STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from the South Carolina Administrative Law Court
The Honorable Robert L. Reibold Administrative Law Judge

Appellate Case No: 2025-000839

Austin Bischoff,

Appellant,

vs.

South Carolina Department of Education

Respondent.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

The Administrative Law Court correctly found the South Carolina Department of Education provided Appellant with adequate notice of his due process rights under the United States and South Carolina Constitutions.

STATEMENT OF THE CASE

On March 14, 2022, the Aiken County Public School District sent a letter to the South Carolina Department of Education (SCDE) to report Mr. Austin Bischoff's (Appellant) resignation following an investigation into allegations of unprofessional conduct. (ROA 20). The SCDE followed the South Carolina State Board of Education's Rule of Governance BCAF, Procedures for Educator Certification Hearings, and began an investigation into Appellant's alleged unprofessional conduct. The investigation found substantial evidence that Appellant engaged in unprofessional conduct through inappropriate communication with a student and inappropriate documentation of student Individualized Education Plan files. Appellant was notified of the allegations and his due process right to a hearing. (ROA 15-18). Specifically, the SCDE sent a notice letter via regular and certified mail on November 29, 2023, to a Grovetown, GA address that was listed in LexisNexis, a public lookup software for legal compliance.[1]

Appellant did not respond to the notices and did not request a hearing. On July 31, 2024, the SCDE sent a subsequent notice letter informing Appellant that, because he failed to request a hearing, the matter would be presented to the State Board of Education on August 13, 2024, or as soon thereafter as feasible. That notice letter was sent via regular mail to the same Grovetown, GA address. The action against his educator certification was subsequently presented as a default matter to the South Carolina State Board of Education (State Board) on September 3, 2024. (ROA 11). The State Board voted to suspend Appellant's educator certification for two years, commencing on September 3, 2024, and ending on September 2, 2026.

Appellant was notified of the suspension, and his legal counsel filed a motion to reconsider

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[1] Appellant's address listed in SC Educator, the statewide educator information system, listed an Aiken, SC address; however, the SCDE believed the Grovetown, GA address to be Appellant's most current address based on the search in the public database. It is the responsibility of educators to update their contact information in SC Educator.

on September 13, 2024. (ROA 9-10). In the motion, Appellant contended: 1) the initial notice was sent to 1103 Churchill Circle, Aiken, SC 29803, 2) Appellant updated his address in SC Educator before December 2, 2023, to the Grovetown, GA address, and 2) the final notice letter was sent to the same Aiken, SC address as the initial notice letter. (ROA 9). The SCDE reviewed Appellant's assertions and verified that the initial and final notice letters were sent to the correct Grovetown, GA address. Additionally, the SCDE determined that Appellant did not update his address in SC Educator until April 22, 2024. Due to the inaccuracies in the motion and the lack of new information for consideration by the State Board, the SCDE determined that it was not necessary to present the motion to the State Board and timely notified Appellant that the State Board's Order of Suspension was the final agency action in this matter. ROA p. 5.

Appellant timely filed a notice of appeal to the South Carolina Administrative Law Court. The Administrative Law Court issued an Order affirming the State Board of Education's order on March 6, 2025. On March 17, 2025, Appellant filed a petition for rehearing. On April 10, 2025, the Administrative Law Court denied Appellant's petition for rehearing. Appellant filed his Notice of Appeal to the South Carolina Court of Appeals on April 29, 2025, and an Initial Brief of Appellant on July 14, 2025. This Initial Brief of Respondent follows.

STANDARD OF REVIEW

As to questions of law, the appellate court's standard of review is *de novo*. Fesmire v. Digh, 385 S.C. 296, 302, 683 S.E.2d 803, 807 (Ct. App. 2009). See also S.C. Code Ann. § 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...). 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).

ARGUMENT

The Administrative Law Court correctly found the South Carolina Department of Education provided Appellant with adequate notice of his due process rights under the United States and South Carolina Constitutions.

Error Preservation

As a threshold matter, Appellant makes a number of arguments that are not preserved for review by this Court. After filing his initial brief before the Administrative Law Court, Appellant moved to supplement the record with a purported letter from a consumer affairs manager with the United States Postal Service (USPS). In the letter, the USPS employee stated that the original certified letter was sent to Appellant's previous Aiken, SC address, despite a change of address that was on file for forwarding. Appellant then made arguments related to the letter in his Reply Brief before the Administrative Law Court. These arguments also form a substantial basis in Appellant's arguments before this Court.

"It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved or appellate review." Wilder Corp. v. Wilkie, 330 S.C. 71, 76, 497 S.E.2d 731, 734 (1998). see also Buist v. Buist, 410 S.C. 569, 574, 766 S.E.2d 381, 382 (2013) ("It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved."). An argument made in a reply brief cannot present an issue to the appellate court if it was not addressed in the initial brief. Glasscock, Inc. v. U.S. Fid. & Guar. Co., 348 S.C. 76, 81, 557 S.E.2d 689, 692 (Ct. App. 2001).

