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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA  
Administrative Law Court

Honorable Robert L. Reibold, Administrative Law Judge

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Appellate Case No. 2025-000839

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Austin Bischoff,

Appellant,

v.

South Carolina  
Administrative Law Court

Respondent.

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[INITIAL] BRIEF OF APPELLANT

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## STATEMENT OF ISSUES ON APPEAL

- I. DID THE ADMINISTRATIVE LAW COURT’S MISAPPLICATION OF JONES V. FLOWERS LEAD TO FAILURE TO IDENTIFY THAT THE NOTICE OF DISCIPLINARY ACTION AND RIGHT TO DUE PROCESS IS TAINTED BY THE MISDELIVERY OF CERTIFIED AND REGULAR MAIL?
- II. DOES THE COURT’S RULING ACCURATELY REFUTE THE APPELLANT’S ARGUMENTS REGARDING S.C. CODE ANN. § 59-25-260 AND DUE PROCESS?
- III. DID THE ADMINISTRATIVE LAW COURT OVERLOOK THE SOUTH CAROLINA DEPARTMENT OF EDUCATION’S FAILURE TO COMPLY WITH PROCEDURAL AND DUE PROCESS REQUIREMENTS?

## STATEMENT OF THE CASE

This appeal arises from the decision of the South Carolina Administrative Law Court (“ALC”) affirming the suspension of Appellant Austin Bischoff’s South Carolina educator certificate by the State Board of Education.

On November 29, 2023, the South Carolina Department of Education (SCDE) notified Mr. Bischoff by regular and certified mail of his right to a hearing regarding the possible suspension of his educator certificate. The SCDE verified Mr. Bischoff’s address; the certified letter was returned unclaimed, and the regular mail was not returned. On July 31, 2024, the SCDE notified Mr. Bischoff by regular mail that the State Board would consider action against his certificate on August 13, 2024, or as soon thereafter as feasible. Mr. Bischoff did not request a hearing and was deemed in default under South Carolina Rules of Civil Procedure 5(b) (R. p. 5).

The State Board convened on September 3, 2024, and, after considering the evidence, voted to suspend Mr. Bischoff’s educator certificate for two years, effective September 3, 2024, through September 2, 2026 (R. p. 5).

Mr. Bischoff timely appealed to the Administrative Law Court (“ALC”) on October 3, 2024, challenging the suspension. The ALC assigned the matter on October 7, 2024, and the South

Carolina Department of Education filed the Record on Appeal on October 11, 2024 (R. p. 1). Due to complications from Hurricane Helene, Mr. Bischoff received the Record on Appeal on October 31, 2024 (R. p. 61). On November 7, 2024, Mr. Bischoff requested and was granted an extension to file his brief, moving the deadline to December 9, 2024. On that date, Mr. Bischoff filed his initial brief and a Motion to Supplement the Record on Appeal (R. p. 1), asserting he had not had an opportunity to submit evidence before the State Board's decision (R. pp. 30, 61). The South Carolina Department of Education did not respond to the motion but filed its brief on January 3, 2025. Mr. Bischoff filed his reply brief on January 13, 2025 (R. pp. 1-2).

On January 21, 2025, the Administrative Law Court granted Mr. Bischoff's motion to supplement the record and offered the South Carolina Department of Education an opportunity to amend its brief; the Department declined (R. p. 8). On March 6, 2025, in the Final Order and Decision, after review of the parties' submissions and arguments, the Administrative Law Court issued an Order affirming the State Board's suspension of Mr. Bischoff's certificate (R. pp. 8, 16). Mr. Bischoff filed a Motion for Rehearing on March 17, 2025 (R. p. 44). As of the date of this brief, the Department has not responded to the motion (R. p. 19). Following the denial of Mr. Bischoff's Petition for Rehearing by the Administrative Law Court, Mr. Bischoff subsequently filed a notice of appeal to this Court (the South Carolina Court of Appeals) on April 29, 2025. Due to the deficiencies, the court filing of the Notice of Appeal with the South Carolina Court of Appeals was officially filed electronically by Mr. Bischoff on May 12, 2025. On May 28, 2025, Mr. Bischoff received a copy of an email from the Honorable Jenny A. Kitchings (Clerk), South Carolina Court of Appeals, via regular mail, informing him that Holly M. Hadden, the Assistant General Counsel, who represented the South Carolina Department of Education (South Carolina Board of Education) in the Administrative Law Court appeal, has left the South Carolina

