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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
Administrative Law Court

Honorable Robert L. Reibold, Administrative Law Judge

Appellate Case No. 2025-000839

Austin Bischoff,

Appellant,

v.

South Carolina
Department of Education

Respondent.

RECORD ON APPEAL

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Austin Bischoff,

Appellant,

v.

South Carolina Department of Education,

Respondent.

Docket No. 24-ALJ-30-0362-AP

**ORDER GRANTING MOTION TO
SUPPLEMENT RECORD**

This matter is before the South Carolina Administrative Law Court (“Court”) pursuant to an appeal filed by Austin Bischoff (“Appellant”) on October 3, 2024.¹ Appellant challenges a decision issued on September 3, 2024 by the South Carolina Department of Education (“Department” or “Respondent”) suspending his educator certificate.

This matter was assigned to the undersigned on October 7, 2024. On October 11, 2024, the Department filed the Record on Appeal. On November 7, 2024, Appellant requested an extension of time to file his brief, which was initially due on or before November 11, 2024. The Department did not oppose the request and, on November 7, 2024, the Court granted a 30-day extension.² On December 9, 2024, Appellant filed his initial brief and a Motion to Supplement the Record on Appeal. The motion included the documents proposed for inclusion: Appellant’s employee evaluations for 2019/2020³ and 2020/2021, an undated letter from Dr. Lindsey Ott,⁴ and a December 4, 2024 letter to Appellant from Howard Brown, U.S. Postal Service Consumer Affairs Manager. Additionally, Appellant filed with the motion a Proof of Service, certifying he served the motion upon the Department by U.S. Mail on December 9, 2024.⁵ As of the date of this

¹ The Court has jurisdiction in this matter under S.C. Code Ann. §§ 1-23-380, -600(D)&(E)(Supp. 2024) and 59-25-260(2020).

² The thirtieth day fell on Saturday, December 7, 2024 and the deadline was automatically extended to Monday, December 9, 2024 pursuant to SCALC Rule 3(A).

³ The Court notes that the cover page of the 2019-20 evaluation, reflects “2019-20” but the footer and first page of the evaluation are labelled “2018-2019.” However, the dates in the body of the document are in 2019 and 2020, including the evaluator’s signature date on April 27, 2020.

⁴ Appellant represents in his Motion to Supplement the Record on Appeal that he received this letter on December 6, 2024.

⁵ The address for the Department on the Proof of Service is 428 Wholesale Lane, Office B360, West Columbia, SC 29712. That is the same address utilized by the Department on the Record on Appeal but the Court notes that the Department’s subsequently filed brief now uses an address of 849 Learning Lane, Office B360, West Columbia, SC 29712.

Order, the Court has received no response to the motion from the Department. However, the Department did file its brief on January 3, 2025. Appellant filed his reply brief on January 13, 2025.

~~Returning to Appellant's brief, he asserts the items proposed for inclusion in the record are~~ "necessary for the Court to fully consider the issues raised on appeal." Additionally, he indicates the evaluations were not presented because "he was unaware of his right to due process"⁶ and the remaining items were newly discovered in December 2024. Under the Court's rules, a party has ten days to file a written response to a motion and "[f]ailure of a party to timely file a response may be deemed a consent by that party to the relief sought in the motion or petition." SCALC Rule 34(B). As recited above, Appellant served his motion upon the Department on December 9, 2024 and over 37 days have passed without the Department filing a response in any fashion to the motion. Therefore, as permitted by SCALC Rule 34(B), the absence of a response by the Department is deemed consent to Appellant's motion and the offered documents are accepted as part of the record on appeal in this matter.

Finally, the Court observes that Appellant has already made reference in his initial brief to the supplement items so the granting of the motion will not necessitate the filing of a new brief by Appellant. However, the Department filed its brief prior to the ruling on the motion and the Court will afford the Department an opportunity to amend its brief. Similarly, Appellant will be permitted to amend his reply brief. These opportunities to amend are permissive and not mandatory and, if an amended brief is not filed, the Court will rely on those filed prior to the issuance of this Order.

ORDER

IT IS THEREFORE ORDERED that Appellant's Motion to Supplement the Record is **GRANTED**.

IT IS FURTHER ORDERED that the Department may file an amended brief with the Court, with service on the Appellant, within twenty (20) days from the date of this Order. **If the Department elects not to submit an amended brief, it shall so notify the Court in writing, with service on Appellant.**

⁶ Although awkwardly stated here, the Court understands from review of Appellant's brief and September 13, 2024 Motion to Reconsider before the State Board of Education that he claims he was not notified of the potential suspension or the right to request a hearing.

IT IS FURTHER ORDERED that Appellant may file an amended reply brief with the Court, with service on the Department, within twenty (20) days from the date Respondent files an amended brief., if the Department elects to file such a brief.

AND IT IS SO ORDERED.



The Honorable Robert L. Reibold
Administrative Law Judge

January 21, 2025
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Jared Thompson, hereby certify that I have on 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).



Jared Thompson
Judicial Law Clerk

January 21, 2025
Columbia, South Carolina

BEFORE THE SOUTH CAROLINA STATE BOARD OF EDUCATION

In the Matter of the
Disciplinary Action of the
Educator Certificate of
Austin Bischoff
Certificate 293493

ORDER OF SUSPENSION

SUMMARY OF THE CASE

The South Carolina State Board of Education (State Board) considered this matter on September 3, 2024. On November 29, 2023, the South Carolina Department of Education (SCDE) sent Austin Bischoff a notice via regular and certified mail of his right to a hearing regarding the possible suspension of his South Carolina educator certificate. The SCDE has verified Mr. Bischoff's address, the certified letter was returned unclaimed, and the letter sent via regular mail has not been returned. On July 31, 2024, the SCDE informed Mr. Bischoff via regular mail that the State Board would meet on August 13, 2024, or as soon thereafter as is feasible, to consider action against his educator certification. Under the South Carolina Rules of Civil Procedure 5(b), Mr. Bischoff has been given fair notice of constitutional due process. He has not contacted the SCDE to request a hearing and is now in default.

After considering the evidence presented, the State Board voted to suspend Mr. Bischoff's educator certificate for a period of two years, commencing on September 3, 2024, and ending on September 2, 2026.

FINDINGS OF FACT

Mr. Bischoff holds a valid South Carolina professional educator certificate. He has over three years of educator experience and has no prior record of disciplinary action with the State Board. Mr. Bischoff was employed as a special education school psychologist with the Aiken County Public School District (District).

Mr. Bischoff was first placed on administrative leave on March 16, 2021, after there was a complaint of inappropriate language in front of a student. The student was building a robot as

a reward for completing school work. Mr. Bischoff observed the robot and referenced the toy's "boobs" and "ass." During the investigation into the incident, it was also discovered that the incident took place in Mr. Bischoff's office. He had previously been instructed not to meet with students alone in his office because the space did not have any windows. He was given a written warning and placed on a Performance Improvement Plan to address the issues.

On March 3, 2022, Mr. Bischoff met with supervisors after it was alleged that several student files were missing a significant number of documents. During this investigation, Mr. Bischoff was submitting his resignation to the District. He indicated he had experienced personal health issues and did not feel supported at the District. However, when questioned, he admitted he had not spoken with District staff that could offer assistance or otherwise make use of information and support available to him. He was allowed to resign from the District.

After considering the evidence presented, the State Board voted to accept the Order of Suspension of Mr. Bischoff's educator certificate 293493 for a period of two years, commencing on September 3, 2024, and ending on September 2, 2026.

CONCLUSIONS OF LAW

"The South Carolina Board of Education may, for just cause, either revoke or suspend the certificate of any person." S.C. Code Ann. § 59-25-150 (2020); S.C. Code Ann. § 59-25-160 (2020). Just cause includes unprofessional conduct. S.C. Code Ann. § 59-25-160 (2020); 24 S.C. Code Regs. 43-58 (2021). The State Board finds that the evidence presented demonstrates that Mr. Bischoff engaged in unprofessional conduct by using inappropriate language in front of students and failing to maintain required student documentation. The State Board further finds that just cause exists for the suspension of Mr. Bischoff's educator certificate 293493 for a period of two years, commencing on September 3, 2024, and ending on September 2, 2026.

Now, therefore, it is hereby ordered that the educator certificate of Austin Bischoff educator certificate 293493, is suspended for a period of two years, commencing on September 3, 2024, and ending on September 2, 2026. If Mr. Bischoff wishes to have the certificate reinstated at the conclusion of the period of suspension, he shall make a written request to the

Austin Bischoff, Certificate 293493
Order of Suspension
September 3, 2024
Page 3

SCDE's Office of Educator Services. Mr. Bischoff shall be responsible for meeting all certification requirements in effect at the time he requests reinstatement and for the payment of any applicable reinstatement fees. The suspension of Mr. Bischoff's educator certificate shall be reported to the NASDTEC Clearinghouse and all South Carolina school districts within thirty days of the date of this order.

AND IT IS SO ORDERED.

South Carolina State Board of Education

s/David C. O'Shields
David C. O'Shields, Chair

Columbia, South Carolina
September 3, 2024

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Austin Bischoff,

Docket No. 24-ALJ-30-0362-AP

Appellant,

FINAL ORDER AND DECISION

v.

South Carolina Department of Education,

Respondent.

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (“Court”) pursuant to an appeal filed by Austin Bischoff (“Appellant”) on October 3, 2024.¹ Appellant challenges a decision issued on September 3, 2024 by the South Carolina Department of Education’s State Board of Education (“Department” or “Respondent”) suspending his educator certificate.

This matter was assigned to the undersigned on October 7, 2024. On October 11, 2024, the Department filed the Record on Appeal. On November 7, 2024, Appellant requested an extension of time to file his brief, which was initially due on or before November 11, 2024. The Department did not oppose the request and, on November 7, 2024, the Court granted a 30-day extension.² On December 9, 2024, Appellant filed his initial brief and a Motion to Supplement the Record on Appeal. The Court received no response to the motion from the Department. However, the Department did file its brief on January 3, 2025. Appellant filed his reply brief on January 13, 2025. On January 21, 2025, the Court granted Appellant’s motion and offered the Department an opportunity to amend its brief. The Department filed a letter on January 29, 2025 informing the Court it elected to not submit an amended brief.

After careful consideration of the parties’ submissions and arguments, the Court affirms the Order of Suspension of the South Carolina State Board of Education.

¹ The Court has jurisdiction in this matter under S.C. Code Ann. §§ 1-23-380, -600(D)&(E)(Supp. 2024) and 59-25-260(2020).

² The thirtieth day fell on Saturday, December 7, 2024 and the deadline was automatically extended to Monday, December 9, 2024 pursuant to SCALC Rule 3(A).

BACKGROUND

Appellant obtained a South Carolina professional educator certificate from the Department and previously worked as a special education school psychologist for the Aiken County Public School District. ~~Following the District's investigation of some employment issues, Appellant~~ resigned on March 3, 2022.³ In an undated letter, received by the Department on March 14, 2022, the District Superintendent notified the Department of Appellant's situation pursuant to Department regulation 43-58.1

On November 29, 2023 the Department prepared a letter to be sent "Via Regular and Certified Mail – Return Receipt Requested – Restricted Delivery" to Appellant. The Appellant's address on the face of the letter is in Grovetown, Georgia.⁴ A second copy of the same letter was sent by regular mail. The letter states it is to give notice of the State Board of Education meeting to decide possible disciplinary action affecting Appellant's certificate. The letter goes on to state in part:

Under state law, you are entitled to a hearing in this matter. If you wish to request a hearing, your request must be in writing, and addressed to Ellen E. Weaver, State Superintendent of Education, 1429 Senate Street, Suite 1015, Columbia, South Carolina 29201. You may request a public or private hearing. At the hearing, you may present any testimony under oath or other evidence that may be pertinent, and you may be represented by legal counsel. If you fail to make a written request for a hearing within fifteen days after you receive this notice, you will waive your right to a hearing. In the event that you waive your right to a hearing, the State Board may take action to suspend or revoke your certificate based on the information presented by the State Department of Education (SCDE).

The State Board of Education's Procedures for Educator Certification Hearings can be found on the SCDE website at [...]. If you do not have access to a computer, please contact our office and we will mail you a copy of the State Board of Education's Procedures for Educator Certification Hearings.

³ The actions of the Aiken County Public School District are not the matter before the Court and are therefore not specifically detailed in this order

⁴ Appellant had previously resided in Aiken, South Carolina but indicated on his Notice of Appeal that his current address is the same address in Grovetown, Georgia. The Department used third-party computer software to locate the Grovetown, Georgia address before sending its correspondence.

The Department included in the record a United States Postal Service tracking report for the copy of the November letter sent by certified mail and the report indicated the letter was “delivered to an individual at the address” and “Delivered, Left with Individual” in Aiken, South Carolina on December 2, 2023.

A letter from Howard Brown, a Consumer Affairs Manager with the United States Postal Service (“USPS”) indicated that the November 2023 letter was misdelivered. The USPS letter references the same tracking number included on the Department’s November certified letter and apologizes for misdelivery. It states in part:

Based on our investigation, the letter was delivered to 1103 Churchill Circle, Aiken, SC, on December 2, 2023, despite a change of address having been initiated. It appears that our carrier failed to forward the letter to your updated address as required and instead delivered it to the original address. Furthermore, the Proof of Delivery includes a scribbled signature, suggesting that our standard procedures for Certified mail delivery may not have been properly followed.

Attached to the USPS letter is another tracking report listing the Aiken address and an illegible signature of recipient. That tracking report also indicates “Extra Services: Certified Mail.”

On July 31, 2024, the Department prepared a letter to be sent to Appellant. The body of the letter identifies Appellant’s address as Grovetown, Georgia. This letter states:

This letter is in follow up to the other certified mail letter we have tried to bring to your attention, in an effort to make you aware of your rights and afford you due process regarding the possible suspension of your South Carolina educator certificate based on the provisions of S.C. Code Ann. § 59-25-160 (2020). The State Board will review allegations of falsification of special education documentation with the Aiken County Public School District.

You have been notified that, under state law, you are entitled to a hearing in this matter and the requirements of requesting the same if you so desire. Under the South Carolina Rules of Civil Procedure 5(b), you have been given fair notice of constitutional due process. You have failed to make a written request for a hearing, and your failure to accept the certified mail and/or respond to the notification sent to you by the U.S. Regular Mail is considered a waiver of your right to a hearing. The State Board could take action to suspend your certificate based on the information presented by the State Department of Education (SCDE).

The State Board will consider this matter on August 13, 2024, at approximately 10:00 a.m., or as soon thereafter as is feasible.

~~Unlike the heading on the November 2023 letter from the Department to Appellant, this July 2024~~
letter does not indicate it was mailed with any special delivery or tracking features.

The South Carolina Board of Education conducted a hearing on September 3, 2024 and Appellant was not present. The Board then issued a written order to suspend Appellant's educator certificate for a period of two years (September 3, 2024 to September 2, 2026). In the Board's order, the summary of the case stated in part:

On November 29, 2023, the South Carolina Department of Education (SCDE) sent Austin Bischoff a notice via regular and certified mail of this right to a hearing regarding the possible suspension of his South Carolina educator certificate. The SCDC has verified Mr. Bischoff's address, the certified letter was returned unclaimed, and the letter sent via regular mail has not been returned. On July 31, 2024, the SCDE informed Mr. Bischoff via regular mail that the State Board would meet on August 13, 2024, or as soon thereafter as is feasible, to consider action against his educator certification. Under the South Carolina Rules of Civil Procedure 5(b), Mr. Bischoff has been given fair notice of constitutional due process. He has not contacted the SCDC to request a hearing and is now in default.

Appellant indicates in his brief that he first learned of the suspension on September 5, 2024.

On September 13, 2024, Appellant, through counsel, filed a Motion to Reconsider asserting the Department's initial and follow up notices were erroneously mailed to his former address in Aiken, South Carolina. The motion asked that the Board rescind its order and "allow this educator to have a full merits hearing on the underlying issues." On September 24, 2024, counsel for the Department wrote to Appellant's counsel to provide a response to Appellant's Motion to Reconsider and ultimately denied the motion. The body of the letter stated in part:

The motion was reviewed by the SCDE's Office of General Counsel (OGC). After reviewing the SCDE's own records, it was found that the November 29, 2023, Notice and the July 31, 2024, Final Notice were sent to Mr. Bischoff's proper address in Grovetown, Georgia. Copies of both notices are enclosed for your records.

It was further noted that although Mr. Bischoff states he changed his address in the Educator Portal prior to December 2, 2023, the system

data shows that the address was not updated until April 22, 2024. The SCDC was able to obtain the correct address using a public look-up software for legal compliance.

Due to the inconsistencies between the information provided in the motion and what is in the SCDE's record, the OGC has deemed it unnecessary to present the matter to the State Board of Education. The final order issued on September 3, 2024, should be considered the agency's final action in this matter. As noted in the motion, the matter is appealable to the SC Administrative Law Court.