Appellant failed to present the argument and related evidence to the State Board of Education and did not raise the argument at the initial briefing stage at the Administrative Law Court. Had Appellant presented the argument and purported letter to the State Board of Education,

the State Board could have considered the issue. Instead, the State Board was precluded from considering the evidence and inquiring further as to the authenticity of the letter and reviewing the accuracy of the information provided by Appellant that led to the provision of the letter by USPS. Appellant's legal counsel filed a Motion for Rehearing that focused exclusively on the argument that all notice letters were sent to the Aiken, SC address and that Appellant updated his address in SC Educator before December 2, 2023. Appellant did not present the USPS documentation or make any related arguments in his Motion for Rehearing. In considering these arguments concerning USPS's delivery of the certified letter, the Administrative Law Court properly concluded that the issues were not preserved for appellate review where they were not raised to the State Board of Education and were raised for the first time in Appellant's reply brief. These arguments should similarly not be considered by this Court.

Analysis

Appellant makes a variety of arguments contending that the SCDE's practice of providing notice of constitutional due process via regular and certified mail was deficient in his case. On the contrary, the Administrative Law Court properly found that the November 29, 2023 notice sent by regular mail satisfies due process. Even assuming an error by the USPS regarding the certified mail, the SCDE sent multiple letters via regular mail to the Grovetown, GA address that Appellant concedes is his current address. The SCDE took reasonably calculated steps to apprise Appellant of the pending action and his opportunity to request a hearing.

Due Process requirements imposed on administrative hearings are not technical, and no particular form or procedure is necessary. In re Vora, 354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003). While there are no technical requirements for procedural due process, an administrative proceeding must include: "(1) adequate notice; (2) adequate opportunity for a hearing; (3) the right

to introduce evidence; (4) the right to confront and cross-examine witnesses." Id. S.C. Code Ann. § 59-25-170 provides, "[n]o person's certificate may be either revoked or suspended unless written notice specifying the cause for either the revocation or suspension has been given to the person by the State Board of Education and a hearing has been afforded such person."

Due process requires the government to provide 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. Jones v. Flowers, 547 U.S. 220, 226 (2006) (quoting Mullane v. Central Hanover Bank & Trust Co. et al., 339 U.S. 306, 314 (1950). "Due process does not require that a property owner receive actual notice before the government may take his property." Jones at 226. Instead, the United States Supreme Court has "allowed the government to defend the reasonableness and hence the constitutional validity of any chosen method. . . . on the ground that it is in itself reasonably certain to inform those affected." Dusenbery v. United States, 534 U.S. 161, 170 (2002). The United States Supreme Court has repeatedly held that, "mail service is an inexpensive and efficient mechanism that is reasonably calculated to provide actual notice." Tulsa Pro. Collection Servs., Inc. v. Pope, 485 U.S. 478, 490 (1988). See also First Resol. Inv. Corp. v. Seker, 795 A.2d 868, 872 (N.J. 2002) (due process is satisfied when a defendant is served by regular mail at his or her last known address).

The SCDE's initial action of mailing notice to Appellant through regular and certified mail on November 29, 2023, was "reasonably calculated under all circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Jones at 226. The SCDE's subsequent step of mailing a final notice letter via regular mail on July 31, 2024, reflects the objectively reasonable efforts of the SCDE to apprise Appellant of the action. The SCDE reviewed Appellant's contact information in SC Educator and used the LexisNexis

public record search in order to ensure the notice was sent to the appropriate address. The letter sent via certified mail indicated that it was delivered and "left with an individual."[2] ROA p. 18. Most importantly, both letters sent via regular mail unquestionably listed the correct address and were not returned to the SCDE. While Appellant contends that neither of those letters were delivered to his address and that the SCDE's determinations to the contrary are "fraudulent," there is no evidence whatsoever to support that conclusion.

The SCDE's earnest and calculated efforts to provide notice of due process satisfies legal requirements, particularly where, as found by the Administrative Law Court, the November 29, 2023, notice sent by regular mail singlehandedly satisfies due process. The additional letter sent via regular mail and the original letter sent via certified mail bolster that conclusion. Because Appellant received constitutional notice of due process, the State Board was authorized to proceed with considering the matter in Appellant's absence.

[2] While Appellant and the Administrative Law Court both take note of the fact that the USPS certified mail tracking information reflected delivery to an Aiken address, Appellant's address at the time in SC Educator was in Aiken and the letter was not returned to the SCDE.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgement of the Administrative Law Court be affirmed.

Respectfully submitted,

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September 26, 2025

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