Department of Education and is now employed by another state agency and that V. Henry Gunter is the new counsel of record who will be representing the South Carolina Board of Education in this matter. On June 13, 2025, Mr. Bischoff received a letter notifying him that he has 30 days from the date of the letter (June 13, 2025) to file his initial brief or the appeal will be dismissed with the South Carolina Court of Appeals. On June 16, 2025, Mr. Bischoff received the official Motion for Substitution of Counsel letter via regular mail from the Honorable Jenny A. Kitchings (Clerk).

Mr. Bischoff now appeals the final order and decision of the Administrative Law Court to the South Carolina Court of Appeals, which affirmed the South Carolina Department of Education's suspension of Mr. Bischoff's educator certification. Mr. Bischoff is appealing to the South Carolina Court of Appeals pursuant to S.C. Code Ann. § 1-23-610 and S.C. Code Ann. § 59-25-260.

#### STANDARD OF REVIEW

The standard of review for questions of law, including whether The South Carolina Department of Education's notice satisfies constitutional due process as well as whether the Administrative Law Court properly interpreted and applied the law, is de novo. *Jones v. Flowers*, 547 U.S. 220 (2006), *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), *Ex parte Carter*, 422 S.C. 623, 813 S.E.2d 686 (2018), U.S. Constitution Amendment V, U.S. Constitution Amendment XIV, § 1, S.C. Code Ann. § 59-25-170, S.C. Code Ann. § 59-25-200, the South Carolina Administrative Procedures Act, S.C. Code Ann. § 1-23-310 et seq., and the Board's BCAF Procedures § 4(C).

## ARGUMENTS

### **I. THE ADMINISTRATIVE LAW COURT’S MISAPPLICATION OF JONES V. FLOWERS FAILS TO IDENTIFY THAT THE NOTICE OF DISCIPLINARY ACTION AND RIGHT TO DUE PROCESS IS TAINTED BY THE MISDELIVERY OF CERTIFIED AND REGULAR MAIL.**

Accordingly, the Court of Appeals should independently determine whether, under the undisputed facts, the South Carolina Department of Education’s actions were “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action,” and whether the South Carolina Department of Education was constitutionally required to take additional reasonable steps upon learning its initial notice likely failed.

Mr. Bischoff, Appellant, respectfully submits that the Administrative Law Court (“ALC”)’s reliance on the simultaneous delivery of notice by regular mail alongside certified mail to an outdated address, without taking further steps to ensure actual notice, fails to satisfy the constitutional requirements articulated in *Jones v. Flowers*, 547 U.S. 220 (2006).

The Supreme Court in *Jones v. Flowers*, 547 U.S. 220 (2006), made clear that the government’s duty to provide notice “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action” (*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)) is not satisfied by mere mailing when there is evidence that notice likely failed. Critically, *Jones v. Flowers*, 547 U.S. 220 (2006) does not limit the duty to take “additional reasonable steps” solely to situations where mail is returned unclaimed. Rather, whenever the government becomes aware—by any means—that its initial attempt at notice has likely failed, it must take further action if practical.

Here, the South Carolina Department of Education had actual knowledge that its certified letter was delivered to an outdated address and signed for by an unidentified third party, despite the

existence of an active change of address for Mr. Bischoff. The South Carolina Department of Education’s own tracking information (R. p. 97) and the testimony of the USPS Consumer Affairs Manager (R. pp. 42-43) confirmed both the misdelivery and the failure of proper forwarding. Under these circumstances, the South Carolina Department of Education could not reasonably rely on the simultaneous regular mail letter—sent to the same outdated address—as being “reasonably calculated” to provide actual notice to Mr. Bischoff of his right to a hearing.