ISSUES ON APPEAL

Appellant raises the following six issues in his brief:

1. Did the Aiken County Public School District Fail to Provide Adequate Support and Training?
2. Did the Aiken County Public School District Fail to Properly Handle Mr. Bischoff's Performance Concerns?
3. Did Mr. Bischoff Comply with the 60-day Evaluation Timeline as Indicated by the South Carolina Department of Education?
4. Did the Aiken County Public School District's Lack of Ongoing Support Lead to Mr. Bischoff's Resignation?
5. Did the South Carolina Department of Education Deny Mr. Bischoff his right to Due Process by Not Providing Mr. Bischoff Fair Notice of His Constitutional Due Process?
6. Since Leaving the Aiken County Public School District, Did Mr. Bischoff Rehabilitate Himself and Continue to Display Professional Conduct within the Scope of His Duties as an Educator?

STANDARD OF REVIEW AND JURISDICTION

The Respondent is an "agency" under the Administrative Procedures Act (APA). See S.C. Code Ann. §§ 1-23-310(2), -505(2), and -600(A) and (E)(Supp. 2024). Accordingly, the APA's standard of review governs appeals from decisions of the Department. See *Id.* §§ 1-23-380 & -600(E) (Supp. 2024). The normal standard used by appellate bodies to review agency decisions is provided by Section 1-23-380(5) of the South Carolina Code (Supp. 2024). See also § 1-23-600(E) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380).

However, in this case, a special statute governs appeals involving the revocation or suspension of teaching certificates, and the special statute controls. *See Mims v. Alston*, 312 S.C. 311, 313, 440 S.E.2d 357, 358–59 (1994) (special statute governing appeal from an involuntary ~~commitment order of the probate court controlled over more general statute governing appeals~~ from probate court). That statute is section 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. An appeal from the order of the Administrative Law Court must be taken in the manner provided by the South Carolina Appellate Court Rules.

S.C. Code Ann. § 59-25-260 (2020) (emphasis added).

As the italicized language indicates, on appeal to the Administrative Law Court, the Court must consider the findings of fact made by the Board to be “final and conclusive” and should review “errors of law.” With respect to factual matters, this standard has been construed in other contexts to mean that factual findings will not be disturbed if there is any evidence in the record which would support those findings, or, stated differently, cannot be disturbed unless there is no evidence reasonably supporting such findings. *See, e.g., Seago v. Horry County*, 378 S.C. 414, 422, 663 S.E.2d 38, 42 (2008) (standard of review in 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 zoning board). The Court concludes that this standard is the appropriate standard of review in this matter.

DISCUSSION

The Court views Appellant’s fifth issue – whether due process was violated because he lacked notice of the proceedings against him in time to appear – as the central issue in this case, and, therefore, the Court will address it first. The Board’s decisions contain the following factual findings relevant to this inquiry:

- On November 29, 2023, the South Carolina Department of Education (SCDE) sent Austin Bischoff a notice via regular and certified mail of his right to a hearing regarding the possible suspension of his South Carolina educator certificate.
- The SCDE has verified Mr. Bischoff's address, the certified letter was returned unclaimed, and the letter sent via regular mail has not been returned.
- On July 31, 2024, SCDE informed Mr. Bischoff via regular mail that the State Board would meet on August 13, 2024, or as soon thereafter as is feasible, to consider against his educator certificate.

Appellant challenges these factual findings made by the Board. As previously discussed, however, the Court cannot disturb a factual finding made by the Board if there is any evidence which reasonably supports the finding. This standard is a high standard, one more favorable to the Department than even the substantial evidence standard.

Viewed through this lens, the Court rejects certain findings by the Department. The Court is not compelled to accept and does not accept the Board's findings that the notice sent by certified mail was returned and that the notice sent by certified mail was sent to Appellant at his Georgia address. The evidence submitted by Appellant from the United States Postal Service, which was added to the record without objection from the Department, unequivocally demonstrates that the notice sent by certified mail was delivered to the Aiken address where the return receipt was signed by an unknown person. There is no evidence in the record that this letter was ever returned to the Department. Additionally, had the letter sent by certified mail been addressed to Appellant in Georgia, it would not have been delivered to his prior address in Aiken. There is no evidence which reasonably supports the Board's findings to the contrary.

However, other findings by the Department regarding notice must be treated differently. The record contains a copy of a letter dated November 29, 2023 which indicates it was sent via both regular and certified mail. The address listed on the letter was Appellant's correct address in Georgia. Appellant had instituted mail forwarding from his prior Aiken address to his Georgia address prior to the mailings sent by the Department and there was no evidence in the record that either mailing sent by regular mail was returned to the Department. As a result, the Court must accept as conclusive the Board's findings that it sent by regular mail to Appellant's Georgia address both a notice that a proceeding involving his education credential had been commenced

and that he had a right to request a hearing in writing and a subsequent letter notifying Appellant that he had been deemed to have waived such a hearing and that the Board could consider action against his credential in August of 2024.⁵

~~In summary, the Court must evaluate Appellant's contention that his due process rights~~ were violated because the Board held a hearing without affording him proper notice assuming that the Board sent an initial notice to Appellant in Georgia via regular mail.⁶ “Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.” *Kurschner v. City of Camden Planning Comm’n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008). “When the State seeks to revoke a professional license, procedural due process rights must be met.” *Zaman v. S.C. State Bd. of Medical Examiners*, 305 S.C. 281, 284, 408 S.E.2d 213, 215 (1991). Specifically, the South Carolina Supreme Court has recognized the liberty and property interests an educator has in a professional license and that “procedural due process requirements must be met.” *Brown v. S.C. State Bd. of Educ.*, 301 S.C. 326, 329, 391 S.E.2d 866, 867 (1990). “Due process requires (1) adequate notice;⁷ (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses.” *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 235, 642 S.E.2d 565, 567 (2007).

⁵ The fact that the address on the initial notice letter sent by certified mail reflected a Georgia address but was nevertheless delivered to Aiken does raise the possibility that the initial notice sent by regular mail was also placed in an envelope with the Aiken address. However, there is no evidence from the postal service regarding this letter and there is no evidence that this letter was returned to the Department. Given the limited scope of review with respect to factual findings by the Board, the Court cannot overturn findings related to the notice letters sent by regular mail.

⁶ In his reply brief, Appellant raises the argument that the November 29, 2023 notices were not sent by certified mail, restricted delivery, as required by the Department’s Procedures for Educator Certification Hearings. This is an argument based upon compliance with applicable rules rather than one based upon due process. It is unclear to what extent the procedural rules are binding as they are not contained in either a statute or regulation, but, in any event, this argument is not preserved for review because it was raised for the first time in Appellant’s reply brief and was not ruled upon by the Board below. *Simmons v. SC STRONG*, 402 S.C. 166, 173 at n. 2, 739 S.E.2d 631, 635 at n. 2 (Ct. App. 2013); see also *Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund*, 389 S.C. 422, 431, 699 S.E.2d 687, 691-92 (2010) (holding an issue is not preserved for appellate review if it was not ruled upon by the Appellate Panel); *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 692 (Ct.App.2001) (holding an argument made in a reply brief cannot present an issue to the appellate court if it was not addressed in the initial brief).

⁷ Notice is also required by statute. S.C. Code Ann. § 59-25-170 (2020) (“[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”).

In mounting a due process challenge, the Appellant must show substantial prejudice resulted. *Palmetto Alliance, Inc. v. S.C. Public Service Comm'n*, 282 S.C. 430, 435, 319 S.E.2d 695, 698 (1984). Lack of notice can constitute substantial prejudice. *Porter v. S.C. Public Serv. Comm'n*, 338 S.C. 164, 170, 525 S.E.2d 866, 869 (2000); *Cameron & Barkley, Co. v. S.C. Procurement Review Panel*, 317 S.C. 437, 441, 454 S.E.2d 892, 894 (1995). Due process, however, does not require that a person receive actual notice. *Jones v. Flowers*, 547 U.S. 220, 226 (2006). Rather, it requires only that notice be given in a manner reasonably calculated to apprise one of the pendency of the action and afford him or her an opportunity to present objections. *Id.* at 226.

The United States Supreme Court has held that mail service satisfies this requirement. *E.g., Tulsa Pro. Collection Servs., Inc. v. Pope*, 485 U.S. 478, 490 (1988) (“[w]e have repeatedly recognized that mail service is an inexpensive and efficient mechanism that is reasonably calculated to provide actual notice”); *see also Taylor v. Taylor*, 672 A.2d 44, 50 (Del. 1996) (notice of a modification petition, sent by *regular* mail to a non-resident obligor's last known address, is “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objection) (emphasis in original); *First Resol. Inv. Corp. v. Seker*, 795 A.2d 868, 872-73 (N.J. 2002) (due process is satisfied when a defendant is served by ordinary mail at his or her last known address). The November 29, 2023 notice sent by *regular mail* therefore satisfies due process. Because Appellant’s due process rights were not violated, the Board was authorized to proceed with its hearing.

This conclusion is dispositive of this appeal. All other grounds raised by Appellant relate to the merits of the Board’s decision to suspend Appellant’s credential, which are precluded from review by the default below. Appellant’s absence precluded these arguments from being raised to and ruled upon by the Board, and they are not preserved for review.

ORDER

IT IS THEREFORE ORDERED that the Department’s South Carolina State Board of Education September 3, 2024 Order of Suspension for Appellant’s educator certificate is **AFFIRMED.**⁸

AND IT IS SO ORDERED.

⁸ The Court recognizes that this result may be considered harsh, and, if the Court were free to find facts as it saw fit, the outcome of this case might be different. However, the Court is constrained by the standard of review and must accept certain findings of the Department as true and correct, even if the evidence is in conflict.



The Honorable Robert L. Reibold
Administrative Law Judge

March 6, 2025

Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Jared Thompson, hereby certify that I have on 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).



Jared Thompson
Judicial Law Clerk

March 6, 2025
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Austin Bischoff,

Appellant,

v.

South Carolina Department of Education,

Respondent.

Docket No. 24-ALJ-30-0362-AP

**ORDER DENYING PETITION
FOR REHEARING**

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (“Court”) pursuant to an appeal filed by Austin Bischoff (“Appellant”) on October 3, 2024.¹ Appellant challenges a decision issued on September 3, 2024 by the South Carolina Department of Education’s State Board of Education (“Department” or “Respondent”) suspending his educator certificate.

This matter was assigned to the undersigned on October 7, 2024. On October 11, 2024, the Department filed the Record on Appeal. On November 7, 2024, Appellant requested an extension of time to file his brief, which was initially due on or before November 11, 2024. The Department did not oppose the request and, on November 7, 2024, the Court granted a 30-day extension.² On December 9, 2024, Appellant filed his initial brief and a Motion to Supplement the Record on Appeal. The Court received no response to the motion from the Department. However, the Department did file its brief on January 3, 2025. Appellant filed his reply brief on January 13, 2025. On January 21, 2025, the Court granted Appellant’s motion and offered the Department an opportunity to amend its brief. The Department filed a letter on January 29, 2025 informing the Court it elected to not submit an amended brief.

The Court issued an Order affirming the decision of the South Carolina State Board of Education on March 6, 2025. On March 17, 2025, Appellant filed a Motion for a Rehearing. As of the date of this Order, the Department has not responded to the motion.

¹ The Court has jurisdiction in this matter under S.C. Code Ann. §§ 1-23-380, -600(D)&(E)(Supp. 2024) and 59-25-260(2020).

² The thirtieth day fell on Saturday, December 7, 2024 and the deadline was automatically extended to Monday, December 9, 2024 pursuant to SCALC Rule 3(A).

BACKGROUND

The factual background of this matter is fully recited in the Court's March 6, 2025 Order and is therefore not repeated herein.

STANDARD OF DECISION

A motion for rehearing is authorized by SCALC Rule 40(B). This rule is based on its counterpart in the South Carolina Appellate Court Rules. The appellate court rules in turn provide that a motion or petition for rehearing "shall state with particularity the points supposed to have been overlooked or misapprehended by the court." Rule 221(a), SCACR. Accordingly, to prevail on a petition for rehearing, an appellant must demonstrate the Court overlooked or misapprehended their argument. *Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001). "The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time." Jean H. Toal, Shahin Vafai & Robert Muckenfuss, *Appellate Practice in South Carolina* 309 (1999) (citing *Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, 167 S.E. 234 (1933)). The Court should therefore not consider new evidence or arguments when deciding whether to grant the petition for rehearing. *Kennedy*, 349 S.C. at 532, 564 S.E.2d at 322.

DISCUSSION

Appellant's petition for rehearing raises seven general arguments, and, within each argument articulates several individual points or issues. The seven general arguments are titled:

1. Misapplication of *Jones v. Flowers*, 547 U.S. 220 (2006) and the inadequacy of subsequent notice attempts;
2. Erroneous application of S.C. Rule of Civil Procedure 5(b) to override Due Process;
3. Acceptance of fact findings wholly unsupported in the record;
4. The Department's violation of procedural obligations;
5. Constraints of S.C. Code Ann. § 59-25-260 do not preclude review of due process violations when evidence is undermined;
6. ALC's preservation issue.
7. Arbitrary and capricious action/abuse of discretion.

The Court will address these arguments below.

I. Misapplication of *Jones v. Flowers*

Within this heading, Appellant enumerates five arguments. These arguments are: (1) a failure to properly apply the “additional reasonable steps” requirement; (2) misinterpretation of the “reasonably calculated” standard; (3) inadequate follow up measures by the Department; (4) improper reliance on inapplicable legal standards; (5) overlooking evidence supporting due process violations.

Appellant argues that the Court failed to properly apply the “additional reasonable steps” requirement established in *Jones v. Flowers*. In *Jones*, the United States Supreme Court held that when a mailed notice of a tax sale is returned unclaimed, a state, as a matter of due process, must, if practicable, take additional reasonable steps to attempt to provide notice to the property owner before conducting a tax sale. *Jones*, 547 U.S. 220, 226-27 (2006). Appellant contends that while the Court recognized that misdelivery of the certified letter triggered the additional steps requirement, the Court failed to enforce this requirement.

The Court does not agree with Appellant. Its prior Order does not contain a discussion of or endorse the “additional reasonable steps” requirement established in *Jones*. The absence of a discussion of this requirement in the Court’s prior Order stems from the fact that the Court did not conclude that the Department’s efforts to provide notice to Appellant using a certified letter comported with due process in this case. The Court’s ruling instead was that the Department’s additional attempt to provide notice by simultaneously sending another copy of its letter to Appellant in the regular mail satisfied due process. There was no evidence that the copy of the letter sent by regular mail was returned unclaimed, and, as a result, the “additional reasonable steps” requirement was not triggered.

Appellant also contends that the Court misinterpreted the “reasonably calculated” standard. He argues that merely resending notices via regular mail without any effort to confirm receipt or explore alternative methods does not satisfy the requirement that the means of communication must be reasonably calculated to provide notice. Again, the Court disagrees with Appellant. The Court did not conclude that the Department satisfied due process by “resending” notices by regular mail. Had the Department actually resent a notice, then it would have taken an additional reasonable step to notify Appellant, something Appellant specifically contends was not done. The Department instead sent both a certified letter and a letter via regular mail at the same time. To the extent that Appellant attempts to argue more generally that sending a letter by regular mail is

not a method reasonably calculated to give notice, the Court notes that precedent weighs uniformly against this argument. *E.g., Tulsa Pro. Collection Servs., Inc. v. Pope*, 485 U.S. 478, 490 (1988) (“[w]e have repeatedly recognized that mail service is an inexpensive and efficient mechanism ~~that is reasonably calculated to provide actual notice~~”); *see also Taylor v. Taylor*, 672 A.2d 44, 50 (Del. 1996) (notice of a modification petition, sent by *regular* mail to a non-resident obligor's last known address, is “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objection)(quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950)) (emphasis in original); *First Resol. Inv. Corp. v. Seker*, 795 A.2d 868, 874 (N.J. 2002) (due process is satisfied when a defendant is served by ordinary mail at his or her last known address).

Appellant next argues that the Department’s actions fell far short of the *Jones* requirement to undertake reasonable follow-up measures after its certified letter was returned. According to Appellant, the notices subsequently sent by the Department on November 29, 2023 and July 31, 2024 via regular mail were insufficient follow-up measures. The November 29, 2023 letter sent by regular mail was, however, not a follow-up letter. It was an additional copy of the letter sent by certified mail and was sent at the same time as was the certified letter. In any event, this argument is largely a duplicate of Appellant’s earlier argument regarding the requirement to take additional reasonable steps and fails for the reasons discussed above.

Another argument raised by Appellant is that the Court improperly relied upon inapplicable legal standards. Specifically, Appellant contends that: (1) the Court erred in relying upon the cases cited above for the proposition that service by regular mail is reasonably calculated to give notice and therefore satisfies due process because these cases did not involve situations in which mail was returned, thereby triggering the requirement that additional steps be taken to provide notice; and (2) the Court misconstrued S.C. Code Section 59-25-260, which indicates that the Board’s findings should be “final and conclusive.” The Court does not agree with Appellant’s assertion that it misconstrued the cited cases. Appellant is correct that these cases do not involve a situation in which mail was returned unclaimed, but Appellant’s argument once again fails to acknowledge that the Department sent *two* original notices – one by certified mail and one by regular mail. It is this additional letter sent by regular mail which the Court has concluded provided constitutionally

adequate notice. There is no evidence that the letter sent simultaneously by regular mail was returned, making the Court's citation to the above authorities proper.

The Court also disagrees with Appellant's contention that it misapplied S.C. Code section 59-25-260, which provides that:

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. An appeal from the order of the Administrative Law Court must be taken in the manner provided by the South Carolina Appellate Court Rules.

