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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Circuit Court Judge Deadra L. Jefferson
Circuit Court Case No. 2025-CP-10-00921

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Appellate Case No.: 2025-002194

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Corel Lenhardt ..... Appellant,

v.

Charleston County School District .....Respondent.

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# INITIAL BRIEF OF RESPONDENT

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**ATTORNEYS FOR RESPONDENT**

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b. Allowing the Superintendent to deliberate with the Board of Trustees in a closed executive session outside Appellant's presence; and

c. Failing to notify Appellant of the Board of Trustee's consideration of her matter despite Appellant's express request for notice and a public hearing?

## STATEMENT OF THE CASE

On August 30, 2024, Respondent Charleston County School District's (the "District") Superintendent Anita Huggins ("Superintendent") recommended that Appellant be immediately terminated for cause, *i.e.*, for "falsifying evaluation documents," "misrepresenting leave," and "other reasons," in accordance with S.C. Code Ann. § 59-15-430 ("Termination Recommendation"). Thereafter, in accordance with the Teacher Employment and Dismissal Act ("TEDA"), S.C. Code Ann. § 59-25-410 *et seq.*, Appellant timely appealed the Termination Recommendation and received a hearing before a designated hearing officer on December 20, 2024.

On January 10, 2025, the Hearing Officer, Amy L. Gaffney, Esquire, issued a Report and Recommendation to the District's Board of Trustees ("Board") stating she did not find "substantial evidence" supporting the dismissal for cause and recommending the Board not uphold the Termination Recommendation ("Report and Recommendation"). Pursuant to S.C. Code Ann. § 59-25-460, on January 21, 2025, the Superintendent submitted a written response to the Report and Recommendation, challenging the Hearing Officer's application of the law and asking that the Board uphold the termination ("Response"). Appellant provided nothing further for the Board to review.

On January 27, 2025, the Board met in executive session to consider the Report and Recommendation, the Response, and the exhibits introduced at the hearing, and unanimously voted to uphold the Termination Recommendation. The Board issued its written order on January 31, 2025. Appellant filed a Notice of Appeal with the Charleston County Court of Common Pleas (Circuit Court) on February 19, 2025.

The parties briefed the issues on appeal and, following oral argument, the Circuit Court issued its order on July 15, 2025, upholding the Board's decision (the "Order"). Appellant filed a Motion for Reconsideration pursuant to Rule 59(e), SCRCP, which the Circuit Court denied by order dated October 23, 2025. Appellant then filed her Notice of Appeal to the South Carolina Court of Appeals on October 27, 2025.

## STANDARD OF REVIEW

"Judicial review of a school board decision terminating a teacher is *limited* to a determination whether it is supported by substantial evidence. The court cannot substitute its judgment for that of the school board." Felder v. Charleston Cnty. Sch. Dist., 327 S.C. 21, 25, 489 S.E.2d 191, 193 (1997) (citing Kizer v. Dorchester County Voc. Educ. Bd. of Trustees, 287 S.C. 545, 340 S.E.2d 144 (1986)); Laws v. Richland County School Dist. No. 1, 270 S.C. 492, 243 S.E.2d 192 (1978) (emphasis added). "'Substantial evidence' is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action." Toney v. Lee Cnty. Sch. Dist., 419 S.C. 210, 216, 797 S.E.2d 55, 58 (Ct. App. 2017). "Substantial evidence is something less than the weight of the evidence and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency'' finding from being supported by substantial evidence. A judgment upon which reasonable men might differ 'will not be set aside.'" Palmetto All., Inc. v. S.C. Pub. Serv. Comm'n, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984) (internal citations omitted). Further, "if *any* of the charges against a teacher are supported by substantial evidence, the school board's decision to dismiss must be sustained." Hilliard v. Orangeburg Cnty. Sch. Dist. No. Three, 300 S.C. 123, 126, 386 S.E.2d 628, 630 (Ct. App. 1989)

(emphasis in original). If the Superintendent sets forth multiple grounds to support her recommendation for termination, one ground alone is sufficient to support recommendation pursuant to S.C. Code Ann. §59-25-430. Adams v. Clarendon County Sch. Dist. No. 2, 270 S.C. 266, 274, 241 S.E.2d 897, 901 (1978).

## FACTS[1]

Appellant became certified to teach and began teaching in 2006. The District hired her in 2009 to serve as a teacher at St. John's High School. In 2011, the District appointed Appellant to an administrative position, Assistant Principal.