The Administrative Law Court’s assertion that the “additional reasonable steps” requirement was not triggered because the regular mail was not returned is a misapplication of *Jones v. Flowers*, 547 U.S. 220 (2006) and overlooks the specific facts of this case. The general precedent that regular mail to the last known address is sufficient for due process presumes that the address used is reasonably likely to reach the intended recipient. In this case, the South Carolina Department of Education had clear evidence that the address was no longer valid for Mr. Bischoff and that mail sent there was not reaching him.

The Record on Appeal demonstrates that the certified letter was sent to Mr. Bischoff’s former address, 1103 Churchill Circle, despite an active USPS change of address redirecting his mail to 6013 Tyne Lane (R. pp. 42-43, 97). This is not a minor administrative oversight but a fundamental failure in the notice process. The USPS Proof of Delivery Tracking, submitted by the South Carolina Department of Education (“SCDE”), shows the letter was “delivered, left with individual,” and signed for by an unidentified third party at the outdated address. Furthermore, the tracking information confirms that SCDE sent the letter via standard certified mail, rather than “restricted delivery,” which would have required Mr. Bischoff to sign for the letter personally after presenting identification (R. pp. 43, 97). This procedural deficiency deprived Mr. Bischoff of the

enhanced protections of restricted delivery and undermined the South Carolina Department of Education's assertion that adequate notice was provided.

Additionally, the Record on Appeal includes testimony from Howard Brown, USPS Consumer Affairs Manager for South Carolina, confirming a system error prevented proper forwarding despite the active change of address (R. p. 42). The South Carolina Department of Education's failure to inquire further, despite having notice of the change, distinguishes this case from those cited by the Administrative Law Court, such as *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478 (1988), and *Mullane*. In both cases, the Supreme Court emphasized that notice must be "reasonably calculated, under all the circumstances," to reach the party. When the government knows the address is incorrect, continued reliance on that address is not reasonable.

Moreover, the fact that the South Carolina Department of Education sent both the certified and regular mail notices simultaneously (R. pp. 14, 94) does not satisfy due process when both were sent to an address known to be outdated. The South Carolina Department of Education's knowledge of the misdelivery, confirmed by its own records and the USPS, triggered a duty to take additional reasonable steps—such as re-mailing to the correct address, employing restricted delivery, or using alternative means of contact (R. pp. 97). The South Carolina Department of Education's failure to do so, and the Administrative Law Court's acceptance of this failure, falls short of the constitutional standard.

Despite these undisputed facts, the Administrative Law Court declined to accept the Board's findings regarding the certified mail's return and its delivery address, yet nonetheless relied solely on the regular mail letter as proof that due process was satisfied (R. pp. 14-16). The Administrative Law Court's decision to disregard the misdelivered certified mail and rely exclusively on the unreturned regular mail—sent to the same incorrect address—overlooks both the factual record

and the heightened due process requirements that arise when there is clear evidence that notice did not reach the intended recipient.

Under *Jones v. Flowers*, 547 U.S. 220, 226 (2006) when the State learns its initial attempt at notice has failed, it must take additional reasonable steps before proceeding. Here, the South Carolina Department of Education was on notice—through its own tracking receipts and record evidence—that the certified letter did not reach Mr. Bischoff (R. p. 97). This triggered a duty under *Jones v. Flowers*, 547 U.S. 220, 226 (2006) to do more than simply rely on regular mail, especially since another individual signed for the certified letter at the old address, making it likely the regular mail was similarly misdelivered or discarded.