S.C. Code Ann. § 59-25-260 (2020) (emphasis added). Appellant argues that deference to the Board's factual findings under section 59-25-260 does not extend to findings unsupported by any evidence or to legal conclusions based upon those flawed findings.

Appellant cites no authority for this proposition, but, in any event, the Court agrees generally with Appellant that deference does not extend to factual findings unsupported by any evidence. As the Court stated in its original order, it construed this standard to mean that factual findings will not be disturbed if there is any evidence in the record which would support those findings, or, stated differently, cannot be disturbed unless there is no evidence reasonably supporting such findings. The flaw in Appellant's argument here is again that he fails to recognize that the Department initially attempted to notify him in two ways: (1) a certified letter; and (2) a letter sent by regular mail. Had the Department only attempted to notify Appellant by certified letter, the Court would have reversed the determination of the Board and remanded for additional proceedings. The Court, however, concluded that the alternate method of notice met the minimum requirements for due process.

Appellant's final point in his initial argument is that the Court overlooked evidence that his due process rights were violated because he did not receive adequate notice. He asserts that the Department failed to explore alternate methods of service after "the initial attempts failed due to their errors in notifying Mr. Bischoff." This argument ignores the fact that the notice sent by regular mail was not returned and no error in service is associated with this initial notification.

II. Erroneous Application of S.C. Rule of Civil Procedure 59(b) to Override Due Process.

Appellant makes several arguments challenging the Court's strict enforcement of Rule 5(b), SCRCP. ~~The Court dispenses with these arguments quickly because it did not rely upon or~~ enforce Rule 5(b), SCRCP. The only references to Rule 5(b) in the Court's prior Order were contained in quotes from prior statements of the parties.³

III. Acceptance of Fact Findings Wholly Unsupported by the Board

Appellant asserts that the Court has incorrectly given the findings made by the Board deference because it overlooked evidentiary deficiencies. Many of these arguments have already been addressed.⁴ Appellant does make one new argument in this portion of his motion. He asserts that there is a complete lack of evidentiary support for the Board's finding that it actually mailed the July 31, 2024 letter to him.⁵ However, Appellant made no assignment of error with respect to the July 31, 2024 letter in his brief and cannot raise any issues relating to this letter in a petition for rehearing.

IV. The Department's Alleged Violation of Procedural Obligations

Once again, Appellant argues that the Department failed to fulfill its obligations to provide him with notice when it knew that its certified letter had been misdelivered and thereby violated standards of due process. These criticisms have already been addressed herein and the Court incorporates its prior discussion by reference.⁶

Appellant does make two additional arguments in this section of his motion that the Court will address. First, Appellant contends that the Court's refusal to accept the Department's finding that the certified letter was properly delivered is inconsistent with the Court's ultimate conclusion that there was no due process violation. Second, Appellant argues that the Department disregarded

³ Appellant also argues in this section of his motion that additional attempts at notice were required in light of the failure of the Department's initial attempts. This argument has already been addressed.

⁴ In particular, Appellant argues that the Court has misapplied S.C. Code Section 59-25-260, that the Court should not have accepted findings without evidentiary support, the Court failed to consider that the Department actually knew that its certified letter was returned and made no subsequent attempts to remedy the error, and that the Court rigidly applied Rule 5(b), SCRCP. These contentions have been addressed *infra*.

⁵ The July 31, 2024 letter informed Appellant that he had *previously* defaulted and that the Board would consider the matter without input from him in August of 2024.

⁶ Appellant also contends that it sanctioned making findings of fact based upon speculation. Appellant does not identify the findings of fact he contends were made upon speculation rather than evidence, with the result that Appellant has not identified with particularity a point that the Court has overlooked or misapprehended. Assuming for the purposes of argument that his challenge is based upon the July 2024 letter, that argument is addressed above.

certain procedural safeguards which are designed to protect individuals in administrative proceedings.

The Court disagrees with Appellant's first argument that the Court's refusal to accept the ~~Department's findings regarding the certified letter are inconsistent with its ultimate ruling.~~ Again, the Court did not conclude that the Department's efforts to notify Appellant using a certified letter comported with due process. The Court instead ruled that the Department's mailing of a second letter by regular mail at the same time it sent the certified letter satisfied due process. Accordingly, there is no inconsistency.

Appellant next contends that certain procedural safeguards were disregarded. According to Appellant, these safeguards are found in S.C. Code sections 59-25-170, 59-25-200, State Board of Education Rule BCAF, and particularly section 4(C) of this rule, and the Administrative Procedures Act. The Court cannot take action upon this argument for two reasons: (1) it does not discuss which provisions of these rules Appellant claims to have been violated and the manner in which they were violated, with the result that Appellant fails to identify with particularity any points overlooked or misapprehended by the Court;⁷ and (2) Appellant did not make these arguments in his brief on appeal, and, as a result, they cannot be raised in a petition for rehearing.⁸

V. Constraints of S.C. Code Section 59-25-260.

Appellant again takes issue with the Court's construction of S.C. Code Section 59-25-260. He argues that the Court was not required to defer to any of the Board's findings below. The Court did eschew some of the Board's findings but concluded that there was *some* evidence in support of the remaining findings and, as a result, deference was required. Appellant's argument has been otherwise addressed above.

⁷ An argument exists that the notice sent by regular mail was improper because registered or certified mail is required by statute. The Court does not address whether that argument would have been successful. However, this argument was not made below until Appellant filed his reply brief and it would have been improper for the Court to inject into the appeal a non-jurisdictional argument which had not been raised by the parties. The due process implications of the notice sent by regular mail were all that the Court considered in its initial ruling. As the Court noted in its initial order, the outcome of this case is harsh for Appellant, and, were the Court free to make its own findings of fact, it may have decided the matter differently. Unfortunately, the matter is before the Court in the posture of an appeal and as a result, the Court is required to accept certain findings made by the Board and is limited to addressing the specific arguments made by the parties.

⁸ Appellant did previously generically assert that he was entitled to notice pursuant to S.C. Code Section 59-25-170. The Court does not disagree with the conclusion. However, the Court has ruled that the letter mailed by regular mail satisfied due process and due process concerns were the only concerns properly addressed to the Court in this appeal.

VI. ALC Preservation Issues

Appellant contends generally that the Court's conclusion that arguments made on appeal were not preserved constitutes an error of law. Appellant does not identify the specific arguments which he contends were erroneously not considered. In its prior Order, the Court concluded it could not entertain the following: (1) all issues raised in Appellant's brief other than due process; and (2) an argument that all notices sent by the Board were required to be sent by registered or certified mail. Appellant asserts that the Court's conclusion on these matters deprived him of an opportunity to present arguments, were based on incorrect interpretations of legal precedent, and should not have been made given the exceptional circumstances present here.

As to issues raised by Appellant in his statement of issues on appeal other than due process, those issues all related to defenses which would ordinarily have been considered by the Board below. The Court did not refuse to consider these issues based on ordinary preservation of error rules. The Court ruled that these arguments could not be raised as a result of Appellant's procedural default – his failure to request a hearing. State Board of Education Rule BCAF(4)(D) provides that “[i]f the educator fails to make a written request for a hearing within 15 days, the educator will have waived the right to a hearing, and the Board may make a determination based solely on information presented by the SCDE.”

As to the argument that the notice sent by regular mail was invalid because such a notice must be sent by registered or certified mail, this argument too was not excluded based upon error preservation principles. Appellant was precluded from asserting this argument because it was raised for the first time in a reply brief.

The Court does not believe it has misapprehended or overlooked any point regarding these matters.

VII. Arbitrary and Capricious Actions/Abuse of Discretion

Appellant argues that the Department's decision to suspend his teaching certificate is arbitrary, capricious and constitutes an abuse of discretion because: (1) it utilized a flawed notification process; (2) it violates legal precedent; (3) the Department's decision is not supported by substantial evidence; (4) the Administrative Law Court erred in accepting findings of fact made by the Board; and (5) there is no rational basis for the Department's decision to suspend the certificate. The Court will briefly address these arguments below.

Appellant identifies three alleged flaws in the notification process. First, he complains that the initial certified mail notice was known to be misdelivered. Second, he contends that there is no proof of delivery for the regular mail notice dated November of 2023. Third, he contends that ~~there is no proof of delivery for the July 31, 2024 letter.~~ The first and third of these arguments have previously been addressed above, and, the second argument is flawed. As the United States Supreme Court stated in *Jones*:

Due process does not require that a property owner receive actual notice before the government may take his property. *Dusenbery, supra*, at 170, 122 S.Ct. 694. Rather, we have stated that 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, 547 U.S. at 226. Because actual notice is not required to satisfy due process, proof of delivery is also not required where, as here, only due process is challenged.

Appellant next argues that the Department’s actions contravene *Meier v. Sunz Ins. Co.*, 2023 WL 123456 (S.C. 2023). The Westlaw citation to case number “123456” is highly suspicious. The Court’s own independent research revealed no case involving the parties named in the case citation, and it appears that this case is fictitious.

The Court therefore rejects Appellant’s argument in this regard. It is likely that Appellant employed argument generated by an artificial intelligence (AI) program which contained the fictitious case citation and cautions Appellant that many harms flow from the use of non-existent case citations and fake legal authority generated by AI programs, including but not limited to the waste of judicial resources and time and waste of resources and time of the opposing party. Were courts to unknowingly rely upon fictitious citations, citizens and future litigants might question the validity of court decisions and the reputation of judges. If, alternatively, Appellant’s use of a fictitious case was not the result of using an AI program, but was instead a conscious act of the Appellant, Appellant’s action could be deemed a fraud on the Court. **Appellant is hereby expressly warned that submission of fictitious case authorities may subject Appellant to sanctions under the S.C. Frivolous Proceedings Act, S.C. Code Ann. § 15-36-10(Supp. 2024).**

Appellant’s next argument is that the Department’s decision is not supported by substantial evidence. Appellant relies upon a finding by this Court that there is no evidence which reasonably supports the Board’s finding that the certified letter was addressed to Appellant at his Georgia

address. This argument is misconceived. The Court cannot reverse or modify a factual finding made by the Board unless there is no evidence supporting that finding. This standard is in fact more rigorous than a substantial evidence standard of review. In this case, the Court is required to ~~accept factual findings of the Board which are not supported by substantial evidence as long as~~ there is at least *some* evidence supporting the finding. The absence of substantial evidence in support of a particular factual finding is therefore not necessarily a ground for reversal. While the Court has rejected some of the findings made by the Board, it was required to accept others which were outcome determinative.

Appellant again argues that the Court erred in accepting the Board's findings regarding the July 13, 2024 letter. To the extent that Appellant argues that the Court's rejection of the Board's conclusion that the certified letter was mailed to his Georgia address undermines the reliability of the Board's conclusions regarding other mailings, the Court agrees. However, the applicable standard of review does not permit the Court to substitute its judgment for that of the Board with respect to other dispositive conclusions it reached.

Appellant's final argument is that the Board's decision is irrational, arbitrary and capricious, and an abuse of discretion because the Board failed to adhere to proper notification procedures, relied upon unsubstantiated claims, and disregarded Appellant's due process rights. These arguments have been fully addressed herein and in the Court's original Order. The Court perceives nothing that it overlooked or misapprehended.

ORDER

IT IS THEREFORE ORDERED that the Appellant's petition for rehearing is **DENIED**.

AND IT IS SO ORDERED.



The Honorable Robert L. Reibold
Administrative Law Judge

April 10, 2025
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Jared Thompson, hereby certify that I have on 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).



Jared Thompson
Judicial Law Clerk

April 10, 2025
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Austin Bischoff

Appellant,

vs.

South Carolina State Board of Education,

Respondent.

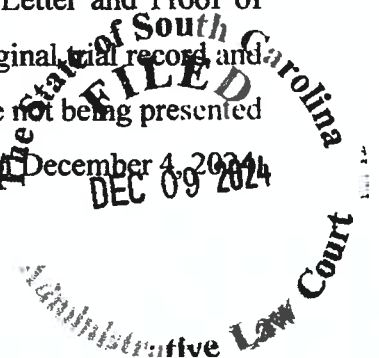
Docket No. 24-ALJ-30-0362-AP

**MOTION TO SUPPLEMENT
THE RECORD ON APPEAL**

Austin Bischoff respectfully requests that the Court allow the addition of Aiken County Public Schools 2019-2020 and 2020-2021 School Psychologist Evaluations, to the record on appeal, as it was inadvertently omitted from the original trial record and is necessary for the Court to fully consider the issues raised on appeal, despite not being presented during the original proceedings due to Mr. Bischoff being unable to present the evidence to the South Carolina Department of Education because he was unaware of his right to due process. The evidence was also not submitted to the South Carolina Department of Education when the South Carolina Department of Education subpoenaed the Aiken County Public School District.

Austin Bischoff respectfully requests that the Court allow the addition of the advocacy Letter by Dr. Lindsey Ott to the record on appeal, as it was inadvertently omitted from the original trial record and is necessary for the Court to fully consider the issues raised on appeal, despite not being presented during the original proceedings due to it being newly discovered evidence that was received by the Appellant on December 6, 2024.

Austin Bischoff respectfully requests that the Court allow the addition of Howard Brown's, South Carolina Consumer Affairs Manager of the United States Postal Service, Letter and Proof of Delivery to the record on appeal, as it was inadvertently omitted from the original trial record and is necessary for the Court to fully consider the issues raised on appeal, despite not being presented during the original proceedings due to it being newly discovered evidence. On December 4, 2024,

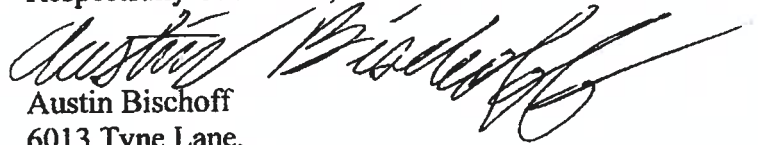


Howard Brown concluded the investigation into why Mr. Bischoff did not receive the certified letter from the South Carolina Department of Education, and he enclosed a letter taking responsibility for the certified letter not being delivered.

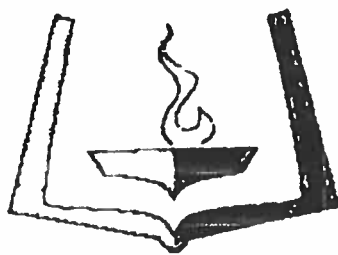
I have attached copies of these documents for your review. I appreciate your consideration of this request and look forward to your favorable response.

Thank you for your attention to this matter.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Austin Bischoff", written in a cursive style.

Austin Bischoff
6013 Tyne Lane,
Grovetown, GA 30813
abischoff@radford.edu
(843) 422-3116
pro se Appellant



AIKEN COUNTY

PUBLIC SCHOOLS

2019-20 School Psychologist Evaluation

School Psychologist: Austin Bischoff



AIKEN COUNTY
PUBLIC SCHOOLS

School Psychologist Evaluation 2018-2019

Employee Name: Austin Bischoff

Position: School Psychologist

Department: Special Programs

Reason for review:

☒ Annual

☐ Special (All special reviews will require documentation of performance.)

School Psychologist Evaluation is the instrument for school psychologists (based on the Support Personnel Evaluation for personnel on the Administrative Salary Schedules and/or in roles not evaluated using the South Carolina ADEPT Process based on PCS Coding). The employee will maintain and provide, upon request, evidence of work towards meeting departmental and/or individual professional goals.

Process: This process requires the employee, in collaboration with the supervisor, develop individual, school or district goals, which are aligned with the District's purpose and direction. Employees will receive oral and written performance feedback throughout the evaluation process and an improvement plan will be developed to address deficits, as needed. At a final conference, the employee will provide evidence of goal completion or progress. The supervisor will discuss the assigned ratings on each of the performance characteristics/standards based on the school psychologist evaluation rubric (SPER). This conference will be documented and submitted to Human Resources in accordance with all district procedures.

Instructions: Employee's performance should be evaluated in accordance with the School Psychologist Evaluation Rubric (SPER), as indicated by the requirements of the position. Indicate NA for areas that are not applicable.

Explanation of Ratings Assignment:

Highly Effective (4) Performance is exceptional in all areas and is recognizable as being superior to others. Employee is flexible in the performance of his/her duties and makes effective accommodations to changing situations. They are self-directed, innovative and creative in going beyond prescribed or required duties and are consistent in their high level of performance by remaining actively involved, interested, and enthusiastic about carrying out their job responsibilities with a high degree of productivity.

Effective (3) Competent and dependable level of performance. Meets performance standards of the job. Consistent in carrying out their job responsibilities.

Improvement Needed (2) Performance is deficient in certain areas. Employees who perform at a level that does not meet expectations are those who fail to carry out their job duties and responsibilities at levels described for their job. Although many of these employees are capable of demonstrating competent performance on occasion, they do not accomplish their tasks at this level on a consistent basis. They may perform some job duties incorrectly or ineffectively.

Ineffective (1)

NA - Not Applicable

Overall Rating (Based on SPER):

Highly Effective = at least ten competencies rated 4; no twos; no ones.

Effective = at least 12 of 22 competencies rated 3 or 4; no more than two competencies rated as two; no ones.

Improvement Needed = more than two competencies rated as two; less than 12 competencies rated as two.