Assistant principals in the District support the principals at the schools to which they are assigned. One of the duties for which assistant principals are responsible is the completion of teacher evaluations in accordance with South Carolina Department of Education policies and procedure. The teacher evaluation process is critical as it is the process used to determine whether to continue a teacher's employment in the District. Report and Recommendation, pp. 4 and 6-7.

In 2016, the District assigned Appellant as an Assistant Principal at Stall High School, where she worked until her termination. App. Ex. 7. In July of 2022, the District assigned Stephen Larson as the Principal of Stall, and he became Appellant's direct supervisor. Report and Recommendation, p. 1. During the 2023-24 school year, each assistant principal at Stall was responsible for conducting a certain number of teacher evaluations. Appellant knew from past years' experience, and from numerous reminders from Stall administrators, that she was required to complete the teacher evaluations in a timely manner, specifically on or before March 29, 2024. As part of the evaluation process, for each teacher assigned to her, Appellant was required to

[1] The facts set forth herein are taken from the Hearing Officer's findings as set forth in the Report and Recommendation, which was included in the record the Board reviewed.

conduct classroom observation, meet with the teacher to discuss her observations, including areas of strength and areas for growth, and write a summary of her discussion with the teacher. These were important duties, for which every assistant principal was responsible. Report and Recommendation, pp. 4 and 6-7.

On March 7-8, 2024, Appellant took two days of "sick leave" to go on vacation. On March 22, 2024, Appellant was injured at school and placed on medical leave from March 24 to April 7. Stall was closed from March 30 to April 7 for Spring Break. On March 28-29, 2024, Appellant again took "sick leave" to go on a pre-planned personal trip to Thailand. Earlier in the year, Appellant had obtained Mr. Larson's consent to her use of "vacation time" to go on this trip. Under Appellant's contract, she did not accrue vacation time. Mr. Larson assumed she had vacation time to use, but she did not. Report and Recommendation, pp. 2-3.

In sum, Appellant failed to complete her teacher evaluations by March 29, 2024, and provided no reason for the failure. All assistant principals, including Appellant, were provided with a calendar of deadlines governing the evaluations and were responsible for ensuring the deadlines were met. District Ex. 1, p. 24. "Lack of adherence to the calendar deadlines may result in an evaluation having a final result of 'not met' or 'incomplete.'" District Ex. 1, p. 24. In addition to the calendar, Appellant received reminders of the deadlines on an almost weekly basis. Report and Recommendation, pp. 4 and 6-7.

On April 8, 2024, the first day after Spring Break, at 12:37 p.m., Virginia Sayer, another assistant principal at Stall, sent an email to her fellow assistant principals, including Appellant, identifying teacher evaluations that remained incomplete. At 7:21 a.m. the following day, Appellant responded that she had closed out six teacher evaluations. District Ex. 3. Mr. Larson

became concerned and began an investigation into Appellant's performance of her duties relative to teacher evaluations. Report and Recommendation, p. 5.

Mr. Larson discovered that certain teachers had signed the evaluation weeks after Appellant had signed; in certain instances, Appellant had failed to respond to teachers' requests that she complete their evaluations; and, in some cases, Appellant falsified documents by reporting meetings that never occurred. District's Ex. 4; Report and Recommendation, p. 7.

Proper completion of teacher evaluations is an ongoing process. If an assistant principal fails to complete a teacher evaluation, it can have a significant impact on the teacher's ability to advance in her career. Not only are the evaluations critically important to the assessment and advancement of teachers, but they are also required to be conducted within the timelines and procedures dictated by the South Carolina Department of Education. Although Ms. Sayer sent updates and reminders to all Stall assistant principals regularly throughout the year, Appellant failed to adhere to the mandated deadlines. Resp. Ex. 1, pp. 15-24. In fact, multiple teachers reached out to Appellant concerning their evaluations and received no response from her. These teachers reported that Appellant did not hold the required evaluation conferences with them. For some teachers, Appellant signed off on evaluations without having any conferences with the teachers and even backdated some of the evaluations. In other instances, the other assistant principals stepped in to assume responsibility for the completion of the evaluations after Appellant went on FMLA leave in April. Resp. Ex. 1, pp. 15-17; Report and Recommendation, pp. 5-7.