Finally, the Administrative Law Court’s suggestion that the regular mail was not returned and therefore presumed delivered ignores the reality that regular mail provides no confirmation of delivery or receipt. In light of the evidence that certified mail was misdelivered and that the address was outdated, the South Carolina Department of Education could not reasonably presume that regular mail sent to the same address would be effective (R. pp. 42-43, 97). Due process requires more than blind reliance on unreturned mail when there is evidence that notice is not reaching the intended recipient.

Due process is not satisfied by the mere act of mailing when there is actual evidence of failed delivery and no effort to confirm receipt or employ alternative methods reasonably calculated to reach the intended recipient. The South Carolina Department of Education could and should have taken additional steps—such as re-mailing to the correct address, using restricted delivery, or attempting contact by other means—once it became aware of the misdelivery. The Administrative Law Court’s refusal to require such steps effectively lowers the constitutional bar for notice and disregards the specific evidence of misdelivery in this case.

In summary, the Administrative Law Court’s reliance on simultaneous regular mail, without more, is arbitrary and capricious in light of the undisputed evidence of misdelivery and the clear requirements of due process as articulated by the Supreme Court in *Jones v. Flowers*. The South Carolina Department of Education’s failure to take additional reasonable steps after learning of the failed certified mail attempt renders the notice constitutionally deficient, and the Administrative Law Court’s decision should be reversed on this ground.

**II. THE COURT'S RULING DOES NOT ACCURATELY REFUTE THE APPELLANT'S ARGUMENTS REGARDING S.C. CODE ANN. § 59-25-260 AND DUE PROCESS.**

Mr. Bischoff, Appellant, respectfully asserts that the Administrative Law Court (“ALC”) erred in presuming constitutionally adequate notice where both the certified and regular mail notices were sent to Appellant’s former address as a result of a USPS error. Both notices were mailed simultaneously to Mr. Bischoff’s old address (an outdated address) due to a USPS error, as confirmed by the South Carolina Department of Education’s own tracking information in the Record on Appeal (R. pp. 94, 97). When the South Carolina Department of Education knew of where the mail was delivered – with the help of their USPS tracking data, it should have triggered a duty to take additional reasonable steps to provide notice, with the likelihood that the regular mail notice also failed to reach Mr. Bischoff, rather than rely on the presumption that the regular mail had been delivered to the appellant. The presumption of delivery is rebutted where the sender is aware of an addressing error. The court’s reliance on procedural formalities and deference to the Board’s findings, without accounting for this constitutional deficiency, improperly subordinated Mr. Bischoff’s right to due process. The Administrative Law Court (ALC)’s reliance on the fact that the regular mail was not returned ignores the unrefuted evidence that both notices (certified and regular) were sent simultaneously, making it very likely that the regular mail was discarded

by the person who signed for the certified letter at Mr. Bischoff's old address (R. p 15). Under these facts, the South Carolina Department of Education was obligated to take additional reasonable steps to ensure notice. Its failure to do so rendered the notice constitutionally inadequate, and reversal, therefore, is warranted.

**III. THE SOUTH CAROLINA DEPARTMENT OF EDUCATION'S FAILURE TO COMPLY WITH PROCEDURAL AND DUE PROCESS REQUIREMENTS WAS OVERLOOKED BY THE ADMINISTRATIVE LAW COURT.**

**A. The South Carolina Department of Education's Notice Procedures Were Deficient and Violated Due Process**

The South Carolina Department of Education's November 29, 2023, letter, which purported to provide Mr. Bischoff with notice of adverse action and his right to due process, was sent via both certified and regular mail (R. p. 94). The letter itself displayed Mr. Bischoff's address in the upper left-hand corner and included, in bold at the top, "Via Regular and Certified Mail – Return Receipt Requested – Restricted Delivery (7021 1970 0001 2723 2079)." However, the record demonstrates that the South Carolina Department of Education failed to ensure that the letter was actually sent as described and that it reached Mr. Bischoff (R. pp. 97).