Ineffective = any competency rated zero; 12 or more competencies rated two; in response to a severe weakness/concern as documented by the supervisor.

School Psychologist Evaluation Form

2018-2019

1-1
ASAP 10/11

School Psychologist: Austin Bischoff

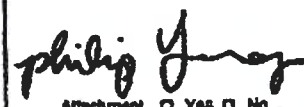
Professional Goal(s) (Established Goal is related to the employee's professional growth and development plan and/or departmental initiative(s):

- 1) My goal is to reduce behavior problems at North Aiken Elementary school, specifically in the 4th grade. I will work with the grade-level team to implement interventions.
- 2) I will involve more parents and community agencies at the schools I serve. I will have a minimum of 2 different community agencies involved at my schools by the end of the year.

*See attached goal setting form.

Professional Growth & Development Plan (Evidence of working towards goal completion)

Goal update: Reduction in referrals prior to school closure. Austin held counseling groups with 6 students. He had 6 sessions so far.

Required Activities	Date	Employee's Signature (All signatures should be in blue ink.)	Supervisor's Signature
Initial Conference • Goal(s), performance standards and expectations discussed • Any concerns brought up	10/9/2019	Attachment: ☐ Yes ☐ No	 Attachment: ☐ Yes ☐ No
Mid-Year Review/Conference • Professional Growth Plan progress reviewed • Performance standards and expectations reviewed	2/13/2020	Attachment: ☐ Yes ☐ No	 Attachment: ☐ Yes ☐ No
Mid-Year Concerns (if any) discussed			
Final Evaluation Conference • Professional Growth Plan progress reviewed • Each competency rated by supervisor • Overall performance evaluation status determined	4/27/2020	Attachment: ☐ Yes ☐ No	Attachment: ☐ Yes ☐ No

Final results and comments are recorded on the last page of this document.

School Psychologist Evaluation Form

2018-2019

School Psychologist: Austin Bischoff

Refer to the School Psychologist Evaluation Rubric for a full description of each domain and indicator.	Highly Effective 4	Effective 3	Improvement Needed 2	Ineffective 1	Comments *Required for any area rated Highly Effective or Improvement Needed
Indicator	4	3	2	1	
Domain 1: Assessment, Data-based Decision Making, and Accountability					
1.1: Utilizes appropriate assessment and data collection methods.		X			Austin uses a variety of assessments depending on the referral question. He works to apply the evaluation data to improve instructional programming.
1.2: Contributes to school-wide assessment and data-based practices for academic, social-emotional, and behavioral domains.		X			Austin worked to increase the data-based practices in his school.
1.3: Contributes to progress monitoring and data-based decisions regarding intervention practices for academic, social-emotional, and behavioral domains.	X				Austin works with the staff at his schools to make sure data is collected prior to a referral for evaluation.
1.4: Conduct special education evaluations to inform eligibility, service, and programming decisions.		X			Austin conducts evaluations in a timely and efficient manner. He effectively communicates evaluation findings to the staff and parents he serves.
1.5: Completes evaluations in a timely manner.			X		Austin completed his evaluations in 60 days. He needs to work on communicating with other service providers to ensure no timelines are missed. Will work to complete within 45 days.
1.6: Utilizes technology as part of data-based decision making practices.		X			Austin uses technology to improve his efficiency.
Domain 2: Interventions and Instructional Support to Develop Academic, Social, and Life Skills.					
2.1: Contributes to school-wide curricular and instructional practices for academic, social-emotional, and behavioral domains.		X			
2.2: Contributes to intervention practices for academic, social-emotional, and behavioral domains.		X			Austin worked to implement counseling groups. He assisted staff with behavioral contracts and reinforcement with students.
2.3: Contributes to crisis response and intervention practices.	X				Austin responds when there is a crisis in his school. He helped with several suicide assessments this year.
2.4: Utilizes information about student background and characteristics to inform instruction, intervention, and service delivery decisions.		X			

School Psychologist Evaluation Form

2018-2019

School Psychologist: Austin Bischoff

Refer to the School Psychologist Evaluation Rubric for a full description of each domain and indicator.	Highly Effective 4	Effective 3	Improvement Needed 2	Ineffective 1	Comments *Required for any area rated Highly Effective or Improvement Needed
Indicator	4	3	2	1	
Domain 3: Consultation and Collaboration					
3.1 Engages in consultation and collaboration with school staff.		X			Austin collaborates well with his colleagues and school staff. He supports teachers with implementation of interventions.
3.2 Engages in consultation and collaboration with parents and families.		X			Austin does an excellent job communicating evaluation findings in a parent friendly way. He is willing to help parents and families in any way he can.
3.3 Engages in consultation and collaboration with community agencies and providers.		X			
Domain 4: Leadership					
4.1 Seeks professional growth and learning opportunities to advance own knowledge and skill.		X			Austin expresses a desire to improve his skills, and has participated in professional development.
4.2 Contributes to School and/or Profession of School Psychology.		X			Austin is working with committees to improve the SIP process.
4.3 Advocates for student success.		X			Austin demonstrates a concern for and desire to improve student outcomes in ACPSD.
Domain 5: Professionalism					
5.1 Communicates effectively.		X			Austin is willing to share his thoughts and ideas with the group, and is considerate in speaking to others.
5.2 Exhibits professional demeanor and behavior.		X			Austin is willing to work hard. He has a positive attitude, is punctual, and professional in all that he does.
5.3 Adheres to ethical and legal standards.		X			Austin maintains confidentiality and is ethical in all that he does.
5.4 Attendance.		X			Austin was out very few days this year and worked through illness.
5.5 Independence/Job Knowledge.		X			Austin manages all aspects of his job without direct supervision. He is able to manage a large load effectively and efficiently.

Overall performance during evaluation period:
(To be discussed during Final Evaluation Conference.)

☐ Highly Effective = at least ten competencies rated 4; no twos; no ones.

☒ Effective = at least 19 of 21 competencies rated 4 or 3; no more than two competencies rated as two; no ones.

☐ Improvement Needed = more than two competencies rated as two; less than 12 competencies rated as two.

School Psychologist Evaluation Form

2018-2019

School Psychologist: Austin Bischoff

☐ ineffective = any competency rated zero; 12 or more competencies rated two; in response to a severe weakness/concern as documented by the supervisor.

Recommendation for continue employment:

☒ Recommended

☐ Recommended with conditions

☐ Not Recommended

Evaluators comments: Austin does an excellent job working with teams and explaining evaluation results. He expresses a desire to improve his leadership.

Employee's comments:

Name of Evaluator: Philip Young

Title: Coordinator of Evaluation and Student Services

Evaluators Signature: Philip Young

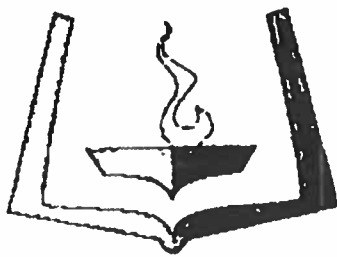
Date: 4/27/2020

Employee's Signature: _____

Date: 4/27/2020

Employee's signature signifies that the employee has reviewed the evaluation results; the signature does not necessarily imply agreement.

Reviewer's Comments:



AIKEN COUNTY

PUBLIC SCHOOLS

2020-21 School Psychologist Evaluation

School Psychologist: Austin Bischoff



AIKEN COUNTY
PUBLIC SCHOOLS

School Psychologist Evaluation 2020-2021

Employee Name: Austin Bischoff

Position: School Psychologist

Department: Special Programs

Reason for review:

☒ Annual

☐ Special (All special reviews will require documentation of performance.)

School Psychologist Evaluation is the instrument for school psychologists (based on the Support Personnel Evaluation for personnel on the Administrative Salary Schedules and/or in roles not evaluated using the South Carolina ADEPT Process based on PCS Coding). The employee will maintain and provide, upon request, evidence of work towards meeting departmental and/or individual professional goals.

Process: This process requires the employee, in collaboration with the supervisor, develop individual, school or district goals, which are aligned with the District's purpose and direction. Employees will receive oral and written performance feedback throughout the evaluation process and an improvement plan will be developed to address deficits, as needed. At a final conference, the employee will provide evidence of goal completion or progress. The supervisor will discuss the assigned ratings on each of the performance characteristics/standards based on the school psychologist evaluation rubric (SPER). This conference will be documented and submitted to Human Resources in accordance with all district evaluations.

Instructions: Employee's performance should be evaluated in accordance with the School Psychologist Evaluation Rubric (SPER), as indicated by the requirements of the position. Indicate NA for areas that are not applicable.
Explanation of Ratings Assignment:

Highly Effective (4) Performance is exceptional in all areas and is recognizable as being superior to others. Employee is flexible in the performance of his/her duties and makes effective accommodations to changing situations. They are self-directed, innovative and creative in going beyond prescribed or required duties and are consistent in their high level of performance by remaining actively involved, interested, and enthusiastic about carrying out their job responsibilities with a high degree of productivity.

Effective (3) Competent and dependable level of performance. Meets performance standards of the job. Consistent in carrying out their job responsibilities.

Improvement Needed (2) Performance is deficient in certain areas. Employees who perform at a level that does not meet expectations are those who fail to carry out their job duties and responsibilities at levels described for their job. Although many of these employees are capable of demonstrating competent performance on occasion, they do not accomplish their tasks at this level on a consistent basis. They may perform some job duties incorrectly or ineffectively.

Or Ineffective (1)

NA - Not Applicable

Overall Rating (Based on SPER):

Highly Effective = at least ten competencies rated 4; no twos; no ones.

Effective = at least 19 of 21 competencies rated 4 or 3; no more than two competencies rated as two; no ones.

Improvement Needed = more than two competencies rated as two; less than 12 competencies rated as two.

Ineffective = any competency rated zero; 12 or more competencies rated two; in response to a severe weakness/concern as documented by the supervisor.

School Psychologist Evaluation Form

2020-2021

School Psychologist: Austin Bischoff

(s)
04/20/2021

Professional Goal(s) (Established Goal is related to the employee's professional growth and development plan and/or departmental initiative(s):)			
Professional Growth & Development Plan (Evidence of working towards goal completion)			
Required Activities	Date	Employee's Signature <i>(If signatures should be in blue ink)</i>	Supervisor's Signature
Initial Conference • Goal(s), performance standards and expectations discussed • Any concerns brought up	10/15/2020		Philip J. Jorg
Mid-Year Review/Conference • Professional Growth Plan progress reviewed • Performance standards and expectations reviewed	02/01/2021		Philip J. Jorg
Mid-Year Concerns (if any) discussed: We discussed Austin's organization difficulties. He was late in completing the quarterly data and has 3 evaluations that are overdue. He shared that he is struggling with staying on top of timelines and getting things turned in on time. We will have a monthly check in to make sure things are getting turned in, reevaluation audits, file reviews, and consultation. We will also have Austin check in with a program specialist at his school.			
Final Evaluation Conference • Professional Growth Plan progress reviewed • Each competency rated by supervisor • Overall performance evaluation status determined			

Final results and comments are recorded on the last page of this document.

Dr. Lindsey Ott
Clear Dot Charter School
2015 Marion Street
Columbia, SC 29201
803-567-3075
lott@cleardotcharterschool.org



To Whom It May Concern,

I am writing concerning Austin Bischoff. Mr. Bischoff began working at Clear Dot Charter School through a staffing agency, Maxim Staffing, in the capacity of School Psychologist on 5/30/2023. Prior to Mr. Bischoff's employment at the School, the previous School Psychologist left many items incomplete or completed incorrectly. The School was left in a position where our compliance with special education timelines was in jeopardy and we had multiple students awaiting evaluation and in desperate need of services. Mr. Bischoff enthusiastically jumped in to assist our School by initiating evaluations, determining immediate actions to ensure compliance, and assisting in any capacity required.

During his time at Clear Dot Charter School, Mr. Bischoff has been professional and courteous to students and staff. He has not only completed the basic tasks required of his position as School Psychologist, but has assisted in other capacities at the school. He has provided compassionate support to our students in crisis or otherwise in need. In my experience, I have found Austin Bischoff to be a kind, professional, and empathetic worker.

Thank you for your consideration,

A handwritten signature in black ink that reads "Lindsey Ott". The signature is written in a cursive, flowing style.

Dr. Lindsey Ott
Director



December 04, 2024

Dear Mr. Bischoff,

I am writing to extend our sincerest apologies regarding the misdelivery of your Certified letter with tracking number 7021 1970 0001 2723 2079. We understand the importance of ensuring the secure and accurate delivery of all correspondence, especially Certified mail, and regret this error on our part.

Based on our investigation, the letter was delivered to 1103 Churchill Circle, Aiken, SC, on December 2, 2023, despite a change of address having been initiated. It appears that our carrier failed to forward the letter to your updated address as required and instead delivered it to the original address. Furthermore, the Proof of Delivery includes a scribbled signature, suggesting that our standard procedures for Certified mail delivery may not have been properly followed.

We recognize the inconvenience and potential issues this misdelivery may have caused you and take full responsibility for this lapse in service. Please rest assured that we are taking immediate steps to address the situation, including additional training for our carriers and reviewing our delivery protocols to prevent similar errors in the future.

If there is any way we can assist in rectifying this matter or if you require further clarification, please do not hesitate to contact me directly. We are committed to regaining your trust and ensuring that your future interactions with our services meet the highest standards of reliability and care.

Thank you for bringing this matter to our attention, and we appreciate your understanding and patience as we work to resolve this issue.

Sincerely,

A handwritten signature in black ink that reads "Howard Brown".

Howard Brown
Consumer Affairs Manager
South Carolina
Howard.J.Brown@usps.gov
803-926-6335



December 4, 2024

Dear Postal Customer:

The following is in response to your request for proof of delivery on your item with the tracking number:
7021 1970 0001 2723 2079.

Item Details

Status:	Delivered, Left with Individual
Status Date / Time:	December 2, 2023, 4:35 pm
Location:	AIKEN, SC 29803
Extra Services:	Certified Mail™

Destination Delivery Address

Street Address:	1103 CHURCHILL CIR
City, State ZIP Code:	AIKEN, SC 29803-7627

Recipient Signature

Signature of Recipient:	
Address of Recipient:	1103 CHURCHILL CIR, AIKEN, SC 29803

Note: Scanned image may reflect a different destination address due to Intended Recipient's delivery instructions on file.

Thank you for selecting the United States Postal Service® for your mailing needs. If you require additional assistance, please contact your local Post Office™ or a Postal representative at 1-800-222-1811.

Sincerely,
United States Postal Service®
475 L'Enfant Plaza SW
Washington, D.C. 20260-0004

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Austin Bischoff

Appellant,

vs.

South Carolina State Board of Education,

Respondent,

Docket No. 24-ALJ-30-0362-AP

MOTION FOR REHEARING

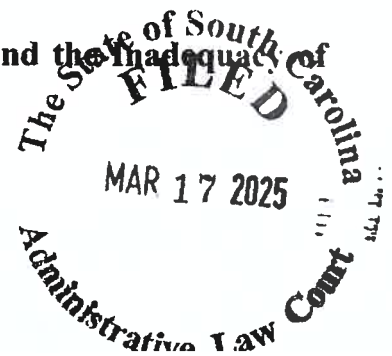
Dear Honorable Robert L. Reibold,

Comes now, Appellant, Austin Bischoff and hereby moves this Administrative Law Court for a rehearing of its Final Order and Decision issued on March 6, 2025, affirming the South Carolina State Board of Education's ("the Board") order to suspend his educator certificate. This motion argues that the Court's decision warrants reconsideration to prevent a manifest injustice and to ensure the protection of Mr. Bischoff's due process rights. The motion is predicated on the grounds that the Court's ruling is legally erroneous, unsupported by the factual record, constitutes a misapplication of governing law, and overlooks significant procedural violations resulting in a denial of due process.

I. POINTS OVERLOOKED OR MISAPPREHENDED BY THE COURT

The Appellant respectfully submits that the Court's decision affirming the suspension of Mr. Bischoff's educator certificate overlooked or misapprehended several critical points, particularly with respect to the adequacy of notice and the application of controlling legal principles.

A. Misapplication of Jones v. Flowers, 547 U.S. 220 (2006) and the Inadequacy of Subsequent Notice Attempts



1. Failure to Properly Apply the "Additional Reasonable Steps" Requirement

The Court correctly recognized that the misdelivery of the initial certified letter triggered the "additional reasonable steps" requirement established in *Jones v. Flowers*, 547 U.S. 220 (2006). However, it erred in its application of this standard to the subsequent notice attempts. The Supreme Court in *Jones* made clear that when an initial attempt at notice fails, due process requires more than simply repeating the same method of notification.

2. Misinterpretation of the "Reasonably Calculated" Standard

The Administrative Law Court (ALC) misapplied the "reasonably calculated" standard articulated in *Jones v. Flowers*, 547 U.S. 220 (2006). The Supreme Court emphasized that the notice must be "reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action." Merely resending notices via regular mail--without any effort to confirm receipt or explore alternative methods--does not meet this standard. By accepting these deficient notice attempts as sufficient, the Court fundamentally misunderstood and misapplied this critical precedent.

