

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2012-213509

Jacqueline Smith.....Appellant.

v.

Horry County Schools.....Respondent.

RECORD ON APPEAL

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JUL 11 2013

SC Court of Appeals

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STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-26-3689

Jacqueline Smith
PLAINTIFF(S)

Horry County Schools
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☒ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☒ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

The decision of the Horry County School Board on March 25, 2011, upholding the recommendation of the Horry County School District to terminate the appellant's employment is AFFIRMED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$ N/A

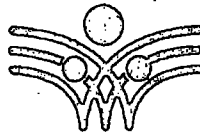
If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Benjamin H. Culbertson
Benjamin H. Culbertson, Circuit Court Judge

2148
Judge Code

September 20, 2012
Date



Horry County Schools

March 29, 2011

**VIA U.S. MAIL: REGULAR MAIL AND
CERTIFIED MAIL, RETURN RECEIPT**

Ms. Jacqueline P. Smith
4640 Greenbriar Drive, Apt. C-1
Little River, SC 29566

Dear Ms. Smith:

The purpose of this letter is to confirm, in writing, the Board's decision regarding your employment with the District. Your hearing before the Board began on the morning of March 24, 2011, and extended slightly beyond midnight.

Upon the conclusion of its deliberation, the Board voted on March 25, 2011, to uphold the recommendation of the Superintendent, Dr. Cindy Elsberry, that your employment with Horry County School District be terminated. The Board concluded after hearing approximately 14 hours of testimony and reviewing all evidence presented at the hearing that there were good and sufficient reasons to justify the termination of your employment.

Your salary will continue through April 8, 2011. It is my understanding your benefits will continue through April 30, 2011. Information regarding your right to continue your health insurance coverage through COBRA, at your expense, will be sent to you separately.

Sincerely,

Will Garland
Board Chair

c: Horry County Board of Education
Cynthia Elsberry, Superintendent
Employee's Personnel File
W. Allen Nickles, Esq.
Dwayne Mazyck, Esq.
Kenneth S. Generette, Esq.
Kathryn Long Mahoney, Esq.
Vernie L. Williams, Esq.

Jacqueline Smith

Appellant
Plaintiff(s)

CIVIL ACTION COVERSHEET

vs.

2011-CP - 26-

3689

Horry County Schools

Respondent
Defendant(s)

(Please Print)

Submitted By: W. Allen Nickles, III

Address: 1519 Richland Street, Columbia, SC 29201

SC Bar #: 4226

Telephone #: 803-779-8080

Fax #: 803-256-1816

Other:

E-mail: wanickles@nickleslaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached) - APPEAL

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -CP- ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Commission (990) ☐ Employment Security Comm (991)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		☒ Other (999) School Board

Submitting Party Signature:

Date:

4/20/11

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)

Case No.: 2011-CP-26-_____

Jacqueline Smith,)

Appellant,)

v.)

Horry County Schools,)

Respondent.)

NOTICE OF APPEAL

FILED
11 APR 25 PM 3:13
CLERK OF COURT

Pursuant to South Carolina Code of Laws § 59-25-480, the Appellant, Jacqueline Smith, hereby appeals the decision of the Horry County School Board ("the Board") of March 25, 2011, to terminate her employment contract with the Horry County School District. A copy of the Board's letter dated March 29, 2011 confirming its action of March 25, 2011 is provided as Attachment A. Ms. Smith provides the following grounds for her appeal, each ground independently requiring reversal of the Board's action.

1. By overruling Ms. Smith's objection to the introduction of documents not supported by live testimony, the Board deprived Ms. Smith of the constitutional and statutory right to confront adverse witnesses. See S.C. Const. art. 1, §§ 3 and 22; S.C. Code Ann. § 59-25-470 (discussing right to cross-examine witnesses).

2. By accepting documents and testimony not supported by first-hand information the Board deprived Ms. Smith of the constitutional and statutory right to confront adverse witnesses. See S.C. Const. art. 1, §§ 3 and 22; S.C. Code Ann. § 59-25-470 (discussing right to cross-examine witnesses).

3. By accepting the recommendation of the Superintendent which contains allegations not supported by first-hand testimony the Board deprived Ms. Smith of the

~~constitutional and statutory right to confront adverse witnesses. See S.C. Const. art. 1, §§ 3 and~~
22; S.C. Code Ann. § 59-25-470 (discussing right to cross-examine witnesses).

4. There is not substantial evidence that Ms. Smith was afforded her statutory right to written notice, assistance, and opportunity to improve her teaching performance prior to dismissal as required by S.C. Code Ann. § 59-25-440.

5. There is not substantial evidence to support termination on grounds that Ms. Smith is incompetent or otherwise unfit to teach as required by S.C. Code Ann. § 59-25-430.

6. Ms. Smith's termination was unlawful because it was retaliation for participation in prior Board hearings, for filing a grievance against a former principal, and for challenging her principal on grade changes, such conduct being protected by Board policy, District procedure and S.C. Const. art. 1, §§ 2 and 22.

7. Ms. Smith's termination was unlawful because the District violated its own policies prohibiting retaliation for participating in the grievance process.

8. Ms. Smith's termination was unlawful because the District violated its own policies regarding grade changes.

9. Ms. Smith's termination was unlawful because the District violated its own policies regarding parental and student grievances.

10. Ms. Smith's termination was unlawful because the District violated its own policies regarding discipline, suspension and dismissal of professional staff.

11. Ms. Smith's termination was unlawful because the District violated its own policies regarding evaluation of instructional staff.

12. Ms. Smith's termination was unlawful because the District violated its own policies regarding investigation of alleged racial harassment.

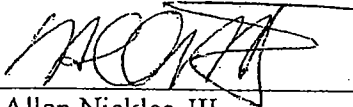
~~13. Ms. Smith's termination was unlawful because the District violated its own~~
policies regarding information gathering by administrators.

14. Ms. Smith's termination was unlawful because the District violated its own
policies regarding continuing contracts and goals based evaluations.

15. Ms. Smith's termination was unlawful because the District violated its own
policies regarding the issuance of continuing with conditions contracts.

16. Ms. Smith's termination was unlawful because the District failed to treat Ms.
Smith in the same fashion as other continuing contract teachers under goals based evaluations,
such conduct being prohibited by Board policy, District procedure and S.C. Const. art. 1, §§ 3
and 22.

NICKLES & SOLOMON, LLC

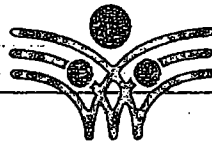
By: 

W. Allen Nickles, III
Dwayne Mazyck
1519 Richland Street
Columbia, SC 29201
(803) 779-8080

Attorneys for Appellant

April 20, 2011
Columbia, South Carolina

ATTACHMENT A



Horry County Schools

March 29, 2011

**VIA U.S. MAIL: REGULAR MAIL AND
CERTIFIED MAIL, RETURN RECEIPT**

Ms. Jacqueline P. Smith
4640 Greenbriar Drive, Apt. C-1
Little River, SC 29566

Dear Ms. Smith:

The purpose of this letter is to confirm, in writing, the Board's decision regarding your employment with the District. Your hearing before the Board began on the morning of March 24, 2011, and extended slightly beyond midnight.

Upon the conclusion of its deliberation, the Board voted on March 25, 2011, to uphold the recommendation of the Superintendent, Dr. Cindy Elsberry, that your employment with Horry County School District be terminated. The Board concluded after hearing approximately 14 hours of testimony and reviewing all evidence presented at the hearing that there were good and sufficient reasons to justify the termination of your employment.

Your salary will continue through April 8, 2011. It is my understanding your benefits will continue through April 30, 2011. Information regarding your right to continue your health insurance coverage through COBRA, at your expense, will be sent to you separately.

Sincerely,

Will Garland
Board Chair

c: Horry County Board of Education
Cynthia Elsberry, Superintendent
Employee's Personnel File
W. Allen Nickles, Esq.
✓ Dwayne Mazyck, Esq.
Kenneth S. Generette, Esq.
Kathryn Long Mahoney, Esq.
Vernie L. Williams, Esq.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2011-CP-26-3689

Jacqueline Smith,)

Plaintiff,)

vs.)

Horry County Schools,)

Defendant.)

Transcript of Record

Hearing

September 13, 2012

B E F O R E :

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

W. Allen Nickles, III, Esquire
Attorney for Plaintiff

Kathryn Long Mahoney, Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

1 (On the record, September 13, 2012.)

2 THE COURT: All right, this is case number 2011-CP-26-
3 3689, the case of Jacqueline Smith versus Horry County
4 Schools. As I understand this is an appeal from a decision of
5 the Horry County School District Board of Education.

6 Please give the court reporter your names and who you
7 represent.

8 MR. NICKLES, III: Your Honor, my name is Al Nickles. I
9 have the privilege of representing Ms. Smith this morning.

10 THE COURT: And she is the Appellant?

11 MR. NICKLES, III: Appellant, that's correct.

12 THE COURT: All right.

13 MS. MAHONEY: Your Honor, I'm Kathy Mahoney with Childs
14 and Halligan. We represent Horry County School District and
15 with me is my partner Vernie Williams.

16 THE COURT: Okay, and that - you are attorney for the
17 Respondent, correct?

18 MS. MAHONEY: Correct.

19 THE COURT: All right.

20 All right, Mr. Nickles, this is your appeal?

21 MR. NICKLES, III: Thank you, Your Honor, and Your
22 Honor, as you have already identified, this is an appeal from
23 a decision by a school board. So, it's governed by statute as
24 well as by the Constitution of this State. Initially what I
25 would like to bring to the Court's attention is that is a very

1 serious matter. It's a matter involving the termination of a
2 teacher's contract. Now, our Supreme Court has said
3 repeatedly that that contract is a property interest and that
4 it's entitled to protection under the Constitution of the
5 State.

6 The Court has also said what proof must be presented to
7 support the termination of a teacher contract and that proof
8 must be abundant and undeniable. Now, Your Honor, you're
9 going to hear and you may have read many bad things about my
10 client, that she was a bad teacher, that she was mean and
11 nasty, that she didn't get along with parents, that she didn't
12 cooperate with her colleagues. Well, Your Honor, if that had
13 been proven by direct testimony I doubt that we would be here
14 this morning, but Your Honor, the obligation of the school
15 district's administration in this case was to prove their case
16 by credible testimony subject to cross examination, and
17 that's really why we're here this morning, Your Honor.

18 Now, I've had the opportunity over many, many years to
19 represent many, many school teachers in many, many
20 circumstances, and this case reminded me very closely of a
21 case that I argued recently in the South Carolina Supreme
22 Court, that is Creola Young versus the Charleston County
23 School District because the same type of arguments will be
24 presented in that case by that administration as are being
25 presented in this case by the Horry County School District

1 Administration. In that case, and we've provided a copy to
2 you or your clerk to review, the district said, "There is
3 abundant evidence that this teacher is deficient in performing
4 her services for this school district." What the Supreme Court
5 said, reversing the trial court in that case, was, "We don't
6 really care what the evidence was presented because you didn't
7 provide a fair hearing," and if you'll look at that case we
8 didn't even appeal on substantial evidence in that case, Your
9 Honor, because we didn't have to reach it because as a
10 preliminary matter every proceeding has to be fundamentally
11 fair, and our Courts and our General Assembly have told us
12 what fairness is in a school board hearing and what fairness
13 is is the opportunity to be heard on the issues which you've
14 provided notice and the opportunity to cross-examine any
15 person who is to provide evidence against you, and Your Honor,
16 I know that my colleagues here are going to say, "We had 16
17 hours of hearing, we have a 514-page transcript. If you can't
18 find substantial evidence in there, it can't be found."
19 That's their argument, but Your Honor, what they didn't do is
20 bring the people to the hearing who had the issues with my
21 client, and to illustrate that, Your Honor, we've provided a
22 couple of examples in our brief. If you have a copy of it
23 before you, if you look at tab three of the brief you will see
24 that this is a summary prepared in, excuse me, November of
25 2010 by the principal of my client's school. This was

1 presented as evidence in the case, Your Honor. There is a
2 laundry list ---

3 THE COURT: Excuse me, first, before you go on, excuse
4 me for interrupting, but you're saying that there was no one
5 called to testify that had a firsthand knowledge of her
6 actions in the classroom or anything of that nature?

7 MR. NICKLES, III: That's correct.

8 THE COURT: Okay, so, everybody that testified before
9 the school board testified on absolutely nothing but hearsay?

10 MR. NICKLES, III: That's correct.

11 THE COURT: Okay.

12 MR. NICKLES, III: Now, Your Honor, what I'm saying in
13 this case is if you, if you look at, for example, they say
14 what is the allegation against my client. That's, that's
15 provided to her in the notice of termination. That's our
16 exhibit tab number one. It was exhibit number one in the
17 hearing, and you look at what is presented to my client as the
18 reasons for her discharge and look at the second page of this
19 letter to Ms. Smith dated January 5, 2011, "You have been
20 advised during 2010-2011 school year out of the 86 students
21 you've taught the parents of 25 students have made 161
22 complaints about you to your principal since August 24, 2010."
23 That's really the sum and substance of this case.

24 Your Honor, two parents were called as witnesses in this
25 case by the administration. Their ---

1 THE COURT: Well, wait a minute, wait a minute. I
2 thought you just said that there was no direct testimony?

3 MR. NICKLES, III: Let me, let me show you why there
4 wasn't.

5 THE COURT: Okay.

6 MR. NICKLES, III: That's in tab number 11 of our brief
7 and you look at page 120 - 166 of the record. This is parent
8 number one. "The only time I met with Ms. Smith was at the
9 open house for the school and that was a brief, brief
10 encounter." Page 167, "Have you ever been in Ms. Smith's
11 classroom while your daughter was present in the classroom?"
12 "No, sir, I did not." "You said you had a meeting with Ms.
13 Duckett, I believe." "Yes, sir." "That's the assistant
14 principal?" "That's correct." "Was Ms. Smith present?" "No,
15 she was not."

16 You look at parent number two and it's at page 183 of the
17 record also in tab 11 says, I asked this parent, "Whether you
18 have gone into Ms. Smith's classroom and done any observations
19 of the classroom." "You did not, did you?" "No, sir, the
20 only time I would have been in the classroom was on open
21 house."

22 THE COURT: Oh, so, wait a minute, excuse me now. So,
23 you're saying that they have to call the children who were in
24 the classroom to testify against her rather than the parents
25 just because the parents were not in the classroom at the

1 time?

2 MR. NICKLES, III: Absolutely.

3 THE COURT: And you're talking about how old? How old
4 are the children?

5 MR. NICKLES, III: These are, these are minors. They're
6 in the fourth grade.

7 THE COURT: Well, I thought they were like ten year
8 olds; weren't they?

9 MR. NICKLES, III: Yeah, ten year olds.

10 THE COURT: Okay, so, they have to call ten year olds
11 that were in her classroom to come and testify against their
12 teacher at a termination hearing?

13 MR. NICKLES, III: If they're relying upon their
14 testimony, and Your Honor, it happens. Now, there are things
15 that we do when we examine children. We do it in a closed
16 setting. We do it at executive session. We do it cordially,
17 but Your Honor, if your career is based upon an allegation by
18 whether it's a ten year old or a 60 year old you're entitled
19 to hear that.

20 THE COURT: A kindergartner, a five year old?

21 MR. NICKLES, III: If you're basing it upon what they
22 say. Now, Your Honor, they had many, many, many opportunities
23 to confirm whether or not these allegations were true. Ms.
24 Smith was in the classroom every day until they kicked her out
25 in October. They could have put someone in the classroom to

1 see is this going on. They chose not to, Your Honor. Now, if
2 you're going to take someone's livelihood from them shouldn't
3 you at least have someone come forward with direct testimony
4 that, yes, these allegations are true? I think fundamental
5 fairness requires that, Your Honor.

6 So, it's not a situation where, oh, we're, we're the bad
7 guys and we have to say, "Well, you're going to bring these
8 kids in and testify," that's not the case. They had many
9 opportunities to confirm this whether through the students or
10 through other adult observations, and they didn't do it. They
11 chose not to do it, and why is that? Well, I'll tell you.
12 This is a case, and I run up against these from time to time,
13 where you have helicoptering parents who make complaints, they
14 talk to each other, they go to the administration. There's
15 testimony in here that the reason that Ms. Smith was kicked
16 out of her classroom is there were just too many complaints
17 about her. Now, Your Honor, people complain about me, maybe
18 people have complained about you before, but that is not
19 evidence. The fact that somebody comes in and says, you know,
20 "Little Sally told me this happened," that's not evidence. Go
21 to the source. Go in there, monitor the teacher. Give the
22 teacher an opportunity to be seen and heard.

23 THE COURT: Well, when you stick an adult - when you
24 have a teacher in a room with ten year olds you're saying that
25 she's going to act the same way when there's an adult in the

1 classroom as she would when there's not an adult in the
2 classroom?

3 MR. NICKLES, III: If, if there are the types of
4 deficiencies that are alleged in this case, yes, sir.

5 THE COURT: Okay.

6 MR. NICKLES, III: And you know what, if it doesn't
7 happen you've got a good teacher in the classroom. Your Honor,
8 this shouldn't be a shell game. It shouldn't be something
9 where, you know, you hide behind these anonymous allegations.
10 Look at the evidence presented in tab number four, for
11 example. I mean, this is the way that it was presented to the
12 school board, Your Honor, documentation of concerns, parent
13 concerns, complaints, observations, and email correspondence.
14 You know why there are all those blacked out redactions on
15 there? They're the names of the people who were making
16 complaints about Ms. Smith. They didn't even tell the school
17 board who they were. Now, how can you judge the credibility
18 of evidence when you don't even tell the school board who
19 these people are, Your Honor, and it's all over the place.

20 THE COURT: Well, I mean, so, the - I guess my
21 question is is this tab four ---

22 MR. NICKLES, III: Yes, sir.

23 THE COURT: --- Margaret Sordian the principal, you're
24 saying all of this is just fabricated by her?

25 MR. NICKLES, III: No, I'm saying it's not proven by her

1 ---

2 THE COURT: Okay.

3 MR. NICKLES, III: --- because she doesn't have the
4 ability to prove it.

5 THE COURT: Okay.

6 MR. NICKLES, III: And Your Honor, the burden is on the
7 administration, no question, and what our courts have said is
8 when you're going to terminate a teacher, this is not a non-
9 renewal where you give a teacher a notice, an opportunity to
10 improve, assistance and so forth. That's not this case. This
11 teacher was taken out of the classroom in October and did not
12 return ever. Her hearing was in March. Now, if you look at a
13 lot of this compilation it was compiled after Ms. Smith left
14 the classroom in support of an effort to fire her, Your Honor,
15 and so, you know, I suggest to you ---

16 THE COURT: Let me, excuse me, let me ask you this.
17 Was it compiled in anticipation of the hearing in March before
18 the school board?

19 MR. NICKLES, III: Well, I - you'd have to ask them what
20 their reasoning was but I expect that's what they were doing.

21 THE COURT: Okay, but as I understand, the principal
22 fired your client in October?

23 MR. NICKLES, III: No, she wasn't fired in October.

24 THE COURT: Okay, what happened?

25 MR. NICKLES, III: She was put on administrative leave

1 with pay in October.

2 THE COURT: Okay, all right.

3 MR. NICKLES, III: So, she was still an employee. They
4 could call her in. They could talk to her. They could have
5 brought her back to work, any number of things, but they paid
6 her to do nothing until the hearing in March.

7 THE COURT: The hearing in March, the adversarial
8 hearing?

9 MR. NICKLES, III: Yes, sir.

10 THE COURT: Okay, before the school board?

11 MR. NICKLES, III: Correct.

12 THE COURT: Okay, all right, I got it.

13 MR. NICKLES, III: There is no other hearing, Your
14 Honor.

15 THE COURT: Okay.

16 MR. NICKLES, III: The statute provides a hearing before
17 the school board.

18 THE COURT: So, she was on leave with pay from October
19 to March and then the hearing was in March ---

20 MR. NICKLES, III: And she was fired.

21 THE COURT: Fired, okay.

22 MR. NICKLES, III: Okay, and Your Honor, you know, just
23 going back to this, this issue about what is the burden, what
24 our court has said and it's in the Young case and I don't want
25 to belabor this point, but I think it's very interesting in

1 our State that we don't have only one, we have two due process
2 clauses in our constitution. We have - there's Article One,
3 Section Three. We also have Article One, Section 22, and
4 Article One, Section 22 is something that's very interesting
5 and very important and very applicable in this case because
6 what that constitutional provision says is if the General
7 Assembly sets a procedure, then it is - it must be followed.
8 That's what that constitutional provision says. The Supreme
9 Court has routinely enforced that in the Teacher Employment
10 Dismissal Act. The Johnson versus Spartanburg School District
11 Seven case, which I argued years ago, the Court found
12 specifically that Article One, Section 22 applies in these
13 circumstances. In the Young case, which I argued recently,
14 was just issued in April, here's what the Court says: "The
15 General Assembly has fixed a mode of procedure to be followed
16 in teacher dismissal matters through the enactment of the
17 Teacher Employment Dismissal Act," that's a quote from the
18 case and says specifically it talks about Section 59-25-470
19 and it quotes from that and this language is in that statute,
20 "The teacher has the privilege of being present at the hearing
21 with counsel and of cross examining witnesses and may offer
22 evidence and witnesses and present any and all defenses to the
23 charges."

24 Now, Your Honor, the argument is always in these type
25 proceedings, this is quasi-judicial. You know, we can't

1 impose upon a school board the obligation to determine whether
2 something's hearsay or not or whether something's admissible
3 or not. Well, Your Honor, the statute and the constitution
4 say that they do, and in this case, Your Honor, you look at
5 the hearing, the board was represented by an attorney.

6 THE COURT: So, you're saying that hearsay is not
7 admissible in a school board?

8 MR. NICKLES, III: Not admissible because of this
9 specific provision in the statute.

10 THE COURT: Has the Supreme Court ruled on that issue
11 as to whether or not hearsay is admissible in a termination
12 hearing before a school board?

13 MR. NICKLES, III: Well, I think by implication they
14 have in the, in the, the Young case.

15 THE COURT: But there's no, there's no direct
16 appellate case.

17 MR. NICKLES, III: I cannot point a direct appellate
18 decision.

19 THE COURT: Okay.

20 MR. NICKLES, III: This may have to be the first one ---

21 THE COURT: I see.

22 MR. NICKLES, III: --- but Your Honor, it's clear, and
23 what our Supreme Court has said repeatedly, and believe me
24 when I'm up there arguing these cases I've already lost below.
25 They've said repeatedly it is the obligation of the school

1 district to provide a fair hearing.

2 THE COURT: So, I'm taking it though that you've never
3 argued the issue of whether or not hearsay is admissible in a
4 school board hearing?

5 MR. NICKLES, III: I've never had a case like this, Your
6 Honor, where it was so, it was so egregious that the - that
7 the - not the majority, the overwhelming evidence presented
8 against my client was hearsay.

9 THE COURT: But, I mean, has that argument ever been
10 put in an appellate? I can't believe that that argument's
11 never been made before an appellate court as to whether or not
12 hearsay's admissible.

13 MR. NICKLES, III: Well, yeah, I mean, it's been made in
14 several other jurisdictions which we point out in our, in our
15 brief.

16 THE COURT: But not in South Carolina?

17 MR. NICKLES, III: No, there's no decision directly on
18 point.

19 THE COURT: Okay.

20 MR. NICKLES, III: But you know, even in these other
21 jurisdictions where they may not have the advantage of the
22 statute requiring cross examination, just a basic
23 constitutional analysis says that you have to have cross
24 examination where there are facts in dispute, and Your Honor,
25 I would say that if you look at the Brown versus State Board

1 of Education case, that's cited in our brief and that's one
2 that we argued years ago. It arose out of a teacher's
3 certificate being denied, and what the Supreme Court said in
4 that case was that cross examination is required when, when an
5 issue turns on a factual dispute. In that case, what the
6 State Department of Education did was accepted information
7 from the educational testing service up in New Jersey to
8 revoke the certificate of a teacher, didn't call anybody,
9 essentially accused the teacher of cheating on a NTE, a
10 National Teacher's Exam, and the Supreme Court overturned that
11 saying, "No, you've got an obligation. If you're going to
12 accuse someone of this impropriety in a way that's going to
13 affect a property interest, you've got to bring the people
14 forward to present that evidence and give that individual an
15 opportunity to cross examine." Your Honor, the remedy in this
16 case, as indicated in Young and in other cases, is that where
17 there is a deficient process it has to be remanded so that
18 justice can be done. I'm not asking you to substitute your
19 judgment for the judgment of the Horry County School District.
20 I can't ask you to that and it wouldn't be fair, but I'm
21 asking you, Your Honor, to look at the constitutional
22 requirements that govern our proceedings. Look at the
23 statutory requirements that govern our proceedings, and Your
24 Honor, you have to conclude when you review this case that
25 whatever service Ms. Smith provided, and she is a former

1 teacher of the year at her school, this case you cannot
2 divorce the overwhelming offensive evidence from whatever
3 isolated pockets of observation there may have been. It's
4 just not fair, and Your Honor, we went through and I've
5 provided to you a preliminary presentation to the School Board
6 setting forth our position, it's at pages 17 through 27 of the
7 record, in which we identify the documents that we are
8 objecting to. We object to the hearsay evidence coming in.
9 It's all preserved. The school board acknowledges that it's
10 preserved.

11 THE COURT: Now where are you referencing?

12 MR. NICKLES, III: Those are just the objections that
13 I've, I made to the individual documents, and I provided you a
14 transcript that has all those in it. I can site them to you
15 chapter and verse if you like.

16 THE COURT: No, that's all right. I just thought I
17 heard you say 17 through ---

18 MR. NICKLES, III: Pages 17 through 27 of the condensed
19 transcript that I provided to you, and all of those were taken
20 under advisement as to page 54 of the record, and then at the
21 end of the hearing, just before they announced their decision,
22 page 516 of the record what the school board says is, "We're
23 going to accept all the evidence that's been presented." So,
24 Your Honor, there are specific objections, they are preserved,
25 and they are overruled by this board after consulting with

1 their attorney. So, Your Honor, this is a very clear cut case
2 of evidence coming in over objection, considered by the
3 decision-maker, and had a necessary effect on the outcome.
4 So, Your Honor, what we contend to you this morning is the law
5 of this state, the constitution of this state entitles
6 everyone, whether you like them or not, whether you think
7 they're a good teacher or not, it entitles everyone to a full
8 and fair hearing, and that was not provided in this case, Your
9 Honor. So, it's our position that Ms. Smith was not treated
10 fairly, she was not given the opportunity to hear from the
11 people who were her accusers ---

12 THE COURT: The ten year olds?

13 MR. NICKLES, III: And the parents.

14 THE COURT: Okay.

15 MR. NICKLES, III: I mean, Your Honor, when, when you
16 have a superintendent telling the board that, "I've got 25
17 parents complaining about this teacher," and it's, it's in the
18 notice here, and then you come in and you present two parents
19 who have never been in the classroom, give me a break, you
20 know. Now, one of the things that my learned opposing counsel
21 is going to probably argue to you is that Ms. Smith wasn't
22 cooperative with the administration, that she was offered an
23 assistance plan and she says, "I don't agree with it," and
24 that that should be sufficient to terminate her employment.
25 Your Honor, that would be like you telling your clerk, "I want

1 you to research this issue," and she says, "I prefer not to,"
2 and you say, "Okay." I mean, do you fire somebody over that?
3 No, you have the authority to direct your employees. This
4 school district clearly had the authority to direct Ms. Smith.
5 She didn't have to agree with the improvement plan. She had
6 to cooperate with it, but what did they do? They said, "Okay,
7 we're not going to do that." Your Honor, this school district
8 made up its mind early on in October that it had too many
9 parental complaints about Ms. Smith. It was a foregone
10 conclusion that they were going to terminate her employment.
11 How they got there, they put together a case based on hearsay,
12 innuendo, and Your Honor, it just ain't fair, and that's what
13 we come to this Court for, fairness and justice. Thank you.

