

RECEIVED

Sep 19 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT
The Honorable S. Phillip Lenski, Administrative Law Judge
Docket No. 24-ALJ-30-0192-AP

Kyndra Sumter Ford,
Educator Certificate No. 184236,
Appellant,

v.

South Carolina Department of Education,
Respondent.

RESPONSE IN OPPOSITION TO MOTION TO DISMISS

I. Introduction

Respondent seeks dismissal of this appeal on the ground that Appellant did not file a motion for rehearing with the Administrative Law Court (“ALC”) prior to filing her Notice of Appeal. For the reasons set forth below, Respondent’s motion should be denied.

II. Factual and Procedural Background

Appellant is a licensed Speech/Language Pathologist who was terminated from her employment with the Berkeley County School District. The Department of Education thereafter initiated proceedings to revoke or suspend her educator certificate. Following a hearing, the hearing officer recommended permanent revocation, but the State Board of Education ultimately suspended her certificate for one year. Appellant appealed to the ALC, which affirmed the Department’s decision in a Final Order dated March 25, 2025. Appellant timely filed a Notice of

Appeal to this Court on April 23, 2025. Respondent then waited until August 22, 2025—four months later, to file its Motion to Dismiss.

III. Standard of Review

Judicial review of ALC decisions is governed by the South Carolina Administrative Procedures Act. Under S.C. Code Ann. § 1-23-610, the Court of Appeals may reverse or modify an ALC decision if the appellant's substantive rights have been prejudiced because the decision is in violation of constitutional or statutory provisions, in excess of statutory authority, made upon unlawful procedure, affected by other error of law, clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion. In educator certification matters, the ALC's review is limited to errors of law, and the findings of fact by the State Board of Education are final and conclusive unless unsupported by any evidence.

IV. Respondent's Motion Misstates the Law and Should Be Denied

Appellant's arguments were fully presented to the ALC and ruled upon, and the ALC's order specifically addressed each of the issues she raised. The ALC discussed her due process argument regarding the lack of specific written notice and concluded that the Department had provided adequate notice while explaining that the statute she cited applies to dismissal from a school district rather than certification proceedings. It addressed her contention that the Department lacked statutory authority to proceed and explained that the Department had authority under S.C. Code Ann. §§ 59-25-150 and 59-25-160. It recited and addressed her argument regarding the introduction of new allegations at the hearing, considered her hearsay objections, and concluded there was sufficient non-hearsay evidence to support the decision. It

applied the substantial evidence standard in rejecting her arguments about credibility determinations and lack of evidence, and it also noted that while the Department's original order incorrectly referred to a breach of contract, this was corrected and the State Board did not find breach of contract as a basis for discipline. The ALC's Final Order shows that it clearly considered and ruled on all of the issues Appellant raised, thereby fulfilling the very purpose of SCALC Rule 40, which is to give the lower tribunal an opportunity to correct errors before appellate review.

Respondent's contention that the absence of a Rule 40 rehearing petition is a jurisdictional defect is incorrect. South Carolina courts have consistently held that failure to raise an issue in a rehearing petition affects issue preservation but does not deprive an appellate court of jurisdiction. In *Ex parte Morris*, 367 S.C. 56, 62, 623 S.E.2d 619, 622 (2005), the Supreme Court confirmed that "[l]ack of preservation does not deprive an appellate court of subject matter jurisdiction." Similarly, in *State v. Johnston*, 333 S.C. 459, 463, 511 S.E.2d 800, 802 (1999), the Court recognized that preservation rules are prudential rather than jurisdictional. Thus, even if Rule 40 was not technically followed, this Court retains the discretion to review the merits where, as here, the record is complete and the issues are clear.

This case also implicates important public and private interests because it involves the suspension of a professional license and therefore Appellant's ability to earn a livelihood. South Carolina courts have long emphasized that cases should be decided on their merits rather than dismissed on technicalities. See *Leviner v. Sonoco Prods. Co.*, 339 S.C. 492, 530 S.E.2d 127 (2000). Dismissing this appeal on a procedural technicality would unfairly deprive Appellant of meaningful review of serious due process and evidentiary errors.

V. The Motion to Dismiss Is Untimely and Prejudicial

Even if the Court were to find some procedural defect, Respondent's Motion should be denied as untimely. Respondent waited four months after the Notice of Appeal was filed to raise this challenge. Under SCACR Rule 240, motions must be filed within a reasonable time after the alleged defect is discovered. Respondent's lengthy and unexplained delay violates that rule and has prejudiced Appellant. In reliance on her timely filed appeal, Appellant has continued to pursue her appellate rights and is actively preparing to brief the case. Allowing dismissal at this late stage would cause manifest unfairness and would reward Respondent's lack of diligence.

VI. Conclusion

For these reasons, Appellant respectfully requests that the Court deny Respondent's Motion to Dismiss and allow this appeal to proceed on the merits.

Respectfully submitted,

s/Reagan Singletary, Esq
THE SINGLETARY GROUP, LLC
297 South Metts Street
St. George, SC 29477
803.552.6957
reagan@thesingletarygroup.com

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT
The Honorable S. Phillip Lenski, Administrative Law Judge
Docket No. 24-ALJ-30-0192-AP

Kyndra Sumter Ford,
Educator Certificate No. 184236,
Appellant,

v.

South Carolina Department of Education,
Respondent.

PROOF OF SERVICE

I hereby certify that on September 19, 2025 I have served a copy of the foregoing **Memorandum in Opposition to the Respondent's Motion to Dismiss** upon counsel for the South Carolina Department of Education by emailing a copy to the following:

Henry Gunter
Deputy General Counsel
South Carolina Department of Education
849 Learning Lane
West Columbia, SC 29172
vhgunter@ed.sc.gov

By: s/Reagan Singletary

Reagan Singletary, Esq
THE SINGLETARY GROUP, LLC
297 South Metts Street
St. George, SC 29477
803.552.6957
reagan@thesingletarygroup.com