**B. The South Carolina Department of Education's Actions Did Not Satisfy Statutory or Constitutional Notice Requirements**

Due process requires that notice be "reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." (Jones v. Flowers, 547 U.S. 220, 226 (2006)). When the government becomes aware that its attempt at notice has failed, due process obligates it to take additional reasonable steps to provide notice before proceeding with deprivation of a protected interest. (Jones v. Flowers, 547 U.S. 220, 230 (2006)).

In this case, the South Carolina Department of Education's own records confirm that the certified letter was not delivered to Mr. Bischoff at his current Georgia address, 6013 Tyne Lane. The tracking data for the certified letter shows it was "delivered, left with individual," but the individual who signed for the letter was not Mr. Bischoff, and the delivery occurred at Mr. Bischoff's former Aiken address, 1103 Churchill Circle (R. pp. 43, 97). This is further evidenced by the fact that the South Carolina Department of Education, despite stating in the Order of Suspension that the certified letter was "returned unclaimed," actually possessed tracking data indicating delivery to the wrong individual (R. p. 5). Thus, the South Carolina Department of Education's assertion in the Order of Suspension is not only unsupported by the record but directly contradicted by it.

The South Carolina Department of Education continued to assert that they sent the certified mail to Mr. Bischoff's current Georgia address on file, as certified mail, restricted delivery, even though they had the evidence through the tracking receipt that they sent it to the wrong address, Mr. Bischoff's former Aiken address (R. pp. 5-7, 76-83). Despite this clear evidence, the trial court failed to address the South Carolina Department of Education's repeated false statements of sending it to his current Georgia address. It is therefore likely that the South Carolina Department of Education also made fraudulent claims that the letter sent by regular mail was sent to the Mr. Bischoff's current Georgia address, on file.

Furthermore, the Administrative Law Court overlooked the fact that the certified mail was sent at the same time as the regular mail, which indicates that the letter sent by regular mail also likely went to Mr. Bischoff's former Aiken address. The Honorable Judge Reibold's order does not reflect consideration of these critical points.

#### C. The South Carolina Department of Education's Negligence in Addressing and Documentation

Despite verifying Mr. Bischoff's current Georgia address, 6013 Tyne Lane, and including it inside the letter, the South Carolina Department of Education negligently addressed the envelope to Mr. Bischoff's former Aiken address, 1103 Churchill Circle (R. pp. 43, 94, 97). The responsibility for correctly labeling both the certified and regular mail notices, as well as for properly completing USPS Form 3800 for certified mail (including checking the boxes for Return Receipt and Restricted Delivery), rested solely with the South Carolina Department of Education. The South Carolina Department of Education failed to provide a copy of USPS Form 3800 in the Record on Appeal, which would have documented the services actually requested at the time of mailing. Instead, the South Carolina Department of Education submitted only the tracking number, tracking information, and a copy of the letter (R. p. 94, 97).

The tracking information provided by the South Carolina Department of Education did not include product details that would confirm whether "Restricted Delivery" or "Return Receipt" services were actually purchased and utilized (R. p. 97). Critically, the South Carolina Department of Education did not provide a return receipt in the Record on Appeal. A return receipt is a separate document that provides proof of delivery, including the signature of the recipient and the delivery address. The absence of this document further undermines the South Carolina Department of Education's claim that notice was properly provided.

#### D. The South Carolina Department of Education Mailing of Regular Mail Does Not Cure the Defect

The Administrative Law Court ("ALC") erred in concluding that the notice requirements were satisfied in this matter. If mail is delivered to the wrong address, the recipient may, as is common practice, write "Return to Sender" or "Wrong Address" on the envelope and place it back in the

mailbox for the carrier to retrieve. In many cases, conscientious recipients do so; however, some may simply ignore the mail or discard it altogether.

In the present case, certified mail was sent to the wrong address, Mr. Bischoff's former address, 1103 Churchill Circle, on November 29, 2023, and the unintended recipient signed for it without returning it to the sender (R. pp. 43, 97). The Administrative Law Court failed to recognize that it is reasonable to conclude the unintended recipient also likely did not "return to sender" the November 29, 2023, notice sent by regular mail along with the certified letter. The Administrative Law Court further failed to recognize that the South Carolina Department of Education should have sent additional correspondence when it became apparent that the notice sent by certified mail—and, likely, the one sent by regular mail at the same time—was not delivered to the intended recipient, Mr. Bischoff.