14 THE COURT: Thank you. Ms. Mahoney?

15 MS. MAHONEY: Thank you, Your Honor. Let me move this
16 down a little bit. Does that work? I can tell you that Mr.
17 Nickles and I agree on one thing, and that is this is, this is
18 a very serious matter before Your Honor this morning, but we
19 have a different reason why it's serious. This is a serious
20 matter because of the wellbeing of the students in Horry
21 County School District and their education. Now, Ms. Smith
22 was granted a hearing before the Horry County School District
23 Board of Education on March 24th, 2011. You've already heard
24 reference to it lasting 16 hours. At that hearing she took
25 advantage of a right to be represented by legal counsel, she

1 is absurd and that her own teacher, perhaps one of the most
2 powerful witnesses in the school building, the teacher who
3 said to the principal, "I'm concerned about how my students
4 are being treated," who personally observed this intimidation
5 and this harshness, that alone should have been enough to say
6 this is not acceptable. I think that there clearly is
7 substantial evidence in this record to support the board's
8 decision. It was incumbent upon the board to support this
9 termination and uphold it in light of the evidence, but more
10 importantly it was incumbent upon them for the benefit of the
11 students in Horry County School District. Thank you.

12 THE COURT: Thank you.

13 MR. NICKLES, III: If I may briefly, Your Honor.

14 THE COURT: All right, Mr. Nickles, anything in reply?

15 MR. NICKLES, III: Yes, Your Honor, and while I respect
16 Ms. Mahoney's passion, I have to disagree with her recitation
17 of the record, Your Honor, and, and her assessment of what
18 business records are and when they are subject to introduction
19 and what it means when they're introduced. I mean, Your
20 Honor, what we have in this case is obviously self-serving
21 records prepared in anticipation of a hearing and trying to
22 sneak them in under the business records rule. That doesn't
23 fly. Also under the business records rule hearsay within
24 hearsay is not admissible. It's the document itself. If
25 there are items within the, the business record that are

1 hearsay, those are not given immunity from challenge. So,
2 Your Honor, to suggest that the administration directs folks
3 to write up these reports and then that brings them into a
4 proceeding without having the obligation to prove the factual
5 allegations in those reports is quite a twisted view of what
6 the rules of evidence are. It won't sustain, it won't
7 withstand judicial scrutiny, Your Honor.

8 As to the suggestion that, "Well, this is merely a quasi-
9 judicial proceeding, and therefore, you know, hearsay is
10 admissible," Ms. Mahoney was candid with the court. Those
11 cases she cite are not under the Teacher Employment Dismissal
12 Act. Your Honor, this is not a standard APA case. This is a
13 very specific statutory process that our Supreme Court says
14 has to be strictly followed. It is, in the terms of the
15 Supreme Court, a mandatory process, and Your Honor, when you
16 start out in a case like this with a destination in mind,
17 certainly you're going to find your way there, and all this
18 information gathered, compiled, put together after Ms. Smith
19 was placed on administrative leave was intended to do what it
20 did, convince that board that she should not be employed
21 there.

22 Your Honor, in this instance what we have is a teacher
23 who was routinely re-employed by this district, every year
24 preceding 2010-2011. Now, you've heard a lot this morning
25 about what happened in 2007, 2008, 2009, 2010. Your Honor,

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Jacqueline Smith,)
Appellant,)
v.)
Horry County Schools,)
Respondent.)

IN THE COURT OF COMMON PLEAS

Case No.: 2011-CP-26-3689

APPELLANT'S MEMORANDUM OF LAW

PROCEDURAL BACKGROUND

By letter dated January 5, 2011, the Horry County School District notified appellant Jacqueline Smith of its recommendation that she be terminated from employment as a continuing-contract teacher. (Exhibit P-1, Attachment 1) Ms. Smith timely requested a hearing before the Horry County School Board ("Board") which was held on March 24 and 25, 2011. On March 25, 2011, the Board voted to uphold the District's recommendation that Ms. Smith be terminated. On April 25, 2011, Ms. Smith filed her Notice of Appeal with this court requesting that it reverse the Board's decision to terminate her employment. Respondent Horry County Schools filed an Answer and Return dated May 3, 2011.

STATEMENT OF THE CASE

Jacqueline Smith is a veteran teacher employed during the 2010-2011 school year as a continuing-contract with the Horry County School District ("District") She began teaching in the District in 1999, and in 2003, she received the Teacher of the Year award for North Myrtle

Beach Elementary School. Each year she was employed, Ms. Smith received a continuing contract to teach for the following year.¹

On October 28, 2010, Ms. Smith received a letter placing her on administrative leave with pay. By letter dated January 5, 2011, the District notified her that it was recommending that she be terminated from employment. (Attachment 1) Ms. Smith submitted a timely request to be heard by the Board to challenge the recommendation.

At the outset of the hearing, the District submitted numerous proposed exhibits to the Board. These exhibits included documents containing hearsay statements by parents and students who were not called to testify at the hearing. Ms. Smith objected to the admission of any exhibits or testimony that contained hearsay statements unsupported by witnesses available for cross-examination. The Board did not rule on the objection when presented, but voted at the conclusion of the hearing to consider all of the exhibits and testimony presented, including all of the hearsay statements. (See, Hearing Transcript pp. 54-59 and pp. 513-516, Attachment 2) After considering the disputed evidence, the Board voted 6 to 1 to uphold the recommendation to terminate Ms. Smith's employment.

STANDARD OF REVIEW

On appeal from termination of a continuing-contract to teach, the Court of Common Pleas has the authority and duty to correct errors of law. Lexington County School District one Board of Trustees v. Bost, 282 S.C. 32, 316 S.E. 2d 677 (1984) Where, as here, the challenged action arises from immediate termination, the record must contain evidence of unfitness to teach that is "undeniably and abundantly present." Kizer v. Dorchester County Vocational Educ. Bd. of Trustees, 287 S.C. 545, 550, 340 S.E.2d 144, 147 (1986) This court may reverse or modify a

¹ Ms. Smith maintains a professional teaching certificate and has been employed under a continuing contract in Dillon County since the 2011-2012 school year.

decision if it is affected by an error of law or is arbitrary or capricious. S.C. Code Ann. § 1-23-380(5)(d), (f) (Supp. 2010). Additionally, this Court has the authority to reverse any decision "made upon unlawful procedure" or in excess of "statutory authority." S.C. Code Ann. § 1-23-380(6) (Supp. 1997), cited in Adamson v. Richland County School District One, 332 S.C. 121, 128, 503 S.E. 2d 752, 755-56 (Ct. App. 1998)

This appeal is governed by the Teacher Employment and Dismissal Act. ("TEDA"), S.C. Code Ann. § 59-25-410 et seq. In Sections 59-25-460 and 470, the Act requires that a continuing contract teacher be provided substantive and procedural due process by the school district's board within the time frames specifically delineated by statute. The hearing process established by the General Assembly in the TEDA compels school boards to provide teachers the opportunity to confront witnesses and to challenge the introduction of evidence offered to substantiate any charges presented. On appeal, the Court of Common Pleas has the responsibility of enforcing the TEDA and ensuring that teachers are afforded the full process required by law.

Because school boards are delegated the responsibility to see and hear witnesses called to testify, review of the factual issues on appeal from teacher dismissals is determined by substantial evidence. Barr v. Bd. of Trs. of Clarendon County Sch. Dist. No. 2, 319 S.C. 522, 462 S.E.2d 316 (Ct. App. 1995) 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. Laws v. Richland County School District 1, 270 S.C. 492, 243 S.E.2d 192 (1978) The court must reverse an adverse decision that is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole

record. S.C. Code Ann. § 1-23-380(A)(6)(e)(Supp. 1997); Lark v. Bi-Lo, 276 S.C. 130, 276 S.E.2d 304 (1981)

LEGAL ARGUMENT

I. The Board failed to provide due process to Ms. Smith as required by the South Carolina Constitution and S.C. Code Ann. § 59-25-470.

The South Carolina Constitution guarantees all citizens the right to due process of law. S.C. Const. art. I, § 3. Additionally, the Constitution states that no person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency except on due process and an opportunity to be heard. S.C. Const. art. I, § 22. This same section provides that no person shall be deprived of liberty or property “unless by a mode of procedure prescribed by the General Assembly.” Id.

The General Assembly has established a mode of procedure to be used in the dismissal of public school teachers in Title 59, Chapter 25, Article 5 of the Code of Laws. See S.C. Code Ann. §§ 59-25-410 through 59-25-860. These statutes provide continuing contract teachers certain specific rights including:

1. Notice of reasons for potential separation (§59-25-440);
2. The right to a hearing. (§59-25-460); and
3. Substantive and procedural due process including the opportunity to cross-examine witnesses (§ 59-25-470).

At the hearing in this matter, the District presented evidence, over the objection of counsel, consisting of hearsay statements of numerous students and parents, to support its recommendation to terminate Ms. Smith. Although only two parents testified at the hearing, the hearsay statements of numerous others were accepted by the Board. The students and parents

who made these statements were not present to testify, thus, Ms. Smith was not provided the opportunity for cross-examination.² Despite the clear language of the State Constitution and the TEDA, the Board did not honor Ms. Smith's right to cross-examine the witnesses whose statements were used against her.

Because this appeal is governed by the TEDA, the due process requirements contained in that Act control. The "primary rule of statutory construction is that the Court must ascertain the intention of the legislature." Cooper v. Moore, 351 S.C. 207, 212, 569 S.E.2d 330, 332 (2002) Where the terms of the statute are clear, the court must apply those terms according to their literal meaning without resort to subtle or forced construction to limit or expand the statute's operation. Moody v. Dairyland Ins. Co., 354 S.C. 28, 30-31, 579 S.E.2d 527, 529 (Ct. App. 2003) If a statute's language is plain, unambiguous, and conveys a clear meaning, "the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 582 (2000) Further, it is manifest error to look beyond the literal wording of the statute itself when the language is clear and plain. Paschal v. State Election Commission, 317 S.C. 434, 454 S.E.2d. 890 (1995) This court need look no further than the plain language of the TEDA to determine that Ms. Smith was not provided the full due process to which she was entitled.

Our Supreme Court affirmed the right to be heard in a meaningful fashion in Brown v. S.C. Board of Education, 301 S.C. 326, 391 S.E. 2d 866 (1990) Citing Board of Regents v. Roth, 408 U.S. 564, 92 S.Ct. 2701 (1972), the Court in Brown held "[t]he fourteenth amendment Due Process Clause requires procedural due process be afforded an individual deprived of a property

² For example, the letter recommending Ms. Smith's termination was presented as the administration's first exhibit to the Board. This letter alleges that "during the 2010-11 school year alone, out of the 86 students you taught, the parents of 25 students made 161 complaints about you to your principal." The District did not identify the parents or students and offered no admissible evidence to substantiate these alleged complaints.

or liberty interest by the State.” In reversing the revocation of the teacher’s certificate, the Court stated “the Board must comply with the statutes and regulations providing for the revocation of a teaching certificate *before* depriving [appellant] of her teaching certificate.” Brown, 301 S.C. at 330, 391 S.E. 2d at 868 (emphasis added). Twenty years later, in Brown v. James, 389 S.C. 41, 697 S.E.2d 604 (Ct. App. 2010), the Court of Appeals held that the language of the TEDA is unambiguous regarding procedure and that “the observance of the procedural requirements of the Employment and Dismissal Act is **mandatory and not a matter of discretion.**” Id. at 53 (emphasis added) In that case, a teacher was not afforded the hearing required by § 59-25-470 prior to the Board upholding a recommendation of termination. In reversing summary judgment in favor of the district, the Court found that the “procedure is set in place to afford the teacher a meaningful review of the evidence prior to the Board making a final determination...” Id. at 55. Here, Ms. Smith was not afforded a meaningful review of the evidence since she was deprived the opportunity to fully challenge hearsay presented to support her termination.

In other jurisdictions, even where a statute did not specifically provide for cross-examination, courts have recognized the due process right of public employees to confront and cross-examine witnesses who provide evidence used against them in termination proceedings. For example, Case v. Shelby Civil Service Merit Board, 98 S.W.3d 167 (Tenn. App. 2002), holds that due process requires an opportunity to confront and cross-examine adverse witnesses where facts giving rise to the public employee’s termination are in dispute. As noted in Case, other jurisdictions have reached the same conclusion. See, Bartlett v. Krause, 209 Conn. 352, 551 A.2d 710 (1988); Ohio Assoc. of Pub. Sch. Emp. v. Lockwood City Sch. Dist. Bd. of Educ., 68 Ohio St.3d 175, 624 N.E.2d 1043 (1994). See also, Winegar v. Des Moines Indep. Comm. Sch. Dist., 20 F.3d 895 (8th Cir.), cert. denied, 115 S. Ct. 426 (1994)(public school teacher was

denied due process because he was not given the opportunity to confront and cross-examine witnesses against him); Garraghy v. Comm. of Va. Dept. of Corrections, 52 F.3d 1274, 1282-83 (4th Cir. 1995)(public employee who was fired based on allegations that he engaged in sexual harassment was denied due process because the employer failed to afford him the opportunity to confront and cross-examine the witnesses against him); Casada v. Booneville School Dist. No. 65, 686 F.Supp. 730 (W.D. Ark., 1988)(failure to allow teacher to cross-examine witnesses against him was a denial of due process and violated the state teacher dismissal act)

McClure v. Independent School Dist. No. 16, 228 F3d 1205 (10th Cir. 2000) found that a school district violated due process when it failed to allow cross examination of adverse witnesses at a pre-termination hearing. The plaintiff, a school principal, brought suit in federal court alleging violation of her due process rights by introduction of affidavits from thirteen witnesses. Id. at 1211. Because no post-termination hearing was held, due process was governed by post-termination requirements. Finding "a 'full post-termination hearing' is understood to include the right to representation by an attorney and the right to cross-examine adverse witnesses, the court held that allowing the affidavits to be used against plaintiff violated her due process rights." Id., citing Workman v. Jordan, 32 F.3d 475, 480 (10th Cir. 1994) .

As in McClure, Ms. Smith's due process right to confront and cross-examine adverse witnesses at her termination hearing was violated. The Board was provided numerous documents replete with statements of anonymous parents accusing Ms. Smith of wrongdoing to which she could not adequately respond. Some examples include:

- o Hearing Exhibit 19 contains 27 anonymous parental complaint and concerns, including one that a guidance counselor reported receiving complaints that Ms. Smith yelled at students, failed to provide clear expectations and that students were afraid to ask for clarification. (Attachment 3)

- Hearing Exhibit 26 contains 19 anonymous complaints, including allegations that Ms. Smith would not return phone calls, that a child was “terrified” of her and that she had been “unprofessional” to a parent. (Attachment 4)
- Hearing Exhibit 17 contains a list of complaints against Ms. Smith including that she made inappropriate comments in class, embarrassed students, failed to give clear instructions, released students late from class and played “RAP” music. (Attachment 5)

The District may argue that hearsay and improperly admitted documents were “cumulative” and “harmless.” This argument, however, ignores the mandatory nature of the TEDA acknowledged by the Supreme Court in Johnson v. Spartanburg Co. School Dist. No. 7, 314 S.C. 340, 444 S.E.2d 501 (1994) and the Court of Appeals in Brown. Because the process below was infected by the admission of anonymous and hearsay statements, the Board’s decision to consider all information presented renders Ms. Smith’s termination invalid *per se*.

II. Ms. Smith’s termination was unlawful because it was in violation of the District’s own policies.

It is elementary that a public agency must follow its own rules. In Hogsed v. Lancaster Area Schools Board of Trustees, 283 S.C. 42, 320 S.E.2d 724, 727 (S.C. App. 1984), the Court held that policies adopted by a school board are contractual and binding upon the district administration as well as its employees. As the South Carolina Supreme Court emphasized in Triska v. DHEC, 292 S.C. 190, 355 S.E.2d 531 (1987), [an agency] “must also follow its own regulations and the provisions of the Administrative Procedures Act ... in carrying out the legitimate purposes of the agency.” 292 S.C. at 195. When a government agency does not follow its regulations or procedures, due process is violated and its action cannot stand. United States v. Heffner, 420 F.2d 809, 811-12 (4th Cir. 1969), citing the rule established in United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260, 74 S. Ct. 499, 98 L. Ed. 681 (1954) that an agency of the

government must scrupulously observe rules, regulations, or procedures which it has established. When it fails to do so, its action cannot stand and courts will strike it down.

In the instant case, the District violated a number of its own policies in actions leading up to Ms. Smith's termination. For example, when a recommendation for termination is based upon performance deficiencies, the District is required to provide a teacher with written notice of the perceived deficiencies and a reasonable time to for improvement. (See, Hearing Exhibit R-1, District Policies on Discipline, Suspension and Dismissal of Professional Staff pp.177-178, Attachment 6) This policy also requires that the administration make reasonable efforts to assist the teacher including formal evaluation and/or placement on an improvement plan. In this case, Ms. Smith was not placed on an improvement plan or formally evaluated.³ Additionally, the District issued Ms. Smith a continuing contract for every school year, despite its claims at the hearing that it had long-standing concerns about her performance. If her performance was a concern, Ms. Smith was entitled to assistance and evaluation through a formal process in keeping with her continuing contract. The District's policy on Evaluation of Instruction and Administrative Staff, p. 179 which refers to the Personnel Handbook, p. 15 states that a continuing contract teacher identified as having deficiencies may be placed on a "continuing with conditions" contract. The District did not take this step, thereby depriving Ms. Smith the benefit of this policy. See, excerpts from Hearing Exhibit R-1, District policies and Hearing Exhibit R-2, Personnel Handbook, Attachment 7.

The District heavily relied upon parental complaints in making its recommendation to terminate. However, the District not follow its own policies in dealing with such complaints. Pursuant to the District's Policy entitled Grievances Filed by Students (Hearing Exhibit R-1,

³ Ms. Smith's principal presented her an assistance plan with which Ms. Smith disagreed. The administration could have required her to follow such a plan without her agreement, however, it chose not to do so.

District's Policies, p. 99, Attachment 8), if a student or parent has a complaint about a teacher, the complaint should first be brought to the attention of the teacher who can address the situation. In most instances, complaints went directly to the principal without giving Ms. Smith an opportunity to address and possibly alleviate the concern. (Hearing Transcript, pp. 499-502, Attachment 9). When the principal brought a concern to her attention, Ms. Smith was often denied specifics or not told what student or parent made the complaint so that she could not adequately explain or defend herself. Id. The policy is in place for a reason - so that matters can be handled quickly and with the most information available. When the policy is violated, as it was in this case, the teacher has no way to adequately defend herself against serious complaints. Because the District failed to follow its own policies, Ms. Smith's termination must be reversed.

III. There is not substantial evidence to support the termination.

The District argued below that its witnesses and evidence reflected a "common theme...of numerous parental complaints." (Hearing Transcript P. 63, lines 10-14, Attachment 10). The primary basis for the recommendation of termination was anonymous parental and student complaints, unsupported by admissible evidence. Additional improper evidence included documents presented by the District containing and referring to hearsay of statements of parents and students. For example, although the District asserted that it had received complaints about Ms. Smith from the parents of 25 students, only two parents testified at the hearing. Both parents were allowed to testify for their children and neither had any first hand information about Ms. Smith's conduct in the classroom. (Hearing Transcript, pp. 166-167; 182-183, Attachment 11). Clearly, this submission was intended to prejudice the Board against Ms. Smith, without affording her the opportunity to confront or examine her actual accusers.

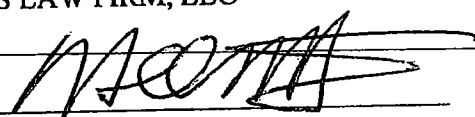
As stated above, substantial evidence is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the public body reached or must have reached in order to justify its action. Laws v. Richland County School District 1, 270 S.C. 492, 243 S.E.2d 192 (1978) In this case, removing improper hearsay from consideration renders the decision to terminate Ms. Smith's employment unsupported by substantial evidence.

CONCLUSION

Reduced to its basics, the District did not provide Ms. Smith the fair hearing to which she was entitled. Only the intervention of this Court can remedy the statutory and constitutional rights that have been violated. For these reasons, Ms. Smith respectfully requests that this Court reverse the School Board's decision and order her reinstatement, subject to the institution of a lawful hearing. Young v. Charleston County School District, 397 S.C. 303, 725 S.E.2d 107 (2012) (reversing a Board decision on due process grounds and remanding for a proper hearing)

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September 7 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Jacqueline Smith,

Complainant,

vs.

Horry County Schools,

Respondent.

C.A. No. 2011-CP-26-3689

**RESPONDENT'S MEMORANDUM OF
LAW IN OPPOSITION TO APPEAL**

I. NATURE OF THE CASE

Appellant, Jacqueline Smith, filed this appeal from the decision of Respondent, the Horry County School District Board of Education ("Board"), to uphold the recommendation of Superintendent, Dr. Cindy Elsberry, that Ms. Smith's employment with the District be terminated.

Pursuant to the Teacher Employment and Dismissal Act ("the Act"), S.C. Code Ann., §§ 59-25-410 through 59-25-530, on January 5, 2011, Dr. Elsberry advised Ms. Smith that she was recommending her termination from employment for the reasons set forth in her letter. (Compl. Ex. 1.) Ms. Smith was granted an adversarial hearing before the Board on March 24, 2011. At the hearing on March 24, 2011, which lasted approximately 16 hours, Ms. Smith took advantage of her right to be represented by legal counsel, her right to produce witnesses and other evidence, and her right to cross-examine the District's witnesses. Ms. Smith was represented by legal counsel, Dr. Elsberry was represented by legal counsel, and the Board was represented by Kenneth S. Generette, Esq. Following the hearing, in the early morning hours of March 25, 2011, the Board issued its decision upholding the Superintendent's recommendation of termination. Ms. Smith was notified of the Board's decision on that date, and the Board's decision was subsequently confirmed in writing on March 29, 2011. (Copy of the Board's decision letter is attached as Attachment A.) Ms. Smith filed this appeal on April 20, 2011,

pursuant to § 59-25-480.

For the reasons set forth below, Ms. Smith's appeal should be dismissed and the decision of the Board should be affirmed.

II. STATEMENT OF FACTS

Ms. Smith was employed by Horry County School District from 1999 until her termination from employment on March 29, 2011, following a full and adversarial evidentiary hearing before the Board. (Tr. pp. 440; 539-540.)

A. Assignment At North Myrtle Beach Intermediate School.

Ms. Smith was assigned as a teacher at North Myrtle Beach Intermediate School ("NMBIS") from 2000 through February 21, 2008, when she was placed on administrative leave, with pay, and subsequently reassigned to Carolina Forest Elementary School ("CFES"), effective February 25, 2008. (Compl. Exs. 10, 11.)

Beginning with the 2006-07 school year, Michelle Green-Graham was assigned as principal at NMBIS. (T. p. 70.) Ms. Green-Graham stated that at the beginning of the 2006-07 school year, there were some challenges with Ms. Smith's performance and some parents had expressed concerns, but since she did not know a lot about Ms. Smith and her teaching style, she took the opportunity to observe Ms. Smith in the classroom. She stated it was only after the conversations continued to happen that she realized there were issues of concern with Ms. Smith that needed to be addressed. (T. pp. 70-71.)

In November 2006, Ms. Green-Graham began placing her concerns with Ms. Smith's performance in writing. On November 13, 2006, Ms. Green-Graham communicated to Ms. Smith that she was granting the request of the parents of a male student to remove their son from Ms. Smith's class for medical reasons based on anxiety the student was experiencing in her class. The parents presented a statement from their physician supporting the request. (T. pp. 71-72; Compl. Ex. 25, p. 1.) Ms. Green-Graham stated that Ms. Smith's environment within the classroom "did not lend itself to the absence of threat." (Tr. p. 72.) Following these concerns,

Ms. Green-Graham met with Ms. Smith and sent her a follow up letter from their conference dated November 20, 2006. In the letter, Ms. Green-Graham outlined several expectations for Ms. Smith's performance. Among other things, she told her to model what she expects from her students; examine her procedures to be sure they are not too rigid and unforgiving; comply with reasonable parent requests; and watch her tone when talking to students. She stated, "Your students need to see you model compassion and understanding when things happen. Things can not be all or nothing when dealing with 10 year old children. Watch your tone when talking to students." (Compl. Ex. 12.) Ms. Green-Graham stated in her letter that as of November 2006, she had received in excess of ten complaints regarding Ms. Smith and she felt the only way to resolve the issue was for Ms. Smith to build relationships. (Compl. Ex. 12; T. pp. 72-75.)

Ms. Green-Graham notified Ms. Smith of the parents and/or students who were making complaints about her and the substance of the complaints in order to provide her with an opportunity to address them. (T. pp. 76-77.) Ms. Green-Graham explained her standard practice for handling a parent complaint. She stated she first listened to the parent and asked if they had spoken with the teacher, since usually issues can be handled at the teacher level. She stated that if she refers a parent to the teacher and the parent comes back to her, that is an indicator that the issue was not resolved and that she needs to become involved. (T. pp. 93-94.) Ms. Green-Graham stated that not all students or parents that had complaints were moved. She stated she would discuss the complaints with Ms. Smith and Ms. Smith would tell her to send them to her. Ms. Green-Graham testified, "And I did, until we got to number ten, and I couldn't just continue sending them to her because there was no resolve." (T. pp. 76-77.)

After Ms. Smith received the November 2006 letter from Ms. Green-Graham, Ms. Green-Graham stated that Ms. Smith did not accept any of the responsibility in the situations at all. She stated Ms. Smith was very much defiant often and it was challenging just to have a conversation with her. (T. pp. 77-78.) As a result of these concerns, Ms. Green-Graham developed a teacher assistance plan for Ms. Smith on January 8, 2007, and a meeting was held on that date to discuss

the plan with her. (T. pp. 78-80; Compl. Ex. 24.) Ultimately, Ms. Smith refused the assistance offered in the plan. Ms. Green-Graham testified:

When we attempted to discuss the goals, the objectives, the areas of concern, Ms. Smith often sat with her back to us. She never really pulled up to the table. If we read a sentence that she felt was not correct, she would correct us in a defiant type manner. In fact, by the time we got to the end, she got up and walked out and slammed the door and refused to sign it.

(T. p. 80.)