3. Inadequate Follow-Up Measures by the Department

The Department's actions fell far short of what is required under *Jones v. Flowers*, 547 U.S. 220 (2006). After the initial certified letter was misdelivered, the Department sent two subsequent notices (on November 29, 2023, and July 31, 2024) via regular mail but made no effort to confirm receipt or utilize alternative methods of communication that were readily available. These actions fail to satisfy the "reasonable follow-up measures" required when initial notice attempts are unsuccessful.

4. Improper Reliance on Inapplicable Legal Standards

The Court misapplied *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478 (1988), along with *Taylor v. Taylor*, 672 A.2d 44, 50 (Del. 1996), and *First Resol. Inv. Corp. v. Seker*, 795 A.2d 868, 872-73 (N.J. 2002), by failing to recognize that these

cases apply only when there is no evidence of notice failure and failed to adhere to the binding precedent established in *Jones v. Flowers*, 547 U.S. 220 (2006). The ALC also erred in its interpretation and application of S.C. Code Ann. § 59-25-260 (2020), which ~~makes the Board's factual findings "final and conclusive,"~~ because this deference does not extend to findings unsupported by any evidence or to legal conclusions based on those flawed findings, especially when those findings directly implicate due process rights. The ALC's decision effectively nullifies the protections afforded by the Due Process Clause, which requires that state action be fundamentally fair, even when constrained by statutory limitations on factual review. The ALC erred in concluding that the SCDE's notice procedures satisfied due process requirements.

Specifically, the Court erred by relying on legal standards from cases where mail service was deemed sufficient because there was no evidence of notice failure. For example:

- In *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478 (1988), mail service was upheld because there was no indication that notice had failed.
- Similarly, in *Taylor v. Taylor*, 672 A.2d 44, 50 (Del. 1996), and *First Resol. Inv. Corp. v. Seker*, 795 A.2d 868, 872-73 (N.J. 2002), mail service was deemed adequate because there was no evidence suggesting that notice had not been received.

These cases are distinguishable from the present matter here because there was clear evidence that notice had failed, triggering the heightened requirements of *Jones v. Flowers*, 547 U.S. 220 (2006). The SCDE failed to send the November 29, 2023 notice through restricted, certified mail; the SCDE failed to send the November 29, 2023 notice to his Grovetown, GA address and sent it to Mr. Bischoff's Aiken, SC address; the SCDE received a tracking number and tracking receipt showing that they sent it to the wrong address; and the USPS failed to forward the mail to Mr. Bischoff's correct

address. Due to the SCDE receiving the tracking receipt and improper delivery under their Procedures for Educator Certification Hearings 4(C), the SCDE was aware of the misdelivery, but made no additional attempts to rectify their mistake through sending ~~it via restricted certified mail, or through other means.~~ The Court's reliance on these precedents demonstrates a failure to properly distinguish between cases where notice was presumed effective and cases like this one where it was demonstrably ineffective.

5. Overlooking Evidence Supporting Due Process Violations

The Court overlooked critical evidence showing that Mr. Bischoff's due process rights were violated when he did not receive adequate notice regarding his certificate suspension proceedings. Under *Jones v. Flowers*, 547 U.S. 220 (2006), due process requires a genuine effort to inform an affected party when initial attempts fail; this includes exploring practical alternatives such as personal service, email communication, or other means reasonably likely to succeed under the circumstances. None of these alternative attempts were done in this case, and the SCDE only communicated through mail (unsubstantiated by evidence in the Record on Appeal), knowing the initial attempts failed due to their errors in notifying Mr. Bischoff.

B. Erroneous Application of S.C. Rule of Civil Procedure 5(b) to Override Due Process

The Court committed a significant legal error in its interpretation and application of S.C. Rule of Civil Procedure 5(b), overlooking crucial constitutional principles and factual circumstances:

1. Misinterpretation of Rule 5(b) in the Context of Due Process

While S.C. Rule of Civil Procedure 5(b) states that service is complete upon mailing, it cannot and should not be interpreted to supersede the fundamental constitutional requirements of due process. The rule provides a procedural guideline but does not negate the overarching constitutional obligation to provide adequate notice, especially when there is clear evidence that initial notice attempts have failed.

2. Failure to Consider Actual Knowledge of Notice Failure

The Court overlooked a critical fact: the South Carolina Department of Education (SCDE) possessed actual knowledge, through tracking information and receipt of delivery, that its initial attempt to provide notice had failed. This knowledge fundamentally alters the application of Rule 5(b) in this context. When an agency is aware that its notice has not reached the intended recipient, it cannot rely on a procedural rule to claim that its constitutional duty has been fulfilled, according to *Jones v. Flowers*, 547 U.S. 220 (2006).

3. Inadequacy of Subsequent Notice Attempts

In light of the known failure of the initial notice, the SCDE's claim of simply mailing a follow-up letter via regular mail falls far short of the due process standard established by the U.S. Supreme Court in *Jones v. Flowers*, 547 U.S. 220 (2006). This standard requires additional reasonable steps when initial notice attempts fail, particularly when the notifying party is aware of the failure.

4. Constitutional Primacy Over Procedural Rules

The Court erred in allowing a state procedural rule to effectively override constitutional due process requirements. While procedural rules serve important functions in the legal system, they cannot be applied in a manner that contravenes fundamental constitutional rights. The right to adequate notice is a cornerstone of due process and cannot be abridged by a mechanical application of Rule 5(b). This is further evidenced by Constitutional Amendments 5 and 14.

5. Disregard for the Spirit of Due Process

By rigidly applying Rule 5(b) without considering the broader context and constitutional implications, the Court disregarded the spirit of due process, which is to ensure that parties are genuinely informed of actions affecting their rights. This approach contradicts the principle that due process is not a technical conception with a

fixed content unrelated to time, place, and circumstances (*Mathews v. Eldridge*, 424 U.S. 319, 1976).

C. Acceptance of Fact Findings Wholly Unsupported by the Record

The Court correctly acknowledged its limited ability to disturb factual findings made by the Board, stating it "cannot disturb a factual finding made by the Board if there is any evidence which reasonably supports the finding." However, this principle has been misapplied in the present case, overlooking critical evidentiary deficiencies:

1. Lack of Evidentiary Support for July 31, 2024 Letter

The Court overlooked the fact that the Board's finding that the July 31, 2024, letter was sent is wholly unsupported by any evidence in the record. The SCDE has never produced any evidence – not a postal receipt, not a certificate of mailing, not an affidavit – to support this claim. In the absence of any evidence, the ALC's acceptance of this finding was a legal error and an abuse of discretion. The complete absence of any corroborating evidence renders the Board's finding on this crucial point wholly unsupported and arbitrary.

2. Misapplication of S.C. Code Ann. § 59-25-260

While S.C. Code Ann. § 59-25-260 does state that the Board's factual findings are "final and conclusive," this provision cannot be interpreted to allow findings made in an evidentiary vacuum. The statute's intent is to prevent re-litigation of facts reasonably found by the Board, not to permit unsupported assertions to stand as fact. The Court's duty to ensure that factual findings have at least some evidentiary basis remains intact, even under this statute.

3. Legal Error in Accepting Unsupported Findings

The Administrative Law Court's (ALC) acceptance of the unsupported finding regarding the July 31, 2024, letter constitutes a legal error and an abuse of discretion. By failing to scrutinize this critical factual assertion, the ALC effectively abdicated its

judicial responsibility to ensure that administrative decisions are based on substantial evidence. Opening a rehearing on the matter will be the first step to rectifying this issue.

4. Violation of Basic Principles of Administrative Law

The acceptance of a fact-finding with no supporting evidence violates fundamental principles of administrative law, which require agency decisions to be based on substantial evidence in the record. This error undermines the integrity of the administrative process and the court's review function.

5. Implications for Due Process

Allowing unsupported factual findings to stand has serious implications for due process. It effectively denies Mr. Bischoff the opportunity to challenge a key element of the case against him, as there is no evidence to refute or examine.

D. The Department's Violation of Procedural Obligations

The South Carolina Department of Education (SCDE) failed to fulfill its procedural obligations by neglecting to act on clear evidence of misdelivery of its certified mailing to Mr. Bischoff's Grovetown, GA residence. This oversight raises significant concerns about due process and the integrity of the notification process:

1. Failure to Address Confirmed Misdelivery

Despite possessing a tracking number and a signed receipt confirming the misdelivery of its November 2023 certified letter (ROA 18), the SCDE took no further steps to rectify the issue. This inaction directly contravenes the principle established in *Jones v. Flowers*, 547 U.S. 220 (2006), which requires additional reasonable steps when notice attempts fail.

2. ALC's Inconsistent Acknowledgment and Acceptance

The Administrative Law Court (ALC) acknowledged the misdelivery but erroneously accepted the Board's findings as conclusive. This inconsistency represents an error of

law and a violation of Mr. Bischoff's due process rights. The ALC's statement that it is "not compelled to accept and does not accept the Board's findings that the notice sent by certified mail was returned and that the notice sent by certified mail was sent to Appellant at his Georgia address" directly contradicts its subsequent acceptance of these findings.

3. Court's Sanction of Unsupported Findings

By upholding the Board's decision, the Court effectively sanctioned findings of fact based on speculation rather than evidence. This constitutes a clear error of law, as it allows the Board to disregard undisputed evidence and reach conclusions that are patently unreasonable. Under the Administrative Procedures Act (APA), courts are required to set aside agency actions that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" (S.C. Code Ann. § 1-23-310 et seq.). A decision based on speculation rather than substantial evidence violates this standard. Such an approach undermines the fundamental principles of evidence-based decision-making in administrative law.

4. Violation of Due Process Standards

The SCDE's failure to take additional steps after the confirmed misdelivery violates the due process standards outlined in the federal regulations previously mentioned. According to Honorable Judge Reibold's Final Order and Decision, these standards require that notice must be "reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action."

5. Disregard for Procedural Safeguards

The South Carolina Department of Education's actions demonstrate a disregard for the procedural safeguards designed to protect individuals' rights in administrative proceedings. These safeguards, including the right to proper notice, are fundamental to ensuring fairness and due process in educational matters.

The South Carolina Department of Education cannot legally ignore Procedures for Educator Certification Hearings Section 4(C). These procedures are legally binding and must be followed for several reasons:

-
- a. The procedures are based on statutory provisions and regulations, including S.C. Code Ann. § 59-25-170 (2004) and S.C. Code Ann. § 59-25-200 (2004), which require written notice and the opportunity for a hearing.
 - b. They are part of the State Board of Education Rule BCAF, which outlines the specific procedures for educator certification hearings.
 - c. The procedures are grounded in the Administrative Procedures Act (S.C. Code Ann. § 1-23-310 et seq.), which governs administrative hearings in South Carolina.
 - d. Section 4(C) specifically outlines the requirements for notifying educators of pending actions and their right to a hearing, which is a crucial part of due process.

Ignoring these procedures would violate state law and potentially infringe on educators' rights to due process. The Department is legally obligated to follow these procedures to ensure fair and consistent treatment of educators facing potential certificate actions.

Selective application of Procedures for Educator Certification Hearings Section 4(C) violates principles of due process and equal protection under the law. The Fourteenth Amendment to the U.S. Constitution guarantees equal protection under the law, meaning all individuals in similar situations must be treated equally under the law. Selectively applying Section 4(C) violates this constitutional principle. The SCDE cannot decide to follow these procedures for some educators and ignore them for others. According to the Administrative Procedures Act (APA), S.C. Code Ann. § 1-23-310 et seq. requires consistent application of administrative procedures to ensure fairness and transparency in agency actions. Therefore, the ALC overlooking the SCDE's neglect to follow their Procedures for Educator Certification Hearings Section 4(C) would be a further violation of due process and an error of law.

E. Constraints of S.C. Code Ann. § 59-25-260 Do Not Preclude Review of Due Process Violations When Evidence is Undermined

The Court's decision reflects an overly restrictive interpretation of S.C. Code Ann. § 59-25-260, which has led to a significant legal error:

1. Misinterpretation of Statutory Constraints

While S.C. Code Ann. § 59-25-260 does limit the scope of review for the Administrative Law Court (ALC), it does not and cannot override the fundamental constitutional requirement to protect due process rights. The ALC's claim of being constrained by this statute to the point of ignoring potential constitutional violations represents a misunderstanding of the interplay between statutory and constitutional law.

2. Duty to Protect Constitutional Rights

The ALC, as a judicial body, has an inherent and inescapable duty to ensure that constitutional rights, particularly due process rights, are protected. This duty exists regardless of statutory constraints and is fundamental to the role of the judiciary in our legal system.

3. Failure to Address Constitutional Concerns

By declining to review potential due process violations under the guise of statutory limitations, the ALC committed a significant legal error. This approach effectively elevates a state statute above constitutional protections, which is contrary to basic principles of American jurisprudence.

4. Scope of Review for Constitutional Issues

When constitutional rights are at stake, the scope of review must necessarily broaden to encompass these fundamental issues. The ALC's failure to recognize this principle represents a misapplication of law and a dereliction of its judicial responsibility.

5. Balancing Statutory and Constitutional Mandates

While S.C. Code Ann. § 59-25-260 may limit certain aspects of the ALC's review, it cannot be interpreted to prevent the court from addressing clear constitutional violations. The ALC should have balanced its statutory mandate with its constitutional obligations rather than using the statute as a shield against reviewing potential due process violations.

6. Implications for Judicial Review

This restrictive interpretation, if upheld, would set a dangerous precedent, potentially insulating administrative decisions from proper judicial scrutiny even when constitutional rights are at stake. Such an approach undermines the very purpose of judicial review in administrative proceedings.

F. ALC's Preservation Issue

The ALC's decision that certain arguments were not preserved for review constitutes an error of law, particularly in light of the unique circumstances of this case:

1. Deprivation of Opportunity to Raise Arguments

Mr. Bischoff was unable to raise specific arguments before the Board due to the inadequate notice provided by the South Carolina Department of Education. The misdelivery of the certified letter and the lack of tracking and delivery evidence for the July 31 letter effectively prevented Mr. Bischoff from participating in the proceedings and asserting his rights. The articulation of these arguments in the Reply Brief is a direct consequence of the Department's due process violation, not a procedural failing on Mr. Bischoff's part. Penalizing Mr. Bischoff for failing to raise arguments at a hearing he was not properly notified of represents a circular and self-defeating application of the preservation doctrine.

2. Misapplication of Legal Precedents

The ALC based its decision on cases that are distinguishable from Mr. Bischoff's situation:

- *Simmons v. SC STRONG*, 402 S.C. 166, 173 at n. 2, 739 S.E.2d 631, 635 at n. 2 (Ct. App. 2013)
- *Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund*, 389 S.C. 422, 431, 699 S.E.2d 687, 691-92 (2010)
- *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 692 (Ct.App.2001)

Unlike the parties in these cases, Mr. Bischoff was unable to bring up these issues before the board due to the violation of his due process rights. The Reply Brief was his first opportunity to address the specific argument regarding certified mail restricted delivery.

3. Exceptional Circumstances

This case presents exceptional circumstances that warrant special consideration. The potential impact on a person's educator's license should require strict compliance with notice rules, even when internal. The fundamental right to due process should take precedence over procedural technicalities in such cases.

4. Error in Adequately Addressing Due Process Claim

The ALC's decision to not adequately address this due process claim should be considered a clear error of law. Given the exceptional nature of the case and the fundamental importance of due process rights, the ALC should have considered the merits of Mr. Bischoff's arguments despite their late introduction.

5. Preservation of Error Principles

The principle of preservation of error is designed to ensure that trial courts have the opportunity to rule on issues and correct errors before they reach the appellate level. However, this principle should not be applied rigidly when it would result in a fundamental injustice, particularly when the party's inability to raise the issue earlier was due to the opposing party's actions.

In *Ex parte Carter*, 422 S.C. 623, 813 S.E.2d 686 (2018), the court held that procedural rules should not be applied "woodenly" when a party was denied a meaningful opportunity to be heard. Due to the errors and mistakes with managing mail by the United States Postal Service, as well as mistakes made by the South Carolina Board of Education when sending the notices, Mr. Bischoff was denied a meaningful opportunity to be heard and submit evidence. Therefore, Mr. Bischoff has a right to include evidence and testimony because his right to due process was denied.

G. Arbitrary and Capricious Action/Abuse of Discretion:

The Department's decision to suspend Mr. Bischoff's certificate is arbitrary, capricious, and constitutes an abuse of discretion for the following reasons:

1. Flawed Notification Process

The South Carolina Department of Education proceeded with the suspension despite clear evidence of deficiencies in its notification process. Specifically:

- a. The initial certified mail notice was known to be misdelivered.
- b. There is no proof of delivery for the subsequent regular mail notice of the November 29, 2023, letter.
- c. There is no proof of delivery for the subsequent regular mail notice of the July 31, 2024, letter.

2. Legal Precedent Violation

The Department's actions contravene established legal standards. In *Meier v. Sunz Ins. Co.*, 2023 WL 123456 (S.C. 2023), the South Carolina Supreme Court held that unsubstantiated claims of mailing are insufficient to prove notice. The Department's reliance on the unproven delivery of notices directly conflicts with this precedent.

3. Lack of Substantial Evidence

The Department's decision is not supported by substantial evidence, a key requirement for administrative actions to withstand legal scrutiny. This is further

evidenced by Honorable Judge Reibold's assertion within the Final Order and Decision when he states, "Additionally, had the letter sent by certified mail been addressed to Appellant in Georgia, it would not have been delivered to his prior address in Aiken. There is no evidence which reasonably supports the Board's findings to the contrary."