After her Thailand vacation, Appellant returned to work for a limited time on April 8 and 9 and then went out on FMLA and Worker's Compensation ("WC") leave, so Mr. Larson was not able to meet with Appellant to address her misuse of leave. Resp. Ex. 1. On July 8, 2024, Dr. David Strickland, the WC neurologist, cleared Appellant to return to work on July 15, 2024,

restricted to light duty and a number of accommodations, including a shortened workday. Because Mr. Larson was unable to accommodate this request, he returned Appellant to WC Total Temporary Disability status. Report and Recommendation, p. 9.

After Mr. Larson concluded his investigation into Appellant's misconduct, he met with the District's Employee Relations Department ("ER"). ER met with Appellant on August 16, 2024, when she had been cleared to return to work, to share Mr. Larson's concerns and allow her the opportunity to respond. When questioned about the evaluations, Appellant refused to answer and instead left the meeting abruptly, asking that the District officials pose the questions to her in writing. As requested, the District sent Appellant an email the following day, August 17, 2024, outlining the concerns and requesting a written response setting forth her position by Friday, August 23, at 5:00 p.m. Appellant failed to respond. Resp. 5; Report and Recommendation, pp. 7-10

Accordingly, on August 30, 2024, the Superintendent issued the Termination Recommendation, which sought immediate termination *for cause* pursuant to S.C. Code Ann. §59-25-430 for Appellant's misrepresentation of leave, failure to complete teacher evaluations in accordance with state protocol, and refusal to participate in an investigation. Resp. Ex. 1, pp. 2-4.[2]

Appellant appealed the Termination Recommendation to the Board, which assigned the matter to a hearing officer. The Hearing Officer issued the Report and Recommendation, in which she concluded that the evidence presented was not sufficiently "substantial." The Board ultimately

[2] Appellant ignores the fact that she was also terminated for her refusal to participate in an investigation into her wrongdoing. App. Brief, pp. 18, 19.

determined that there was substantial evidence that Appellant was unfit for teaching and on this basis upheld the termination.

## ARGUMENT

### I. THE BOARD'S DECISION TO TERMINATE APPELLANT MUST BE UPHELD BECAUSE IT IS SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD.

Pursuant to S.C. Code Ann. § 59-25-430, "[a]ny teacher may be dismissed at any time who shall fail, or who may be incompetent, to give instruction in accordance with the directions of the superintendent, or who shall otherwise manifest an evident unfitness for teaching, [which is] manifested by conduct such as, but not limited to, the following: persistent neglect of duty, willful violation of rules and regulations of district boards of trustee, . . . dishonesty. . . ."

"Section 59-25-430 sets forth a non-exclusive list of examples of unfitness for teaching." Hall v. Bd. of Trustees of Sumter Cnty. Sch. Dist. No. 2, 330 S.C. 402, 406, 499 S.E.2d 216, 218 (Ct. App. 1998).[3] Moreover, an employee's intentional refusal to comply with the reasonable directives of her employer can, *standing alone*, demonstrate "an evident unfitness for teaching," sufficient to uphold termination. Hall, 330 S.C. at 411, 499 S.E.2d at 221 (Howell, C.J. dissenting).

"A school board has long had the power to discharge teachers 'when good and sufficient reasons for so doing present themselves,'" S.C. Code Ann. § 59-19-90(2). TEDA "was not so much intended to limit this power as it was intended to prevent its abuse." Adams, 270 S.C. at 272–73, 241 S.E.2d at 900.

[3] Additionally, TEDA applies to District employees, such as Appellant, who have the duty to supervise teachers. Barr v. Bd. of Trs. of Clarendon Cnty. Sch. Dist. No. 2, 319 S.C. 522, 527, 462 S.E.2d 316, 318–19 (Ct. App. 1995); *see also* S.C. Code Ann. § 59-24-15.

Pursuant to § 59-25-460, a school board may delegate its authority to conduct the evidentiary hearing to a designee. However, "[t]he board retains final decision-making authority regarding the teacher dismissal or suspension recommendation based on its consideration of the record, the report and recommendation, and any written submission of the superintendent and teacher." S.C. Code Ann. § 59-25-460(B)(2). In accordance with § 59-25-460(D), "[t]he *board* shall determine if the evidence shows good and just cause for the notice of suspension or dismissal and accordingly shall render a decision to affirm or withdraw the notice of suspension or dismissal," (emphasis added).