In describing Ms. Smith's conduct during conferences with parents, Ms. Green-Graham stated the following:

I spent a lot of time being a buffer, I felt like, within the conferences. A parent might make an accusation such as, my daughter says that she did turn in her work or my daughter says you haven't given them their signed papers since before Christmas. And I was witness to a conference where she flat out told the parent that your daughter's lying, I give them every week, she must not have brought them home. And, of course, when you say such things, a parent immediately becomes defensive...She was very defensive of any action that they might have accused, and it was challenging to get through a parent conference.

(T. p. 83.) Ms. Green-Graham stated another concern is that parents could not seem to schedule conferences with Ms. Smith. If they had conferences with Ms. Smith, Ms. Green-Graham stated that the parents were not pleased with the outcome. They did not feel like she heard what they had to say and they did not feel like any changes were made as a result of what they had to say.

(T. pp. 87-90.)

Ms. Smith responded to Ms. Green-Graham's ongoing discussions with her in a memo in February 2007 in which she summarized her perspective of her performance. Ms. Smith concluded her memo by stating, "An administrator does not come up to you and state that there will be a meeting at a given time without asking me. Appointments could be scheduled elsewhere. Thank you for a reply. I know administrator have the power." (Compl. Ex. 25, p. 2.)

When Ms. Green-Graham brought additional concerns to Ms. Smith's attention in January 2008, about parent complaints, Ms. Smith responded in an e-mail by stating that she wanted to meet with all of the dissatisfied parents with Dr. Bobby Nalley present, who was the Interim Superintendent for the District at the time. (Compl. Ex. 25, p. 3.) Ms. Green-Graham stated that one of the things about Ms. Smith she remembered specifically was that Ms. Smith always said, "[w]ell, nobody ever told me, nobody ever told me, and so I was taking every opportunity I could to sit down and tell her who said what about what." (T. p. 95.)

In addition to the problems in the classroom that dealt with parental and student concerns, other concerns dealt with the way Ms. Smith did her work. These concerns dealt with her not turning things in when she was supposed to turn them in, as well as her not following through with District and school-wide initiatives. (T. pp. 85-86.)

The administration attempted to meet with Ms. Smith in February 2008. The District's Executive Director of Human Resources, Ed Curlee, had been in touch with Ms. Green-Graham throughout the 2007-08 school year to assist her in dealing with concerns with Ms. Smith's performance. Mr. Curlee met with Ms. Smith in February 2008 to advise her of the importance of meeting with Ms. Green-Graham. At that point, Ms. Smith was so hostile towards her supervisor, Ms. Green-Graham, that she was placed on administrative leave, with pay. (Tr. pp. 288-293; Compl. Exh. 11.) Following the conference, Ms. Smith was reassigned to another position for the remainder of the 2007-08 school year at CFES. (Tr. pp. 289 - 296.) Mr. Curlee summarized the concerns with Ms. Smith's performance as of that date in a letter dated February 26, 2008. (Compl. Exh. 10.)

B. Assignment At Ocean Bay Middle School.

Ms. Smith was assigned to Ocean Bay Middle School ("OBMS") for the 2008-09 school year for several reasons. The principal at OBMS was Connie Huddle. OBMS was experiencing tremendous growth and had several vacancies. Ms. Smith had also requested to be transferred to a middle school. (Tr. p. 296-297.) While at OBMS, Ms. Smith taught sixth grade as an English

Language Arts ("ELA") teacher. She was assigned three regular ELA classes and one honors ELA class. (Huddle Dep. p. 6.)

Ms. Huddle testified in her video deposition that during the 2008-09 school year, there were some concerns and issues that were brought to the administration from parents of students in regard to concerns they had with Ms. Smith. Mr. Curlee reported that after the first couple of weeks of the 2008-09 school year, Ms. Huddle contacted him to report that she was receiving numerous complaints from parents about one of her teachers, and it was Ms. Smith. Ms. Huddle reported to Mr. Curlee that the complaints involved the fact that students were not understanding assignments, the parents did not understand the grades and a lot of grades were not being placed properly or not being reported. (Tr. pp. 299-300.) Ms. Huddle reported that the concerns were brought to the administration from the first part of the school year to the end of the school year. (Huddle Dep. pp. 6-7.)

Ms. Huddle testified that during the 2008-09 school year, there were approximately 28 students moved from Ms. Smith's class by parent request. By the end of the school year, Ms. Smith had approximately 63 students assigned to her over four classes in comparison to the other ELA classes that were by the end of the year in the high 90s. (Huddle Dep. pp. 7-8.) The nature of the concerns brought by parents were that their children felt uncomfortable in the classroom, they were confused on assignments, and the classroom atmosphere was harsh. (Huddle Dep. p. 8.) Ms. Huddle stated that there were a number of claims that work was misplaced and students were not given credit for what they claimed to have handed in and completed. On one occasion, a child brought the paper that had been graded by Ms. Smith that had comments on it and there had been a zero in the grade book for that paper. (Huddle Dep. p. 10.) Ms. Huddle further stated that students are not automatically removed upon parental request, but the first usual contact is through guidance. If guidance receives a call from a parent requesting a change, guidance sets up a conference with the parent to discuss the matter. (Huddle Dep. pp. 10-11.) Ms. Huddle summarized in writing her concerns working with Ms.

Smith's performance. (Compl. Ex. 22, Ex. 10.) At the conclusion of the 2008-09 school year, Ms. Huddle decided to assign Ms. Smith to teach in the District's new language program that was very scripted. Ms. Huddle advised Ms. Smith of the assignment, and Ms. Smith objected to the assignment. At the same time, the student enrollment at OBMS had declined at the beginning of the 2008-09 school year. For these reasons, the decision was made to reassign Ms. Smith to Conway Middle School ("CMS") for the 2009-10 school year, where there was an ELA vacancy. (Tr. pp. 301-302.)

C. Assignment At Conway Middle School.

Ms. Smith was assigned to CMS for the 2009-10 school and 2010-11 school years. Margaret Sordian was named principal at CMS at the beginning of the 2010-11 school year. Ms. Smith was assigned as a seventh grade ELA teacher where she had one accelerated class, one honors class, and two regular education classes. (T. p. 218.) When Ms. Sordian receives complaints from parents about teachers, the first thing she does is she asks the parent to speak with the teacher. Ms. Sordian said parents come to her after they are unable to get the problem solved directly with the teacher. (T. pp. 218-219.) Ms. Sordian had received complaints regarding Ms. Smith as early as September of the 2010-11 school year. (T. p. 219.) Ms. Sordian described the types of complaints she received about Ms. Smith as follows:

I had concerns from parents that students were having trouble getting clarity on assignments, knowing what was expected of them, what work they had to do and how they had to do it to know that their work was good enough. There was concern of grades that were missing for students where the parents said their children had turned in the work and not received credit for it. I had concerns about map testing being timed; other assessments given during map testing; children being told that they would have to stay after school if they didn't finish their map testing; and children concerns as well.

(T. p. 220.) Ms. Sordian attempted to meet with Ms. Smith to discuss the concerns she had received as of September 10. Ms. Sordian stated that the administration had received concerns

from children and their parents across the board from Ms. Smith's accelerated, honors, and regular education classes. (T. pp. 221-222.) On September 16, 2010, Ms. Sordian attended a meeting with Ms. Smith along with a parent and another administrator regarding concerns raised by a student's parent. In her testimony, Ms. Sordian described Ms. Smith's conduct during the parent conferences as follows:

A: In the conferences that Ms. Smith attended, for the most part she seemed to fumble around with papers, didn't look directly at the parents and often did not answer the question that the parent was posing.

Q: Did you have any concerns with the way Ms. Smith conducted herself in those meetings?

A: Yes, sir, I did.

Q: Did you express those concerns to Ms. Smith?

A: At one point during two of the meetings, I had to remind everyone in the room that we needed to stay calm.

(T. p. 223.)

Ms. Sordian also described concerns with the grades Ms. Smith gave to her students. She testified as follows:

Well, from looking at her grades, we were very concerned that two of her regular classes that as many as 45 percent of the children in one class were receiving unsatisfactory grades of D's and F's and in another class as many as 47 percent. In the accelerated class, we have 11 percent that were failing and that's very unusual for an accelerated group of students.

(T. p. 226.)

On October 11, 2010, Ms. Sordian sent a letter to Ms. Smith in follow up to a conference with her summarizing their meetings. (Compl. Ex. 8.) Notes were taken summarizing conferences held with parents, Ms. Smith, and members of the administration. (Compl. Ex. 14.)

Ms. Sordian summarized the parent concerns and told Ms. Smith she would like to implement an individualized teacher assistance plan to assist her in improving her performance. Ms. Smith was adamantly opposed and said she did not agree with an assistance plan. (T. pp. 228-229.) Ms. Sordian stated, "In all my years in education, I've never had a teacher refuse to accept assistance." (T. p. 229.)

Ms. Sordian described Ms. Smith's relationships with students as follows:

I felt like a good number of Ms. Smith's students were afraid of her, fearful of asking questions in her class for fear of embarrassment or humiliation, and many, many times very unclear of what to do with their assignments. There was no clear example or clarity of assignments and many were confused as to what they should do.

(T. p. 233.)

Several more letters were written to Ms. Smith in October 2010 in an effort to address the concerns raised by parents and meet with her. (Compl. Exs. 6, 7.) Several attempts were made to reschedule the meeting with Ms. Smith. Mr. Curlee had to become involved in scheduling the meeting. The meeting was finally rescheduled for October 28, 2010. (Compl. Exs. 4, 5.) Ms. Smith refused to come to the meeting and did not show up for it. (T. pp. 230-232.)

Ms. Sordian summarized her concerns about Ms. Smith as follows:

In all my years as an educator, I've been in a lot of situations where there have been students that are confused or parents that were confused and we know that usually we can come to a resolve in any situation. And teachers are there to teach our children and affect our future. There was no building of relationships that I could see. I had children that did not feel comfortable in a classroom. And in all of my years, I've never had a teacher refuse assistance for help. And as an instructional leader responsible for what goes on in your building, I'm baffled as to how I can possibly help an educator who refuses to accept assistance.

(T. p. 234.)

Yvonne Williams, the department chair for ELA at CMS during the 2009-10 school year,

expressed concerns about Ms. Smith to Ms. Sordian and she testified as a witness at the hearing. (Compl. Ex. 18.) Ms. Williams testified about some occasions in which she observed Ms. Smith act harshly towards students. Ms. Williams stated that she was attempting to assist the students on her Step team with their class work. A student had asked for her assistance on an assignment from Ms. Smith and Ms. Williams was not clear herself what the assignment required. Ms. Williams then approached Ms. Smith in the school cafeteria to get clarification on the assignment. (T. pp. 194-199.) Ms. Williams testified about her conversation with Ms. Smith as follows:

A: And I said, Ms. Smith, these ladies, they have questions about homework. I was going to help them, but I wasn't sure, you know, what needed to be done and so I was asking her, and she said they know what to do, they know what to do, and so she proceeded past me. She went to the table and she said, y'all, you know what to do. It's not like this is something new. Open up the book, it's the same thing. And so I didn't say anything else and one of the girls was left literally in tears and it was frustrating for me because I still didn't really have an answer to be able to help them.

Q: So did Ms. Smith ever respond to you and provide the information that you had asked so you could help the girls?

A: Not at all.

Q: Okay. And how would you describe the reaction of the girls once Ms. Smith had that exchange with them?

A: Some were angry. Some were angry, but some were -- I wouldn't say scared, but totally intimidated where, like I said, to tears. It was one specifically and I just -- I don't know, it was very awkward.

(T. pp. 198-199.) Ms. Williams further described Ms. Smith as follows: "I would say she's rough around the edges. I mean, if I, as a student, I probably too would be a little hesitant to ask a question." (T. p. 201.) Finally, when Ms. Williams was asked at the hearing whether she would

want her children to be in Ms. Smith's class, she replied, "I would not be comfortable at all with that, no." (T. p. 216.)

In addition to Ms. Williams, the parents of two students who were in Ms. Smith's class testified at the hearing regarding their concerns with Ms. Smith. The parent of a sixth grade female student in Ms. Smith's class during the 2010-11 school year described her daughter who had enjoyed ELA as her favorite class in prior years and wanted to be an English teacher as a student who now had severe anxieties with the class. The parent stated:

After about the first week of school we noticed that she had some anxieties that we'd never noticed in the past....There were tears at night, do I have to go to school tomorrow. There were tears in the morning, do I have to go to school today.

(T. p. 151.) She stated her daughter had a panic attack on the way to school one morning and her husband had to pull her daughter out of the car. She stated that after her daughter had the panic attack was when they discovered that her daughter was concerned with Ms. Smith. (T. pp. 150-157.) She stated that her daughter was further concerned that more attention might be brought to her from Ms. Smith since her parents had spoken with Ms. Smith. (T. pp. 159-160.) The parent further described a phone call she received from the school from her daughter who was frantic because she had forgotten to get a stems test signed and if she didn't have it returned, she would receive a referral. (T. p. 163.) The parent described her observations of her daughter as follows: "There were tears every night. Tears, fear for the next day, what she would walk into in her first period class." (T. pp. 164-165.) She stated her daughter was concerned she may be singled out and embarrassed or humiliated in front of her peers. (T. p. 165.) The parent communicated her concerns to the school administration. (Compl. Ex. 20.)

The parent of a male student also testified at the hearing. The parent testified regarding concerns with what he perceived as a lack of response from Ms. Smith about some missing grades. The father of the student notified Ms. Smith of his concerns in an e-mail and he did not receive a timely response. He then attended a meeting with Ms. Smith, Ms. Sordian, and Dr.

Sherilynn Duquette, assistant principal. He stated Ms. Smith came to the conference with a laptop and stated she spent a lot of time dealing with the computer and not really paying attention to what they were trying to discuss. He said he did not believe her demeanor was necessarily appropriate for what they were doing and that she seemed distracted, not only by the computer, but just overall from what was going on in front of her. (T. pp. 175-179.) The parent stated that he wanted to communicate with Ms. Smith, but he did not think he had an effective relationship with her as the teacher of his son. (T. pp. 181-182.) The parent communicated his concerns to the school administration. (Compl. Ex. 21.)

Ms. Smith called Anita Chestnut, a teacher at CMS, as a witness at the hearing. However, Ms. Chestnut testified that she herself had an issue with a grade or a score that her son was given and the issue was never resolved. (T. pp. 411-412.) Ms. Chestnut also testified that she had personal knowledge of students complaining of Ms. Smith since they were on the same team and they taught all the same students. She stated that when students came to her room, they would talk and complain to her about Ms. Smith, but she would tell them they were not going to talk about Ms. Smith. She stated this happened just about every day in every class. (T. pp. 412-413.) In describing how many of her students complained about Ms. Smith, she stated that one or two would start and then another one would want to say something, but they were all very much in agreement. (T. pp. 416-417.)

Mr. Curlee, was involved in dealing with concerns with Ms. Smith's performance over a period of several school years where she was assigned to teach at four different schools with several principals. As a result of his ongoing concerns with Ms. Smith's performance, Mr. Curlee recommended to Dr. Elsberry that Ms. Smith's employment with the District be terminated. In his testimony, he summarized the basis for his recommendation as follows:

...we've actually placed Ms. Smith in several different locations under different principals with different leadership styles. Students have some similarities but in different parts of the District but yet we were still seeing some of the initial problems that we had a North Myrtle

Beach Intermediate School in all of the other locations as well. ... And during that time, we had various forms of assistance that had been given or offered to Ms. Smith to try to assist her in certainly becoming more effective to address some of the concerns that we were getting from parents and complaints. But from my perspective in my dealings with Ms. Smith, Ms. Smith would never acknowledge that there were any issues. When I met with her, she consistently said that she was unaware of any problems, that if there were problems with parents, the parents should be sent to her and she would deal with it. But basically she was aware that there were problems and if you'd look at the emails that were going back and forth between Ms. Smith and the administration, you'd know that she was aware that there were complaints coming in on a regular basis. ... So for these reasons and the patterns that I mentioned earlier, and the fact that we had tried in this case four different schools and we were still having these problems, I think you can see what our problems were as far as continuing with her employment.

(Tr. pp. 315-316.)

D. Dr. Elsberry's Termination Recommendation.

After receiving the termination recommendation from Mr. Curlee, Dr. Elsberry met personally with Ms. Smith on December 1, 2010, to provide her with an opportunity to respond to the concerns prior to her making a decision. Dr. Elsberry testified:

I just felt the offenses rose to the level that we could no longer tolerate. The reports from the parents were just reprehensible and something that I didn't want to allow in our schools. So I needed to hear from Ms. Smith. I needed to hear -- you've heard a lot about improvement plans and assistance. I needed to know if there was a chance that we could offer something else that might provide -- would allow Ms. Smith to be successful.

(Tr. pp. 349-350.)

Dr. Elsberry described Ms. Smith's comments during her December 1 conference with her as follows:

...I asked her about the parent concerns and she said that she wasn't aware of parent concerns except for the eight

conferences that she had had since the beginning of the school year. And I asked her what she would have done – what she could do differently, what she could change to address the concerns that the parents were expressing in the eight conferences that she was aware of and she said she didn't know of anything. That she was not aware of anything she could have done that would have changed the concerns that the parents had. And I asked her after the conferences, after she heard what they had shared, did she do anything differently, did she change her behavior, did she change her communication style and she said no, she did not change anything. And I was taken aback by that. ... I was very concerned about almost half of her students making D's or F's and her comment was I don't know why you consider that failing. A D is not a failing grade and I didn't feel like I was able to communicate with her that that is not acceptable. That when a teacher's students, when more than almost half of them make a D or an F, that is not acceptable. And I didn't - I didn't get any perception that Ms. Smith saw that that was a concern or an issue that she needed to address as a teacher and that was just unacceptable to me.

(Tr. pp. 350-352.)

Dr. Elsberry asked Ms. Smith during their conference on December 1, 2010, if there was anyone else she wanted Dr. Elsberry to speak with regarding the District's investigation. Dr. Elsberry stated that Ms. Smith gave her no names during the conference, and Ms. Smith never gave her any additional names to speak with as of the date of the Board hearing. (Tr. pp. 352-353.) Additionally, Ms. Smith acknowledged during the conference with Dr. Elsberry that she had made a call to a mental health counselor during class time with students present in order to discuss concerns she was having with a student in the class not doing his work. Ms. Smith stated that she turned her back to the class and she spoke quietly. (Tr. pp. 353-354.) This incident was another issue of concern with Ms. Smith's judgment noted in Dr. Elsberry's letter recommending her termination.

Finally, when Dr. Elsberry asked Ms. Smith during the conference why she wrote on the bottom of the assistance plan that Ms. Sordian had prepared for her that no assistance was

needed, Ms. Smith replied that she did not need any help. Dr. Elsberry testified that Ms. Smith stated that because there were no issues, there was nothing that needed to be provided to her. (Tr. pp. 354-355.) Specifically, at the bottom of a letter that Ms. Sordian sent to Ms. Smith dated October 11, 2010, in which she advised her an assistance plan may become necessary, Ms. Smith wrote, "Not in agreement with individualized assistance plan." (Compl. Ex. 8.)

For all of the above-referenced reasons, Dr. Elsberry advised Ms. Smith by letter dated January 5, 2011, that she was recommending to the Board that Ms. Smith's employment with the District be terminated. Dr. Elsberry stated in her January 5 letter that much of the conduct described in the letter she received on February 26, 2008, regarding her performance at NMBIS was reoccurring in her treatment of parents, students and members of the administration at CMS. She also referred to concerns at OBMS. (Compl. Ex. 1.) Dr. Elsberry testified at the hearing that concerns at all of the schools formed the basis for her termination recommendation. (Tr. p. 356.)

Following the hearing before the Board and arguments by legal counsel, the Board deliberated in executive session, and thereafter voted to approve Dr. Elsberry's recommendation of termination. (T. pp. 539-541.) This appeal was then filed.

III. LEGAL ARGUMENT

A. Standard Of Review

The Teacher Employment and Dismissal Act ("the Act") governs the employment and dismissal of all teachers in the public schools of South Carolina. Section 59-19-90(2) in the S.C. Code of Laws vests in the board of trustees the power and duty to employ and discharge teachers." Specifically, the statute states that the board shall "[e]mploy teachers -- and discharge them when good and sufficient reasons for so doing present themselves. ..." Section 59-19-90(2). "A school board has long had the power to discharge teachers 'when good and sufficient reasons for doing so present themselves,' S.C. Code § 59-19-90(2) (1976). The Employment and

Dismissal Act was not so much intended to limit this power as it was intended to prevent its abuse." *Adams v. Clarendon Co. School District No. 2*, 241 S.E.2d 897, 900 (S.C. 1978).

In considering appeals from decisions of school district boards of trustees under the Teacher Employment and Dismissal Act, the scope of judicial review is limited to an examination of the record to determine whether there is substantial evidence supporting the decision of the Board.

Consistency with relevant precedent requires that the scope of judicial review [in the Teachers Employment Dismissal Act appeals] be a limited one. In view of the powers, functions, and discretion which must necessarily be vested in educational authorities if they are to execute the duties imposed upon them, this court cannot substitute its judgment for that of these authorities.

Law v. Richland County School District No. 1, 243 S.E.2d 192, 193 (S.C. 1978); *Kizer v.*

Dorchester County Voc. Educ. Bd. of Trustees, 340 S.E.2d 144, 146 (S.C. 1986); *Hendrickson v.*

Spartanburg County School District Five, 413 S.E.2d 871 (S.C. Ct. App. 1992). Accordingly,

the appropriate standard of review is "whether the grounds given for termination of the respondent's employment are supported by substantial evidence." *Law*, 243 S.E.2d at 193.

Substantial evidence is that, which "considering the record as a whole, would allow reasonable minds to reach the conclusion the [school board] must have reached in order to justify the action." *Hendrickson*, 413 S.E.2d at 873. If substantial evidence exists, a court may not substitute its judgment for that of the Board, and the decision must be upheld. *Id.*

As will be discussed below, there is substantial evidence in the record supporting the Board's decision to terminate Ms. Smith's employment with the District, and, therefore, the decision must be affirmed.

B. There Is Substantial Evidence In The Record To Support The Board's Decision To Terminate Ms. Smith's Employment.

Ms. Smith has alleged, as grounds for reversal of the Board's decision, that the determination of the Board is not supported by substantial evidence. This allegation is completely without merit. In the present case, the Board's decision upholding the dismissal of Ms. Smith is clearly supported by substantial evidence from which reasonable minds can conclude that her termination was appropriate and permissible under South Carolina law.

In *Adams v. Clarendon County School District No. 2*, 241 S.E.2d 897, 900 (S.C. 1978), the South Carolina Supreme Court stated that the Act "has clearly separated the circumstances for which a teacher may be discharged for cause into two categories. One of these categories is explicitly set out in § 59-25-430 and the other is implicit in § 59-25-440."

Section 59-25-430, which governs dismissals based on "evident unfitness for teaching," requires only that notice and an opportunity for a hearing be afforded the teacher prior to any dismissal. On the other hand, § 59-25-440, which governs dismissal based on deficiencies or shortcomings other than incompetence, failure to provide instruction in accordance with directions of the superintendent, and unfitness, requires that notice and an opportunity to improve be afforded the teacher prior to any dismissal. Significantly, this Court only needs to find that the procedures for one section of the Act were met in order to uphold the Board's decision. A review of the record on appeal demonstrates that there is substantial evidence to support the Board's determination that Ms. Smith's conduct justifies termination of her employment pursuant to both §§ 59-25-430 and -440.

1. Ms. Smith's Conduct Manifests An Evident Unfitness For Teaching

Section 59-25-430 provides that "any 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...." The statute goes on to cite examples of conduct evidencing an unfitness for teaching. The examples include persistent neglect of duty and willful violation of rules and regulations.

Here, substantial evidence in the record supports the finding of Ms. Smith's evident unfitness to teach, insubordination, and persistent neglect of duty. As far back as the 2006-07 school year, serious concerns with Ms. Smith's teaching were noted and addressed with her by the administration at NMBIS, including concerns with her instructional interactions with both students and parents. Instead of agreeing with the administration to address these concerns, Ms. Smith refused to agree with the school administration's assistance plan. (Compl. Ex. 24.) Nevertheless, the school's principal, Ms. Green-Graham continued to try and address with Ms. Smith the ongoing concerns with her performance throughout the 2006-07 and 2007-08 school years. Following attempts to meet with Ms. Smith in January and February 2008, which met with opposition from Ms. Smith, Ms. Smith was placed on administrative leave, with pay, based chiefly on the hostility Ms. Smith displayed towards Ms. Green-Graham, Ms. Smith's unsatisfactory teaching performance, and her refusal to change her teaching methods.

Ms. Smith was reassigned to CFES for the remainder of the 2007-08 school year and to OBMS for the 2008-09 school year. Ms. Huddle advised Ms. Smith of complaints expressed to the administration by parents about Ms. Smith's instruction and classroom management throughout the school year. Approximately twenty-eight students were moved from Ms. Smith's classes based on parent complaints during the school year. The nature of the complaints by parents included that their children felt uncomfortable in Ms. Smith's class, they were confused by her instructions, and the classroom atmosphere was harsh. (Huddle Dep. pp. 7-9.)

Subsequently, Ms. Smith was reassigned to CMS for the 2009-10 and 2010-11 school years. Ms. Sordian, CMS's principal beginning with the 2010-11 school year, received similar complaints from parents regarding Ms. Smith as early as September 2010. These complaints included placing students in the hall during class; making inappropriate comments to students; yelling at students; embarrassing students; failing to communicate effectively with students and parents regarding work, testing, re-testing, grades and assignments; humiliating students in front of others during class time; unprofessional behavior when conferencing with parents; breaking

student confidentiality; and students being afraid of Ms. Smith and having anxiety about attending class. As she had four years before, Ms. Smith again refused an assistance plan proposed by the school administration. Most telling in regard to Ms. Smith's unfitness as a teacher, however, is the fact that during the 2007-08 school year, 45% of her students had Ds or Fs (Compl. Ex. 26), and by the 2010-11 school year, over half of her regular education students, or twenty-five of her forty-one regular education students, had Ds or Fs. (Compl. Ex. 17.) Even aside from her refusal to accept an assistance plan, the hostile and intimidating classroom environment, and her poor communications with parents, these poor instructional results make evident Ms. Smith's unfitness to teach.

In short, Ms. Smith has: (1) been insubordinate over a period of years, refusing to follow through with required changes to her classroom management, instruction, and communications, as well as refusing to accept assistance plans (Compl. Exs. 10, 26); (2) created a hostile and threatening classroom environment that has caused students undue fear, embarrassment, and anxiety (Compl. Exs. 14, 18, 19, 22, 26); and (3) provided poor instructional results with an excessive number of her students receiving Ds and Fs (Compl. Exs. 17, 26).

These performance concerns with insubordination, classroom atmosphere, hostility, and instructional quality are well recognized grounds for termination. In *Green v. Clarendon Co. Sch. District Three*, the Federal District Court for South Carolina found that a teacher's inappropriate actions revealed such serious concerns about her judgment as to warrant the teacher's discharge. The explanation for the discharge follows:

The grounds upon which this action is based include your recent conduct toward your immediate supervisor, Mrs. Connie Dennis, whereby you made direct personal threats toward her in an apparent attempt to intimidate her into refraining from addressing her concerns about your performance as a teacher, and you later attempted to confront her again about the matter in the presence of another teacher. As I understand it, this is not the first occasion that you have expressed an unwillingness to accept direction from Mrs. Dennis as your supervisor. It is also not the first incident where you have acted

inappropriately toward or around others, or attempted to threaten or intimidate others. Additionally, it has come to my attention that you recently made inappropriate comments to a member of the Board of Trustees. I have concluded that your conduct has been highly insubordinate and unprofessional and is, at best, indicative of a serious lack of judgment on your part, warranting the termination of your employment pursuant to S.C. Code Ann. 59-25-430 and 440.