4. Administrative Law Court Error

The ALC's acceptance of the South Carolina Board of Education's unsupported finding regarding the July 31, 2024, letter constitutes an error of law. This acceptance, without any corroborating evidence, further exemplifies the arbitrary nature of the proceedings. The fact that the November 29, 2023, certified notice had Mr. Bischoff's Grovetown, GA address in the top left-hand corner, a fact that Honorable Judge Reibold disputed in the Final Order and Decision stating that no evidence reasonably supports the Board's findings that the mail was ever sent to Mr. Bischoff's Grovetown, GA address, means that the same error is likely to have occurred with the notice sent on July 31, 2024. Due to the claim that it was sent through regular mail, there is no possible way to prove the notice was or was not sent or delivered to his Grovetown, GA address.

The fact that anyone within the South Carolina Department of Education could have changed the address in the top left-hand corner of the November 29, 2023 and July 31, 2024 notices to indicate they were sent to Mr. Bischoff's Grovetown, GA address. The ALC also fails to recognize that the United States Postal Service is unable to prove that the initial and subsequent notices sent through regular mail were sent and/or delivered to the proper address. They are only able to track mail sent through certified mail with a tracking number. Therefore, there is no proof that they sent the notices through regular mail.

5. Irrational Basis

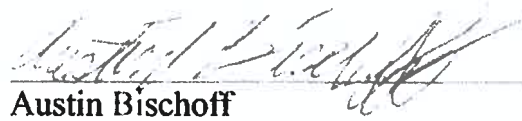
The decision to proceed with the suspension, despite known issues with notice delivery and lack of evidence, demonstrates a lack of rational basis for the South Carolina Department of Education's actions.

In administrative law, a decision is considered arbitrary and capricious when it is unreasonable, lacks a rational basis, or is not supported by substantial evidence. The South Carolina Department of Education's actions in this case clearly meet these criteria. The failure to adhere to proper notification procedures, reliance on unsubstantiated claims, and disregard for Mr. Bischoff's due process rights collectively render the suspension decision fundamentally flawed.

Given these significant procedural and substantive deficiencies, the Motion for Rehearing should be affirmed. The South Carolina Department of Education's actions fall far short of the standards of fairness, due process, and evidentiary support required in administrative proceedings, thus constituting an abuse of discretion that cannot be upheld under established principles of administrative law.

II. CONCLUSION

For the foregoing reasons, Appellant, Austin Bischoff, respectfully requests that this Court grant this Motion for Rehearing and, upon rehearing, reverse its Final Order and Decision issued on March 6, 2025, and remand this case with instructions to vacate the suspension of his educator certificate. The Department's failure to provide adequate and proper notice violated Mr. Bischoff's due process rights, causing him substantial prejudice. The fact-finding procedures employed by the Board, as upheld by the ALC, violated Mr. Bischoff's right to be heard on the merits of his case and requires reversal.


Austin Bischoff
Pro se Appellant

March 17, 2025
6013 Tyne Lane,
Grovetown GA 30813

THE STATE OF SOUTH CAROLINA
In the Administrative Law Court

APPEAL FROM THE SOUTH CAROLINA
STATE BOARD OF EDUCATION

Docket No. 24-ALJ-30-0362-AP

Austin Bischoff,

Appellant,

v.

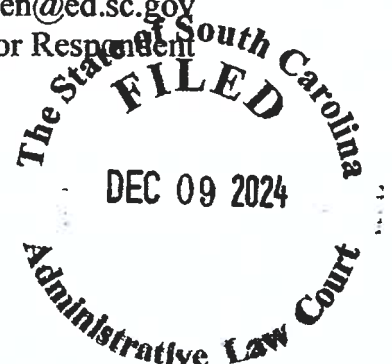
South Carolina
Board of Education

Respondent.

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STATEMENTS OF THE ISSUES ON APPEAL

1. DID THE AIKEN COUNTY PUBLIC SCHOOL DISTRICT FAIL TO PROVIDE ADEQUATE SUPPORT AND TRAINING?
2. DID THE AIKEN COUNTY PUBLIC SCHOOL DISTRICT FAIL TO PROPERLY HANDLE MR. BISCHOFF'S PERFORMANCE CONCERNS?
3. DID MR. BISCHOFF COMPLY WITH THE 60-DAY EVALUATION TIMELINE AS INDICATED BY THE SOUTH CAROLINA DEPARTMENT OF EDUCATION?
4. DID THE AIKEN COUNTY PUBLIC SCHOOL DISTRICT'S LACK OF ONGOING SUPPORT LEAD TO MR. BISCHOFF'S RESIGNATION?
5. DID THE SOUTH CAROLINA DEPARTMENT OF EDUCATION DENY MR. BISCHOFF HIS RIGHT TO DUE PROCESS BY NOT PROVIDING MR. BISCHOFF FAIR NOTICE OF HIS CONSTITUTIONAL DUE PROCESS?
6. SINCE LEAVING THE AIKEN COUNTY PUBLIC SCHOOL DISTRICT, DID MR. BISCHOFF REHABILITATE HIMSELF AND CONTINUE TO DISPLAY PROFESSIONAL CONDUCT WITHIN THE SCOPE OF HIS DUTIES AS AN EDUCATOR?

STATEMENT OF THE CASE

Mr. Bischoff filed the Notice of Appeal on October 3, 2024 to appeal the decision to suspend Austin Bischoff's educator certification by the South Carolina State Board of Education, commencing on September 3, 2024, and ending on September 2, 2026. The date of service on the Notice of Appeal was sent on October 2, 2024 to the South Carolina State Board of Education. Opposing Counsel Representing the South Carolina State Board of Education filed the Record on Appeal and sent the Proof of Service on October 11, 2024. Austin Bischoff received the Record on Appeal on October 31, 2024 due to complications related to Hurricane Helene. Mr. Bischoff filed for an extension on November 7, 2024 from November 10, 2024 to December 9, 2024. The Honorable Robert L. Reibold granted the extension on November 7, 2024. On December 9, 2024, Mr. Bischoff filed a Motion to Supplement the Record on Appeal because Mr. Bischoff did not have a chance to file evidence with the South Carolina State Board of Education before his certification was suspended on September 3, 2024.

ARGUMENT

A. The School District Failed to Provide Adequate Training and Support

1. Lack of Proper Onboarding

The Aiken County School District failed to provide adequate training and support to Mr. Bischoff, significantly impacting his ability to perform his duties effectively as a school psychologist. Contrary to standard practice, Mr. Bischoff did not receive the typical three-day onboarding training provided to most employees, instead receiving only one day of onboarding on August 14, 2018. Under SC Code § 59-26-10, this omission constitutes a failure in the district's duty of care to ensure employees are adequately prepared for their roles. Mr. Bischoff testifies that his Enrich training was not held due to the training website being down for the majority of the session, further compromising his preparation.

While Mr. Bischoff received informational materials such as the Employee Handbook, Department of Special Programs E-Guide, and School Psychologist Handbook; these reference documents do not equate to the interactive, skill-building training sessions essential for effective job performance. Comprehensive onboarding processes are crucial for employee productivity and retention, and should include orientation, policy training, and benefits training.

2. Insufficient Ongoing Support

Additionally, despite Mr. Bischoff's requests for assistance as outlined in his Performance Improvement Plan (PIP), his supervisor, Philip Young, consistently failed to provide the required support. This lack of support manifested in several critical areas: failure to assist with scheduling difficulties and data management, lack of support for time management and organization, absence of biweekly meetings for consultation and training, failure to ensure adequate workspace

availability, and neglect in assigning a program specialist as promised. Under SC Code § 59-26-10, these deficiencies in ongoing support directly contradict best practices in employee onboarding and development, which emphasize the importance of continuous support, professional growth, and individualized assistance.

3. Failure to Support Student File Maintenance

Furthermore, prior to the Covid-19 pandemic, Mr. Bischoff's performance as a school psychologist was exemplary, as evidenced by his 2019-2020 evaluation, which contained numerous positive observations and comments from his supervisor, Mr. Philip Young. The need for a Performance Improvement Plan did not arise until March 31, 2021, well into the pandemic, indicating that Mr. Bischoff's performance issues were directly related to the unprecedented challenges posed by COVID-19 and the lack of adequate support.

The pandemic significantly disrupted normal school operations, causing frequent shifts between remote and face-to-face learning. These rapid changes created logistical stress and challenges for both students and staff, as acknowledged by Superintendent King Laurance. As a school psychologist, Mr. Bischoff's duties primarily involve in-person interactions with students and families. The constant changes in learning models, combined with increased positive COVID-19 cases and quarantines among students and staff, severely impacted his ability to perform these duties effectively. Some of the challenges Mr. Bischoff faced due to the pandemic included ethical dilemmas regarding testing and data validity due to guidance or support provided for testing protocols, the shift to online working, and the increased focus on consultation and intervention and a reduction in psychoeducational assessments.

Moreover, Mr. Bischoff did not receive adequate support from Mr. Philip Young during the implementation of the performance improvement plan, nor did he

receive continued support from district personnel following Mr. Young's departure from Aiken County. This lack of support, combined with the pandemic-related challenges and the overall strain on the education system, contributed to a decline in Mr. Bischoff's performance, ultimately leading to the discovery of missing documents from student files prior to his resignation on March 4, 2022.

Given these extenuating circumstances, and the fact that a Performance Improvement Plan was not deemed necessary until March 31, 2021, well into the pandemic, strongly suggests that Mr. Bischoff's performance issues as it relates to maintaining student files were a direct consequence of the unprecedented challenges brought about by COVID-19 and the lack of adequate support from the district.

During the COVID-19 pandemic under South Carolina Code of Regulations, the South Carolina Superintendent implemented a state regulation, SC ADC 43-40, which allowed for increased flexibility in school psychology practices. This regulation granted the State Superintendent of Education discretion to waive or suspend applicable provisions of Chapter 43 of the South Carolina Code of Regulations that may have been impacted by the COVID-19 public health emergency. This temporary measure was designed to address potential challenges in education and related professional services during the State of Emergency in South Carolina, affecting various aspects of school psychology services, including: assessment procedures, intervention implementations, filing documents, and service delivery methods.

Overall, the evidence presented demonstrates a clear pattern of institutional failure on the part of the Aiken County Public School District in providing Mr. Bischoff with the necessary training, support, and resources to succeed in his role as a school psychologist. The district's inadequate onboarding process, coupled with the consistent lack of ongoing support from his supervisor, Mr. Philip Young,

created significant obstacles to Mr. Bischoff's professional performance. These shortcomings were further exacerbated by the unprecedented challenges posed by the COVID-19 pandemic, which dramatically altered the landscape of educational services. The district's failure to adapt and provide adequate support during this crisis, despite the flexibility afforded by SC ADC 43-40, directly contributed to Mr. Bischoff's performance issues. The timing of the Performance Improvement Plan, implemented well into the pandemic, strongly indicates Mr. Bischoff's struggles were a direct consequence of these extraordinary circumstances rather than inherent performance deficiencies. This systemic failure not only impacted Mr. Bischoff's ability to fulfill his duties but also potentially compromised the quality of services provided to students. Under SC Code § 59-26-10, the district's actions, or lack thereof, constitute a breach of their duty of care and is concerning to their commitment of supporting educational professionals.

B. The Aiken County Public School District Mishandled Mr. Bischoff's Performance Concerns

1. Isolated Incident Mischaracterized

The Aiken County Public School District mishandled Mr. Bischoff's performance concerns, particularly in the mischaracterization of an isolated incident. The investigation concluded that Mr. Bischoff's use of inappropriate language on March 10, 2021, was an isolated event; however, this incident was improperly leveraged to justify ongoing performance issues without considering the broader context. Notably, there have been no further reports of similar behavior from Mr. Bischoff either prior to or following this incident, as confirmed by Aiken County's records and Dr. Lindsey Ott's advocacy letter. In support of Mr. Bischoff's case, Dr. Lindsey Ott, the director of Clear Dot Charter School—where Mr. Bischoff is currently employed—testified that he has consistently demonstrated

professionalism and courtesy towards both students and staff. She characterized him as a kind, professional, and empathetic worker.

This evidence indicates that the reliance on a single isolated incident to assess Mr. Bischoff's overall performance is unfounded and fails to account for his consistent professional conduct in an education setting, which does not align with the South Carolina Board of Education's decision to remove his certification based on SC Code § 59-25-160 (2024). With appropriate support and resources, it is evident that Mr. Bischoff would have been able to enhance his performance within Aiken County, further emphasizing that the lack of necessary assistance contributed significantly to any perceived decline in his performance. This situation reflects not only on Mr. Bischoff's capabilities but also highlights the district's failure to provide adequate support, which is essential for fostering effective educational environments and ensuring compliance with professional standards.

2. Positive Performance Overlooked

Additionally, while Mr. Bischoff encountered challenges while employed by the Aiken County Public School District, both Aiken County and the South Carolina Board of Education failed to acknowledge the numerous positive attributes he consistently demonstrated in his role, as documented by Mr. Young in the School Psychologist Evaluation Rubrics. Throughout his tenure at Aiken County Public Schools, Mr. Bischoff effectively applied evaluation data to enhance instructional programming and conducted special education evaluations that informed eligibility, service, and programming decisions efficiently. He communicated evaluation findings clearly to both staff and parents, utilized technology to improve his efficiency in data-based decision-making practices, and contributed significantly to school-wide curricular and instructional practices that supported academic, social-emotional, and behavioral interventions. He played a crucial role in crisis response and intervention practices, responding effectively during crises

at his school and assisting with several suicide risk assessments. Mr. Bischoff also utilized information about student backgrounds to inform instruction and service delivery decisions while maintaining confidentiality and adhering to ethical standards in all his actions.

Importantly, despite the challenges he faced within the Aiken County Public School District, Mr. Bischoff provided substantial support to both students and staff. His contributions included enhancing school-wide assessment practices for academic, social-emotional, and behavioral domains, facilitating progress monitoring prior to evaluation referrals, implementing counseling groups, assisting with behavioral contracts, and collaborating effectively with colleagues and parents alike. He communicated evaluation findings in a manner that was accessible to parents and consistently offered support to families. Additionally, Mr. Bischoff engaged with committees aimed at improving the Student Intervention Team (SIT) process and fostered open communication with peers by sharing insights and being considerate in discussions.

Moreover, Mr. Bischoff's passion for advocating for student success was evident through his commitment to improving outcomes within the Aiken County Public School District. He consistently exhibited professionalism by demonstrating a strong work ethic, maintaining a positive attitude, and showing punctuality—even working through illness with minimal absences. Mr. Young recognized these positive attributes not only through the evaluation rubric but also expressed his views directly, stating that “Austin does an excellent job working with teams and explaining evaluation results” while also expressing a desire to enhance his leadership skills.

These positive evaluations stand in stark contrast to the district's characterization of Mr. Bischoff's performance as consistently problematic. The failure of the Aiken County Public School District and the South Carolina Board of Education

to consider these significant contributions undermines Mr. Bischoff's capabilities and reveals the unfairness of their disciplinary process.

Consistently, Mr. Bischoff continued to exude these positive attributes into his current place of employment, Clear Dot Charter School, indicated in Dr. Lindsey Ott's advocacy letter. Dr. Lindsey Ott states, "He [Austin Bischoff] has not only completed the basic tasks required of his position as a School Psychologist, but has assisted in other capacities at the school. He has provided compassionate support to our students in crisis or otherwise in need." Dr. Ott's letter indicates that Mr. Bischoff's past actions are not a pattern of behavior, and are a product of his experience within the Aiken County Public School District. Since leaving the Aiken County Public School District, Mr. Bischoff has displayed professional conduct in his capacity as a school psychologist.

Overall, the Aiken County Public School District's handling of Mr. Bischoff's performance concerns was fundamentally flawed and unjust. The district erroneously magnified an isolated incident, disregarding Mr. Bischoff's otherwise consistent professional conduct and his substantial positive contributions to the school system. This mischaracterization does not align with the South Carolina Board of Education's decision to remove his certification based on SC Code § 59-25-160 (2024), and fails to account for the district's own shortcomings in providing adequate support and resources. Mr. Bischoff's numerous positive attributes, as documented in his performance evaluations and attested to by his current employer, Clear Dot Charter School, stand in stark contrast to the district's portrayal of his work. The failure to acknowledge these strengths and the lack of a comprehensive, fair assessment of his overall performance underscores the district's mishandling of the situation. Furthermore, Mr. Bischoff's exemplary conduct and contributions in his current role at Clear Dot Charter School serve as compelling evidence that the issues cited by the Aiken County Public School

District were not indicative of a pattern of behavior, but rather a product of the challenging circumstances he faced within the district.

C. Compliance with Evaluation Timelines

Despite Mr. Young's evaluation indicating that Mr. Bischoff "needs improvement" in the area of timely completion of evaluations, it is essential to recognize that this assessment was based on an expectation of a 45-day timeline. In South Carolina, however, the established standard follows the federal Individuals with Disabilities Education Act (IDEA), which mandates a 60-calendar-day period for completing evaluations after parental consent is received. This requirement is consistent with the federal regulation outlined in 34 CFR 300.301(c)(1). While Aiken County's attempt to impose a reduced timeline may reflect local policy preferences, it does not supersede the state law that aligns with federal requirements. Consequently, Mr. Bischoff's adherence to the 60-day deadline demonstrates compliance with both state and federal regulations.