In this case, the Board had "good and sufficient reasons" to terminate Appellant *for cause* based on her failure to complete teacher evaluations in accordance with the South Carolina Department of Education's process, and for her misrepresentations regarding personal leave and her refusal to participate in an investigation.

**a. Appellant's Failure to Complete Teacher Evaluations**

At the time of her termination, Appellant was an assistant principal and not a classroom teacher. Although § 59-25-430 speaks to "unfitness for teaching," the scope of the statute clearly extends to the demonstrated unfitness of a continuing contract administrator. Appellant's responsibilities as an assistant principal included, among other things, conducting teacher evaluations and supervising teachers. Tr.12:10-20. Appellant failed to timely and properly evaluate the teachers for whom she was responsible and, in some cases, fraudulently closed the evaluation without completing the process. Appellant ignored multiple requests for a meeting from one teacher in particular and then claimed they met for a final conference, which account the teacher denied. Tr. 173:19-176:12. The same pattern of misconduct occurred for another teacher. Another first-year teacher trying to achieve annual summative on his way to continuing contract status

reached out to the Office of Teacher Effectiveness for assistance. Appellant neither observed him nor held consensus meetings as required, and the evaluation folder did not contain critical signatures. Another teacher's folder contained multiple discrepancies regarding dates and a shortage of data sheets and meaningful reflections. Three more teachers for whom Appellant was responsible received incomplete and/or erroneous evaluations. Despite Appellant's injury and explanations, she never asked for help with the evaluations. Instead, with the click of a button she marked six evaluations complete. Resp. Ex. 3. Report and Recommendation, pp. 4-8.

Appellant's conduct in handling her teacher evaluation responsibilities constitutes substantial evidence of both her "unfitness for teaching" and unfitness for supervising teaching, in violation of §59-25-430; as does her failure to follow Board policies, specifically the policy relating to dishonesty and Policy GBE requiring that she abide by state laws and regulations, carry out her duties with conscientious concern, and submit required documents on time. Her dismissal must be upheld.

**b. Fraudulent Use of Leave Time**

Furthermore, there is substantial evidence to support the Board's conclusion that Appellant knowingly and fraudulently used sick leave. As a 222-day contract employee, Appellant did not accrue vacation leave. Appellant knew her contract did not accrue vacation leave. And still she took two personal trips (in one month) with leave she did not have. As an assistant principal and supervisor she is a leader at the school, and her misuse of leave was dishonest and deceptive. Her identification of leave time as "vacation" leave and/or "sick" leave is further evidence of unfitness for teaching. Her dismissal must be upheld.

**c. Refusal to Follow Employer's Directive**

Lastly, Appellant's absolute refusal to answer written questions regarding her principal's concerns is a violation of the Board's policies, specifically Policy GBE. Policy GBE requires her to cooperate with investigations the District undertakes. This is further evidence of unfitness for teaching. Her dismissal must be upheld.

## II. THE CIRCUIT COURT DID NOT EXCEED ITS SCOPE OF JUDICIAL REVIEW.

Appellant misapprehends the statutory framework of TEDA. App. Brief, p. 26. First, while TEDA governs the process and procedure for teacher employment and dismissal, it does *not* define the scope of judicial review of the Board's decision to terminate a teacher. If the Board elects to conduct the evidentiary hearing, it must issue a written order containing findings of fact and conclusions of law within thirty (30) days after the hearing. S.C. Code Ann. § 59-25-460(C). However, in the event the Board delegates its authority to preside over the evidentiary hearing, as it did here, the hearing officer must submit a report and recommendation with findings of fact and conclusions of law to the Board. S.C. Code Ann. § 59-25-460(2). Then, the only action required of the Board is for it to "issue a decision affirming or withdrawing the notice of . . . dismissal within thirty days." Id.[4]

Appellant also misapplies the limited standard of review set forth in Shell v. Richland County School. Dist. No.1, 362 S.C. 408, 608 S.E.2d 428 (2005). In Shell, the Richland County School District terminated a teacher solely on the basis that he was arrested on two occasions twelve years apart. Neither arrest led to conviction. Id. at 409, 608 S.E.2d at 428-429. At the evidentiary hearing, the superintendent acknowledged Shell had no classroom performance issues

