is nothing in the record indicating why it took the Department nearly four years to convene a hearing in this matter.

ending on May 14, 2024 for unprofessional conduct, breach of contract, willful neglect of duty, and failure to comply with the provisions of a contract without the written consent of the local school board.<sup>3</sup> This appeal followed.

### STANDARD OF REVIEW

The court has jurisdiction over appeals from the State Board of Education, as provided for in Sections 1-23-380 and 1-23-600(D) of the South Carolina Code. *See* S.C. Code Ann. § 59-25-260 (2020). In such cases, the court sits in its appellate capacity under the Administrative Procedures Act (APA). *See* S.C. Code Ann. § 1-23-600(D) & (E) (Supp. 2019). Absent alleged irregularities in agency procedure, the scope of the court’s review in appellate cases is confined to the record. *See* S.C. Code Ann. § 1-23-380(4) (Supp. 2019).

Subsection 1-23-380(5) of the South Carolina Code provides the standard of review to be utilized by appellate bodies, including the ALC, when reviewing agency decisions:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5) (Supp. 2019) ; *see also* S.C. Code Ann. §1-23-600(E) (directing administrative law judges to conduct appellate review in the same manner as prescribed in Section 1-23-380).

“‘Substantial evidence’ is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow

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<sup>3</sup> As previously stated, the corrected final order does not contain the breach of contract language. The Amended Order of Suspension provides that the “State Board finds that the evidence presented supports its determination that just cause exists to suspend the educator certificate of [the Appellant] for a period of one year, retroactively commencing on May 14, 2023, and ending on May 14, 2024.”

reasonable minds to reach the conclusion that the administrative agency reached . . . .”<sup>4</sup> *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (citation omitted). “The limited substantial evidence standard of review is intended only to assure that the [agency’s] action is properly supported and that, therefore, no abuse of delegated authority occurred.” *Fast Stops, Inc. v. Ingram*, 276 S.C. 593, 595, 281 S.E.2d 118, 119 (1981) (citation omitted).

In applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. See S.C. Code Ann. § 59-25-260 (“The findings of fact by the State Board of Education are final and conclusive.”); *Rodney v. Michelin Tire Corp.*, 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996) (citing *Kearse v. State Health & Human Servs. Fin. Comm’n*, 318 S.C. 198, 200, 456 S.E.2d 892, 893 (1995)); 73A C.J.S. *Pub. Admin. Law & Procedure* § 497 (2015). A reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact for which there is room for a difference of intelligent opinion. See *Byerly Hosp. v. S.C. State Health & Human Servs. Fin. Comm’n*, 319 S.C. 225, 229, 460 S.E.2d 383, 386 (1995) (citation omitted). The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency’s findings from being supported by substantial evidence. *Risher v. S.C. Dep’t of Health & Envtl. Control*, 393 S.C. 198, 210, 712 S.E.2d 428, 435 (2011) (citing *Palmetto All., Inc. v. S.C. Pub. Serv. Comm’n*, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984)). Thus, the court “will not overturn a finding of fact by an administrative agency ‘unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.’” *Sea Pines Ass’n for Prot. of Wildlife, Inc. v. S.C. Dep’t of Nat. Res.*, 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (citation omitted).

The party challenging an agency action on appeal has the burden of proving convincingly that the agency’s decision is not supported by substantial evidence. *Waters v. S.C. Land Res. Conservation Comm’n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996) (citation omitted). If substantial evidence exists for an agency decision, the decision may not be disturbed absent a showing that the action was arbitrary, in excess of the statutory authority, or otherwise unlawful. See S.C. Ann. § 1-23-380(5).

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<sup>4</sup> In this regard, the term “substantial evidence” is a bit of a misnomer; there need not be a “substantial” amount of evidence in order to satisfy the substantial evidence standard.