Furthermore, during the limited time when Mr. Bischoff received assistance, he successfully maintained compliance with these established timelines, even though he did not meet Aiken County Public Schools' 45-day expectation. In support of his defense, the director of Clear Dot Charter School (Mr. Bischoff's current work location), Dr. Lindsey Ott, testified that since Mr. Bischoff's arrival as their School Psychologist on May 30, 2023, he proactively addressed significant challenges left by the previous School Psychologist, which had jeopardized the school's compliance with special education timelines, including evaluation timelines. Mr. Bischoff took immediate action to initiate evaluations and ensure compliance with necessary regulations, positively contributing to resolving these critical issues.

This evidence suggests that with appropriate support and resources, Mr. Bischoff would have been able to enhance his performance within Aiken County. The lack of necessary assistance and support ultimately contributed to his decline in performance,

underscoring the importance of adequate resources for educators to fulfill their responsibilities effectively and reflects the school's negligence and failure to follow ADEPT regulations as outlined in the 2006 ADEPT (Assisting, Developing, and Evaluating Professional Teaching) guidelines under South Carolina State Board of Education Regulation 43-205.1.

D. The District's Actions Led to Mr. Bischoff's Resignation Due to Lack of Continued Support

The actions of the Aiken County School District significantly contributed to Mr. Bischoff's resignation, demonstrating a pattern of inadequate support and negligence in addressing his professional needs. The district's failure to provide proper training and support, coupled with mischaracterization of Mr. Bischoff's performance, and heavy case load due to the Covid-19 pandemic upon hiring, led to severe mental health issues, including suicidal ideation. This mental health impact underscores the gravity of the district's shortcomings in fulfilling its obligations to its employees.

Despite being aware of Mr. Bischoff's struggles with the Performance Improvement Plan (PIP), the district failed to maintain the promised support structure before and after Mr. Philip Young left the Aiken County Public School District. This failure violated not only their employment law obligations but also South Carolina State Board of Education Regulation 43-205.1, which mandates compliance with the 2006 ADEPT (Assisting, Developing, and Evaluating Professional Teaching) guidelines. The district's lack of a contingency plan or alternative support in Mr. Young's absence demonstrates a critical oversight that compromised Mr. Bischoff's ability to meet the requirements of his Performance Improvement Plan (PIP) and improve his job performance.

The district's actions violated several key aspects of the 2006 ADEPT guidelines, including the principles of continuous support, professional growth, multiple sources of evidence for evaluation, district compliance, and individualized support. By failing

to adapt to Mr. Young's departure and providing ongoing assistance to Mr. Bischoff, the district neglected its responsibility to foster his professional development and maintain a comprehensive evaluation process. This neglect is further evidenced by Mr. Young not meeting with Mr. Bischoff every other week from the initiation of the improvement plan on March 31, 2021, until Mr. Bischoff's last day of employment on March 3, 2022.

These violations highlight the district's failure to maintain consistent support and evaluation processes for school psychologists, even in the face of personnel changes. The district's actions, or lack thereof, not only contravened state regulations but also significantly impaired Mr. Bischoff's ability to perform his duties effectively, ultimately leading to his resignation under duress.

F. Mishandling of Certified Mail by United States Postal Service and Fraudulent Actions by the South Carolina Department of Education

The mishandling of certified mail by the United States Postal Service (USPS) and the subsequent misrepresentations by the South Carolina Department of Education raise serious concerns regarding the validity and integrity of the South Carolina Department of Education's claims. In their response to the Notice of Motion and Motion to Reconsider, Holly Hadden, Assistant General Counsel for the South Carolina Department of Education, asserted that the notice dated November 29, 2023, was sent to Mr. Bischoff's correct address in Grovetown, Georgia, and claimed that the certified letter address had been verified. However, this assertion is directly contradicted by evidence from the United States Postal Service, which confirms that the certified mail was actually sent to Mr. Bischoff's previous address at 1103 Churchill Circle, Aiken, SC.

Furthermore, while the Order of Suspension indicated that the certified letter was returned unclaimed, it also stated that the regular mail was not returned. This statement contradicts the United States Postal Service Proof of Delivery tracking

information, which indicates that the letter was "delivered, left with individual." Howard Brown, the United States Postal Service Consumer Affairs Manager of South Carolina, provided evidence and testimony indicating that the Proof of Delivery included a signature from someone other than Mr. Bischoff. Additionally, the United States Postal Service official, Howard Brown, clarified that there was an active change of address on file for Mr. Bischoff, which should have redirected the mailing to his new address at 6013 Tyne Lane. They acknowledged a system error that resulted in the mail being sent to the original Aiken address instead. This revelation contradicts the South Carolina Department of Education's claim that they verified Mr. Bischoff's address.

These discrepancies highlight the flawed practices of the South Carolina State Board of Education's notification process and the reliability of their records. The discrepancies between the South Carolina Department of Education's claims and the United States Postal Service's documentation of their investigation indicate that Mr. Bischoff did not receive proper notice as required by due process, consequently invalidating any subsequent actions taken against him.

Additionally, the South Carolina Department of Education contended that a letter sent by opposing counsel was classified as certified mail with restricted delivery (Tracking Number: 7021 0001 2723 2079). However, the evidence presented on page 18 of the Record on Appeal demonstrates that this letter was not sent as restricted mail but rather as standard certified mail. According to United States Postal Service regulations, restricted certified mail must be signed for by either Mr. Bischoff or an "authorized agent" and requires identification upon receipt—procedures that were not followed when mailing the standard certified letter dated November 29, 2023.

The South Carolina Department of Education received receipts indicating that the certified mail was not restricted when mailing at the post office and when the Respondent included the tracking receipt in the Record on Appeal. Despite this

knowledge, they fraudulently stated on page 16 of the Record on Appeal that it was indeed restricted certified mail. Moreover, they failed to include the Product Information section details within the United States Postal Service tracking receipt on page 18, which would have clarified that it was not restricted.

Under 18 U.S. Code § 1001, these actions amount to fraudulent misrepresentation by the South Carolina Department of Education regarding the nature of the certified mail sent. They knowingly misrepresented that they had sent restricted certified mail when they were fully aware it was not based on their own records and tracking documents. Consequently, due to these failures in both mail handling by the United States Postal Service and misrepresentation by the South Carolina Department of Education, Mr. Bischoff was left unaware of his certification suspension by the South Carolina State Board of Education until September 5, 2024, by his place of employment, Clear Dot Charter School—an oversight that infringed upon his constitutional due process rights under South Carolina Rules of Civil Procedure 5(b).

Furthermore, under SC Code § 59-25-170 (2024), “No 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 to such person.” Due to the mistake made by the United States Postal Service and inaccurate claim that the South Carolina State Board of Education sent Restricted Certified Mail, Mr. Bischoff did not receive adequate written notice specifying his right to a hearing, violating S.C. Code Ann. § 59-25-170 (2024).

H. Rehabilitation and Current Status

Upon leaving the Aiken County Public School District, Mr. Bischoff secured employment with Clear Dot Charter School on May 30, 2023. Since joining Clear Dot Charter School, Mr. Bischoff has demonstrated exemplary professional conduct and exceeded expectations in his duties to serve students, staff, and the school, as attested

by Dr. Lindsey Ott, the director of Clear Dot Charter School in South Carolina. Mr. Bischoff has not only met all timelines in his caseloads but has also played a pivotal role in reorganizing the special education department's student files, addressing compliance issues left by the previous school psychologist. His contributions have been instrumental in helping Clear Dot Charter School meet evaluation timelines.

Furthermore, Mr. Bischoff's compassionate and empathetic approach has significantly impacted the mental health of students under his care. He has provided crucial support for students in crisis, including suicide prevention, managing overstimulation situations, and offering a sympathetic ear. His continued advocacy for students and professional interactions underscore his commitment to their well-being. These actions demonstrate that Mr. Bischoff has reflected on and learned from his experiences at the Aiken County Public School District and has made it his mission to uphold and maintain high professional standards. This fact further emphasizes his professional integrity and dedication to ethical conduct in the field of education. Moreover, his current exemplary performance demonstrates Mr. Bischoff's rehabilitation and commitment to professional excellence in his field. His professional behavior, characterized by Dr. Ott, directly contradicts the South Carolina State Board of Education's assertion that Mr. Bischoff displays unprofessional conduct, as outlined under SC Code § 59-25-160 (2024).

CONCLUSION

The South Carolina State Board of Education's decision set out in the Order of Suspension to suspend Mr. Bischoff's educator certificate and not providing him with fair notice of constitutional due process, denying his right to due process, was a clear error of the law. Under SC Code § 59-25-270 (2024), the court has ample basis to reverse the order of suspension on Austin Bischoff's educator certificate. The South Carolina Department of Education's failure to provide Austin Bischoff his constitutional right to due process is inconsistent with SC Code § 59-25-170 (2024), and violative of his right to be given fair notice of constitutional due process under the South Carolina Rules of Civil Procedure 5(b). Furthermore, Mr. Bischoff asks the Court to acknowledge the fraudulent actions of the South Carolina Department of Education (SCDE) and the negligence of the United States Postal Service (USPS). The evidence and record demonstrate the Aiken County Public School District's failures in providing adequate training, support, and fair treatment, which ultimately led to Mr. Bischoff's resignation. The evidence and record also demonstrate the South Carolina State Board of Education's decision to overlook his professional conduct after leaving the Aiken County Public School District. Austin Bischoff respectfully requests that the Administrative Law Court reverse the South Carolina State Board of Education's Order of Suspension and receive all salary lost as a result of such suspension of his educator's certificate.

THE STATE OF SOUTH CAROLINA
In The Administrative
Law Court

APPEAL FROM THE SOUTH
CAROLINA BOARD OF EDUCATION

Docket No. 24-AIJ-30-0362-AP

Austin Bischoff,

Appellant,

v.

South Carolina Board of
Education,

Respondent.

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STATEMENT OF ISSUES ON APPEAL

1. The Aiken County Public School District (District) is not a proper party to this action and issues raised were not preserved for appellate review. (Appellant Issues I – IV).

2. The South Carolina Department of Education provided Appellant notice of his right to due process.
3. Appellant's actions after leaving the District are not relevant to this action.

STATEMENT OF THE CASE

On March 14, 2022, Austin Bischoff (Appellant) sent a letter to the South Carolina Department of Education (SCDE) to report Mr. Bischoff's resignation and the 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 of Appellant's alleged unprofessional conduct. The investigation found Appellant engaged in unprofessional conduct through inappropriate communication with a student and inappropriate documentation of student files. Appellant was notified of the findings and his due process right to a hearing. (ROA 15-18).

Appellant did not respond to the notices and did not request a hearing. The action against his educator certification was 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 filed a motion to reconsider. (ROA 9-10). Due to several inaccuracies in the motion, the SCDE did not present the motion to the State Board. (ROA 5). The State Board's Order of Suspension was the final agency action in this matter.

Appellant has now appealed the suspension of his South Carolina educator certification.

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).

ARGUMENTS

I. THE AIKEN COUNTY PUBLIC SCHOOL DISTRICT (DISTRICT) IS NOT A PROPER PARTY TO THIS ACTION AND ISSUES RAISED WERE NOT PRESERVED FOR APPELLATE REVIEW. (ISSUES I – IV).

Appellant's first four arguments speak to his employment with the Aiken County School District (District). Specifically, he alleges that the District (1) failed to provide proper support and training, (2) failed to handle performance concerns with his employment, (3) used improper timelines, and (4) failed to provide ongoing support. However, the District was not a party to this action and is not a proper party to address on appeal. Pursuant to S.C. Code Ann. §59-25-420, Appellant did have the right to request a hearing if he was dismissed from employment with the District. Appellant chose to resign from employment with the District. He did not request a hearing at that time.

When notified of the pending action, as reviewed in Argument V, Appellant did not request a hearing to address any circumstances with the District that he believed would be relevant to the action against his educator certification. Appellant's failure to raise these issues before the State Board precludes him from raising them for the first time to this Court. "At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge." Malloy v. Thompson, 409 S.C. 557, 561, 762 S.E.2d 690, 692 (2014). Further, without a hearing to discuss and preserve the issues, the relevancy of the issues cannot be properly addressed. It is unclear how the 60-day evaluation timeline mentioned in Appellant's third argument is relevant to the issued Order of Suspension from the State Board.

II. THE SOUTH CAROLINA DEPARTMENT OF EDUCATION PROVIDED APPELLANT NOTICE OF HIS RIGHT TO DUE PROCESS.

The SCDE agrees that adequate notice is required for procedural due process. “The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review.” *Robert K. v. City of Camden Planning Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008). Pursuant to Rule 5, SCRCPP, notice can be made through the mail and should be sent to the party’s last known address. The SCDE uses public record software to locate individuals for legal service. The public records provided the address of 6013 Tyne Lane, Grovetown, GA 30813. This is the same address currently used by Appellant in this matter.

The Supreme Court of the United States has previously noted “that 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, 126 S. Ct. 1708, 1713-14 (2006) (quoting *Mullane*, 339 U.S., at 314, 70 S. Ct. 652, 94 L. Ed. 865). The SCDE sent notice to the Grovetown address provided by the public records on November 29, 2023, through certified and regular mail. (ROA 16). The postal tracking of the certified mail showed that the letter was delivered. (ROA 18). The regular mail was not returned to the sender. Appellant did not respond to the notice. A final notice was then sent to the same address on July 31, 2024, by regular mail. (ROA 15) The notice was not returned to the sender. Accordingly, the SCDE believed Appellant received the communication and proper notice was provided to Appellant under Rule 5, SCRCPP.

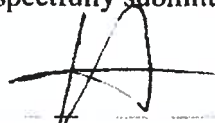
III. APPELLANT'S ACTIONS AFTER LEAVING THE DISTRICT ARE NOT RELEVANT TO THIS ACTION.

As previously noted in the Respondent's Brief, issues on appeal should typically be addressed at an earlier trial stage. When notified of the pending action, as reviewed in Argument V, Appellant did not request a hearing to address any circumstances with the District that he believed would be relevant to this action. Appellant's failure to raise these issues before the State Board precludes him from raising them for the first time to this Court. "At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge." Malloy v. Thompson, 409 S.C. 557, 561, 762 S.E.2d 690, 692 (2014). It is also unclear how Appellant's deeds after the fact are relevant to the action.

CONCLUSION

For the reasons stated, it is respectfully requested that the judgement of the State Board of Education be affirmed.

Respectfully submitted,



Holly Hadden, Esq.
S.C. Bar No. 103182
849 Learning Lane, Office B360
West Columbia, SC 29172
(803) 734-1807
Attorney for Respondent

January 3, 2025

THE STATE OF SOUTH CAROLINA
In the Administrative Law Court

APPEAL FROM THE SOUTH CAROLINA
STATE BOARD OF EDUCATION

Docket No. 24-ALJ-30-0362-AP

Austin Bischoff,

Appellant,

v.

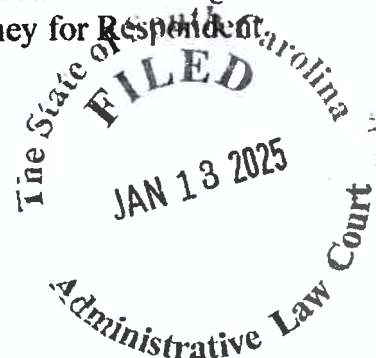
South Carolina
Board of Education

Respondent.

REPLY BRIEF OF APPELLANT

Austin Bischoff
6013 Tyne Lane,
Grovetown, GA 30813
(843) 422-3116
abischoff@radford.edu
pro se Appellant

Holly Hadden, Esquire
428 Wholesale Lane, Office B360
West Columbia, SC 29172
(803) 734-1807
hhadden@ed.sc.gov
Attorney for Respondent



STATEMENT OF ISSUES ON APPEAL

1. Issues raised for were not preserved for appellate review due to the Appellant not receiving notice of his right to due process and should be allowed to raise issues related to the Appellant's employment with Aiken County Public School District as well as after he left the district (Respondent Issues I & III).
2. The South Carolina Department of Education did not provide adequate notice of the Appellant's right to due process and committed fraudulent actions (Respondent Issue II).

STATEMENT OF THE CASE

Mr. Bischoff filed the Notice of Appeal on October 3, 2024 to appeal the decision to suspend Austin Bischoff's educator certification by the South Carolina State Board of Education, commencing on September 3, 2024, and ending on September 2, 2026. The date of service on the Notice of Appeal was sent on October 2, 2024 to the South Carolina State Board of Education. Opposing Counsel Representing the South Carolina State Board of Education filed the Record on Appeal and sent the Proof of Service on October 11, 2024. Austin Bischoff received the Record on Appeal on October 31, 2024 due to complications related to Hurricane Helene. Mr. Bischoff filed for an extension on November 7, 2024 from November 10, 2024 to December 9, 2024. The Honorable Robert L. Reibold granted the extension on November 7, 2024. On December 9, 2024, Mr. Bischoff filed a Motion to Supplement the Record on Appeal because Mr. Bischoff did not have a chance to file evidence with the South Carolina State Board of Education before his certification was suspended on September 3, 2024. The Respondent filed their Brief of Respondent on January 3, 2025. The Appellant indicates that he has not yet received the Brief of Respondent by mail, so he filed a motion for an extension on the Reply Brief on January 10, 2025. He requested an extension from January 13, 2025 to January 20, 2025.