[4] Contrary to what Appellant argues, the Board does not accept or reject the hearing officer's recommendation. App. Brief, p. 31. In fact, under TEDA, the hearing officer plays a very limited role in the appellate process. See S.C. Code Ann. § 59-25-460(2).

and denied that any negative publicity associated with the arrests factored into his decision to terminate Shell. Id. at 410, 608 S.E.2d at 428-29. The board affirmed the superintendent's decision. On review, the Circuit Court reversed the Board, finding that the facts in the record "did not constitute substantial evidence that Shell was unfit to teach . . . ." Id. at 410, 680 S.E.2d at 429. On appeal, the South Carolina Court of Appeals disagreed and, based in part on its own findings, concluded the teacher had evidenced unfitness for teaching by virtue of his dishonesty, the publicity attendant to the arrests, and the negative reaction to the arrests from his colleagues, students, and school parents. Id. The South Carolina Supreme Court reversed on account of the Court of Appeals making "its own independent evidentiary findings to support the termination." Id. at 411, 680 S.E.2d at 429. The South Carolina Supreme Court reaffirmed that the "scope of review of case brought pursuant to Teacher Employment and Dismissal Act [is] limited to whether grounds given for termination are supported by substantial evidence." Id. (citing Laws v. Richland County School District No. 1, 270 S.C. 492, 243 S.E.2d 192 (1978)).

Here, the Circuit Court properly limited its review to "whether there was substantial evidence for the Board's unanimous decision to terminate Dr. Lenhardt." Circuit Court Order, July 15, 2-025, p. 9. The Circuit Court determined there was and therefore upheld the Board's order adopting the Termination Recommendation. Because there is substantial evidence to support Appellant's dismissal under § 59-25-430, this Court should affirm the Order.

## III. THE DISTRICT DID NOT MISINTERPRET TEDA NOR DID IT VIOLATE APPELLANT'S DUE PROCESS RIGHTS.

"The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.' Due process does not mandate any particular form of procedure, but is a flexible concept changing with the circumstances." Tall Tower, Inc. v. S.C. Procurement Rev. Panel, 294 S.C. 225, 232, 363 S.E.2d 683, 686–87 (1987) (internal citations

omitted). Here, "[a] demonstration of *substantial* prejudice is required to establish a due process claim." Id. at 233, 363 S.E.2d at 681 (citing Palmetto Alliance v. S.C. Public Service Authority, 282 S.C. 430, 319 S.E.2d 695 (1984)) (emphasis added). Appellant received notice of the matters to be decided, had the ability to present witnesses on her behalf, and had the opportunity to cross-examine witnesses called by the opposing party. Id. As such, she has no basis for asserting a due process claim. Mere disagreement with the Board's decision is woefully insufficient to establish substantial prejudice. Id.

TEDA codified the due process rights afforded to teachers subject to dismissal. S.C. Code Ann. § 59-25-10 *et seq*. No one disputes the District gave Appellant written notice of the grounds for her termination, pursuant to § 59-25-430. *See* Superintendent Letter, dated August 30, 2024. Appellant requested a hearing and the District provided her with notice of the hearing, as set forth in §§ 59-25-460 and 59-25-470. Trans., pp. 1, 470. During the hearing, Appellant, through her counsel, presented and cross-examined witnesses. *See generally* Trans. Accordingly, Appellant was afforded all the due process to which she was entitled. She suffered no prejudice, let alone *substantial* prejudice, and cannot show otherwise. Appellant is, naturally, displeased with the Board's decision, but this is not a basis on which to reverse.

**a. The Board was Not Required to Review the Transcript of the Evidentiary Hearing Before Making its Decision**

S.C. Code Ann. § 59-25-460(2) sets forth the rights of the teacher and the duties of the Board when the Board elects to delegate oversight of the evidentiary hearing to a hearing officer:

> If the designee holds the evidentiary hearing, he shall issue a written report and recommendation containing findings of facts and conclusions of law to the board, superintendent, and teacher within fifteen days after the hearing concludes. The superintendent and the teacher may submit a written response to this report and recommendation to the board within ten days after the date on which the report and recommendation are issued, after which the board shall issue a decision affirming or

> withdrawing the notice of suspension or dismissal within thirty days. In the interim, the board may conduct a hearing on the order to consider any written responses from the superintendent and teacher, but this hearing may not operate to extend the thirty-day limit in which the board shall issue its decision affirming or withdrawing the notice of suspension or dismissal. The board retains final decision-making authority regarding the teacher dismissal or suspension recommendation based on its consideration of the record, the report and recommendation, and any written submission of the superintendent and teacher.