The Administrative Law Court's assertion that the notice sent by regular mail on November 29, 2023, was sufficient to satisfy due process is incorrect. The notice contained false information, as both the notice sent by regular and certified mail stated that it was sent with restricted delivery to Mr. Bischoff's current Georgia address, 6013 Tyne Lane (R. p. 94). As such, the South Carolina Department of Education's failure to ensure proper delivery and to follow up with additional correspondence deprived Mr. Bischoff of adequate notice and an opportunity to be heard, in violation of due process.

The Administrative Law Court erroneously concluded that the South Carolina Department of Education's simultaneous mailing of a regular letter, in addition to the certified letter, satisfied due process. However, both letters were mailed on the same day, and both were addressed using the same erroneous information. The South Carolina Department of Education's obligation under

Jones v. Flowers, 547 U.S. 220 (2006), is not satisfied by sending two forms of notice simultaneously; rather, due process requires the agency to take additional steps after learning that its initial attempt at notice failed. The South Carolina Department of Education took no such steps after learning of the misdelivery. The fact that the regular mail letter “has not been returned” does not establish that Mr. Bischoff received actual notice, particularly in light of the proven misaddressing and the lack of returned receipt documentation.

E. The South Carolina Department of Education’s Assertions in the Order of Suspension Are Inaccurate

The Order of Suspension states: “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” (R. p. 5). The record demonstrates these assertions are inaccurate (R. pp. 14, 43, 94, 97).

The certified letter was not returned unclaimed. The tracking data clearly displays “delivered, left with individual,” not “returned unclaimed.” The individual who signed for the letter was not Mr. Bischoff, and the letter was delivered to the wrong address, 1103 Churchill Circle. If the South Carolina Department of Education verified Mr. Bischoff’s current address and wrote it inside the letters, they were negligent in writing his former address, 1103 Churchill Circle, on the envelope, directly causing the misdelivery. The fact that the regular mail letter was not returned does not prove actual delivery or receipt by Mr. Bischoff.

F. The Administrative Law Court’s Reliance on Letter Content Rather Than Mailing Procedure Is Misplaced

In the Final Order and Decision, the Administrative Law Judge, the Honorable Judge Reibold, stated:

“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 South Carolina Department of Education and there was no evidence in the record that either mailing sent by regular mail was returned to the South Carolina Department of Education. 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” (R. pp. 14-15).

However, the mere presence of bolded language at the top of the letter—such as “Via Regular and Certified Mail – Return Receipt Requested – Restricted Delivery”—does not constitute evidence that the letter was actually sent in the manner described. The text within the letter is drafted by the South Carolina Department of Education (SCDE) and may reflect the sender’s intentions, but it does not serve as proof that the corresponding United States Postal Service (USPS) services were requested, paid for, or applied at the time of mailing.

#### G. Letter Content vs. Mailing Procedure

It is well established that the content of a letter, even if it expressly states the intention to use certified mail, return receipt, or restricted delivery, does not establish that those services were in fact utilized. The actual USPS services applied to a mailing depend solely on the sender’s actions at the post office. To properly send a letter via “Certified Mail – Return Receipt Requested –

Restricted Delivery,” the sender must complete USPS Form 3800 for Certified Mail; check the appropriate boxes for “Return Receipt” and “Restricted Delivery,” and pay the additional fees for each service at the post office counter. USPS will only provide the services that are specifically requested and paid for at the time of mailing. If “Restricted Delivery” is not selected and paid for, the item will be delivered as standard certified mail, which allows any individual at the address to sign for the item, rather than restricting delivery to the named addressee. See Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM) § 503.3.1 (Apr. 7, 2025), Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM) § 503.3.2 (Apr. 7, 2025).