However, here, a special statute governs appeals involving the revocation or suspension of teaching certificates, and therefore, controls. *See Mims v. Alston*, 312 S.C. 311, 313, 440 S.E.2d 357, 358-59 (1994). The relevant section is 59-25-260:

The findings of fact by the State Board of Education are final and conclusive. A person aggrieved by the order of the State Board of Education, within thirty days, may appeal to the Administrative Law Court as provided in Sections 1-23-380(B) and 1-23-600(D), to review errors of law only, by filing with the Administrative Law Court and the State Board of Education notice of appeal. The State Board of Education shall file a certified copy of the record with the Administrative Law Court in accordance with its rules of procedure....

S.C. Code Ann § 59-25-260 (2020).

This special standard limits this court's review of the State Board's hearing to only errors of law. In other contexts, this standard has been construed to mean that factual findings will not be disturbed if there is any evidence in the record that would support those findings, or unless there is no evidence reasonably supporting such findings. *See, e.g. Seago v. Horry County*, 378 S.C. 4114, 422, 663 S.E.2d 38, 42 (2008) (the standard of review in an action tried without a jury); *Clear Channel Outdoor v. City of Myrtle Beach*, 360 S.C. 459, 466, 602 S.E.2d 76, 79 (Ct. App. 2004), *aff'd*, 372 S.C. 230, 642 S.E.2d 565 (2007) (appeal from a zoning board).<sup>5</sup>

### DISCUSSION

The Appellant asserts that the Department violated her due process rights by failing to provide specific, written notice of the alleged unprofessional conduct as required by S.C. Code Ann. § 59-25-430 and that the Department exceeded its statutory authority by proceeding with a certification revocation hearing despite the District's failure to provide adequate notice of the alleged unprofessional conduct. The Appellant also asserts that the Hearing Officer erred by introducing new allegations of misconduct for the first time during the certification revocation hearing in violation of her due process rights. Further, the Appellant argues that the Hearing Officer erred by admitting and relying on hearsay testimony concerning the Appellant's alleged unprofessional conduct in violation of her due process rights. Additionally, the Hearing Officer erred in credibility determinations and abused its discretion by relying on subjective assessments instead of substantial evidence. Finally, the Appellant argues that the Department erred in finding

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<sup>5</sup> The court is troubled that neither party cited this standard of review in their briefs.

a Breach of Contract for failure to comply with contractual provisions without substantial evidence.<sup>6</sup>

The Department asserts that it did provide the Appellant with adequate notice of the action against her educator certification. The Appellant received the May 28, 2020 notice and then sought legal counsel. The Department sent the Appellant a copy of all proposed evidence and list of witnesses prior to the hearing. The Department further explains that the cited statute, S.C. Code Ann. § 59-25-430, applies to the procedures involved with the dismissal of a teacher from a school district, and the Appellant's termination is not the subject currently before the court. Furthermore, subsection 59-25-150 of the South Carolina Code provides the State Board of Education the authority to either revoke or suspend the certificate of any person for just cause. The statutory definition of just cause includes unprofessional conduct. S.C. Code Ann. §59-25-160. Finally, the Department argues that even if hearsay testimony was admitted, any "inadmissible hearsay testimony was merely cumulative" *State v. Price* 368 S.C. 494, 499, 629 S.E.2d 363, 366 (2006) because the State Board had sufficient evidence outside of the alleged hearsay to take action against the Appellant's educator certification for unprofessional conduct.

At the Appellant's Educator Certification Hearing, the Chief, Human Resource Officer testified that the last issue she recalled before the Appellant left the District was that the Appellant had not been truthful during a meeting regarding a conversation the Appellant had with a parent. During the meeting, the Appellant typed the word "gaslighting" on her computer and showed her screen to the parent, insinuating the school was manipulating the truth in its dealing with the parent. The Appellant initially denied she had typed that, but the school had the computer records checked, and the information showed that the Appellant had typed in the word "gaslighting."