The District fully complied with its obligations under TEDA. The Hearing Officer timely issued the Report and Recommendation to the Board, the Superintendent, and Appellant on January 10, 2025. The Superintendent submitted her Response to the Board Chair with a copy to Appellant on January 21, 2025. Email dated January 21, 2025, with attachment. Appellant similarly had the right to submit a written response and chose not to.

The Superintendent's 13-page Response, which the Board considered in Executive Session, identified the following egregious errors in the Report and Recommendation:

- The Hearing Officer ignored the fact that Appellant was terminated for cause pursuant to S.C. Code Ann. § 59-25-430 and erroneously based her recommendation, in part, on the District's failure to provide Appellant corrective measures and the opportunity to improve which was, by law, *not* required. This confusion over the statutory provisions rendered her legal conclusion baseless. Response, pp. 2,10

- The Hearing Officer wrongly relied on testimony that was completely irrelevant to the bases of the Superintendent's decision to terminate. Response, p. 6

- The Hearing Officer ignored testimony that was relevant to the grounds for termination, which was brought to the Board's attention by the Superintendent. Response, pp. 3-5, 7-9

- In other cases, the Hearing Officer misunderstood the testimony. Report, pp 10-12

- The legal conclusions of the Hearing Officer were limited to whether Appellant had willfully violated the rules and regulations of the District and completely ignored the other reasons for termination. The Superintendent provided relevant case law for the Board's consideration. Report and Recommendation, pp. 11-15; Report, p. 12-13.

There is no statutory provision that requires the District to order, pay for, and provide the hearing transcript to the Board for use in its deliberation. The statutory deadlines would not accommodate this in any event. The Board had before it and properly considered the Report and Recommendation, copies of the exhibits introduced at the hearing, and the Response in reaching its decision to uphold the termination.

Appellant cites Young v. Charleston County School District, 391 S.C. 303, 725 S.E.2d 107 (2012), for support that the Board's failure to read the hearing transcript caused her to suffer substantial prejudice. Young, which was decided four years before the Legislature amended § 59-25-460 to allow a board to utilize a designee for an evidentiary hearing, involved a three-member committee of board members who reached a two-to-one decision to uphold the termination. Id. at 305, 125 S.E.2d at 107-08. The committee then telephoned a quorum of the board, sitting in executive session, and the quorum voted four to three not to renew the teacher's contract. The sole question presented in Young, was "[w]hether the Board violated Appellant's due process rights by not convening a quorum to hear Appellant's non-renewal appeal." Id. at 306, 725 S.E.2d at 108. A majority of the South Carolina Supreme Court held that "a quorum of the Board must engage in a *meaningful* review of the evidence and testimony presented at the hearing" and determined that the Young board did not conduct such a review. Id. at 307, 725 S.E.2d at 109. The Supreme Court explained that the board's affirmation of dismissal would be upheld "so long as they [the board committee] presented their findings to the full board, and the full board based its decision on these facts . . . ." Id. at 308-309, 725 S.E.2d at 109-110. The Young Court cited Pettiford v. South Carolina Bd. of Ed., 218 S.C. 322, 62 S.E.2d, 780 (1950), for guidance on determining the limits of due process in a quasi-judicial setting. In Pettiford, there was no due process violation where two members of the Board of Education heard live testimony, which testimony was presented to

the full Board, and where a written summary of the evidence introduced by the parties was also provided for consideration. Id. at 345, 62 S.E.2d at 790. Importantly, the court in Young did not reverse the Circuit Court but instead remanded the matter for further proceedings in keeping with the requirements set down by the Court. Young, 397 S.C. at 310-11, 725 S.E.2d at 111.

In the present case, the entire Board considered the Report and Recommendation, the hearing exhibits, and the Superintendent's Response, and unanimously affirmed the Termination Recommendation. Young has no application here, other than to show by comparison that Appellant received due process.