#### H. Insufficiency of Record Evidence

In this case, the South Carolina Department of Education failed to submit into the record a copy of USPS Form 3800 or any return receipt (Postal Service Form 3811) that would confirm the actual services requested and the identity of the person who received the mailing. Instead, the South Carolina Department of Education relied solely on the tracking number and the content of the letter itself (R. pp. 94, 97). The absence of these critical documents means there is no competent evidence that the South Carolina Department of Education complied with the requirements for return receipt or certified mail, restricted delivery.

The Administrative Law Court’s reliance on the November 29, 2023, certified and regular mail letter’s content, rather than on documentary evidence of the actual mailing procedure, is misplaced. Due process requires not only notice, but proof that notice was reasonably calculated to reach the intended recipient. (See *Jones v. Flowers*, 547 U.S. 220, 226 (2006)). The South Carolina Department of Education’s failure to provide documentary evidence of the requested mailing

services—despite the letter’s assertions (R. p. 94)—renders the record insufficient to support a finding that proper notice was given.

Accordingly, Mr. Bischoff respectfully submits that the Administrative Law Court’s acceptance of the South Carolina Board of Education’s findings, based solely on the content of the letter rather than on actual proof of mailing procedure, constitutes reversible error.

I. The South Carolina Department of Education’s Failure to Remedy Known Misdelivery Is a Fundamental Due Process Violation

Upon learning that the certified letter had been misdelivered, the South Carolina Department of Education was constitutionally required by both the Fifth Amendment and the Fourteenth Amendment to take additional reasonable steps to provide notice before proceeding. The Due Process Clause of the Fifth Amendment provides that no person shall “be deprived of life, liberty, or property, without due process of law” (see United States Constitution Amendment V). The Fourteenth Amendment extends this same protection to actions by state governments, stating that no state shall “deprive any person of life, liberty, or property, without due process of law” (see United States Constitution Amendment XIV, § 1).

Due process requires that the government provide notice reasonably calculated to inform interested parties of the pendency of an action and an opportunity to respond. If the government learns that its attempt at notice has failed, it must take reasonable follow-up measures to ensure actual notice. Failure to do so is not a mere technicality but a fundamental due process violation, depriving the individual of a meaningful opportunity to be heard and to respond to the pending action. This requirement applies equally under both the Fifth and Fourteenth Amendments, which together guarantee fair procedures and protect individuals from unjust deprivation of life, liberty, or property by either federal or state authorities.

J. The Administrative Law Court's Refusal to Address Procedural Safeguards Constitutes Error

The Administrative Law Court's refusal to address Mr. Bischoff's arguments concerning violations of specific procedural safeguards constitutes reversible error. Mr. Bischoff expressly cited S.C. Code Ann. § 59-25-170, S.C. Code Ann. § 59-25-200, the South Carolina Board of Education's BCAF Procedures for Educator Certification Hearings § 4(C), and the South Carolina Administrative Procedures Act, S.C. Code Ann. § 1-23-310 et seq., as the sources of these safeguards. Each of these authorities imposes mandatory requirements designed to ensure due process for educators subject to disciplinary proceedings.

S.C. Code Ann. § 59-25-170 provides that an educator must be furnished written notice of the grounds for any proposed disciplinary action against his certificate. S.C. Code Ann. § 59-25-200 further requires that an educator be afforded fifteen days after receipt of such notice to request a hearing before the Board of Education. The statute mandates that the educator receive notice of the time and place of the hearing, and that the hearing be scheduled within a specified period.

The Board of Education's BCAF Procedures for Educator Certification Hearings § 4(C) reinforce these statutory requirements. Section 4(C) mandates that notice be sent by certified mail, restricted delivery, and that such notice inform the educator of the grounds for the proposed action, the right to counsel, the right to a hearing, and the requirement to request a hearing in writing within fifteen days of receipt of the notice. Failure to timely request a hearing results in waiver of that right, and the Board may proceed based solely on the Department's evidence.