923 F.Supp. 829, 843 (D.S.C. 1996).

Likewise, in *Adams v. Clarendon County School District No. 2*, the Supreme Court upheld the dismissal of a teacher whose low level of both oral and written communication rendered him ineffective as a teacher. The Court noted that "[d]eficiency in such a basic skill is proof of 'evident unfitness for teaching'...." *Adams*, 241 S.E.2d at 901. Here, too, Ms. Smith's inability to effectively instruct her students, manage her classroom, communicate with parents, and accept direction from school administrators renders her ineffective as a teacher.

In *Laws v. Richland County School District No. 1*, the Supreme Court again upheld the dismissal of a teacher whose teaching methods were inappropriate and refused to reasonably respond to the school administration's recommendations made to him to improve his method of instruction and classroom atmosphere. *Laws*, 243 S.E.2d at 194; *see also Hendrickson v. Spartanburg County School District No. Five*, 413 S.E.2d 871, 874 (S.C. Ct. App. 1992) (upholding termination based on teacher's "general inability to control her class and on the specific incident of slapping one of her handicapped students."); *Adamson v. Richland County School District One*, 503 S.E.2d 752, 756 (S.C. Ct. App. 1999) (noting inefficiency in teaching and classroom management as appropriate grounds for discharging a teacher).

Ultimately, like the situations in *Green*, *Adams* and *Hendrickson*, Ms. Smith's insubordination, hostile acts towards students, parents, and administrators, inefficiency and incompetence, and lack of any meaningful or reasonable response to the District's efforts to help her improve her teaching, justify her dismissal under both §§ 59-24-430 and -440. Indeed, with

respect to § -440, Ms. Smith was provided years of notice of administrators', parents', and students' concerns. The administration repeatedly sought to provide her an assistance plan, but Ms. Smith repeatedly refused to accept them. Accordingly, the record as a whole provides substantial evidence supporting the Board's decision to terminate Ms. Smith's employment.

2. The Board's Decision To Terminate Ms. Smith's Employment Was Consistent With District Policy.

Specifically, District Policy regarding Discipline, Suspension and Dismissal of Professional Staff provides, among other things:

Therefore, it is the policy of the Superintendent to recommend to the Board the removal from employment of any teacher (or administrator) who shall fail, or who may be incompetent, to give instruction (or provide appropriate administration of a school or a program) in accordance with the directions of the Superintendent or who shall otherwise manifest an evident unfitness for teaching (or administration), as determined by the Superintendent.

Evident unfitness for teaching or administration is manifested by conduct including, but not limited to, the following: persistent neglect of duty; willful violation of the policies, rules, regulations, or procedures of the District....

Accordingly, it is clear that by complying with the Teacher Employment and Dismissal Act, as discussed further below, the District and Board complied with applicable policy. Thus, District policy permits the termination of teachers who manifest an evident unfitness for teaching, just as provided for in State law referenced above.

C. The Board Acted In Full Compliance With The Provisions Of The South Carolina Employment And Dismissal Of Teachers Act In Terminating Ms. Smith's Employment.

Pursuant to Section 59-25-470 of the Act, a teacher has the privilege of being present at the hearing before the Board with counsel, of cross-examining witnesses, and may offer evidence and witnesses and present any and all defenses to the charges. Ms. Smith was granted an adversarial hearing before the Board on March 24, 2011, pursuant to the Teacher Employment

and Dismissal Act contained in S.C. Code Ann. § 59-25-410 *et seq.* At the hearing, on March 24, 2011, which lasted approximately 16 hours, Ms. Smith took advantage of her right to be represented by legal counsel, her right to produce witnesses and other evidence, and her right to cross-examine the District's witnesses. Ms. Smith was represented by legal counsel, Dr. Elsberry was represented by legal counsel, and the Board was represented by Mr. Generette.

Following the hearing on March 24, 2011, the Board issued its decision upholding the Superintendent's recommendation for termination. Ms. Smith was notified of the Board's decision on that date, and the Board's decision was subsequently confirmed in writing on March 29, 2011.

It is well established that school board hearings are "quasi-judicial" administrative hearings. *See, e.g., Law v. Richland County School District No. 1*, 243 S.E.2d 192 (1978). The rules of evidence do not strictly apply to teacher dismissal hearings. *Richards v. City of Columbia*, 88 S.E.2d 683, 689 (1955) ("[E]ven with the aid of statute it is held that an administrative or quasi-judicial body is not governed by the ordinary legal rules of evidence"); *Jacoby v. S.C. State Board of Naturopathic Examiners*, 64 S.E.2d 138, 149 (1951) ("An administrative or quasi-judicial body is allowed a wide latitude of procedure and not restricted to the strict rule of evidence adhered to in a judicial court."). Ms. Smith's hearing before the Board plainly met the requirements of due process and the evidence presented to the Board was competent and probative, including testimony from witnesses with direct knowledge of Ms. Smith's performance, and does, considering the record as a whole, allow reasonable minds to reach the conclusion that Ms. Smith's termination was justified under §§ 59-24-430 and -440.

IV. CONCLUSION

There is more than substantial evidence in the record indisputably showing Ms. Smith's conduct manifested an evident unfitness for teaching. There can be no doubt that, considering the record as a whole, reasonable minds could conclude that Ms. Smith's termination was justified. Accordingly, the Board properly concurred with the Superintendent's recommendation

of dismissal, and the Board's decision should be upheld and this appeal dismissed.

Respectfully submitted,

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Sept. 7, 2012

Columbia, South Carolina

STATE OF SOUTH CAROLINA) BEFORE THE HORRY COUNTY
COUNTY OF HORRY) SCHOOL BOARD

Dr. Cynthia Elsberry,

Petitioner,

v.

Jacqueline Smith,

Respondent.

COPY

HEARING TRANSCRIPT

Thursday, March 24, 2011

8:26 a.m. - 12:12 a.m.

The hearing in the above mentioned case was heard before the HORRY COUNTY SCHOOL BOARD at the Horry County School District Offices, 335 Four Mile Road, Conway, South Carolina, on the 24th day of March, 2011 before Carla S. Dominick, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to agreement of counsel.

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1 notes, you might want to put those on a piece
2 of paper rather than on the exhibit itself. Or
3 a sticky or something like that. Give me just
4 a moment. Mr. Chairman, there is something
5 called the mental process rule that applies to
6 proceedings such as this, where you're seated
7 as a quasi judicial body, as long as you
8 maintain the document that has been introduced
9 and that is the only document that you take
10 back with you to your deliberation, then we
11 would have no objection to you maintaining
12 these documents and putting any of the notes
13 you might want to make on them. Okay? You
14 understand what I'm saying there? The only
15 official record would be the document that's
16 marked and is up there with the court reporter
17 and has a stamp of the exhibit on it. Is that
18 acceptable to you?

19 **MR. WILLIAMS:** We agree with that.

20 **MR. NICKLES:** Okay. Are you ready to proceed with
21 the evidentiary issue, Mr. Chairman?

22 **MR. CHAIRMAN:** Yes.

23 **MR. NICKLES:** One of the things that's always tricky
24 in a case like this, and I have to confess that
25 Ms. Mahoney, Mr. Williams, Mr. Mazyck, and I

1 probably done more than our share of these
2 types of proceedings, is that we realize that
3 we're not dealing with a judicial body. This
4 is a quasi judicial body, that you were elected
5 to form -- to serve this purpose and, although
6 some of you may have legal training, you're not
7 wearing robes. So, the Rules of Evidence don't
8 apply with the same strict standards as they
9 may in other proceedings, but those evidence --
10 those evidence rules do apply and we want to
11 make certain objections to documents that have
12 been presented to you for your review. And we
13 do that for this reason, this is a hearing
14 under the Teacher Employment Dismissal Act
15 section that calls for immediate termination of
16 the employee. And what our courts have said in
17 that context, is that the standards of proof
18 and standards of persuasion are different than
19 they are in your normal non-renewal process.
20 What the court has said, and this is the case
21 of Hall that I presented to Mr. Generette and
22 I presented to the attorney for the District,
23 it said that the South Carolina appellate
24 courts have appealed termination only where
25 evidence of unfitness for teaching, which is

1 the standard in this case, is undeniably and
2 abundantly present. Now, you going hear from
3 Ms. Mahoney and Mr. Williams that you should
4 entertain hearsay in this case, and they cite
5 some cases from the 1950s, some non-renewal
6 cases, and saying that it's sort of okay, as
7 long as you don't make that what you only rely
8 upon. Well, ladies and gentlemen, that simply
9 is not fair in a case like this, in a case
10 where the District has to prove by undeniable
11 and abundant evidence that our client is unfit
12 to teach. So the standards are different in
13 this case than they are in the cases relied
14 upon by the District's attorneys. And when you
15 have that standard, you have to hold yourself
16 to a higher standard. I suggest to you that it
17 is highly improbable that anyone having read a
18 document containing allegations, horrible
19 allegations, against my client can divorce
20 those things from their mind when they go back
21 into the deliberation room. The rules provide
22 that she is entitled to face her accusers.
23 She's entitled to hear people say those things
24 that may cause her to lose her career. And
25 what the District is doing in this case, by

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1 presenting documents containing information
2 provided by third-parties that these folks, who
3 you'll hear from, don't know themselves are
4 getting around that rule. They're depriving
5 you the opportunity to see and hear those
6 people to rule for yourself, determine for
7 yourself, is this a credible person, do I
8 believe this person. Let me look at them, let
9 me hear them, let the lawyer question them
10 about where they were, what else they heard,
11 what motivation do they have. That's why the
12 rules of hearsay apply, and that's why they're
13 very important in this type of special case.
14 Now, ladies and gentlemen, in this case we have
15 two bases, essentially, for our objections and
16 I'll lay them out for you in this way. The
17 first is the only due process that we have in
18 this case is the notice that was given to Ms.
19 Smith by Dr. Elsberry in her letter in January
20 of this year of the reasons for her discharge.
21 The law's clear, that is the issue before you,
22 have they proven the allegations in that
23 letter. If Dr. Elsberry didn't put it in the
24 letter or didn't rely upon it as a basis for
25 her recommendation to you, it is not relevant,

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1 it should not come before you. The only reason
2 it would come before you is to cloud your
3 judgment or to disadvantage our client, and
4 there are a group of exhibits here that don't
5 relate to any of the allegations in Dr.
6 Elsberry's letter. I took Dr. Elsberry's
7 deposition earlier in this case, and she was
8 asked to answer questions truthfully and I
9 believe that she did her very best to do that.
10 She was under oath and I asked her, what did
11 you rely upon in making your recommendation.
12 And what Dr. Elsberry said to me -- I asked
13 her, did you know that there had been an
14 investigation of Ms. Smith in 2008. She says,
15 no. I said, then did you consider anything
16 related to that investigation in making your
17 recommendation. She said, how could I have, I
18 didn't read it. There are materials in this
19 file from an investigation in 2008 that at page
20 16 of Dr. Elsberry's deposition she says she
21 didn't consider. Those materials shouldn't be
22 presented to you. They didn't form the basis
23 for the recommendation to you. There's only
24 one item from 2008 that is identified in Dr.
25 Elsberry's letter, and that is the letter of

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1 February 26, 2008. That is at page three of
2 the District's Exhibit Number One. That's the
3 only reference to 2008 in this entire
4 recommendation. That exhibit is in the
5 materials and we have no objection to that.
6 Apart from that exhibit, we object to all of
7 the exhibits relate to allegations from 2008,
8 and, Mr. Chairman, those would include Exhibits
9 Number Eleven, Twelve, Thirteen, Fourteen,
10 Twenty-Four, Twenty-Five, and Twenty-Six. Now,
11 I understand that they see --

12 MR. CHAIRMAN: Twenty-Four?

13 MR. NICKLES: Twenty-Five and Twenty-Six. And
14 that's just to make sure that the information
15 presented to you is based upon the notice
16 provided to Ms. Smith. Now, we have a further
17 basis for objecting to other entries in the
18 exhibits submitted by the District, and that's
19 what I referred to, the hearsay objection, that
20 the person presenting this information didn't
21 see it themselves, didn't hear it themselves
22 and no witness has been identified or will be
23 brought before you that can testify as to the
24 veracity of this information. And if we look
25 at Exhibit Number One, you will see in Dr.

1 Elsberry's letter there's an allegation that a
2 parent concern is that Ms. Smith is mean to
3 their children. Okay. And that she yells at
4 their children and she doesn't respond to e-
5 mails within 24 to 48 hours. And to the extent
6 that they don't produce a witness to say that,
7 we object to that as hearsay. We know that no
8 students are going to be presented. You've
9 seen the witness list, I expect. No students
10 are going to be presented today, therefore,
11 nothing that the student alleges or said, even
12 if they say it through their parent, ladies and
13 gentlemen, if the student doesn't say it to
14 you, if we're not given the opportunity to say
15 to the student, now, Johnny, when did that
16 happen, who else was there, who heard that, and
17 given the opportunity to bring those students
18 in to say, well, no, it really didn't happen
19 like that, you know, he misinterpreted her,
20 that type of information is improper to present
21 to you. On the second page of Dr. Elsberry's
22 letter, it says that there were 86 students, 25
23 parents and 161 complaints. Where are the
24 parents? Where are the complaints? I present
25 to you that you'll only hear from two parents,

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1 and they didn't present 161 complaints and they
2 don't represent anybody other than themselves.
3 In fact, I asked them, do you represent anybody
4 other than yourself, they said, no. Where are
5 these phantom people? Where are these phantom
6 complaints? They shouldn't be considered. You
7 see in this paragraph, there's a laundry list
8 of things that Dr. Elsberry cannot know for
9 herself. You yell at students. Not a single
10 witness will be brought to you today that says
11 that in her classroom she yells at students,
12 not a single witness. You embarrass students.
13 You fail to communicate with students regarding
14 homework and so forth. None of these students
15 are going to be presented to you. None of this
16 evidence should be considered. There's an
17 allegation that is a very serious allegation in
18 this document. It's the last paragraph of page
19 two, and I asked Dr. Elsberry about this. It
20 says, you reportedly told a student that you
21 would like to write up white people. You
22 reportedly called Waccamaw Mental Health
23 counselor and disclosed private information
24 concerning a student. I asked Dr. Elsberry,
25 you know those yourself, no. Have they

1 presented any witness to support that? No.
2 Are they present this student to you who claims
3 that she made a racial statement to him? No.
4 Are they going to present a guidance counselor
5 to you from Waccamaw? No. These type of
6 allegations should not be considered by you.
7 They're pure hearsay. We turn to Exhibit Two.
8 This is a letter of November 3, from Mr. Curly,
9 y'all know Mr. Curly. The third paragraph of
10 this letter iterates the same allegations that
11 I just addressed in the letter from Dr.
12 Elsberry, I mean, it's verbatim. We assert
13 the same reasons those should not be -- they
14 should be stricken from the record and should
15 not be considered by you. Exhibit Number Nine
16 in your notebooks is a letter from Dr.
17 Sherrilyn Duquette who will not appear before
18 you today, the assistant principal at the
19 school, saying that a parent was under the
20 belief that you made a racial comment. Well,
21 that parent's not going to come to you. Ms.
22 Smith has never been given the opportunity to
23 do anything other than say, that's not true,
24 you know, let me -- let me talk to the kid.
25 The kid's not going to be here; the parent's

1 not going to be here. Exhibit Number Fourteen,
2 number three on page one, a parent complained
3 that she felt her child was forced to do
4 something. Neither than parent nor the child
5 is going to be presented to you. Number five
6 on this, racial comments, same reasons I
7 indicated earlier. Paragraph seven, and
8 allegedly embarrassed student, says that Ms.
9 Smith told to this student, we don't know
10 whether it's male, female, black or white,
11 what's wrong with you, in trying to embarrass
12 the student. That student will not be brought
13 before you. Shouldn't be considered by you.
14 Exhibit Number Fifteen has been withdrawn, I
15 believe, by the District's administration.
16 Exhibit Number Seventeen, you'll see on the
17 second page, this is a convenient way of
18 getting a lot of bad stuff to you. It's a
19 laundry list of things, which this individual
20 who made this list here, Ms. Sordian, --

21 MR. CHAIRMAN: Which exhibit's that?

22 MR. NICKLES: It's Number Seventeen. And on the
23 second page there's a laundry list of things
24 here that are hearsay in nature, not known to
25 the person who provided this list. Just

1 gathered bad stuff and put it in a list and
2 presented to someone other than Ms. Smith. We
3 didn't receive this until we started the
4 discovery in this case. So we think this
5 laundry list of making inappropriate comments
6 during class, you'll not hear that from
7 anyone's mouth who will appear before you
8 today. Nobody heard that. Breaking student
9 confidentiality, nobody will appear before you
10 today will say that. They don't have any
11 information to support that. Playing rap music
12 in the class, nobody will appear before you
13 today to say that. Students are afraid of the
14 teacher. With what a horrible allegation that
15 is, not a single student's going to appear
16 before today. Yelling at students, the list
17 goes on and on. That type of list there you
18 shouldn't consider. You should make the
19 District prove its case. That's the way we
20 operate in this country. Exhibit Number
21 Eighteen, this is a quote from an individual.
22 I don't believe that this individual should be
23 allowed to repeat it -- actually, I'll withdraw
24 that objection. I will withdrawn the objection
25 to Eighteen. Number Nineteen, this is another

1 one of those compiled documents, never
2 presented to Ms. Smith. It's kind of hard to
3 figure out when this was compiled when it
4 doesn't include the last page. It says it was
5 dated September 23, with the last entry
6 September 27th, and there are, I can just
7 identify them for you by date, 9/1/10, there's
8 a mention of another student. We don't know
9 who that is, they never presented it to us, the
10 person's not going to be here. 9/3/10, the
11 first entry, it says, this unannounced parent
12 reported that blah, blah, blah. That parent is
13 not going to be here. 9/3/10, number two, a
14 mother reported that, that mother's not going
15 to be here. 9/3/10, number three, reported
16 that her daughter was told something, that's
17 not going to be introduced to you today.
18 9/7/10, the second entry, as parent reported
19 the students were required to do something,
20 again, no parents. 9/7/10, the third entry, a
21 parent again, her son was not given credit for
22 something, parent's not going to be here.
23 9/8/10, number one, parent called, and it
24 reports what the parent called. On the second
25 page, 9/8/10, number two, same complaints, I

1 mean, give me a break. Same complaints. What
2 does that mean? 9/9/10, a student visited my
3 office and reportedly said something that Ms.
4 Smith said, that student's not going to be
5 brought here. 9/14/10, the second entry at the
6 bottom of the page, parent -- received e-mail
7 from parent making several complaints about a
8 particular class. On the next page, the second
9 entry, observations conducted by the curriculum
10 coach. Curriculum coach is a living,
11 breathing, person, ladies and gentlemen, and it
12 says, that certain criticisms were made. Well,
13 guess what? That curriculum coach is not going
14 to be here and his criticisms are not in your
15 record. So why should this be in front of you?
16 9/15/10, the second entry, this is Sordian
17 talking, I received an e-mail from a guidance
18 counselor about parent concerns. All right.
19 Parent talks to guidance counselor. Guidance
20 counselor talks to principal. That's hearsay
21 twice removed. That shouldn't be considered by
22 you in this case. 9/15/10, second entry, third
23 entry, a team teacher reports, no name,
24 nothing. About a child being sent out for
25 smiling in class. We think that if she was

1 sending people out of a room for smiling in
2 class, they'd at least bring the person in here
3 and say, yeah, I saw so this happened. You
4 won't hear that testimony today. 9/17/10, the
5 first entry at the bottom of the page, lead
6 guidance counselor reports receiving a
7 complaint. Again, not going to be before you
8 today. 9/20/10, a parent making some claim
9 about the child, the parent or the child are
10 not going to be here today. On the next page,
11 9/20/10, a parent reports something about a
12 book bag, you're not going to hear about that
13 today. You'll read about it if you accept this
14 exhibit, but you won't hear about it. 9/23/10,
15 a parent reported that Ms. Smith spoke to her
16 a certain way, that parent's not going to be
17 here. Ms. Sordian doesn't have a clue whether
18 that happened or not. 9/23/10, a parent
19 complained that Ms. Smith was telling her son
20 to do something. Exhibit Number Twenty-One, it
21 is -- there's several e-mails in this exhibit
22 -- I just -- and this is an e-mail, you see,
23 it's to Ms. Sordian and Duquette, copied to
24 somebody but not Ms. Smith. And at the bottom
25 of this page, there's a message it's trying to

1 send to you, ladies and gentlemen of the board,
2 and it says, we have many friends at CNS who
3 are aware of several issues concerning Ms.
4 Smith. This person's trying to testify for
5 other people. He's trying to influence Ms.
6 Sordian and subsequently the ultimate you, by
7 saying, we've got friends and we're mad. Those
8 friends aren't going to be here, I don't know
9 if they exist and neither do you. This is the
10 type of information that should not be consider
11 by you. An example on Exhibit Twenty-Two, it's
12 got sub-exhibit at the bottom, number four, and
13 this is an exhibit from a deposition and it
14 sort of illustrates the whole point. This is
15 a parent -- this is back in 2008 and shouldn't
16 be here, but anyway, according to this, it was
17 sent to Ms. Huddle, who we'll hear from later
18 and who's exhibit you'll see perhaps, talking
19 about a parent who approached her about
20 something that allegedly went on in the class.
21 The parent's not going to be here, the child's
22 not going to be here. Exhibit Number Twenty-
23 Two, ten, Exhibit Number Ten at the bottom,
24 this is a compilation that you'll see at the
25 bottom of the page it says, Connie Huddle,

1 Principal of Ocean Bay Middle School,
2 11/5/2010, Ms. Smith had been long gone from
3 Ocean Bay Middle School, almost two years gone
4 when this was compiled. And it's another
5 laundry list of things they're not bringing
6 anybody in to support. This type of approach,
7 this type of information should be rejected by
8 you. You should demand that your
9 administration bring people to you to tell you
10 if they have concerns and not accept these
11 types of laundry lists that contain things that
12 these individuals don't personally even know.
13 Kathy, Number Twenty-Three is the same as
14 Number Twenty-Four, Ten?

15 **MS. MAHONEY:** Yes.

16 **MR. NICKLES:** So we don't need to say it twice. Do
17 we? Have it twice?

18 **MS. MAHONEY:** One packet was passed through
19 deposition because these notebooks were
20 prepared before that, so we'll be happy to take
21 it -- leave it in one place and take it out of
22 Exhibit Number Twenty-three.

23 **MR. NICKLES:** So, we can remove Exhibit Number
24 Twenty-Three. Exhibit Number Twenty-Five, the
25 first e-mail illustrates what I've been trying

1 to convey to you. It's something from a former
2 principal back in 2006, that's five -- almost
3 five years ago and it's telling Ms. Smith that
4 a doctor recommended a student be removed from
5 her class because of stress that a student was
6 suffering. Well, we don't have the doctor
7 here, we don't have the student here, we don't
8 have the parent here. We don't know whether
9 this student had anxiety about other classes.
10 We don't know whether this student had other
11 underlying problems. We don't know anything
12 about this, other than it's a slam on Ms.
13 Smith. That's the type of information you
14 shouldn't consider. Exhibit Number Twenty-Six,
15 this is an outlining of the events back in
16 2008. We already know that Dr. Elsberry didn't
17 consider this, but even apart from that, you've
18 got entries, December 18, 2007, parent said
19 that a student would not return -- a student is
20 'quote, terrified of Ms. Smith. That's a
21 horrible thing to say. We don't have the
22 parent and we don't have the student here, we
23 don't know the circumstances of this, and
24 that's the type of information that you
25 wouldn't consider -- shouldn't consider.

1 January 3, 2008, mom says, that Ms. Smith won't
2 return her calls. Where's mom? January 7,
3 2008, there are two entries. The second one,
4 I met with some unidentified person to ask why
5 his grades were poor. So it must be a student
6 and he said -- he gave a variety of reasons,
7 like Ms. Smith is mean. We don't know anything
8 about that. We just know that this principal,
9 whenever she was compiling this, back in 2008,
10 listed that somebody told her Ms. Smith was
11 mean. January 9, 2008, on the next page,
12 father came in to complained about the
13 difficulties his daughter was having in class.
14 Father's not here, daughter's not here.
15 January 28, it's the I think third and goes
16 over to the fourth page of this, and this is
17 the final thing I'm going to say to you about
18 this. Look what it says, blank blank mom sent
19 another e-mail to express concerns. What does
20 that tell you, ladies and gentlemen, that blank
21 blank mom sent an e-mail to expressed concerns?
22 See attached, no attachment. Now, it's our
23 position in this case, Mr. Chairman and members
24 of the board, that we have a hard enough time
25 doing our jobs to try and discover, through the

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1 witnesses in this case, what the allegations
2 are. We shouldn't have to chase ghosts. This
3 type of information should not be considered,
4 or presented to you, quite frankly. We ask
5 that these items be stricken from the record
6 and not be considered by you in your
7 deliberations in this case. Thank you very
8 much.

9 **MS. MAHONEY:** I've got a lot of different points I
10 need to cover here, based on what Mr. Nickles
11 said. I will try to be as efficient as
12 possible. The outset, I want to completely
13 disagree with Mr. Nickles' opening asserting
14 that this is a 430 case, he called it. If the
15 board would refer to Exhibit One, which is Dr.
16 Elsberry's letter, which is the notice of this
17 hearing, if you look at the end of that letter,
18 three paragraphs from the end, it says, for
19 these reasons I have concluded -- I'll wait to
20 we all get there. It says, for these reasons,
21 I have concluded the above described concerns
22 of your conduct and performance have resulted
23 in the loss of your ability to serve
24 effectively as a professional employee of the
25 District and justify your dismissal, pursuant

1 to South Carolina Code Sections 59-25-430 and
2 440. There's a reason two statutes are
3 referenced there. Quick history is 430 is the
4 statute we talk about evidence of unfit for
5 teaching, outrageous acts, a teacher that slaps
6 a student, harms a student, does something
7 sexually inappropriate. That's an evident
8 unfit statute case. 440 is an entirely
9 separate statute. That statute says, whenever
10 a principal, or supervisor charged with
11 supervision of a teacher finds it necessary to
12 admonish a teacher for a reason that he
13 believes may lead to, or be cited as a reason
14 for dismissal for cause, the teacher -- or
15 cause the teacher to not be reemployed, he
16 shall, one, bring the matter to the attention
17 of the teacher involved and make a reasonable
18 effort to assist the teacher to correct
19 whatever appears to be the cause of potential
20 dismissal or failure to be reemployed; and,
21 two, allow reasonable time for improvement.
22 This is what we call a mixture case. We have
23 a combination of misconduct and ultimately
24 notice of concerns over the years and
25 assistance that meet the two together. Mr.