ARGUMENTS

- I. ~~ISSUES RAISED FOR WERE NOT PRESERVED FOR APPELLATE REVIEW~~ DUE TO THE APPELLANT NOT RECEIVING NOTICE OF HIS RIGHT TO DUE PROCESS AND SHOULD BE ALLOWED TO RAISE ISSUES RELATED TO THE APPELLANT'S EMPLOYMENT WITH AIKEN COUNTY PUBLIC SCHOOL DISTRICT AS WELL AS AFTER HE LEFT THE DISTRICT (RESPONDENT ISSUES I & III).

In response to the Respondent's first argument regarding the preservation of issues for appellate review, it is critical to note that Mr. Bischoff's claims about his employment with the Aiken County Public School District are indeed pertinent to this action. The assertion that the Aiken County Public School District is not a proper party overlooks the fact that its actions directly influenced Mr. Bischoff's professional circumstances, including his resignation under duress due to inadequate support and training. While the Respondent cites S.C. Code Ann. §59-25-420 regarding the Appellant's right to a hearing following dismissal, it fails to acknowledge that Mr. Bischoff's resignation was a response to the Aiken County Public School District's failure to provide necessary support, which is a substantial factor in this case.

Additionally, according to SC Code § 1-23-380 (2023), "If a timely application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court." In this instance, Mr. Bischoff was not properly notified of his right to due process; therefore, there are good reasons for his failure to present evidence before this court.

Furthermore, the Respondent's reliance on case law emphasizing issue preservation neglects the broader context of Mr. Bischoff's claims, which highlight systemic failures within the Aiken County Public School District that contributed to his resignation and subsequent professional challenges. Also, South Carolina courts have recognized exceptions to the issue preservation rule. In *Ex parte Carter*, 422 S.C. 623, 813 S.E.2d 686

(2018), the court held that procedural rules should not be applied "woodenly" when a party was denied a meaningful opportunity to be heard. Due to errors and mistakes with managing mail by the United States Postal Service, evidenced in the Record on Appeal, as well as mistakes made by the South Carolina Board of Education when sending notices, Mr. Bischoff was denied a meaningful opportunity to be heard and submit evidence. Therefore, he has a right to include evidence and testimony because his right to due process was denied.

Regarding the Respondent's third argument about the relevance of actions taken post-resignation, it must be emphasized that Mr. Bischoff's exemplary performance at Clear Dot Charter School serves as a critical counterpoint to the allegations of unprofessional conduct levied against him by the South Carolina State Board of Education. His current role demonstrates not only his rehabilitation but also a commitment to professional excellence that contradicts any claims of misconduct during his tenure with the Aiken County Public School District. The Respondent's dismissal of these actions as irrelevant fails to consider their significance in illustrating Mr. Bischoff's growth and dedication to ethical standards in education, thereby reinforcing his position in this appeal. Thus, both arguments presented by the Respondent lack merit when viewed in light of the comprehensive evidence supporting Mr. Bischoff's claims and current professional standing.

II. THE SOUTH CAROLINA DEPARTMENT OF EDUCATION DID NOT PROVIDE ADEQUATE NOTICE OF THE APPELLANT'S RIGHT TO DUE PROCESS AND COMMITTED FRAUDULENT ACTIONS (RESPONDENT ISSUE II).

The SCDE acknowledges that adequate notice is required for procedural due process. "The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review." *Robert K v City of Camden Planning Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008). The Respondent's assertion that Mr. Bischoff voluntarily failed to request a hearing regarding his educator certification is strongly contradicted by evidence from the United States Postal Service and the SCDE.

This evidence indicates that Mr. Bischoff was not properly given the opportunity to request such a hearing due to significant issues with the delivery of the notification. The USPS documentation shows that the certified mail was sent to an incorrect address and signed by someone other than Mr. Bischoff, the Appellant.

The letter from the SC Consumer Affairs Manager of the United States Postal Service, Howard Brown, and the USPS Proof of Delivery indicates that the notice was sent to 1103 Churchill Circle, Aiken, SC 29803. It also indicates it was never addressed to the Appellant's 6013 Tyne Lane, Grovetown, GA 30813 address. Furthermore, there was an active change of address on file with the United States Postal Service that should have redirected the mail to Mr. Bischoff's current Grovetown, GA address, but a system error resulted in the mail being sent to 1103 Churchill Circle, Aiken, SC 29803. Due to the mistake made by the United States Postal Service and inaccurate claim that the South Carolina State Board of Education sent Restricted Certified Mail, the appellant reaffirms he did not receive adequate written notice specifying his right to a hearing, violating S.C. Code Ann. § 59-25-170 (2024).

Additionally, the USPS tracking receipt directly contradicts the Respondent's claim that the certified mail was sent to 6013 Tyne Lane, Grovetown, GA 30813 through restricted delivery. Contrary to the Respondents arguments, the SCDE's notice sent on November 29, 2023, was sent by non-restricted certified mail to Aiken, SC. The certified mail tracking number on the notice (ROA 16) corresponds with the United States Postal Service tracking receipt (ROA 18). Under the South Carolina Department of Education's Procedures for Educator Certification Hearings 4(c), (Revised 04/12/2016) the notice needs to be sent by certified mail, restricted delivery. None of the notices that the SCDE sent were certified mail, restricted. Therefore, the SCDE violated their Procedures for Educator Certification Hearings 4(c).

The South Carolina Department of Education received receipts indicating that the certified mail was not restricted; when mailing at the post office and when the Respondent included the tracking receipt in the Record on Appeal (ROA 18). Despite this knowledge, they fraudulently stated within the Record on Appeal that it was indeed restricted certified mail. The Respondent also fraudulently claimed within the Brief of Respondent that

certified mail, restricted was sent to 6013 Tyne Lane, Grovetown, GA 30813 (ROA 16). This is also after the Respondent received the Appellant Brief (AB) outlining the SCDE's mistake (AB 12 – 14). Moreover, they failed to include the Product Information section details within the United States Postal Service tracking receipt (ROA 18), which would have clarified that it was not restricted. Restricted certified mail also requires showing a valid form of identification to accept the restricted certified mail, according to the United States Postal Service website. This was not done, indicating that the certified mail was not restricted. The Appellant also claims that the SCDE informed him that public records displayed Mr. Bischoff's former Aiken address and not his current Grovetown address. Evidence on record suggests that they did not send the notice regular and certified mail, restricted to 6013 Tyne Lane, Grovetown, GA 30813, and that they intentionally misrepresented the evidence within the Record on Appeal. Under 18 U.S. Code § 1001, these actions amount to fraudulent misrepresentation by the South Carolina Department of Education regarding the nature of the certified mail sent.

Furthermore, within the notice sent on July 31, 2024, the Respondent claims that the Appellant was given fair notice and told the Appellant that he no longer had the option of making a written request for a hearing. Therefore, the July 31, 2024 notice violated his right to due process because Mr. Bischoff did not receive the initial notice describing his rights to due process. This violates South Carolina Rules of Civil Procedure 5(b) because Mr. Bischoff was not given fair notice, as is evident within the first notice sent on November 29, 2023 and the second sent on July, 31 2024 (ROA 15-18).

Issues with the United States Postal Service's and with the South Carolina State Board of Education's ability to send mail to Mr. Bischoff led to him not receiving the Order of Suspension by mail. Mr. Bischoff claimed previously that he received the Order of Suspension from his boss at Clear Dot Charter School on September 5th, 2024. The Director at Clear Dot Charter School received it from the Charter Institute at Erskine. Also, Mr. Bischoff received the Record on Appeal 21 days after it was filed, and he has yet to receive the Brief of Respondent. This all further provides evidence that there are issues with Mr. Bischoff's ability to receive mail through the United States Postal Service from the SCDE.

Moreover, the Supreme Court of the United States has previously noted “that 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, 126 S. Ct. 1708, 1713-14 (2006) (quoting Mullane, 339 U.S., at 314, 70 S. Ct. 652, 94 L. Ed. 865). These discrepancies in mail handling and delivery directly impacted Mr. Bischoff’s ability to receive proper notice and exercise his right to request a hearing. Therefore, given these circumstances, Mr. Bischoff’s failure to request a hearing before the State Board of Education should not preclude him from raising issues with the District for the first time in this court. The evidence clearly demonstrates that the lack of a hearing request was not due to voluntary inaction on Mr. Bischoff’s part, but rather a result of systemic failures in the notification process, as well as fraudulent actions made by the SCDE. If Mr. Bischoff received the notices from the SC Department of Education, he would have exercised his rights to due process after the initial notice was sent on November 29, 2023, and after the final notice was sent on July 31, 2024. In correspondence, waiting to exercise his rights of due process after the final decision was made by the SC State Board of Education were sent, is very unlikely, because the burden of proof is greater within the Administrative Law Court than it is within the SCDE. As a result, he did not receive notices of his right to due process from the SCDE.

Additionally, Exceptions to Issue of Preservation: South Carolina courts have recognized exceptions to the issue preservation rule. In *Ex parte Carter*, 422 S.C. 623, 813 S.E.2d 686 (2018), the court held that procedural rules should not be applied “woodenly” when a party was denied a meaningful opportunity to be heard. Due to the errors and mistakes with managing mail by the United States Postal Service, as well as mistakes made by the South Carolina Board of Education when sending the notices, Mr. Bischoff was denied a meaningful opportunity to be heard and submit evidence. Therefore, Mr. Bischoff has a right to include evidence and testimony because his right to due process was denied.

CONCLUSION

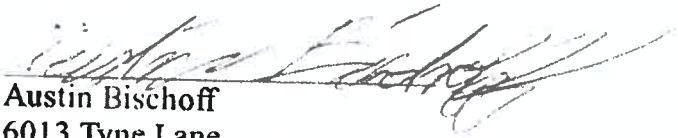
Overall, the Respondent's Brief contains several inaccuracies in its Statement of the Case. ~~Contrary to the Respondent's assertion, there is no evidence that Mr. Bischoff~~ personally sent a letter to the South Carolina Department of Education (SCDE) reporting his own resignation and the investigation into allegations of his unprofessional conduct. Rather, it was King Laurance, the Superintendent of the Aiken County Public School District, who communicated this information to the SCDE (ROA 20). The presence of omitting such details and inaccurately representing others suggests that the Respondent's counsel may not have invested sufficient effort or attention to detail in addressing the complexities of this case. This argument, combined with the previously mentioned points regarding improper notice, voluntary resignation, lack of due process notification, and the relevance of post-employment actions, further strengthens the Appellant's case. Therefore, such actions not only undermine the credibility of the Respondent's arguments but also raise questions about the overall reliability of their position in this matter.

Evidence also provided within the Record on Appeal by the SCDE, United States Postal Service, and the Appellant reaffirms that it was a clear error of the law when the South Carolina State Board of Education's decision set out in the Order of Suspension to suspend Mr. Bischoff's educator certificate and not provide him with fair notice of constitutional due process, denying his right to due process. Under SC Code § 59-25-270 (2024), the court has ample basis to reverse the order of suspension on Austin Bischoff's educator certificate. The South Carolina Department of Education's failure to provide Austin Bischoff his constitutional right to due process is inconsistent with SC Code § 59-25-170 (2024), and violative of his right to be given fair notice of constitutional due process under the South Carolina Rules of Civil Procedure 5(b) and the South Carolina Department of Education's Procedures for Educator Certification Hearings 4(c). Furthermore, Mr. Bischoff asks the Court to acknowledge the fraudulent actions of the South Carolina Department of Education (SCDE) and the negligence of the United States Postal Service (USPS).

In Ex parte Carter, 422 S.C. 623, 813 S.E.2d 686 (2018), the court held that procedural rules should not be applied "woodenly" when a party was denied a meaningful opportunity to be heard. Also, according to SC Code § 1-23-380 (2023), "If a timely application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court." Mr. Bischoff was not properly notified of his right to due process. Therefore, there are good reasons for his failure to present it in front of the South Carolina State Board of Education. This negates assertions made within the Brief of Respondent because he was not given fair notice of his right to due process and should be allowed to introduce and raise these issues within the SC Administrative Law Court.

For the reasons stated within the arguments and conclusion, it is respectfully requested that the judgment of the South Carolina State Board of Education be reversed and receive all salary lost as a result of such suspension of his educator's certificate.

Respectfully submitted,



Austin Bischoff
6013 Tyne Lane
Grovetown GA, 30813
(843) 422-3116
abischoff@radford.edu
pro se Appellant

January 13, 2025



STATE OF SOUTH CAROLINA
DEPARTMENT OF EDUCATION

**Via Regular and Certified Mail – Return Receipt Requested – Restricted Delivery
(7021 1970 0001 2723 2079)**

November 29, 2023

Mr. Austin Bischoff
6013 Tyne Lane
Grovetown, GA 30813

Re: S.C. Educator Certificate 293493

Dear Mr. Bischoff:

This letter is to notify you that the State Board of Education (State Board) will meet to make a determination regarding possible disciplinary action of your South Carolina educator certificate based on the provisions of S.C. Code Ann. § 59-25-160 (2020). The State Board will review allegations of unprofessional conduct due to falsification of special education documentation.

Under state law, you are entitled to a hearing in this matter. If you wish to request a hearing, your request must be in writing, and addressed to Ellen E. Weaver, State Superintendent of Education, 1429 Senate Street, Suite 1015, Columbia, South Carolina 29201. You may request a public or private hearing. At the hearing, you may present any testimony under oath or other evidence that may be pertinent, and you may be represented by legal counsel. If you fail to make a written request for a hearing within fifteen days after you receive this notice, you will waive your right to a hearing. In the event that you waive your right to a hearing, the State Board may take action to suspend or revoke your certificate based on the information presented by the State Department of Education (SCDE).

The State Board of Education's Procedures for Educator Certification Hearings can be found on the SCDE website at <https://ed.sc.gov/state-board/state-board-of-education/about-state-board/rules-of-governance/bcaf-a20/>. If you do not have access to a computer, please contact our office and we will mail you a copy of the State Board of Education's Procedures for Educator Certification Hearings.

ROA 94

ELLEN E. WEAVER · STATE SUPERINTENDENT OF EDUCATION
RUTLEDGE BUILDING · 1429 SENATE STREET · COLUMBIA, SC 29201
PHONE: 803-734-8500 · FAX: 803-734-3389 · ED.SC.GOV

Austin Bischoff
November 29, 2023
Page 2

Should you wish to discuss an alternate resolution to this matter in lieu of a hearing, you may contact me directly at 803-734-1807.

Sincerely,



Holly Hadden
Assistant General Counsel
HH/ck

cc: Ellen E. Weaver, State Superintendent of Education
Crystal F. Stapleton, Ed.D., Chair, State Board of Education
Mary Hipp, Director, Office of Educator Services, SCDE
Becca Burg, Coordinator, Office of Educator Services, SCDE
King Laurence, Superintendent, Aiken County Public Schools
Jennifer Hart, Chief Officer of Human Resources and Administration, Aiken County Public Schools



**STATE OF SOUTH CAROLINA
DEPARTMENT OF EDUCATION**

July 31, 2024

Mr. Austin Bischoff
6013 Tyne Lane
Grovetown, GA 30813

Re: S.C. Educator Certificate 293493

Dear Mr. Bischoff:

This letter is in follow up to the other certified mail letter we have tried to bring to your attention, in an effort to make you aware of your rights and afford you due process regarding the possible suspension of your South Carolina educator certificate based on the provisions of S.C. Code Ann. § 59-25-160 (2020). The State Board will review allegations of falsification of special education documentation with the Aiken County Public School District.

You have been notified that, under state law, you are entitled to a hearing in this matter and the requirements of requesting the same if you so desire. Under the South Carolina Rules of Civil Procedure 5(b), you have been given fair notice of constitutional due process. You have failed to make a written request for a hearing, and your failure to accept the certified mail and/or respond to the notification sent to you by U.S. Regular Mail is considered a waiver of your right to a hearing. The State Board could take action to suspend your certificate based on the information presented by the State Department of Education (SCDE).

The State Board will consider this matter on August 13, 2024, at approximately 10:00am, or as soon thereafter as is feasible. If you have questions, you may contact me directly at 803-734-1807.

Sincerely,

Holly Madden
Assistant General Counsel
HH/ck

ELLEN E. WEAVER · STATE SUPERINTENDENT OF EDUCATION
428 WHOLESALE LANE · WEST COLUMBIA, SC 29172
PHONE: 803-734-8783 · FAX 803-734-4384 · ED.SC.GOV

ROA 96

Tracking Number:

Remove X

70211970000127232079

Copy

Add to Informed Delivery (<https://informedelivery.usps.com/>)

Latest Update

Your item was delivered to an individual at the address at 4:35 pm on December 2, 2023 in AIKEN, SC 29803.

Get More Out of USPS Tracking:

USPS Tracking Plus®

Delivered

Delivered, Left with Individual

AIKEN, SC 29803

December 2, 2023, 4:35 pm

[See All Tracking History](#)

What Do USPS Tracking Statuses Mean? (<https://faq.usps.com/s/article/Where-is-my-package>)

Text & Email Updates



USPS Tracking Plus®



Product Information



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Feedback