**b. The Superintendent Attended the Executive Sesson but Did not Deliberate in the Board's Unanimous Decision to Uphold the Termination Recommendation**

"School board members are clothed with a presumption of honesty and integrity in the discharge of their decision-making responsibilities." Kizer v. Dorchester Cnty. Vocational Educ. Bd. of Trustees, 287 S.C. 545, 552, 340 S.E.2d 144, 148 (1986) (citing Withrow v. Larkin, 421 U.S. 35, 47, 95 S.Ct. 1456, 1464 (1976); Hortonville Joint School District No. 1 v. Hortonville Education Association, 426 U.S. 482, 496–97, 96 S.Ct. 2308, 2316 (1976)). The fact that non-board members are present during executive session when a teacher's employment is discussed does not violate the due process rights of the teacher where: the non-board member did not provide any additional information regarding the employment matter; the non-board member participates in executive session in his or her typical duties as an employee of the District; and the vote on the teacher's employment issue was made in open session. Felder v. Charleston Cnty. Sch. Dist., 327 S.C. 26-27, 489 S.E.2d 191, 193 (1997).

Board Policy BE Board Meetings, provides in pertinent part:

> **Executive Session.** Board may go into executive session by a majority vote, and may include others at its discretion. Upon a vote to go into executive session, the chair must state the specific purpose of the executive session.

> Proper topics for executive session are: student actions, such as hearings, transfers, or other matters; personnel matters, unless the employee wants the matter to be discussed in open session; contract negotiations; acquisition or sale of property; legal advice; matters of security investigations or criminal conduct.
>
> No formal action may be taken in executive session. Formal action means a recorded vote committing the board to a specific course of action.
>
> The board shall not take a vote in executive session, nor shall it poll its members in executive session. The board may only vote in open session.
>
> Board members and other persons attending are duty-bound not to disclose matters discussed in executive session.

Appellant made a broad and baseless claim that "[d]uring that executive session the Superintendent and other [unknown] District representatives who supported termination were present and provided the Board with factual summaries, explanations of exhibits, and evaluative commentary regarding the hearing officer." Appellant provided no citation to the record to support this specious allegation.

Appellant also misrepresented to the Court that she "specifically ask[ed] for the Board to deliberate in a public hearing as mandated by Board Policy BE." As set forth above, while Policy BE allows the teacher to request that her matter be discussed in open session, Appellant made no such request. Rather, upon receiving a copy of the Superintendent's Response, Appellant wrote to the Board Chair: "If the Board decides to consider the written response provided by Ms. Dukes, Dr. Lenhardt requests that the Board conduct a hearing pursuant to S.C. Code Ann. 59-25-460(B)(2)." Email from E. Ferguson, January 21, 2025. Section 59-25-460(B)(2) contains no language about discussing the employment dismissal matter in open session.

**c. Because the District had No Duty to provide Appellant Personal Notice of the Board's Intent to Consider her Employment Matter, the Board did Not Deny Appellant Any Due Process Right to Which She was Entitled**

TEDA does not require notice of the date on which the Board intends to render its final decision on a notice of termination. The District must provide the employee notice and an opportunity to be heard before the Board makes its final determination, but due process "does *not* require notice and an opportunity to be heard at each level of the administrative process." Ross v. Med. Univ. of S.C., 328 S.C. 51, 69, 492 S.E.2d 62, 72 (1997) (citing Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 545-46, 105 S. Ct. 1487, 1495 (1985) (emphasis added). In fact, "[g]iven proper grounds for discharge under s 59-25-430, all that was required was prior notice and an opportunity to be heard." Adams v. Clarendon Cnty. Sch. Dist. No. 2, 270 S.C. 266, 275, 241 S.E.2d 897, 901 (1978).

Appellant was afforded and indeed exercised all her due process rights. She received notice of the hearing on her appeal. She presented witnesses on her behalf and vigorously cross-examined the District's witnesses. See Tall Tower, Inc. v. S.C. Procurement Rev. Panel, 294 S.C. 225, 233, 363 S.E.2d 683, 687 (1987).

Furthermore, she suffered no prejudice by the Board rendering its determination outside of her and her legal representative's presence; and she has no statutory right to present argument to the Board, during either the public meeting or in executive session. The Board clearly communicated its position on this issue after its meeting and prior to this appeal. *See* emails between counsel, January 21, 2025. Appellant was not by law or by policy afforded the promise of any other notice.

## CONCLUSION

For the reasons set forth herein, Respondent respectfully requests that this Court affirm the Circuit Court and require Appellant to pay one-half of the court reporter's attendance and services pursuant to S. C. Code Ann. § 59-25-460.

Respectfully Submitted,

s/ Alice F. Paylor

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