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1 Nickles is citing a case that was based on an
2 isolated incident of misconduct, which brings
3 you under 430. So when he talked about a
4 higher standard and different burden, that was
5 focusing on 430. And I want to make it very
6 clear, we're under 430 and 440, and 440
7 requires notice, assistance and time to
8 improve. And we believe we fully meet the
9 standards. I don't want there to be a
10 misunderstanding about the standard here. And
11 Mr. Nickles also talks a lot about hearsay and
12 he went through a whole bunch of different
13 documents. He acknowledged at the outset that
14 this board is sitting at a quasi judicial body,
15 and the evidence in those cases -- or the case
16 law that deals with these types of proceedings,
17 this is an administrative proceeding, says you
18 are quasi judicial and that, generally, hearsay
19 is admissible. It's a somewhat relaxed rule.
20 There's the Richards case is another
21 administrative proceeding with another
22 administrative body, that says, even without
23 the aid statute, an administrative or quasi
24 judicial body is not governed by the ordinary
25 legal rules of evidence. So technical

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1 objections, such as the ones Mr. Nickles might
2 make, would not ordinarily apply in this
3 situation. But the Jacoby case, another
4 administrative proceedings case, it says, an
5 administrative or quasi judicial body is
6 allowed a wide latitude of procedure and not
7 restricted to the strict rule of evidence
8 adhered to in a judicial court. So the point
9 is, there are relaxed rules and we want you to
10 be -- we want to be mindful of that. Now, I
11 want to go on and say, in no point are we rely
12 exclusively on hearsay. That's something else
13 for the board to be aware of. If Mr. Nickles
14 is going through these documents as if this
15 hearing is about these two notebooks, that we
16 came in here this morning, handed out notebooks
17 and sat down and said, we recommend
18 termination. That's not -- we have a full day
19 hearing. We have witnesses who, none of, who
20 can testify about all these documents he's gone
21 through one by one. Witnesses can give live
22 testimony. We ask you to weigh all the
23 evidence. And to the extent that Mr. Nickles
24 objects to hearsay or objects to a particular
25 document or a particular statement, what we

1 would ask you to do, that's really an objection
2 to the weight of the evidence. You may
3 consider it not at all; you can disregard it,
4 but the weight is what you look at, how much
5 you consider a statement that's referring to
6 something else. Now, Mr. Nickles also went
7 through, line by line, several documents,
8 where's the student, where's the parent. What
9 I will tell you is this board, because this is
10 a public hearing, had all the names redacted.
11 We want to protect students from the school
12 district, we want to protect their parents, and
13 not reveal their names. But Mr. Nickles and
14 Mr. Mazyck got these documents, all of them,
15 with all the names included. They could look
16 at every single allegation, they could come in
17 and refute anyone they wanted to. Where are
18 their students that they're bringing in
19 refuting them? Where are their parents that
20 they're bring in refuting them? So it goes
21 both ways. So we're bringing in administrators
22 and other witnesses who can testify to what
23 they dealt with. And all we say is, give the
24 weight that he's objected to, the appropriate
25 weight. You can all -- you're all intelligent

1 individuals, you can recognize what you heard
2 directly versus what you saw as a summary. You
3 can make those distentions. And, again, this
4 case is not exclusively based on hearsay
5 evidence. And we're simply not going to bring
6 the students, we're not going to do that.
7 That's not -- that's not what the
8 administration's going to do. Now, let's talk
9 about the 2007-8 school year. Mr. Nickles
10 objected to a whole series of documents,
11 talking about that school year isn't relevant.
12 He said, Dr. Elsberry testified at her
13 deposition that she did not know of a 2008
14 investigation. Now, he's gone through an awful
15 lot that we can deal with in her testimony and
16 so it's a little bit awkward, but I'm going to
17 read to you in her deposition, since he's
18 already represented what he thinks it says. He
19 asked her the question, on page 16 of her
20 deposition, of course, Mr. Hickman was the same
21 person that conducted what's been called an
22 investigation in 2008 at Ms. Smith's former
23 school. Did you look at that investigation?
24 Answer, no, I did not. Question, did you know
25 that he had been previously investigation

1 concerning this case. Answer, no, I did not.
2 Question, did you know now, I guess, you did
3 not know that he had made similar findings
4 against Ms. Smith in an earlier investigation.
5 Answer, I have not read an earlier
6 investigative report by Mr. Hickman, so I do
7 not know anything that's in those. She didn't
8 know about Hickman's report. This has nothing
9 to do with whether she knew there were problems
10 in 2008. He's making that -- that's a leap to
11 suggest that. So his very next question is, so
12 would it be fair to say then that in making
13 your recommendation, this board, having no
14 knowledge of any prior investigation, you
15 didn't rely on that information. Answer, no,
16 that would not be accurate because I did look
17 at the personnel file and saw it was reflected
18 in the file. I was aware of concerns at Ocean
19 Bay Middle School because I was -- I don't
20 recall that I ever spoke to principal, Ms.
21 Huddle about the concerns, but these were
22 concerns relayed to me by Mr. Lee and Mr. Curly
23 at the time of her transfer from one school,
24 from Ocean Bay Middle to Conway Middle. Well,
25 then, you have to piece all this together

1 because this is a deposition and he's asking
2 the questions. But you say, well, this
3 mentions Ocean Bay, what about going North
4 Myrtle Beach Intermediate School. He asked her
5 earlier about a conversation she had with Mr.
6 Curly. And in the deposition on page 11, what
7 did he have to say. He had reviewed
8 documentation. He felt like there was a
9 pattern of behavior that was reflected in the
10 documentation. He had reviewed the personnel
11 file and shared with me concerns that were
12 expressed from her previous assignments with an
13 S. And from that meeting, this letter
14 developed, that specified the concerns that the
15 documentation supported. There's no question
16 Dr. Elsberry knew about 2008. She simply
17 didn't know that Paul Hickman had done a report
18 back then, and that's not relevant. You're
19 going to hear directly from the principal, who
20 will be a witness to talk about that. Exhibit
21 Ten, Mr. Nickles refers to this letter being in
22 the record. This is a letter from Mr. Curly to
23 Ms. Smith, February 26, 2008. He says, this
24 letter is on record. If you look at that
25 paragraph -- at that letter, the first

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1 paragraph, the first Paul Hickman, the Director
2 of Special Projects. The second paragraph,
3 during our meeting, I informed you Mr. Hickman
4 had an opportunity to investigate the
5 allegations of unprofessional conduct and
6 insubordination. Based on the investigative
7 findings, it's been determined that you
8 exhibited unprofessional behavior towards the
9 school administration and blatantly disregard
10 several directives issued to you. Referenced,
11 again, in there. There's no question that was
12 part of it. And, finally, I refer you back to
13 Dr. Elsberry's letter. He acknowledged at the
14 outset of this discussion, this letter sets the
15 notice for this hearing. There's no question
16 this letter, it's fully referencing the issues
17 that North Myrtle Beach Intermediate Middle
18 School. If you would please turn to the third
19 page of that letter at the bottom, last
20 paragraph, middle of the paragraph.
21 Additionally, the documentation establishes
22 that much of the conduct described in the
23 letter you received on February 26, 2008,
24 regarding your performance at your North Myrtle
25 Beach Intermediate School is reoccurring in

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1 your treatment of parents, students, and
2 members of the administration at Conway Middle
3 School. And then it goes on, she references
4 Ocean Bay Middle School as well. There are
5 clearly numerous different places where this is
6 clearly at this hearing, it is clearly in the
7 evidence, and it's in the actual notice letter.
8 To suggest now that 2008's not relevant and
9 that they weren't on notice of it, they have
10 all the documents and they had this letter, and
11 this letter will outline the hearing. Now, he
12 went through a bunch of documents. I'm not
13 going to go back through every one of those
14 documents and respond to everything he said,
15 but let me make these broad points. We would
16 suggest in Exhibit One, Dr. Elsberry's letter,
17 we do not intend to bring in a student to
18 testify about specific allegations, because
19 that specific allegation is in this letter. We
20 would ask the board to go to the second page of
21 Exhibit One, go down to the last paragraph
22 please. The first sentence of the last
23 paragraph says, additionally, you received a
24 letter from Dr. Sherrilyn Duquette, on
25 September 1, 2010, following up a conference

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1 with you in which she addressed a parent's
2 concern that you reportedly told a student you
3 would like to write white people up. Do you
4 deny making this comment? We ask you to strike
5 that sentence from the letter so we won't have
6 any issue with that.

7 MR. CHAIRMAN: Which sentence?

8 MS. MAHONEY: The sentence that Al objected to.
9 Additionally, you received a letter from Dr.
10 Duquette. And then the last sentence of that
11 paragraph, says, your conduct towards this
12 student in both instances was entirely
13 inappropriate and unprofessional. Go ahead and
14 take that one out since it refers to the two
15 incidents now, since we're only referring to
16 one and not two.

17 MR. CHAIRMAN: Which -- where, Kathy?

18 MS. MAHONEY: Excuse me?

19 MR. CHAIRMAN: The second one?

20 MS. MAHONEY: Top of the page three, that last
21 sentence, your conduct towards this student in
22 both instances was entirely inappropriate and
23 unprofessional. We want to remove any concern
24 about that sentence, so we'll just go ahead and
25 take it out. Exhibit -- does everybody follow

1 that? Exhibit Nine, there is one letter that
2 references the same issue. It's from Dr.
3 Duquette. We would ask that you remove that
4 one as well, so that one is also no longer an
5 issue. I'm would like to also mention that on
6 Exhibit Twenty-Two because those were exhibits
7 that were made part of the deposition of Dr.
8 Huddle that we'll have through video, that was
9 in exhibits we unable -- we had not -- we
10 failed to redact the student names and parent
11 names. We would just simply ask that we either
12 have the opportunity to do that or you all can
13 do that yourselves. Just so that doesn't
14 become part of any public record, we don't
15 intend to refer to students' and parents' names
16 for obvious confidentiality reasons for them.
17 So we apologize for that being done in that
18 Exhibit.

19 **MR. NICKLES:** And for purposes of the record, we
20 have no objection to the redaction of student
21 names and I think you'll see in the materials
22 that we've done the same.

23 **MS. MAHONEY:** So, in summary, when Mr. Nickles went
24 through item after item, and through these
25 various documents and pointed out there's not

1 going to be a teacher, there's not going to be
2 a student here, there's not going to be a
3 student here for those examples. I would say
4 in response, they had every single one of these
5 documents for weeks, if not months, in
6 preparation for this hearing. They could have
7 gone and found any of those students or any of
8 those parents to come in and refute them, and
9 they're not identified as witnesses. We don't
10 plan to call in every parent and every student
11 who's ever had a complaint against this teacher
12 to bring them in. But we do have seven
13 witnesses who can all testify as to what they
14 dealt with and what they handled. We would ask
15 you to consider all their objections on
16 hearsay, to recognize that some of them may
17 constitute hearsay, but hearsay is not
18 inadmissible. We just ask that you consider it
19 as hearsay and give it the appropriate weight
20 it should be afforded under the circumstances.
21 Thank you.

22 MR. NICKLES: Just a couple brief comments before I
23 y'all make a ruling on it. First, I want you
24 to understand that when Ms. Mahoney's talking
25 about what may be somehow eloquently understood

1 from Dr. Elsberry's letter or her testimony,
2 that's not the standard here. You have to be
3 given notice, in writing, of the reasons. And
4 we were very up front with you. We said, yes,
5 this letter of February 26, 2008 is in there,
6 it's in her personnel file. We don't object to
7 that. But when I asked her to elaborate if she
8 considered anything else, she said, no, I did
9 consider Ms. Huddle, Dr. Huddle, and you'll
10 hear from her, but she didn't say anything
11 about Ms. Graham, she didn't say anything about
12 2008 at Conway -- North Myrtle Beach, other
13 than that letter. I think she's confined to
14 what she notified Ms. Smith of and I'm -- I
15 also want to point out that Ms. Mahoney is
16 relying upon the non-renewal statute, the
17 notice, opportunity to improve, ask yourself
18 this, as you listen to the testimony today.
19 Was this person ever put on an improvement
20 plan? Was the person ever put on a formal
21 evaluation? Where's the evidence of that?
22 Where's the evidence of this District following
23 its own policies and procedures? That's how
24 you qualify for that standard of review, but
25 they didn't do that, ladies and gentlemen, they

1 are held to the higher standard, and that's
2 what we assert happened here. So we contend
3 that you didn't hear a lot of complaints from
4 Ms. Mahoney that this stuff is not hearsay.
5 She's saying, trust yourselves, we trust you,
6 don't consider this alone. That's not fair to
7 us, and we thank you for considering our
8 objection.

9 MS. MAHONEY: Nothing further.

10 MR. CHAIRMAN: Anyone on the board have a questions
11 for either of the attorneys?

12 MR. POSTON: I have a procedure question.

13 MR. GENERATE: Yes, sir.

14 MR. POSTON: We have one of the attorneys who have
15 asked us to take -- to not consider certain
16 documents in the record and the other attorney
17 who's asked us -- told us that she feels we can
18 consider certain documents. Do we need to take
19 an action, at all today, based on our agreement
20 or disagreement on Exhibit One?

21 MR. GENERETTE: Action will need to be taken in
22 order for us to proceed further, that is
23 correct, for what has been presented by both
24 sides.

25 MR. POSTON: Okay. Because there were a number of

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1 MR. CHAIRMAN: All in favor, please say aye?

2 ALL BOARD MEMBERS: Aye.

3 MR. CHAIRMAN: Opposed? Hearing none. What is the
4 pleasure of the board regarding the objections
5 made by the attorney?

6 MR. POSTON: Mr. Chairman, I have a motion.

7 MR. CHAIRMAN: Yes, sir, Mr. Poston?

8 (MOTION)

9 MR. POSTON: I would like to make a motion, this
10 board take all the procedural objections
11 presented under advisement and that this board
12 reserve the right to act on these objections as
13 evidence is presented during the hearing
14 procedures or prior to deliberations on this
15 matter.

16 MR. HARDEE: Second.

17 MR. CHAIRMAN: I have a motion and a second, any
18 discussion?

19 MR. DEFEO: I just have one comment.

20 MR. CHAIRMAN: Yes, sir, Mr. Defeo.

21 MR. DEFEO: It would probably make things easier to
22 not to have to ask that many questions during
23 this deliberation if you would indicate whether
24 this evidence was being presented under 430 or
25 440, rather than just a blanket on all of it,

1 we have no idea why you're presenting a certain
2 amount of evidence. If you don't do that,
3 that's fine, but I think that rather than stop
4 the question, how are you presenting this,
5 under 440 dismissal or 430 dismissal. And what
6 I'm referring to is hearsay evidence. There's
7 a different standard -- in my opinion, there's
8 a different standard as to whether we take all
9 or none. I would like to know whether or not,
10 when you present a particular part of evidence,
11 or are you just going to say to me now that
12 everything is under 440 and 430. You
13 understand what I'm saying?

14 **MS. MAHONEY:** I'm not completely clear, no.

15 **MR. DEFEO:** Okay. The letter says that being
16 dismissed under 430 and 440. Okay. Is
17 everything in this book under both or is some
18 of these things being presented for dismissal
19 under 430 and some of it under 440?

20 **MS. MAHONEY:** Our position would be that this 430
21 statute is the condition of evidence of
22 unfitness for teaching. And our position would
23 be that all this cumulatively leads to evidence
24 unfitness for teaching, but that there was
25 notice, assistance and time to improve was

1 given, so we actually do believe that the two
2 statutes are together in terms of this entire
3 presentation of the hearing.

4 MR. DEFEO: Okay. So every single piece evidence
5 being presented is under both 430 and 440, in
6 your opinion?

7 MS. MAHONEY: It's combined -- in our opinion, this
8 is a combined case, that not -- that this is a
9 one isolated incident of one particular nature.
10 This is a culmination of concerns over a period
11 of years for which notice, assistance and time
12 to improve were given.

13 MR. DEFEO: Okay. I guess the question I would
14 have, 430 is the more stringent, whereas one
15 piece -- one outrageous act, is that not
16 correct or did I misunderstand that?

17 MS. MAHONEY: Evident unfitness for teaching could
18 be one act, it could be a few together, but
19 generally it's just going to be more isolated
20 to a single incidence of misconduct.

21 MR. CHAIRMAN: Okay. Mr. Nickles?

22 MR. NICKLES: Mr. Chairman, members of the board,
23 under 440 or 430, we're here on a termination
24 of a teacher, this is not a nonrenewal hearing.
25 This is not a hearing where a teacher has been

1 given an improvement plan, a special evaluation
2 or anything. Read the letter. It says, I'm
3 going to terminate you immediately. That is --
4 that requires a demonstration of evidence of
5 unfitness to teach, and I believe we're
6 entitled to a standard that our courts have
7 said you've got to prove this more than just my
8 by mere happenstance. You've got to prove your
9 case. This is taking a career away from a
10 person that have enormous effect on them now
11 and in the future. So we suggest that if
12 they're saying it's all one, it's the higher
13 standard. We're entitled to it.

14 MS. MAHONEY: We certainly agree we have to prove
15 our case, no question.

16 MR. CHAIRMAN: Other questions or comments from the
17 board members? Hearing none, all in favor of
18 the motion, please say aye?

19 ALL BOARD MEMBERS: Aye.

20 MR. CHAIRMAN: Opposed? Hearing none, motion
21 carries.

22 (MOTION CARRIED)

23 MR. NICKLES: Point of clarification, Mr. Chairman.

24 MR. CHAIRMAN: Yes, sir?

25 MR. NICKLES: Do I understand the board's ruling is

1 we don't have to stand up at each document and
2 object while the witness -- if the witness is
3 presented that document, our objections are
4 preserved and we can make argument at the end
5 of the presentation of the case? Is That
6 correct?

7 MR. CHAIRMAN: Read the motion again, John.

8 MR. POSTON: Sure. The motion was that the board
9 will take all of the procedural objections that
10 were presented under advisement --

11 MR. NICKLES: All right. Thank you.

12 MR. POSTON: -- that way we're going to take every
13 objection you presented under advisement at
14 this time.

15 MR. NICKLES: All right.

16 MR. POSTON: We will reserve the right to act on
17 every objection you presented either during the
18 course of the hearing, we may just stop them
19 and say, hey, we agree, you're done, or we may
20 listen to all the evidence and then make a
21 decision prior to going into deliberation.
22 That's our intent.

23 MR. NICKLES: All right, thank you, sir. Just that
24 I'm clear if Ms. Mahoney or Mr. Williams is
25 examining a witness and it's one of the

1 documents I objected to. I don't have to stand
2 at that point in time and reassert my
3 objection, it's already noted for the record,
4 is that correct?

5 MR. CHAIRMAN: That's correct.

6 MR. NICKLES: That's all I need to know.

7 MR. CHAIRMAN: So noted.

8 MR. NICKLES: Okay. Thank you.

9 (Off the Record Discussion)

10 MS. LOFTUS: Mr. Nickles, when you get to the podium
11 could you speak into the microphone?

12 MR. NICKLES: I will be happy to try to remember to
13 do that, yes, ma'am.

14 MS. LOFTUS: Okay. Thank you.

15 MR. CHAIRMAN: Are any members of our audience
16 witnesses at this hearing today, at these
17 proceedings? Any of our board members or our
18 guests, are you going to be a witness in these
19 proceedings? Ms. Mahoney.

20 MR. NICKLES: No, sir, there are no witnesses.

21 MS. MAHONEY: Ready for opening argument?

22 MR. CHAIRMAN: Yes, sir. Yes, ma'am.

23 (Opening Argument)

24 MS. MAHONEY: Well, I'll offer by saying good
25 morning again, but good morning again. We

as to protect the students' confidentiality. And finally, you hear from the superintendent, Dr. Cindy Elsberry, who in addition to communicating with all the administrative staff as she does, also chose to meet personally with Ms. Smith and she will testify to what her concerns and conclusions were. There are a common theme of concerns that you can expect the testimony to reflect and will come in through witnesses and evidence. But the common theme, as I would suggest to you are this, that in all these assignments that I've just mentioned at all three schools, you will see a theme of numerous parental complaints. You will see a theme of students being removed from Ms. Smith's class at all school, numerous conferences with parents at all schools, Ms. Smith's failure to establish positive relationships with students at all three schools, Ms. Smith's failure to establish effective communications with the parents at all three schools, Ms. Smith's defensive attitude when anyone tried to bring concerns to her attention at all three schools, Ms. Smith's refusal to acknowledge the concerns that they

1 School. I was named principal and one of the
2 tasks that I did was to meet with every staff
3 member and I sent a letter through the summer
4 and invited them in and we set appointments and
5 I met with her as one of the staff members.

6 Q: Did anything stand out in your mind from that
7 meeting just then?

8 A: No, not really. It was just an opportunity for
9 us to find out what we valued about North
10 Myrtle Beach Intermediate School, what we'd
11 like to see tweaked and what things that we
12 hold dear. So nothing stood out.

13 Q: Okay. So Ms. Smith was already a teacher at
14 North Myrtle Beach Intermediate School when you
15 became principal in 2006-7?

16 A: Correct.

17 Q: Is that correct? What observations did you
18 have of Ms. Smith's performance during that
19 2006-7 school year?

20 A: Well, there were some challenges, there were
21 some opportunities that parents had expressed
22 some concern, but being new to the building, I
23 didn't know a lot about her and her teaching
24 style, so I took the opportunity to first just
25 observe. And it was only after the

1 conversations that continued to happen that I
2 realized that there was an issue of concern
3 that we needed to address.

4 Q: Okay. If you would, turn to tab 25 in the
5 black book of Exhibits that's in front of you,
6 please. Turn to the first page of that
7 exhibit. Did you have occasion to send Ms.
8 Smith an e-mail?

9 A: I did.

10 Q: Could you identify what the first page of
11 Exhibit Twenty-Five is?

12 A: This is a copy of an e-mail that I sent to Ms.
13 Smith on November 13, 2006, and the gist of the
14 e-mail, simply, is that we had a student, the
15 parent had come in and raised some concerns.
16 The parent met with the assistant principal on
17 11/2, and evidently the concerns were not
18 satisfied to their level of -- to their level
19 and it came to me. And when it came to me, the
20 parent met with me to inform me and out of that
21 conversation came that their child was
22 overwhelmed, frustrated, they had had the
23 occasion to speak to Ms. Smith and they didn't
24 see that anything was going to change. They
25 had also shared with me a doctor's note that

1 stated that the child was being treated
2 medically and having counseling due to anxiety.
3 And the doctor felt that the classroom
4 situation was adding to that stress, based on
5 their conference sessions. And the parent
6 requested at that time that the student be
7 removed from the class.

8 Q: And based on your conversation with that
9 parent, what did you understand to be the basis
10 for the student's anxiety?

11 A: The classroom. He could not keep up. It
12 seemed -- the child thought that Ms. Smith
13 didn't like him, he thought that -- it was just
14 overwhelming. In fact, the parent showed me a
15 doctor's note stating he was on anxiety
16 medication actually.

17 Q: But were these anxiety, when you said the
18 classroom, what are you referencing? Whose
19 classroom?

20 A: The environment, Ms. Smith's environment within
21 the classroom did not lend itself to the
22 absence of threat.

23 Q: Okay. Did you meet with Ms. Smith during that
24 school year to advise her of the concerns that
25 were developing?

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1 A: I did.

2 Q: If you would turn to tab 12, please. If you
3 would first identify this document.

4 A: This document is a letter that I sent to Ms.
5 Smith dated November 20, 2006. I had had
6 informal conversations with Ms. Smith, along
7 the way, when I would get a concern and my
8 first line was to allow her the opportunity to
9 correct the issues that were brought to my
10 attention. And after I continued to get parent
11 concerns and continued to have these issues, I
12 recognized that I needed to write her a letter
13 to make sure that she was clear on what the
14 expectation was and make sure she knew exactly
15 what the concerns were. So this letter was a
16 follow up, and within the letter I informed her
17 of some conversations that I had had and that
18 the concerns that were brought forth. Some of
19 the things that we discussed were -- an example
20 of excessive anxiety might be that I remember
21 a specific situation where we had spelling
22 words. And the fifth grade students in Ms.
23 Smith's class had to copy their own spelling
24 words from the board, wherein, it's customary
25 that we give them the spelling words. But the

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1 parent had called Ms. Smith on a number of
2 occasions to ask for a copy of the words
3 because her child was not being successful on
4 the spelling tests. And after that did not
5 occur, the parent contacted me and then I in
6 turn contacted Ms. Smith, and Ms. Smith did,
7 after several conversations, give the child the
8 spelling words. But based on what came back,
9 the parent felt like she did it in a way that
10 was embarrassing to her child and so I noted
11 that of a concern. And I also recommended to
12 Ms. Smith, within this letter, to -- if there
13 are simple things that you can do to assist
14 your students and decrease the anxiety level,
15 if the desired outcome is a good grade, then
16 why not do those things so that the child
17 doesn't have the anxiety and that they can feel
18 comfortable in the environment. Also, in this
19 letter, I spoke to her about relationships and
20 I told her that it was very important that she
21 develop good relationships with her parents and
22 her students. We talked about -- I also talked
23 about in the letter that the tone of her
24 classroom she needed to really take a look at
25 and maybe assess what, from other people's

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1 perspective, was going on. Also, I also
2 recommended, within this, that she make sure
3 that she continues to send her weekly -- she
4 was sending her weekly newsletters. That was
5 part of her structure of her classroom, but
6 parents were complaining that they did not know
7 how their child was doing. They had not
8 received grades back. They had not received
9 any information and it was a surprise to them
10 at grade time when they found out their child
11 wasn't passing the course. And I had reminder
12 her to be a good role model and if she a very
13 structured environment that students -- there
14 was no compromise if students didn't turn in
15 their work on time, it really didn't reflect
16 well when she did not follow through with
17 getting that newsletter out weekly as she had
18 promised to parents and getting those papers
19 back in a timely matter.

20 Q: At that point of this November 26, 2006 letter
21 to Ms. Smith, does it reflect on any complaints
22 you had at that point from parents?

23 A: We had had about ten complaints already that
24 school year in November, and that's when,
25 again, initially we had had conversations. In

1 fact, I went to her on a personal level more
2 than one time to see how I could assist her.
3 I don't know -- I didn't know Ms. Smith
4 personally, but I knew of her and I knew of the
5 community she came from and I thought, wow, if
6 there's any way I can help, I want to be able
7 to help you. And it was after we got to
8 number ten that I realized that we needed a
9 different level of support.

10 Q: Did you, in this discussion letter, also
11 suggest she survey her students herself?

12 A: I did.

13 Q: Tell me about that.

14 A: One of the things that I talked about with Ms.
15 Smith was that perception is people's reality.
16 Whether it's true or not, that leads to be
17 discovered, but the reality is what people
18 believe is their truth. And I said to her, it
19 would be important to know what people believed
20 because her perception of the situation was
21 very different than what I was receiving from
22 parents and students. So I recommended to her
23 to do a survey for her eyes only. I
24 recommended to her to do -- and I offered
25 assistance, I'd help her develop the questions

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1 so that she could get at what parents were
2 feeling and what students were feeling in her
3 classroom, and then I told her to just compile
4 that information and just read the responses
5 and let them do it anonymous so people felt
6 comfortable in giving what they truly were
7 feeling. And Ms. Smith responded to me, what
8 can ten year olds tell me about running my
9 classroom.