The former principal at Nexton Elementary School testified about specific job performance concerns that she had spoken to the Appellant about. One concern was the Appellant's failure to report a student's safety concern to administration, counselors, or the parent when a student had reported to the Appellant, thereby putting the student at risk. Another concern was that the Appellant had brought her cellphone into an Individualized Education Program (IEP) meeting after the Appellant was previously asked not to bring her phone into meetings. The Appellant also

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<sup>6</sup> The Department acknowledged that the final order was incorrectly drafted as a breach of contract matter but was corrected for publication, and the Amended Final Order does not contain the breach of contract language. The court finds that the State Board did not find the Appellant committed a breach of contract and that was not a basis for the Department's disciplinary action.

emailed a student's relative regarding a special education meeting concerning the student, disclosing confidential student information to someone who did not have authorization to possess the information.

A school psychologist for the District testified about multiple incidents that had transpired between her and the Appellant. The school psychologist explained that the Appellant asked if she could record their weekly meetings where they review student caseloads. The school psychologist told the Appellant she was not comfortable with her recording their meetings because of the confidential information being discussed. She decided to put that in writing and emailed the Appellant. Later, during a meeting after the parents and principal stepped out, the Appellant pointed and waved her finger at the psychologist and two (2) other teachers saying that she did not play the confusion game, that she was a straight shooter and did not play games. The school psychologist stated that she told the Appellant that her behavior was intimidating and asked her to please stop. The school psychologist also testified that the Appellant frequently copied district personnel on emails which often become a thread where the Appellant misquoted staff, copied caregivers who should not have received the messages, requested information already provided and caused confusion for the team.

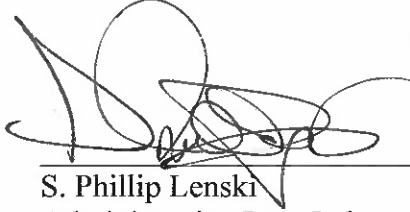
A special education resource teacher testified about conflicts that arose between her and the Appellant because the resource teacher was fearful of filing a formal grievance. Specifically, the teacher testified that after she expressed concern to the Appellant about the number of emails the Appellant was sending and unnecessarily copying personnel, the Appellant confronted her when the resource teacher was alone in her classroom. The Appellant told the resource teacher that she was comfortable with confrontation, which made the resource teacher very uncomfortable. The resource teacher testified that after this interaction the Appellant's emails became worse, and the Appellant started copying the superintendent and parents. The resource teacher explained that many of the emails contained misquotes, misinterpretations of procedures, prompted repeated explanations of procedures that had already been reviewed with the Appellant, and that the emails created a great deal of confusion and fractured the team. The resource teacher testified that the Appellant created a hostile work environment.

Subsection 59-25-150 of the South Carolina Code provides that "[t]he State Board of Education may, for just cause, either revoke or suspend the certificate of any person." The definition of just cause includes incompetence, willful neglect of duty, willful violation of the rules

and regulations of the State Board of Education, unprofessional conduct, dishonesty, and evident unfitness for position for which employed. S.C. Code Ann. § 59-25-169. Therefore, the Board found that the evidence presented supported its determination that there was just cause to suspend the educator certificate of the Appellant for a period of one year.

Applying the standard set forth in S.C. Code Ann § 59-25-260, the court accepts the Department's findings of fact and finds that there is substantial evidence on the record to support the Department's conclusion that just cause exists to suspend the Appellant's educator certificate. Therefore, based on the foregoing,

**IT IS HEREBY ORDERED** that the Department's decision is **AFFIRMED**.  
**AND IT IS SO ORDERED.**

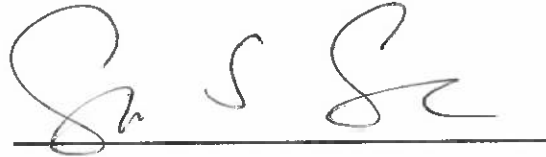


S. Phillip Lenski  
Administrative Law Judge

March 25, 2025  
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Erika S. Easler, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Erika S. Easler  
Judicial Law Clerk

March 25, 2025  
Columbia, South Carolina