The South Carolina Administrative Procedures Act, S.C. Code Ann. § 1-23-310 et seq., likewise guarantees that individuals subject to administrative action by a state agency are entitled

to notice and an opportunity to be heard. These are fundamental principles of due process under both statutory and constitutional law.

Here, the record demonstrates that the South Carolina Department of Education failed to ensure Mr. Bischoff's actual receipt of notice, even after learning that the original notice had been misdelivered (R. p. 97). This failure is not a mere technicality; it is a direct violation of the statutory and regulatory safeguards designed to protect educators' rights. By declining to address whether these procedural requirements were satisfied, the Administrative Law Court disregarded a threshold due process issue. The right to written notice and a meaningful opportunity to be heard are not discretionary; they are prerequisites to any lawful deprivation of an educator's certification under South Carolina law.

Accordingly, the Administrative Law Court's refusal to address Mr. Bischoff's procedural due process arguments was error. The matter should be remanded for consideration of whether the Department complied with the mandatory notice and hearing requirements set forth in S.C. Code Ann. § 59-25-170, S.C. Code Ann. § 59-25-200, the BCAF Procedures § 4(C), and the South Carolina Administrative Procedures Act, S.C. Code Ann. § 1-23-310 et seq.

#### K. The Administrative Law Court's Ruling Sanctions Arbitrary and Unsupported Agency Action

The Administrative Law Court's ruling upholding the South Carolina Department of Education's actions (R. p. 16), despite clear evidence of misdelivery and procedural noncompliance, constitutes error under S.C. Code Ann. § 1-23-380. This statutory provision entitles an aggrieved party who has exhausted all administrative remedies to judicial review of a final agency decision. The reviewing court is required to determine whether the agency action is: in excess of statutory authority; made upon unlawful procedure; affected by other error of law;

clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Here, the record indisputably demonstrates that the South Carolina Department of Education's certified letter was misdelivered and that they failed to take corrective action to ensure actual notice to Mr. Bischoff. The South Carolina Board of Education's findings, therefore, rest not on substantial evidence but on speculation. By affirming agency action unsupported by reliable and probative evidence, the Administrative Law Court sanctioned a result that is clearly erroneous and arbitrary within the meaning of S.C. Code Ann. § 1-23-380. Such a ruling is contrary to the statutory mandate that agency decisions must be supported by substantial evidence and must not be arbitrary or capricious. Accordingly, the Administrative Law Court's decision should be reversed for failure to adhere to the standards of judicial review set forth in S.C. Code Ann. § 1-23-380.

#### L. Application of Ex parte Carter and the Right to Be Heard

In *Ex parte Carter*, 422 S.C. 623, 813 S.E.2d 686 (2018), the South Carolina Supreme Court held that procedural rules should not be applied "woodenly" when a party was denied a meaningful opportunity to be heard. Here, due to errors and mistakes in mail management by the United States Postal Service (R pp. 42-43), as well as mistakes made by the South Carolina Board of Education in sending notices (R. pp. 94, 97), Mr. Bischoff was denied a meaningful opportunity to be heard and to submit evidence. Therefore, Mr. Bischoff has a right to include evidence and testimony because his right to due process was denied. Honorable Judge Reibold's refusal to allow Mr.

Bischoff to do so—on the basis that he did not start out in a lower court (R. p. 26)—was improper under the principles articulated in *Ex parte Carter*.

## CONCLUSION

For the foregoing reasons, the South Carolina Department of Education's failure to take additional steps after confirmed misdelivery, combined with its deficient documentation and the Administrative Law Court's refusal to enforce binding procedural safeguards, violated both due process and South Carolina law. The record demonstrates that Mr. Bischoff was deprived of notice and a meaningful opportunity to be heard, as required by statute and the Constitution. Accordingly, Mr. Bischoff respectfully requests that this Court reverse the decision of the Administrative Law Court.

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Respectfully submitted,

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