10 Q: Okay. Did you tell of these ten complaints
11 that you said you had got at this point, did
12 you tell Ms. Smith who was making the
13 complaints and the substance of them?

14 A: Absolutely, absolutely. The e-mail that we saw
15 just prior to that specifically told her about
16 the student and what the situation was, and
17 that student was moved but not all students or
18 parents that had complaints were moved and we
19 would talk about them and her comment would be,
20 well, just send them to me, just send them to
21 me. And I did, until we got to number ten, and
22 I couldn't just continue sending them to her
23 because there was no resolve.

24 Q: Okay. How did Ms. Smith respond to you when
25 you discussed these complaints from parents,

1 generally?

2 A: Initially, prior to this letter, she seemed
3 willing to at least tolerate my conversation,
4 but once I began to follow things up with an e-
5 mail or letter, she became very confrontational
6 when I would try to speak to her. She did not
7 accept any of the responsibility in the
8 situations at all. It was always the students.
9 She, at the end, would not even have a meeting
10 with us. We could not sit down and have a
11 planning session to talk about the problems and
12 come up with solutions together. She very much
13 was defiant often and it was challenging just
14 to have a conversation with her.

15 Q: If you could turn to Exhibit Twenty-Four,
16 please, tab 24, and identify what this document
17 is, please.

18 A: This is an in-house teacher assistance plan
19 that was developed by me and the administration
20 at North Myrtle Beach Intermediate School in
21 2006-2007.

22 Q: And when was the meeting to discuss this plan
23 with Ms. Smith, when was that held?

24 A: January 8, 2007.

25 Q: And what was the purpose for the development of

1 this teacher assistance plan?

2 A: It became very evident to us that the problems
3 were not going to be fixed just based on
4 referring the parents to Ms. Smith, and we had
5 tried to have several informal conversations
6 with her, so we decided that maybe the best
7 avenue was to create a plan of support so that
8 we can put these pieces in a document so we're
9 clear on what the pieces are and then work
10 through some solutions together.

11 Q: And what specific areas did you identify to
12 address in this plan?

13 A: We took these areas from the teacher evaluation
14 instrument and the first area that we
15 identified was the teacher establishes and
16 maintains an environment that's conducive to
17 learning. Based on the complaints that we had
18 received and the things that we had observed,
19 we felt like the environment was not one that
20 students felt an absence of threat. The second
21 area that we identified was fulfilling
22 professional obligations and professionalism.

23 Q: And what generally, what were the objectives
24 you gave her to assist her with?

25 A: We wanted to decrease the number of parental

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1 complaints coming from her classroom. We
2 wanted to work with her to provide staff
3 developments and opportunities for her to grow
4 in creating relationships with parents and
5 students within her classroom so they felt
6 comfortable coming to her and did not have to
7 come to us. They could resolve it at the
8 classroom level. We also wanted to work with
9 her so that she recognized that students were
10 individuals and one size didn't fit all and
11 that we needed to adjust, if need be, for that
12 individual student's needs.

13 Q: How did Ms. Smith respond to the presentation
14 of this assistance plan to her during that
15 meeting?

16 A: When we attempted to discuss the goals, the
17 objectives, the areas of concern, Ms. Smith
18 often sat with her back to us. She never
19 really pulled up to the table. If we read a
20 sentence that she felt was not correct, she
21 would correct us in a defiant type manner. In
22 fact, by the time we got to the end, she got up
23 and walked out and slammed the door and refused
24 to sign it.

25 Q: Did Ms. Smith communicate with you further

1 meetings with parents?

2 A: I spent a lot of time being a buffer, I felt
3 like, within the conferences. A parent might
4 make an accusation such as, my daughter says
5 that she did turn in her work or my daughter
6 says you haven't given them their signed papers
7 since before Christmas. And I was witness to
8 a conference where she flat out told the parent
9 that your daughter's lying, I give them every
10 week, she must not have brought them home.
11 And, of course, when you say such things, a
12 parent immediately becomes defensive and I try
13 to move around and say, okay, we have maybe a
14 communication problem here. Maybe we can take
15 a look at how we can solve this problem and --
16 the conferences were often back and forth.
17 They were often defensive. She was very
18 defensive of any action that they might have
19 accused, and it was challenging to get through
20 a parent conference.

21 Q: If you'd turn to the third page of tab 25,
22 please, and identify this document. The pages
23 are in the right-hand corner.

24 A: This is -- there's a series of e-mails here.
25 A parent had e-mailed Ms. Smith and cc'd it to

1 written notes from her file that had
2 accumulated over the time that we spent
3 together.

4 Q: And do these entries reflect matters that you
5 dealt with yourself generally?

6 A: Yes, yes.

7 Q: If you would make just four or five examples of
8 different situations that these notes reflect
9 that you dealt with personally with Ms. Smith.

10 A: Well, some of the problems that we dealt with
11 were not limited just to parental and student
12 concerns. Some of them actually dealt with the
13 way that she did her work. For example,
14 November 25th, 28th and 28th entry, they all
15 deal with lesson plans. All teachers were
16 required to turn in their lesson plans each
17 week, and the curriculum coach would collect
18 the lesson plans, we would peruse them, give
19 them feedback and things of that nature. And
20 the curriculum coach had let me know that she
21 did not receive lesson plans from Ms. Smith and
22 I communicated to Ms. Smith that we needed her
23 lesson plans. And she responded something to
24 the effect that, they were on my desk if she
25 wanted them. There was also -- we did

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1 interactive read-a-louds. It was a District
2 reading initiative and I communicated to her
3 that we had not received her interactive read-
4 a-louds lesson plans, and she communicated back
5 to us that that's not the only strategy that's
6 available to use. So the concerns weren't just
7 limited to the students in the classroom. The
8 concerns dealt with her turning things in when
9 she was supposed to turn them in as well as her
10 following through with District and school wide
11 initiatives. That was the first three --
12 moving on down to another situation that I
13 dealt with over on the next page, largely
14 January 7th, all those activities, dealt with
15 grades. We had a number of parents who had
16 received a packet of work. Ms. Smith, again,
17 based on her structure that she set up, was to
18 send home weekly papers. They would get a
19 newsletter with all of their assignments and
20 graded assignments. Well, the students had all
21 received their grades after Christmas, that
22 first week we came back. Well, they had not
23 gotten them from November to January, and the
24 parents, for the first time, knew that their
25 child was failing the course and the nine weeks

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1 was to end within a week or so. So many of
2 those entries deal with parents who are very
3 upset that they did not receive notification
4 that their child was even struggling until the
5 end of the marking period. On January 8th, on
6 the next page, this particular incident, this
7 was a parent -- the parent came in and was
8 really upset in talking to the secretary,
9 January 8, 2008, and she wanted to see Ms.
10 Smith, but Ms. Smith had already left for the
11 day. She was -- she had left early that day.
12 And I could hear during the afternoon
13 announcements that the parent was upset. So as
14 soon as I finished the afternoon announcements,
15 I invited the parent into the conference room.
16 And out of that conference, I found out that
17 she had been trying to contact Ms. Smith. She
18 had left phone messages with Ms. Smith, and she
19 was really upset because that particular day,
20 after she could not get her on the phone, she
21 took off work to come to the school to see Ms.
22 Smith because her child was failing the English
23 class. And I talked with the parent briefly
24 there, calmed her, helped her to understand
25 that we could meet. I would make sure that Ms.

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1 Smith contacted her and that we could set up a
2 conference. And at that time, she expressed to
3 me that she works and she couldn't take any
4 more time off work unless we meet with her
5 after 4:30 in the afternoon. So I asked her
6 how her mornings were, and she said that would
7 be perfect. I sat it up for a few days ahead
8 so that I had -- and I told her that I need to
9 speak with Ms. Smith to make sure that that
10 worked with her. So I spoke with Ms. Smith to
11 tell her that that parent had come by, she was
12 very concerned about her son's grades and she
13 had been trying to reach her. And I told her
14 I went ahead and sat up the conference, but if
15 that date is not a workable date, let me know.
16 Ms. Smith communicated to me that that date
17 would work, and we did have the conference, but
18 Ms. Smith was about 30 minutes late. She -- we
19 did an all-call over the building PA several
20 times looking for her. After she had
21 communicated to me that that would work, she --
22 we called her classroom looking for her. The
23 parent had been waiting about 25 minutes and I
24 was still trying to locate Ms. Smith. When we
25 finally located Ms. Smith, we did have the

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1 conference, but after the parent left, I said
2 to her, why did you say it was okay for you and
3 we scheduled this and you were so late, the
4 parent was already upset. It would have been
5 better for us to be there and be ready when we
6 promised when we would, because, yet again,
7 we've not followed through with something in
8 her eyes. And she simply commented to me, you
9 know I'm not a morning person anyway, something
10 to that degree. And I was, you know -- that
11 was that situation. On January 10th, that
12 entry is a summary of that conference that was
13 to be held a few days later. Looking at
14 January 15, 16, 17, all of those entries are
15 related to parents who had concerns about their
16 children in the class. One parent commented
17 that they had concerns about her
18 unprofessionalism. Other parents commented
19 that she was inconsistent with sending home
20 grades and they didn't know their child was
21 doing so poorly. The overall concern through
22 this whole process, or this whole summary, was
23 that we couldn't seem to get -- parents could
24 not seem to schedule conferences with Ms.
25 Smith. If they had conferences with Ms. Smith,

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1 they weren't pleased with the outcome. They
2 didn't feel like she heard what they had to say
3 and they didn't feel like any changes were made
4 as a result of what she had to say. There was
5 a lot of concern about the reading initiative
6 that she had implemented, which was her own
7 which was different than the school and the
8 District. One of the biggest concerns was
9 centered around reading log. Ms. Smith had
10 created her own antidotal reading log, and the
11 students had to read each night, which is a
12 good thing, but they also had to write a
13 summary of what they read and bring that in.
14 That, in itself, is a good assignment, but when
15 you couple that with another piece of her
16 reading, writing, language arts class was that
17 the students had to write a piece each week
18 going through the entire writing process. They
19 would have to, on their own at home, do the
20 think and jot, the rough draft, the edit and
21 revision, and then turn in a final copy. And
22 certainly writing is a good thing, but many of
23 the parent complaints centered around that
24 their child was a good writer, they needed
25 assistance, they couldn't help them because it

1 oh, no, we have to because we can't get up once
2 we sit down. We have to stay seated and if
3 your pencil breaks, you just can't do your work
4 and you'll get a zero. And so little things
5 like that and in addition to the comments from
6 students that I had talked to, as well as
7 parents, it began to form a pattern.

8 Q: Is there any question in your mind that you
9 made Ms. Smith aware of parental concerns?

10 A: We talked -- I made many attempts to talk with
11 her about many of the concerns or all of the
12 concerns.

13 Q: And what is your standard practice for handling
14 a parent complaint? How would you handle that
15 with any other teacher?

16 A: Well, like I said earlier, your first line is
17 just to try to hear people out and then ask
18 them, have you spoken with the teacher, have
19 you met with the teacher, have you talked with
20 the teacher, would you like for me to help put
21 you in contact with the teacher. Usually, it
22 can be handled at the teacher level, so that's
23 usually my first line. If I refer them to the
24 teacher and they come back, that is an
25 indicator that the issue wasn't resolved and

1 that I need to be involved. So I would refer
2 them to the teacher and then if it was not
3 resolved, then I would be involved.

4 Q: How many complaints do you typically receive
5 from parents about other teachers at North
6 Myrtle Beach Intermediate since you've been
7 there since 2006?

8 A: At the elementary level, it's really not that
9 common. I probably get maybe two complaints a
10 year. Most of the teachers go throughout their
11 whole career without having a complaint. But
12 when I say that, I don't mean that teachers and
13 parents haven't had disagreements or
14 differences of opinions. What I mean is, that
15 they're able to usually work them out without
16 it going to beyond the two of them and they're
17 -- were fine. So maybe two or three a year
18 that I have to get involved in.

19 Q: In your five years at North Myrtle Beach, have
20 any other teachers had as many complaints as
21 Ms. Smith?

22 A: Oh, no.

23 Q: Did you meet with Ms. Smith to discuss the
24 parent concern -- if you turn to tab 25, page
25 four, and describe this document.

1 A: On January 9th, 2008, again, we attempted to
2 meet with Ms. Smith to talk about some of the
3 concerns and the goal was to -- or actually,
4 this was a follow up to our meeting. The goal
5 was to make sure she understood what the
6 concerns were, give her the opportunity to have
7 input and we work together to try to address
8 some of the issues that continued to surface.
9 And I actually tried to set the stage for this
10 being a positive opportunity, but I did want to
11 let her know that -- because one of the things
12 about Ms. Smith that I remember specifically is
13 that she always said, well, nobody ever told
14 me, nobody ever told me, and so I was taking
15 every opportunity I could to sit down and tell
16 her who said what about what. And this was one
17 of those documents to document our conversation
18 in 2008.

19 Q: All right. And you were present at this
20 conference?

21 A: Yes.

22 Q: And have you reviewed this document?

23 A: Yes.

24 Q: And does this document reflect what was said at
25 a conference to which you were present?

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1 [REDACTED]

2 COURT REPORTER: Thank you.

3 MS. [REDACTED] - EXAMINATION BY MS. MAHONEY:

4 Q: Ms. [REDACTED], there's a microphone. I'm sort
5 of loud already, but if you need to you can
6 pull that microphone up to your -- a little bit
7 closer to you. That way everybody can hear
8 you, thank you.

9 A: Okay.

10 Q: If you would please tell the Board how many
11 children you have and what schools they attend
12 in Horry County, please.

13 A: I have an eleven year old son that attends
14 Conway Elementary. He is currently in fifth
15 grade and I have a 13 year old daughter that
16 attends Conway Middle School and she's in the
17 seventh grade, [REDACTED] --

18 Q: And what is your daughter's name?

19 A: [REDACTED] [REDACTED].

20 Q: Could you describe her -- your daughter,
21 [REDACTED]'s, experiences -- has she been in
22 Horry County Schools her whole life?

23 A: Yes, she has.

24 Q: And can you describe her experiences in Horry
25 County Schools through the sixth grade?

- 1 A: [REDACTED] has always had a very positive
2 experience. She's my child that counts down
3 the days in the summer until school starts
4 back. She -- she loves school.
- 5 Q: And did she attend sixth grade at Conway Middle
6 School?
- 7 A: Yes, ma'am, she did.
- 8 Q: And how was her sixth grade year?
- 9 A: She had a great year.
- 10 Q: Tell the Board how [REDACTED]'s school year has
11 been this year as a seventh grader at Conway
12 Middle School, please.
- 13 A: After about the first week of school we noticed
14 that she had some anxieties that we'd never
15 noticed in the past. We thought new school
16 year, hormones, girls getting older. It was
17 just -- it was just bad. We gave [REDACTED] a
18 little time and each day we started noticing
19 when she would ask us do I have to go to school
20 tomorrow. There were tears at night, do I have
21 to go to school tomorrow. There were tears in
22 the morning, do I have to go to school today.
23 We were concerned, but when we would ask her
24 she would say I'm okay, I'm okay. She started
25 counting down the days till school was over.

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1 Which we knew something was wrong, but we felt
2 like at that point she wasn't ready to come to
3 us and say this is what it is.

4 Q: Who were her teachers or who are her teachers
5 this year in seventh grade?

6 A: She had Ms. Jackie Smith, was her first block
7 teacher. She then has Ms. Chestnut, which was
8 her math teacher. She has Ms. Tangia Rivera,
9 she has Ms. -- Mr. Conners and she has her
10 exploratory teachers, those -- those change.

11 Q: At some point did you discuss with the school,
12 school administration or staff at Conway Middle
13 School, that [REDACTED] was experiencing these
14 problems at home?

15 A: We did. That was after one morning [REDACTED]
16 had a panic attack on the way to school and my
17 husband was taking her that morning and he --
18 he had to literally pull her out of the car.
19 Thought the best thing at that point to do was
20 to go into the school and help her find someone
21 to talk to. Someone that possibly she would
22 open up to and he spoke with Mr. Holden and my
23 daughter with Ms. Lyn, the school guidance
24 counselor.

25 Q: At that point did you know what the concern was

1 with [REDACTED]?
2 A: We had -- I had noticed and started to put some
3 things together. Every week they had stems
4 that they had to do. [REDACTED], after spending
5 probably 45 minutes looking through every
6 dictionary in the house, she could not find the
7 definitions for these stems that she was
8 supposed to do for the next day. We got on the
9 computer and we spend probably an hour looking
10 for them. Not knowing if they were Greek or
11 Latin in origins or, you know, all we had were
12 five stems that we had to find a definition and
13 example of. She had been given an example and
14 her example that she'd copied off the board was
15 for ornet and she had written down cornet,
16 cornet hen. I questioned her and said,
17 [REDACTED], there's no such word as cornet. We
18 went through the computer. We looked at every
19 resource we had and she looked at me in tears
20 and said I cannot change this answer because,
21 if I do, Ms. Smith will be upset with me. This
22 is what my teacher told me to write down and
23 she may yell at me and she will be angry at me
24 if I change it. So that was the lightbulb for
25 me, that maybe it wasn't what we thought.

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1 Maybe it wasn't peers, it wasn't peer pressure
2 at school. That it was a concern with this
3 teacher. Every week when we would do homework
4 we would have the same problem. There would be
5 issues with I don't feel comfortable, I can't
6 -- I can't talk to her, I can't -- I can't do
7 this. Which was something we'd never seen in
8 the past from her.

9 Q: You said she loves school. How had she done in
10 school, her grades and academics, through this
11 year?

12 A: She's always done very well. She is on the
13 junior Beta Club, she's -- if I was -- if you
14 ask me -- of course, I'm sure every parent --
15 but if you ask me to define her, I would say to
16 describe her, she is very well rounded. She's
17 involved in student council, she's always done
18 very well in school. It's not uncommon and I
19 don't know that we've ever had a comment that
20 a teacher has listed, other than she's a
21 pleasure and a joy to teach and have in my
22 class. She's involved at church, she's on the
23 swim team, she's -- she's very involved. She's
24 not a type -- a shy timid child.

25 Q: And did she generally enjoy English language

1 arts as a course up until this year?

2 A: Yes, that -- that is actually her favorite. In
3 Kindergarten she decided she wanted to be an
4 English teacher or a librarian and that is --
5 that's her passion. She loves ELA, so to see
6 a child that now is in tears not wanting to go
7 to this class, something that always had come
8 easy for her -- on all of her standardized
9 tests she's always been at the top of her
10 charts in this -- in this subject. That now
11 she was at the point she was discouraged and
12 didn't -- not even didn't want to go to school.
13 She didn't want to be in this class, which is
14 something she loves.

15 Q: All right. You refer to an anxiety attack she
16 had when your husband is driving the car and
17 she goes in and speaks to a counselor. What
18 happened after that?

19 A: My husband and myself also spoke with Ms. Lyn,
20 the school guidance counselor, and we decided
21 we felt like, her parents, the best thing to do
22 was to encourage her to open those lines of
23 communication with Ms. Smith. We assured her
24 Ms. Smith would not hurt her. Her feelings may
25 be hurt, but that would be it, and she would be

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1 fine. But she had to open that communication
2 and she had to feel like she could talk to this
3 teacher. That was -- that was what it was
4 going to take.

5 Q: To your knowledge, did [redacted] have this
6 conversation with Ms. Smith?

7 A: No, she did not.

8 Q: And why, to your understanding, did she not
9 have the conversation?

10 A: It took about two weeks. We gave her about two
11 weeks, Ms. Lyn and myself and my husband,
12 hoping she would do that herself and she -- she
13 never did. There was anxiety when we
14 questioned her, have you spoken with Ms. Smith,
15 and the only explanation [redacted] could give me
16 was I do not want to draw any attention to
17 myself.

18 Q: The day that she met with the counselor the
19 first part of school, you described when your
20 husband brought her to school.

21 A: Yes, ma'am.

22 Q: Was she able to attend school the rest of that
23 day?

24 A: Yes, after speaking with the guidance
25 counselor, while we were working on a plan,

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1 what we were going to do to help [REDACTED], it
2 was -- it was -- it was kind of enlightening,
3 in my opinion, for all of us that after that
4 first bell rang and that first period was over
5 her demeanor and the anxiety just completely
6 went away. She carried on with the rest of her
7 day.

8 Q: Now, if you recall Mr. Nichols took your
9 deposition by telephone. Do you recall that?

10 A: Yes, ma'am.

11 Q: And during the deposition he asked you whether
12 your daughter was receiving counseling and I
13 believe you responded she was.

14 A: She was and, in that, I meant that she was
15 working with Ms. Lyn, the school guidance
16 counselor, in trying to help her resolve --
17 help us resolve this, this problem.

18 Q: So she wasn't seeing a counselor for other
19 outside reasons than this?

20 A: No, ma'am, not at all.

21 Q: Okay. Did you attempt, yourself, to
22 communicate with Ms. Smith about these issues?

23 A: After giving [REDACTED] about two weeks we tried
24 to communicate via e-mail with Ms. Smith and
25 tried to come up with a plan and I think in

1 Q: Let me ask you this. Your daughter is in
2 seventh grade.

3 A: Yes.

4 Q: Did she want you and your husband to
5 communicate with Ms. Smith about any concerns
6 she was having?

7 A: No, ma'am.

8 Q: Why?

9 A: She -- she didn't want to be singled out. She
10 -- she expressed to us that other children that
11 had had some issues --

12 MR. NICKLES: I'm going to object to this line of
13 questioning. You're asking this parent to
14 repeat to you what her child told her that
15 other children told her child. I think that
16 goes beyond what we agreed.

17 Q: Okay. Let me ask you this. Based on your
18 conversations with your daughter -- don't share
19 what others told her, but based on your
20 conversations with your daughter, what did you
21 understand her anxieties to be?

22 A: [REDACTED] was very concerned that we spoke with
23 Ms. Smith. That then she -- there would be
24 more attention drawn, brought to her, and that
25 she could possibly become subject to some of

1 the actions she had seen other children in her
2 class go through.

3 Q: Okay. Did you understand from your discussions
4 with your daughter whether she was comfortable
5 asking Ms. Smith questions?

6 A: No, it is my understanding it was not uncommon
7 for -- if a question was asked, if [REDACTED]
8 asked a question, that the answer would be
9 you're in the seventh grade, you're in honors,
10 you should know the answer to that question.

11 Q: That's something your daughter experienced.

12 A: Yes, that is something she experienced.

13 Q: Were there ever -- from your discussions with
14 [REDACTED], were there ever any other occasions
15 while she was in Ms. Smith's class that she had
16 concerns with what happened at school that day
17 or in the classroom?

18 A: There was one day in particular. We were
19 helping [REDACTED] with her homework and she had
20 been instructed to log onto Compass Odyssey,
21 which to my understanding is a teaching tool.
22 It's not -- I understand that it's not a
23 requirement because not every child has access
24 to a computer when they get home from school.
25 [REDACTED] had been instructed to log on and

- 1 A: About two or three days later I got a phone
2 call, a frantic phone call from the school.
3 [REDACTED] had a stems test that she needed
4 signed and she needed me to return to the
5 school. If she didn't have it returned then
6 she was told she would receive a referral.
- 7 Q: What did you do after receiving that call?
- 8 A: I dropped what I was doing and immediately ran
9 to the school and signed the papers and I met
10 with Dr. Duquette and gave the papers, the
11 paperwork, to her.
- 12 Q: Did you, at some point, meet with the school
13 administration to discuss these concerns you've
14 just described?
- 15 A: Yes, ma'am, we did.
- 16 Q: If you could, still under tab 20, turn back one
17 page to the first page there. Does that look
18 like it would be an accurate reflection of the
19 day in which you met with administration?
- 20 A: Yes, ma'am.
- 21 Q: And what did you advise the administration your
22 concerns were regarding your daughter during
23 this conference?
- 24 A: We were concerned that our child emotionally
25 was not in a safe place. She felt very

1 overwhelmed and she was scared to go to school.
2 She was scared to confront this teacher and we
3 didn't feel like it was an environment in which
4 she could meet her full potential in this
5 classroom.

6 Q: To your knowledge -- to your knowledge, did you
7 determine this anxiety had to do with any other
8 teacher or anything else at school outside of
9 Ms. Smith's classroom?

10 A: No, ma'am.

11 Q: At some point later in the school year -- well,
12 let me ask you this. Did your daughter -- did
13 [REDACTED]'s anxieties continue after this
14 September meeting with Ms. Smith?

15 A: With Dr. Duquette?

16 Q: Excuse me, yes.

17 A: Yes.

18 Q: After you had this meeting with Dr. Duquette
19 did your daughter, [REDACTED], continue to have
20 concerns in Ms. Smith's class after that time?

21 A: Yes, ma'am.

22 Q: And what did you observe in your home
23 personally that led you to believe she --

24 [REDACTED] continued to have concerns?

25 A: There were tears every night. Tears, fear for

- 1 the next day, what she would walk into in her
2 first period class.
- 3 Q: What grade did your daughter have in the class?
- 4 A: At the time of these complaints it was a 98 or
5 a 99 average.
- 6 Q: So was she concerned about her grade?
- 7 A: No, ma'am.
- 8 Q: What did you determine from your observation
9 she was concerned about?
- 10 A: She was concerned that she may be singled out
11 and embarrassed or humiliated in front of her
12 peers.
- 13 Q: At some point did you become aware that Ms.
14 Smith was no longer at the school?
- 15 A: I did.
- 16 Q: How did you become aware of that?
- 17 A: It's -- it's been a practice of mine every day
18 when I get my children home from school, the
19 first questions I ask are how were your day,
20 how -- how was your day today and the day that
21 my child looked at me and smiled and said it
22 was great, I had a sub in Ms. Smith's class,
23 was -- was the day.
- 24 Q: After the day, whenever that was that you had
25 the conversation with [REDACTED], do you recall

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1 her having any further anxiety on any other day
2 after that day?

3 A: No, ma'am.

4 Q: You can answer whatever questions.

5 MS. [REDACTED] EXAMINATION BY MR. NICKLES:

6 Q: [REDACTED] my name is Al Nickles. We spoke
7 on the phone the other day, do you remember
8 that?

9 A: Yes, sir.

10 Q: And I asked you some questions about your
11 communications with Ms. Smith. Do you remember
12 answering my questions?

13 A: Yes, sir.

14 Q: You were under oath at that time and you
15 attempted to tell me the truth then, did you
16 not?

17 A: Yes, sir.

18 Q: I asked you back then on the 17th of March if
19 you had any meetings with Ms. Smith concerning
20 your daughter during the 2010-2011 school year.
21 Did you have any meetings with Ms. Smith?

22 A: The only time that I met with Ms. Smith was at
23 the open house for the school and that was a
24 brief -- brief encounter.

25 Q: And you didn't take away from that meeting any

- 1 fears or apprehensions about Ms. Smith, did
2 you?
- 3 A: No, sir.
- 4 Q: Had you ever been to Ms. Smith's classroom
5 while your daughter was present in the
6 classroom?
- 7 A: No, sir, I did not.
- 8 Q: You said that you had a meeting with Ms.
9 Duquette, I believe.
- 10 A: Yes, sir.
- 11 Q: That's the assistant principal, correct?
- 12 A: Yes.
- 13 Q: Was Ms. Smith in that meeting?
- 14 A: No, she was not.
- 15 Q: Do you know if any information was provided to
16 Ms. Smith about that meeting?
- 17 A: That, I'm not aware of.
- 18 Q: Okay.
- 19 A: All I had to go on what was I was told.
- 20 Q: Now, you had provided I believe an e-mail and
21 you have a book in front of you that is Exhibit
22 Number Twenty and I think you've made reference
23 to it earlier, is that correct?
- 24 A: Yes, sir.
- 25 Q: I want to make sure I've got the sequence in

1 Sordian has some stuff in here. All the names
2 are blacked out, so I'm having to read it to
3 see where --

4 Q: I understand.

5 A: Where they're from. On the first page after
6 the tab the -- the top e-mail is from me
7 replying to something Ms. Sordian sent. The
8 next page is from -- is between me and Ms.
9 Sordian. Then there's one that I sent to Ms.
10 Smith that I didn't get a reply on.

11 Q: You could use these e-mails and documents
12 however you see fit, but please advise the
13 Board the concerns you have that involve your
14 son in this class and what you did to attempt
15 to address those concerns directly with Ms.
16 Smith.

17 A: Well, I had been, you know, in my house we take
18 school seriously and education very seriously
19 and I knew that my wife was trying to get
20 answers to some questions and that she was
21 frustrated with what she perceived as a lack of
22 response, so in an effort to -- because she
23 teaches school and she's an employee of the
24 School District. I figured I should be the one
25 that -- to take the -- the banner, so to speak.

1 So I reached out to Ms. Smith and gave her my
2 concerns that -- about the grade and the test
3 and there were some grades missing and I didn't
4 get any response from her. So I reached out to
5 Ms. Sordian to see if there was something else
6 I needed to do or could we get a conference
7 because, being that the nine weeks was coming
8 up, the grades were going to be finalized. I
9 wanted to make sure that we got all these --
10 you know, if [REDACTED] earned a 73 then he earned
11 it and he'll have to suffer the consequences.
12 But he had not earned that in any other course.
13 He had not -- that had not been his --
14 historically, his grading through his whole
15 academic career so far. So why all of the
16 sudden were we having a problem in a subject
17 that he'd always done well in and likes. He
18 likes ELA, he likes to read, so I did get a
19 reply from Ms. Sordian that she had gotten my
20 e-mail and that gave me a time for a conference
21 and I made arrangements to be there and we went
22 and had a conference. Some of my questions
23 were still not answered. They were supposed to
24 be. I was supposed to get some things cleared
25 up that day and we still didn't get it done, so

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1 I sent Ms. Sordian another e-mail saying that
2 we hadn't gotten it done and then some of the
3 grades -- by the end of the thing, the grades
4 were adjusted. I don't remember what his grade
5 was. It wasn't a 73, though.

6 Q: You said you had a conference. Who was at that
7 conference?

8 A: Ms. Smith, Ms. Sordian, Dr. Duquette, myself,
9 and my wife.

10 Q: Describe for the Board how that conference
11 went, please.

12 A: Well, we arrived at the school and went -- we
13 were shown into the conference room at the
14 middle school. Ms. Sordian was there and told
15 me who was going to be there. Ms. Smith came
16 in and she was carrying a laptop computer that
17 she sat down in front of her and she was
18 sitting across the table from us and the
19 computer was between my -- between me and her,
20 basically just kind of to my left and the
21 computer was sitting -- on a laptop sort of
22 like the one you've got there, and it was
23 between our line of sight and she spent a lot
24 of time dealing with the computer and not
25 really paying any attention to, I didn't think,

1 what we were trying to have a conversation.
2 Ms. Sordian asked her to remove the computer
3 and I think she said she was trying to log onto
4 something and the WiFi wasn't working or
5 whatever. We did have a conversation and it
6 was pleasant. Nobody got, you know, angry or
7 out of the way. We had a discussion. We asked
8 questions, my wife and I both, to Ms. Smith of,
9 you know, what was the deal with the test and
10 the retake and she said he had retaken it and
11 that some of the missing grades from earlier in
12 the quarter were projects that she wanted to
13 discuss with the students individually and she
14 was going through by alphabet to get to each of
15 them, which was fine. But we were dealing with
16 -- I think one of them was a month, over a
17 month. They had not been graded and it was a
18 project and I thought that that was plenty of
19 time for her to have been able to meet with
20 [REDACTED] and discuss it with him or at least
21 tell us what her initial thoughts were at that
22 meeting. She didn't have any of those grades
23 with her and she was asked to provide them to
24 us that day. I didn't think that Ms. Smith's
25 demeanor was necessarily appropriate for what

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1 we were doing. She seemed distracted, not only
2 by the computer, but she just, overall, she
3 seemed distracted from -- from what was going
4 on in front of her.

5 Q: When you concluded the conference did you
6 ultimately get the issues resolved?

7 A: Well, the grades were put in. I know one of
8 them, the run-on sentence grade, was averaged
9 with a new score into the old score. That
10 paperwork came home with [REDACTED] and I looked
11 at it and there was -- I sent a note back to
12 Ms. Smith. There was still things missing and
13 I questioned the -- the grade on the, you know,
14 what about the run-on sentence test. Before he
15 got a grade on it she said that he had -- he
16 needed to see her to retake it and I said,
17 well, you told us in our conference that he
18 already took it, so where's the new grade, and
19 he's either taken it or he hasn't. He said he
20 did, she said he did. Now we're being told
21 that he had not taken it. Eventually we got
22 the grade of 70 that was averaged with the
23 original test grade, I don't remember what it
24 was, to come up with a new grade. So I asked
25 Ms. Sordian was that a common practice for the

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1 two grades to be averaged because if it's a
2 retake for whatever reason, if they're not
3 going to retake it, I felt like then the first
4 one was garbage. Should be thrown out. The
5 second one would be the grade. When I
6 eventually got the test in my hand, there was
7 nothing marked on it, but the grade, other than
8 the -- the answers that [REDACTED] circled, A, B,
9 C or D, or wherever the period or coma was
10 supposed to be or was missing. There was no
11 feedback for me, as a parent, to go over with
12 [REDACTED], as the student, to say this is why it
13 is you missed this. There's nothing marked on
14 that paper, other than a seven and a zero, you
15 know, blue highlighter pen. That's what it
16 looked like, blue highlighter ink. So it was
17 no feed -- he didn't know why he scored a 70,
18 he didn't know what he'd done wrong, so really
19 no answers. We never really got a resolution
20 completely. The grades ended up getting put
21 into Power School and his first quarter grade
22 was whatever it was, a B. He's been on the AP
23 Honor Roll since he's been in middle school and
24 he was before that period also.

25 Q: As a parent, why do you -- you think it's

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1 important to have an effective communication in
2 relationship with your child's teachers?

3 A: Because I think that we are a team. I do not
4 send my child or my children to Horry County
5 Schools to be their parents and to provide the
6 only education that they'll ever get. I have
7 a responsibility also. Parents have the first
8 responsibility. We have a lot of standards,
9 national, state, local standards with the No
10 Child Left Behind. None of that stuff
11 addresses parenting and I think parenting is a
12 big part of it and I take that very seriously
13 and so does my wife and I feel that we're a
14 team and me, my wife, [REDACTED], and his
15 teachers, we all have to work together to make
16 sure he has a good quality education.

17 Q: And from your perspective, did you have an
18 effective communication with Ms. Smith and an
19 effective relationship with her as [REDACTED]'s
20 teacher?

21 A: I did not think that we did at all. I feel
22 like that I tried to communicate with her. I
23 wanted to be -- and I wanted to communicate
24 with her. She was [REDACTED]'s teacher and I
25 don't have any control over who is hired or who

1 teaches my children and so he has who he had.
2 I wanted to be their friend and talk to them
3 and work out any issues and those communication
4 -- that communication did not take place. I
5 felt like it was one-sided.

6 Q: Thank you. Please answer whatever questions
7 the other attorneys might have for you.

8 MR. [REDACTED] - EXAMINATION BY MR. NICKLES:

9 Q: We meet again.

10 A: Hey, how are you?

11 Q: How are you?

12 A: Good.

13 Q: Mr. [REDACTED], we met back on the 16th of March
14 in a deposition, is that correct?

15 A: Yes, sir.

16 Q: And I put some questions to you in that
17 deposition. Do you remember?

18 A: Yes, sir.

19 Q: We talked a little bit about your
20 communications with Ms. Smith and your
21 communications with the administration at the
22 Conway Middle School, is that correct?

23 A: That's correct.

24 Q: I also asked you, I believe, whether you had
25 gone into Ms. Smith's classroom and done any

1 observations in the classroom. You did not,
2 did you?

3 A: No, sir. The only time I would have been in
4 her classroom was on an open house.

5 Q: And we talked a little bit about the type of
6 information that's sent from any teacher to a
7 parent at the middle school level, do you
8 remember that?

9 A: Yes, sir.

10 Q: One of the things that teachers send -- not
11 just Ms. Smith, but other teachers send
12 progress reports, isn't that right?

13 A: Correct.

14 Q: And Ms. Smith did send progress reports back
15 and you or your wife signed off on some grades
16 and other things, correct?

17 A: Yes.

18 Q: Now, you also spoke with a representative of
19 the District after Ms. Smith left your son's
20 classroom, correct?

21 A: I did.

22 Q: And he had some questions for you that you
23 provided answers to, correct?

24 A: Yes, sir.

25 Q: One thing he asked you is if you had any

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1 COURT REPORTER: Please state and spell your name for
2 the record.

3 MS. WILLIAMS: Okay. My name is Yvonne Williams.
4 And my name is spelled, Y-V-O-N-N-E and
5 Williams, W-I-L-L-I-A-M-S.

6 MS. WILLIAMS - EXAMINATION BY MR. WILLIAMS:

7 Q: Ms. Williams, I have a terrible memory but I
8 think I can remember your last name, given what
9 mine is. Tell the Board what your position is
10 with Horry County School?

11 A: I teach at Conway Middle School and I teach a
12 combination of language and fluency, sixth and
13 seventh grade.

14 Q: How long have you taught at Conway Middle
15 School?

16 A: I've been at Conway Middle School for ten
17 years.

18 Q: And do you have any experience in the District
19 before going to Conway Middle School?

20 A: Briefly, I was at Aynor for a semester. They
21 had a teacher retire, so I started in January.

22 Q: Do you know Ms. Jacqueline Smith?

23 A: I do.

24 Q: And when did you meet Ms. Smith?

25 A: Last school year, '09, '09-'10.

1 Q: Okay. I think you mentioned in ELA department
2 at your school?

3 A: Yes.

4 Q: Did you have any leadership role with that
5 department during the '09-'10 school year?

6 A: I did. I was the department chair for English
7 language arts.

8 Q: Did you have any interaction with Ms. Smith in
9 your role as department chair?

10 A: Well, yes, just to make sure she had what she
11 needed as far as supplies and kind of acclimate
12 her to the school and then also we had monthly
13 meetings for the department.

14 Q: Okay. And how would you describe your
15 interactions with Ms. Smith during the '09-'10
16 school year?

17 A: My interactions. Well, she was new and, not
18 knowing anything about her, I didn't know if
19 she had been teaching longer than me or
20 anything, so just kind of trying to feel her
21 out to see if she needed anything. But she
22 seemed pretty independent and she gave me
23 support.

24 Q: Okay. Do you assume any extra curricular
25 assignments at Conway Middle School?

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1 A: I do.

2 Q: And what -- tell us what would you do at Conway
3 Middle School as far as extra curricular
4 activities.

5 A: Okay. I started their step team and I called
6 them CMS Diamond Steppers. Demonstrating
7 intelligence and motivation over negative
8 distractions. They asked me to -- the young
9 ladies approached me about sponsoring the group
10 and I didn't know much about step, so I told
11 them the only way I would do it is if they have
12 study hall before they have practice. The
13 first year study hall was 30 minutes and this
14 year it was 45 minutes and I partner up the
15 young ladies if they need support in any of the
16 academic areas. So I'm the coach and then I
17 have two students from a high school that
18 actually teach them the step.

19 Q: Do you get any additional compensation from the
20 District for doing that?

21 A: No. Well --

22 Q: We're not suggesting it for purposes here. But
23 tell the Board about the students that are on
24 your step team in terms of their grades and
25 that sort of thing.

- 1 A: Six through eighth grade and seventh and eighth
2 grade I did tryouts at the end of the year and
3 then at the end of September is when I had
4 tryouts for sixth graders as well.
- 5 Q: Okay. And how well do you feel like you've
6 gotten to know the students on your step team
7 over the year?
- 8 A: Really well.
- 9 Q: All right. And do you help them out with
10 homework?
- 11 A: I do.
- 12 Q: And during the '09-'10 school year did you help
13 with any homework in Ms. Smith's class?
- 14 A: I did.
- 15 Q: Tell me how that came about.
- 16 A: I asked the students if they're having any
17 issues or problems with classes, if they need
18 help in any academic area, and since my
19 expertise is English Language Arts then
20 certainly they would ask me to help them with
21 that. In that, I had students that had
22 homework and they were somewhat confused about
23 what was being asked of them. So they asked me
24 to look at it and I did and I was not sure what
25 was being asked of them.

- 1 Q: So once you looked at the assignment and you
2 were unsure of what was being asked, what was
3 your next step?
- 4 A: They asked me if I would confer with Ms. Smith
5 so that I would be able to help them.
- 6 Q: Okay. And did you do that?
- 7 A: I tried to. The night before is when the
8 question was asked of me and then when I went
9 to lunch in the cafeteria the girls said, Ms.
10 Williams, did you ask her, and I said, oh, let
11 me ask her now. And so I went over to her and
12 I was --
- 13 Q: When you say her, so the Board will know.
- 14 A: Oh, I'm sorry. I went over to Ms. Smith.
- 15 Q: Okay. And what happened when you went over to
16 Ms. Smith?
- 17 A: And I said, Ms. Smith, these ladies, they have
18 questions about homework. I was going to help
19 them, but I wasn't sure, you know, what needed
20 to be done and so I was asking her, and she
21 said they know what to do, they know what to
22 do, and so she proceeded past me. She went to
23 the table and she said, y'all, you know what to
24 do. It's not like this is something new. Open
25 up the book, it's the same thing. And so I

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1 didn't say anything else and one of the girls
2 was left literally in tears and it was
3 frustrating for me because I still didn't
4 really have an answer to be able to help them.

5 Q: So did Ms. Smith ever respond to you and
6 provide the information that you had asked so
7 you could help the girls?

8 A: Not at all.

9 Q: Okay. And how would you describe the reaction
10 of the girls once Ms. Smith had that exchange
11 with them?

12 A: Some were angry. Some were angry, but some
13 were -- I wouldn't say scared, but totally
14 intimidated where, like I said, to tears. It
15 was one specifically and I just -- I don't
16 know, it was very awkward.

17 Q: Okay. What school year that the incident you
18 just described happen?

19 A: '09-'10.

20 Q: Were you also --

21 A: '10.

22 Q: -- I'm sorry. Were you also a colleague of Ms.
23 Smith's during the current school year, the
24 '10-'11 school year?

25 A: Yes.

1 Q: Anything else occur during that same time
2 period?

3 A: Yes, and two students came in and she said
4 where were you and they said we went to Dr.
5 Duquette's office. You didn't have permission
6 to go to Dr. Duquette's office and she doesn't
7 have the right to do that, so she goes in and
8 she uses the phone and she's loud, because I
9 can hear her and I'm at the computers where
10 students are as well, and she was just, you
11 know, saying some things to Dr. Duquette like,
12 this is what I'm talking about. This is what
13 y'all keep doing and whatever, whatever, and --

14 Q: Was she loud enough for students to overhear?

15 A: Yes.

16 Q: Were students present when she was talking or
17 in the area?

18 A: Yes, they were standing there.

19 Q: Based on what you observed yourself, your
20 personal observations, how would you describe
21 Ms. Smith's interactions with her students?

22 A: I would say she's rough around the edges. I
23 mean, if I, as a student, I probably too would
24 be a little hesitant to ask a question.

25 Q: You talked about your step team members during

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1 being a parent as well.

2 MR. HARDEE: You build relationships by how you
3 interact with them?

4 A: Yes, sir.

5 MR. HARDEE: Thank you.

6 MR. CHAIRMAN: Mr. DeFeo?

7 MR. DEFEO: How long have you been teaching?

8 A: Ten years.

9 MR. DEFEO: Based on what you know right now, would
10 you want your children to be in Ms. Smith's
11 class?

12 A: I would not be comfortable at all with that,
13 no.

14 MR. CHAIRMAN: Any Board members have any other
15 questions? Thank you, Ms. Williams.

16 (Off the Record Discussion)

17 MR. WILLIAMS: The Administration calls Margaret
18 Sordian.

19 MARGARET BRINKLEY SORDIAN, being duly sworn,
20 testifies as follows:

21 COURT REPORTER: Please state and spell your name
22 for the record.

23 MS. SORDIAN: My name is Margaret Brinkley Sordian
24 and it's Margaret, M-A-R-G-A-R-E-T, Brinkley,
25 B-R-I-N-K-L-E-Y, and Sordian, S-O-R-D-I-A-N.

1 Q: And she was a teacher at Conway Middle --
 2 A: Yes, sir.
 3 Q: -- at the beginning of the year? And what was
 4 her teaching assignment for the 2010-11 school
 5 year?
 6 A: Ms. Smith was assigned as a seventh grade
 7 English Language Arts teacher. She had one
 8 accelerated class, one honors class and two
 9 regular education classes.
 10 Q: And did you have to address any concerns with
 11 Ms. Smith during the 2010-11 school year?
 12 A: Yes, sir.
 13 Q: How did you generally become aware that there
 14 were concerns regarding Ms. Smith?
 15 A: Concerns were initially brought to me by
 16 parents, students and our assistant principal
 17 of seventh grade.
 18 Q: Okay. And when you received concerns regarding
 19 Ms. Smith, did you make her aware of those
 20 concerns?
 21 A: Yes, sir.
 22 Q: Explain to the Board how you generally handle
 23 parent complaints at your school.
 24 A: Okay. Normally, all of our teachers work on
 25 teams. So Ms. Smith is our four-man team where

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1 there's a math, social studies and science
2 teacher. And when we have a parent concern,
3 the first thing we do is we ask the parent to
4 please speak with the teacher or ask if they've
5 spoken to the teacher. If a parent has not
6 spoken to the teacher, then that's where I seem
7 to go first before they come to me and it's
8 after any problem that they have getting
9 resolved that they would come to me if they
10 couldn't resolve it at the teacher level or one
11 of the other administrators.

12 Q: If I could get you to turn to tab number 13.
13 There's a black binder in front of you and
14 there are two pages of documents there that you
15 had identified. The first page is a
16 handwritten statement.

17 A: Yes, sir. The first page is a note written by
18 me to Ms. Smith dated September 10, 2010.

19 Q: And what was your purpose in writing that note
20 to Ms. Smith?

21 A: This was a note that I left to you asking her
22 to come and speak with me to discuss some
23 parent concerns and some classroom concerns
24 that I had.

25 Q: Do you recall the type of parent concerns you

1 were getting regarding Ms. Smith?

2 A: Yes, sir.

3 Q: Tell me what types of complaints you were
4 getting.

5 A: I had concerns from parents that students were
6 having trouble getting clarity on assignments,
7 knowing what was expected of them, what work
8 they had to do and how they had to do it to
9 know that their work was good enough. There
10 was concern of grades that were missing for
11 students where the parents said their children
12 had turned in the work and not received credit
13 for it. I had concerns about map testing being
14 timed; other assessments given during map
15 testing; children being told that they would
16 have to stay after school if they didn't finish
17 their map testing; and children concerns as
18 well. Do you want me to speak to that?

19 Q: And also speak to any concerns of your
20 students.

21 A: Okay. Students are told at Conway Middle and
22 encouraged that if they ever have a problem,
23 that they first should speak to their teacher
24 or come to an administrator if they feel like
25 they need some help. And children in the

1 seventh grade would go to our seventh grade
2 administrator, Dr. Duquette, or they could see
3 any other adult or me. And I did have a couple
4 of students approach me individually about
5 problems that they had. One child, her problem
6 was with a report that they were supposed to
7 type and turn in, a piece of poetry, and the
8 child was supposed to go to the media center to
9 type it but she was never given clear
10 directions on when to go to the media center
11 and she did not have her material prepared
12 because it was not typed. And she came to me
13 because she was afraid that if she tried to
14 turn it in, it wouldn't be accepted.

15 Q: The concerns you just described for the report,
16 did you meet with Ms. Smith and share those
17 concerns with her?

18 A: Yes, sir. Whenever there was a comment by a
19 child, we did bring that to her attention.

20 Q: There are a series of documents under tab
21 number 14. If you could turn to that tab and
22 tell me what those documents are.

23 A: The first document is conference summary notes
24 from a conference that was held on September 10
25 and in that conference were Ms. Smith, Dr.

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1 Duquette and myself.

2 Q: Okay. And can you look at that first paragraph
3 there and tell what was the purpose of that
4 conference?

5 A: Yes, sir, I can.

6 Q: What was the purpose of the conference?

7 A: The purpose of the conference was to meet with
8 Ms. Smith and share with her the concerns that
9 had been brought to us at this point and to let
10 her know that the concerns were continuing. We
11 were receiving concerns from children across
12 the board, from her accelerated, honors and
13 regular ed classes and their parents and these
14 are just samples of some of the things that had
15 happened up until that point or had been
16 reported.

17 Q: And what's in the next document just briefly
18 there?

19 A: The next document is another conference summary
20 dated September 16th and that conference was
21 attended by a father and mother and Dr.
22 Duquette and myself.

23 Q: Okay. What about the next document?

24 A: The next document is conference summary notes
25 from September 16, 2010 for a conference that

1 Ms. Smith attended with a child's father,
2 myself and Dr. Duquette.

3 Q: So Ms. Smith would have been present at the
4 conference you just described?

5 A: Yes, sir.

6 Q: How would you describe the conference with
7 parents and Ms. Smith in terms of Ms. Smith's
8 conduct during those meetings?

9 A: In the the conferences that Ms. Smith attended,
10 for the most part she seemed to fumble around
11 with papers, didn't look directly at the
12 parents and often did not answer the question
13 that the parent was posing.

14 Q: Did you have any concerns with the way Ms.
15 Smith conducted herself in those meetings?

16 A: Yes, sir, I did.

17 Q: Did you express those concerns to Ms. Smith?

18 A: At one point during two of the meetings, I had
19 to remind everyone in the room that we needed
20 to stay calm.

21 Q: And what was your purpose in reminding everyone
22 to stay calm?

23 A: Whenever you meet with your parents, of course,
24 they're customers just like your students and
25 we want to do everything that we can to make

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1 A: Well, from looking at her grades, we were very
2 concerned that two of her regular classes that
3 as many as 45 percent of the children in one
4 class were receiving unsatisfactory grades of
5 D's and F's and in another class as many as 47
6 percent. In the accelerated class, we have 11
7 percent that were failing and that's very
8 unusual for an accelerated group of students.

9 Q: Other than the parental complaints and the
10 grade issue that you just discussed, did you
11 have any other concerns with Ms. Smith based on
12 your own observations?

13 A: Yes, sir.

14 Q: Tell me or share with me those concerns.

15 A: Those complaints are turned in on Fridays to
16 our curriculum coaches and that's one of the
17 procedures that we follow at Conway Middle
18 School. And one of our curriculum coaches made
19 me aware of the fact that Ms. Smith was missing
20 her lesson plans for four or five weeks. And
21 we had five weeks in a row that she did not
22 turn in her lesson plans to the curriculum
23 coaches. I observed in her room several times
24 and there were a couple of the observations
25 that I observed that I had concerns about as

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1 Q: Please turn to tab number eight and identify
2 that document for the Court.

3 A: This is a letter that I wrote to Ms. Smith
4 dated October 11, 2010.

5 Q: What was your purpose in writing this October
6 11th letter to Ms. Smith?

7 A: I wrote this letter to Ms. Smith as a recap of
8 a meeting that we held that Mr. Dale attended
9 with her. He's the representative from the
10 South Carolina Education Association. And
11 during this meeting, we did discuss parent
12 concerns, student concerns and classroom
13 instruction. And as a result of that meeting,
14 I had made the suggestion to Ms. Smith that I
15 would like to implement a teacher assistance
16 plan, an individualized assistance plan. And
17 Ms. Smith at that time had said that she was
18 not in agreement with my recommendation.

19 Q: And what were you trying to accomplish by
20 implementing the assistance plan?

21 A: Our goal is to always make sure that we are
22 doing the very best we can for our students.
23 And if there are concerns that we can improve
24 upon, assistance plans are not I got you.
25 They are designed to help the teacher be better

1 at her craft and to help the children be more
2 successful. So this would be what we would do
3 as an administrative team to provide
4 assistance, support and recommendations to help
5 the teacher experience greater levels of
6 success.

7 Q: And what was Ms. Smith's reaction to your
8 recommendation of the assistance plan?

9 A: Ms. Smith was adamantly opposed and said she
10 did not agree with an assistance plan.

11 Q: What was your response as her principal to her
12 reaction to your offering the assistance plan
13 or your discussing an assistance plan?

14 A: Of course, I was disappointed to hear that she
15 was not willing to participate in that
16 professional growth. And to be quite honest,
17 I was very surprised. In all my years in
18 education, I've never had a teacher refuse to
19 accept assistance.

20 Q: Please turn to tab number seven and identify
21 that document for the Court.

22 A: This is a letter that I wrote to Ms. Smith
23 dated October 19, 2010.

24 Q: What was the purpose of your October 19th
25 letter to Ms. Smith?

1 A: This was a letter of reprimand in regards to a
2 professional development training that we had
3 scheduled with the District Learning Specialist
4 for English Language Arts. Ms. Smith did not
5 report to the meeting on the time that we had
6 scheduled for the meeting to begin and the rest
7 of the group waited until she came. And when
8 you block off the time, it's very critical that
9 everybody gets there so you can get the most of
10 the training sessions. And at one point during
11 the meeting when she came, she did not have the
12 materials that she needed. So once again, we
13 had to stop where we were so that she could go
14 get materials and come back.

15 Q: Okay. Please turn to tab six and identify that
16 document for the Court.

17 A: This is a letter that I wrote to Ms. Smith
18 dated October 21, 2010.

19 Q: And what was the purpose of that October 21st
20 letter to Ms. Smith?

21 A: The purpose of this letter was to let Ms. Smith
22 know about a meeting that I had planned in
23 hopes that she would attend certainly.

24 Q: Okay. Please turn to tab five as we're going
25 backwards and identify that document to the

1 Court.

2 A: This is a letter that I dated October 25, 2010
3 and addressed to Ms. Smith.

4 Q: Okay. And what was the purpose of the October
5 25th letter?

6 A: Several attempts were made to get Ms. Smith to
7 attend a meeting and the first meeting she
8 missed. And so we rescheduled the meeting for
9 Monday after she missed the Friday meeting.
10 She didn't come to school on Monday. She
11 called in sick. So we had to reschedule the
12 meeting again and this time we rescheduled the
13 meeting for Tuesday, October the 26th at 2:45
14 at the District Office.

15 Q: Did Ms. Smith attend the October 26th meeting?

16 A: No, sir, she did not.

17 Q: Did you make any arrangements for her to attend
18 the meeting?

19 A: Yes, sir. In addition to this letter and e-
20 mail verification, I had a curriculum coach
21 scheduled to go to her class. Normally, we
22 wouldn't take a teacher away from instructional
23 time for a meeting but because we had had
24 several attempts and not been successful, this
25 was the time available for Mr. Curlee to meet

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1 with us at the District Office. When the
2 teacher, the curriculum coach, went to Ms.
3 Smith's room to release her so she could come
4 to the District Office, she refused to come and
5 stated in front of the students in the
6 classroom --

7 MR. NICKLES: I object to anything that may have
8 been reported to her or that Ms. Smith may have
9 said to a third party.

10 Q: Based on -- don't say what Curlee told you, but
11 did you reach any conclusions regarding Ms.
12 Smith's willingness to participate with meeting
13 with you and Mr. Curlee on the 26th?

14 A: Yes, sir.

15 Q: What conclusions did you reach?

16 A: That she refused to come. She did not show up
17 for the meeting.

18 Q: Were you ever asked to summarize your
19 experiences with Ms. Smith?

20 A: Yes, sir.

21 Q: I'll ask you to turn to tab 17 and identify
22 that document for the Court.

23 A: This is a statement prepared by me written on
24 November 2, 2010. It was prepared for Mr. Paul
25 Hickman.

- 1 Q: And is that statement an accurate summary of
2 your experiences as Ms. Smith's principal
3 during the 2010-11 school year?
- 4 A: Yes, sir, up until that point of November 2nd.
- 5 Q: Based on your interactions with Ms. Smith this
6 school year, did you reach any conclusions
7 regarding her relationship with her students?
- 8 A: Yes, sir, I did.
- 9 Q: Tell me what conclusions you reached.
- 10 A: I felt like a good number of Ms. Smith's
11 students were afraid of her, fearful of asking
12 questions in her class for fear of
13 embarrassment or humiliation, and many, many
14 times very unclear of what to do with their
15 assignments. There was no clear example or
16 clarity of assignments and many were confused
17 as to what they should do.
- 18 Q: Do you support the recommendation that Ms.
19 Smith be terminated?
- 20 A: Yes, sir, I do.
- 21 Q: Please explain to the Board why you feel that
22 way.
- 23 A: I guess it was probably best stated this way.
24 One of the parents spoke to me and said if
25 parents are having to probe and repeat and ask

1 over and over for answers to questions for
2 clarity, then how in the world is a student
3 supposed to know how to do anything or get any
4 answers. In all my years as an educator, I've
5 been in a lot of situations where there have
6 been students that are confused or parents that
7 were confused and we know that usually we can
8 come to a resolve in any situation. And
9 teachers are there to teach our children and
10 affect our future. There was no building of
11 relationships that I could see. I had children
12 that did not feel comfortable in a classroom.
13 And in all of my years, I've never had a
14 teacher refuse assistance for help. And as an
15 instructional leader responsible for what goes
16 on in your building, I'm baffled as to how I
17 can possibly help an educator who refuses to
18 accept assistance.

19 Q: Please answer any questions Mr. Nickles or Mr.
20 Mazyck may have for you.

21 MS. SORDIAN - EXAMINATION BY MR. NICKLES:

22 Q: Ms. Sordian, my name is Al Nickles. We met
23 before today, have we not?

24 A: Yes, sir.

25 Q: I took your deposition back in February. Do

1 what we call formal evaluations. We call it
2 contract with conditions, a continuing contract
3 with conditions because Ms. Smith was on a
4 continuing contract. So to answer your
5 question, that would have been outside our
6 process of procedures to put Ms. Smith on a
7 formal evaluation. And I will say we did not
8 discuss the possibility of putting her on
9 formal evaluation at that time because we, the
10 folks in HR, had discussed the situation and
11 wanted to give her an opportunity for a fresh
12 start in a new school.

13 Q: And would being placed on a formal evaluation
14 prior to going to a new school have given her
15 the opportunity for a fresh start?

16 A: That's what I think it would have indicated at
17 that point in time that there were concerns
18 with her performance and that was not our
19 intent at that time.

20 Q: And let me ask you this. Would a formal
21 evaluation process even be an appropriate
22 mechanism to address the student, excuse me, to
23 address the teacher who's engaging in a conduct
24 that was described in your February 2008
25 letter?

1 A: Correct.

2 Q: You had personal involvement with Ms. Huddle's
3 concerns at Ocean Bay Middle School?

4 A: Correct.

5 Q: And you had had personal involvement with Ms.
6 Sordian's concerns at Conway Middle School, is
7 that correct?

8 A: That is correct.

9 Q: And you had conversations with Mary Clark the
10 prior year when she was at Conway Middle
11 School?

12 A: That is correct.

13 Q: Did you then at some point discuss all these
14 issues with Dr. Elsberry and others?

15 A: I did. The concern I had, even though I had
16 not been in the classroom with Ms. Smith, the
17 concern I had were the patterns that I saw that
18 were developing. Basically when I went back
19 and looked at a letter that I had sent to Ms.
20 Smith on February of -- I think February 26th
21 or thereabout of 2008, some of the same issues
22 that I had referenced in that letter were some
23 of the same complaints that we were getting
24 from parents. That is, the communication, lack
25 of clarity, misunderstanding, students not

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1 having clear expectations for directions of
2 what they were to do, very same. So I did have
3 the conversation because I was concerned about
4 the patterns that I was seeing, the similarity
5 in three different locations, three different
6 principals but yet we were having the same
7 complaints.

8 Q: And these conversations you had with Dr.
9 Elsberry took place, I assume, in advance of
10 January 5, 2011?

11 A: Absolutely.

12 Q: And during those conversations with her, did
13 you discuss North Myrtle Beach Intermediate
14 School?

15 A: I did.

16 Q: Ocean Bay Middle School?

17 A: I did.

18 Q: And Conway Middle School?

19 A: Yes, ma'am.

20 Q: Do you support the administration's
21 recommendation or Dr. Elsberry's recommendation
22 to this Board that Ms. Smith's employment with
23 the District be terminated?

24 A: I do. I actually made that recommendation to
25 Dr. Elsberry for a lot of reasons, but

1 agree with it and I believe that was the second
2 time she had actually done that and when we
3 tried to develop an assistance plan. It makes
4 it very difficult to develop an assistance plan
5 when the person you're trying to work with
6 disagrees with the process or disagrees with
7 what's being developed.

8 MR. CHAIRMAN: John?

9 MR. POSTON: One simple question, Mr. Curlee. I
10 understand that Ms. Smith was put on
11 administrative leave from North Myrtle Beach
12 Intermediate in February of 2008?

13 A: That's correct.

14 MR. POSTON: Contracts would have been issued in
15 April of 2008 for the following year?

16 A: No, not the following year, that year.

17 MR. POSTON: For the following year.

18 A: Oh, I'm sorry, excuse me, I misunderstood you.
19 Yes, that is correct.

20 MR. POSTON: Would there have been time had the
21 administration taken the initiative or decided
22 to do so, that between the time that she was
23 placed on administrative leave in February and
24 when her contract was issued in April to have
25 issued that contract as a conditional

1 continuing contract instead of just a
2 continuing contract?

3 A: As far as time, I think the question would not
4 be a matter of time. There probably would have
5 been time, Mr. Poston. We actually moved her
6 to another setting, another school, and really
7 to move somebody to another school with
8 different administration or whatever --

9 MR. POSTON: I don't mean to interrupt you, but I
10 heard your testimony on the fresh start and I
11 understand the concept. But my question is
12 fairly simple. Had the administration not
13 chosen the new fresh start option at a new
14 school but it had chosen to go to a conditional
15 continuing contract with the April contract
16 issuance, would there have been to put that
17 process in place?

18 A: That could have been a decision that could have
19 been made at that school, yes, sir, if she had
20 remained at that school.

21 MR. HARDEE: Okay. The -- I don't have her, I
22 guess, her human resource file here in front of
23 us. Knowing that she was teacher of the year,
24 if I was to look in her file would we find
25 other honor aspects of her career at Horry

1 County Schools that are outstanding or do we
2 have some certain life event that happened
3 maybe in '07, '06 that's caused, you know,
4 maybe caused this manner of behavior? It seems
5 like we've got -- in every situation today
6 we've had instances where a pattern of behavior
7 is established. The best way I know to do it
8 is a lack of taking on a responsibility for the
9 actions. Is there anything I'm missing here
10 that hasn't been brought before us that's in
11 the file?

12 A: Not to my knowledge. Keep in mind I started
13 working with Ms. Smith when I assumed this
14 role. Prior to that I did not know Ms. Smith.
15 And as far as anything in the personnel file,
16 I'm not seeing anything in the personnel file
17 that you referenced that would state otherwise.
18 When I started dealing with Ms. Smith I
19 actually had a conversation with Ms. Graham
20 during the 2006-2007 school year. There were
21 some issues that began during that year and Ms.
22 Graham was able to handle them and I really
23 didn't get involved with Ms. Smith until the
24 next year.

25 MR. HARDEE: Okay.

1 MR. POSTON: I'm sorry. I've got to come back to
2 my question, Mr. Curlee. When I processed what
3 you said this is still in my head. You said
4 that the administration could have issued a
5 conditional continuing contract with conditions
6 but then you made reference that you couldn't
7 do it at that school. As I understand it, our
8 contracts are for our district employees
9 whatever school they go to, that we don't put
10 a condition on her on an additional contract,
11 those conditions would have carried with her no
12 matter what school she was assigned to, is that
13 correct?

14 A: That is correct, Mr. Poston, but it's a little
15 bit more to it than just the simplified version
16 that you gave because when you put somebody on
17 a formal evaluation there's an evaluation team
18 that's developed and that usually involves
19 people in the school in which you're at and
20 plus outside observers. We also before we just
21 place somebody off on an evaluation, we try to
22 make every attempt we can to deal with the
23 situation. In this case the superintendent, as
24 well as Mr. Little and the others, myself
25 included, were concerned more with the

1 A: Yes.

2 Q: And at some point was Paul Hickman asked to
3 play a role in this matter?

4 A: Yes, he was asked to compile the information
5 and put it together and that was -- I didn't
6 receive the entire report. I did receive the
7 executive summary and I felt like the executive
8 summary supported the reports that I had
9 received previously.

10 Q: Okay. So after receiving all this information
11 that we've mentioned, that you then wanted to
12 meet with Ms. Smith yourself, is that correct?

13 A: Yes.

14 Q: Why did you personally want to meet with Ms.
15 Smith?

16 A: Well, because this is such an important
17 decision. At this point, I was -- I was at the
18 point of considering termination. I just felt
19 like the offenses rose to the level that we
20 could no longer tolerate. The reports from
21 parents were just reprehensible and something
22 that I didn't want to allow in our schools. So
23 I needed to hear from Ms. Smith. I needed to
24 hear -- you've heard a lot about improvement
25 plans and assistance. I needed to know if

1 there was a chance that we could offer
2 something else that might provide -- would
3 allow Ms. Smith to be successful.

4 Q: And you met with her I believe on December 1st?

5 A: That's correct.

6 Q: If you would turn to the first tab in the black
7 notebook, please. Identify this document,
8 please?

9 A: This is the letter that was sent to Ms. Smith
10 on January 5th and it captures the meeting that
11 we had on December 1st.

12 Q: Okay. And to the extent you want to refer to
13 this, feel free to. But if you would please
14 describe for the Board your meeting with Ms.
15 Smith and what you learned from her during that
16 meeting or what you observed during that
17 meeting?

18 A: I met in my office with Ms. Smith and her legal
19 counsel as well as Ms. Mahoney. So the four of
20 us met for at least an hour. I don't know
21 exactly how long but I know it exceeded an
22 hour. And I felt like Ms. Smith was aloof. I
23 felt like she was -- she gave short answers,
24 what you heard earlier today, just yes, no, at
25 first, but then she began to share more

1 9, 2010. That was before you made your
2 recommendations in this case, correct?

3 A: For termination?

4 Q: Yes, ma'am.

5 A: Yes, it is.

6 Q: So while Ms. Smith was out on this
7 administrative leave where she didn't
8 communicate with folks. Apparently this was
9 solicited was sent somewhere by her former
10 principal. Statement of performance, Jackie
11 Smith. If you look at the second page of this,
12 actually at the bottom of the page. It says,
13 so each time there was concern expressed I
14 would meet privately with Ms. Smith to debrief
15 and ensure that we were going to rectify the
16 problem and provide strategies for improvement.
17 I felt that Ms. Smith understood my request and
18 followed through with my request for
19 strategies. Do you see that?

20 A: No, I don't. Did you say page two?

21 Q: It's the bottom, very bottom of page two, well,
22 actually it's all pages, it's page one of the
23 exhibit. At the bottom of page one it talks
24 about a meeting with Ms. Smith to debrief and
25 ensure we would rectify the problem, analyze

1 strategies for improvement. I felt that Ms.
2 Smith understood my request and followed
3 through with my request for strategy. You see
4 that?

5 A: Yes.

6 Q: So Ms. Smith cooperated with at least somebody,
7 didn't she?

8 A: It said she would provide strategies. I'm
9 assuming that those are the ones that they
10 discussed privately.

11 Q: You walked through extended observations. I
12 observed Ms. Smith was prepared for class each
13 day, posted agendas and objectives, students
14 were well managed on task. I did not witness
15 her being mean to students nor did I witness
16 her yell at students in the class. She was on
17 duty when expected. Appeared to function well
18 with the seventh grade team members, although
19 she taught with the seventh and eighth grade
20 students her planning coincided with seventh
21 grade. During parent conferences, which I was
22 present, Ms. Smith was professional and willing
23 to work with students and parents. At the
24 conference table she would explain assignments,
25 grades and describes student behaviors and

1 academic progress. That's a very different
2 Jacqueline Smith than we've heard described
3 today, isn't it, Dr. Elsberry?

4 A: Well, particularly the parent conferences, yes.

5 Q: And, of course, you weren't there and I wasn't
6 there for the parent conferences. Ms. Smith
7 said she was sometimes called in on class and
8 did not know what she was getting in to. It's
9 fair to say that a level of trust sort of
10 disintegrated rapidly at Conway Middle School
11 between Ms. Smith and the administration?

12 A: I've been a principal before, Mr. Nichols, and
13 I think that there are times when parents are
14 so volatile that you have to deal with the
15 issue immediately and I would say that that
16 probably occurred.

17 Q: But although you wanted to have good relations,
18 I think everybody wants to be loved, this
19 institution, Horry County School District is
20 not public relations but public education
21 that's important, isn't that right?

22 A: Both.

23 Q: Thank you very much. I appreciate it.

24 A: You're welcome.

25 MS. MAHONEY: I have some brief follow up questions,

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1 testifies as follows:

2 **COURT REPORTER:** Please state and spell your name for
3 the record.

4 **MS. CHESTNUT:** I'm Anita Chestnut. A-N-I-T-A, C-H-
5 E-S-T-N-U-T.

6 **MS. CHESTNUT - DIRECT EXAMINATION BY MR. NICKLES:**

7 **Q:** Ms. Chestnut, my name is Al Nickles. We met
8 just a little while ago. Thank you for being
9 here this evening. I know it's been a long
10 day.

11 **A:** It has.

12 **Q:** Ms. Chestnut, are you currently a teacher at
13 Conway Middle School?

14 **A:** Yes, sir.

15 **Q:** How long have you been there?

16 **A:** This is my third year.

17 **Q:** And have you taught at any other schools in the
18 Horry County School District?

19 **A:** Whittemore Park.

20 **Q:** How long have you taught there?

21 **A:** I was there for five years.

22 **Q:** All together how many years of teaching
23 experience here in the public schools of South
24 Carolina?

25 **A:** This is my eighth year. So, going on eight

1 proximity to Ms. Smith's class?

2 A: Right across the hall.

3 Q: So in terms of distance between your classroom
4 and hers, it was a hall's breadth distance
5 between?

6 A: Yes, sir.

7 Q: Did you have any experience working with Ms.
8 Smith on your team efforts?

9 A: Yes, sir.

10 Q: And how did you find her as a fellow team
11 member?

12 A: Well, she was at all our team meetings and, you
13 know, participated.

14 Q: Did you work well with her as a colleague?

15 A: Yes, sir.

16 Q: Now, if your class is across the hall from Ms.
17 Smith, did you ever hear loud noises, yelling
18 coming out of Ms. Smith's classroom?

19 A: No.

20 Q: Do you recall her being late to any of the team
21 meetings?

22 A: No, I don't recall any times being late.

23 Q: And did she contribute to the meetings?

24 A: Yes, sir.

25 Q: Now, as is sometimes the case, I believe you

1 Q: -- with gas prices being what they are.

2 A: I assume so.

3 Q: Okay. Did you ever -- ever have any impression
4 that Ms. Smith just didn't care about education
5 and didn't care about her students?

6 A: Not really. I only worked closely with her for
7 --

8 Q: For a short time?

9 A: -- for a short time.

10 Q: Answer any questions that the attorneys for the
11 administration may have.

12 A: Yes, sir.

13 Q: Thank you very much.

14 A: Thank you.

15 MS. CHESTNUT - EXAMINATION BY MR. WILLIAMS:

16 Q: Ms. Chestnut, I suspect this has been a long
17 day for you --

18 A: It has.

19 Q: -- so I'll try to be brief. Let me get you to
20 look at the statement that you provided to Mr.
21 Hickman --

22 A: Yes, sir.

23 Q: -- that you've identified. At the bottom you
24 refer to an issue with a grade or a score that
25 your son was given.

1 A: Yes, sir.

2 Q: Did you ever get that issue resolved?

3 A: No, sir.

4 Q: And as a father of three sons myself, I

5 hesitate asking this question, but how did your

6 son perform from a grade standpoint during this

7 period of time that Ms. Smith was his teacher?

8 Do you recall that?

9 A: The -- his overall grade for the --

10 Q: Right.

11 A: He got a 92 on his report card.

12 Q: How did that compare to how he performed in

13 other classes?

14 A: That was the first time he ever got a B. He's

15 always gotten A's.

16 Q: In his life?

17 A: Yes, sir.

18 Q: Okay. The entire time he's been in school?

19 A: Yes, sir.

20 Q: I can't relate to that comment. I would have

21 to accept your answer. Do you have any

22 personal knowledge of students complaining of

23 Ms. Smith?

24 A: Yes, sir.

25 Q: What's your personal knowledge of that?

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1 A: Well, like I said earlier, we taught all the
2 same kids. We were on the same team. When
3 they would come to my room, they would want to
4 talk and complain to me about Ms. Smith and I
5 would just say no, we're not here to talk about
6 Ms. Smith; we're here to do math. So I really
7 wouldn't let them comment to me in front, you
8 know, as a class discussion.

9 Q: And how often would you say they would try and
10 comment to you?

11 A: Just about every day, every class.

12 Q: That's all I have.

13 A: Thank you.

14 MS. CHESTNUT - RE-EXAMINATION BY MR. NICKLES:

15 Q: I just have one more and then I promise to let
16 you go.

17 A: Okay.

18 Q: Did you ever inform Ms. Smith that the students
19 were coming in and complaining about her?

20 A: No, sir, I did not.

21 Q: Did any other teacher ever come to you and say,
22 gee whiz, that Ms. Chestnut's a tough nut. I
23 wish I had somebody else.

24 A: Did any other teacher?

25 Q: Did she ever tell you that?

1 MR. EISNER: Am I correct saying that when a
2 student is transferred out of let's say Ms.
3 Smith's class, it also infringes on yours
4 because it's a team approach or am I missing
5 something?

6 A: Yes. It's -- at the beginning of the year, I
7 think Ms. Sordian had stated that it would be
8 very rare to transfer from team to team but if
9 they did it that in one class, it would be from
10 the whole team to another team.

11 MR. EISNER: Okay. And were some students moved
12 out of your team?

13 A: While Ms. Smith was there?

14 MR. EISNER: Yes.

15 A: I don't remember. We had some but I don't
16 really remember.

17 MR. EISNER: Okay. Thank you.

18 MR. CHAIRMAN: Any more questions? You're saying
19 many students complained. Give me an idea of
20 what many means. How many students would be in
21 your second period class?

22 A: My second period is 21.

23 MR. CHAIRMAN: And, out of that, any number, to
24 that extent that you would hear complaining?

25 A: Well, usually --

1 MR. CHAIRMAN: One or two or five or six?

2 A: One or two would start and then another one
3 would want to say something. They were all
4 very much in agreement, you know, so.

5 MR. CHAIRMAN: Okay. Other questions?

6 MR. NICKLES: Nothing. We would ask this witness to
7 be excused.

8 THE CHAIRMAN: Thank you very much.

9 MR. MAZYCK: Mr. Chair, we would like to call Ms.
10 Gore.

11 GRETТА GORE, having been duly sworn, deposes and
12 testifies as follows:

13 COURT REPORTER: Please state and spell your name for
14 the record.

15 MS. GORE: Gretta Gore. G-R-E-T-T-A, G-O-R-E.

16 MS. GORE - EXAMINATION BY MR. MAZYCK:

17 Q: Ms. Gore, good evening.

18 A: Good evening.

19 Q: If you will, talk into the microphone so the
20 board members can hear you. Ms. Gore could you
21 tell the board over here where you're currently
22 employed?

23 A: At North Myrtle Beach Intermediate School.

24 Q: And what do you do at North Myrtle Beach
25 Intermediate School?

1 North Myrtle Beach?

2 A: I did. She was in Ms. Smith's homeroom class,
3 in her class when she was in the fifth grade.
4 She's currently a ninth grader.

5 Q: She was just in her homeroom or was she in her
6 ELA class as well?

7 A: She started out in her -- one of her regular
8 classes but, because of her test scores, she
9 was moved to an honors class.

10 Q: Did you have custody of your grandchild at that
11 time?

12 A: I did.

13 Q: And did you have interactions with Ms. Smith as
14 a parent for your grandchild?

15 A: I did.

16 Q: Can you describe for the board your
17 interactions with Ms. Smith as a parent?

18 A: She was always very cooperative. She was --
19 kept very good records. She made good
20 recommendations to us for our child. And even
21 though my granddaughter did not have direct
22 classes with her, she would oftentimes provide
23 her with additional work that she could use to
24 improve her writing skills in particular. I
25 mean, my granddaughter loved her. We never had

1 a problem with her. She was very strict when
2 it came time to do assignments. You had to
3 turn it in and, if you did not turn it in, she
4 would make her stay and get it done, but --

5 Q: In the short time that your granddaughter was
6 in her class, did you have the opportunity to
7 ever come in and observe Ms. Smith deliver
8 instruction?

9 A: I did. Sometimes for the student study team
10 while she was there I would have to observe
11 students. I can't remember what the term is
12 called, but you had to do observations on the
13 students, so I would sit in her class and I
14 would observe what she was doing in the class
15 while observing the student.

16 Q: Did you ever have any question about your
17 homework assignment and where you had to go ask
18 Ms. Smith for some clarity?

19 A: Did I have a question about it?

20 Q: Yes.

21 A: No, I didn't.

22 Q: As your role as a guidance counselor, what were
23 your interactions with Ms. Smith?

24 A: Basically if -- if a parent came in with a
25 concern or she had a concern with a parent, she

1 would ask me questions. Did I know that parent
2 or did I know how to contact a parent. I can't
3 remember specifically but if she could not
4 contact a parent, as any teacher in the school,
5 if they couldn't contact a parent, sometimes I
6 could contact a parent and get them in for
7 conferences and things of that nature. Other
8 than that, I don't --

9 Q: And I may have asked you this but what was your
10 impression of Ms. Smith as you observed her
11 deliver instruction?

12 A: She was well organized. She had feedback with
13 the kids. She motivated the kids. Students --
14 I've had some of her students even come to me
15 to get me to help them on a project that they
16 were doing in a class. She kept the lessons
17 current. Things that the kids would be
18 interested in. One particular activity where
19 they were doing the -- I believe it was social
20 studies and they were talking about the child
21 -- child welfare laws, labor laws. And some of
22 the kids had to create their own little wrap or
23 story about child labor laws and they had to
24 put it to music. And I can remember some kids
25 coming to me during recess time to help them to

1 get it taped so they would have it ready for
2 her class. And the kids were very anxious to
3 get it done. They, you know, they wanted to do
4 the work. And Ms. Smith kept the kids
5 motivated to do it.

6 Q: So would you say they were excited to do the
7 work they were assigned by Ms. Smith?

8 A: They were.

9 Q: Have you ever had an opportunity as a guidance
10 counselor to address a parental concern as it
11 related to Ms. Smith?

12 A: I did. There was one occasion that I remember
13 a parent came in and there was no one, none of
14 the administration was there at the time. And
15 the parent came in the front office and she was
16 quite irate and told the front staff that she
17 just wanted to get her kid out of Ms. Smith's
18 class. And she wanted to talk to one of the
19 principals. And they said, well, they were in
20 an A-Team meeting that day; would you mind
21 talking to the guidance counselor. And she
22 said well, I need to talk to somebody. So when
23 she came down to my room and she started
24 telling me that she just wanted to get her
25 child out of Ms. Smith's room, and I said well,

1 that's pretty, you know, kind of harsh. But
2 what's the reason for that? And she said well,
3 my child worked on a homework assignment all
4 weekend and now Ms. Smith won't accept her
5 assignment. And I said well, that seems out of
6 character. I said, let's call Ms. Smith in and
7 find out what's going on and then we can find
8 out where your daughter is right now and pull
9 her in. So when I called Ms. Smith in and she
10 brought her -- her planner and her, you know,
11 the student's work because I told her the name
12 of the student and she bought copies of the
13 child's work. And she shared with the parent
14 that the assignment that the student was --said
15 she did that weekend was due about two weeks
16 prior to that. And she said that she had kept
17 the child in the first two days of that same
18 week because the child still had not done the
19 assignment. And the woman said well, my child
20 would not lie to me. She said that you
21 wouldn't accept it. So I said well, let's get
22 her. And I think at that time she was in one
23 of her specials so we called her in. And after
24 we talked to the student, the student admitted
25 that she did not do any assignment. That while

1 she was in her room that weekend, she was on
2 the computer on Facebook with her friends. And
3 her mother said well, why did you tell me that?
4 And she just kind of shrugged her shoulders and
5 she said I don't know. And so after we
6 finished talking, the mother said well, I'm
7 going to leave her in Ms. Smith's class. But
8 Ms. Smith kept saying well, she is so capable.
9 Said that she's able to do A quality work. And
10 she had showed the parent -- Ms. Smith showed
11 the parent a few samples of the child's work
12 where she was doing A quality work. And then
13 she showed her other samples where the child
14 was just real sloppy with it. And the mother
15 said well, I know she can do it. And Ms. Smith
16 said well, you know, it's like I have to push
17 her and push her to get her to do it. And the
18 parent said well, I want her to stay in your
19 class and I want you to push her because I know
20 she can do this work. And I'm sorry I said
21 what I said. But she need -- that's what --
22 you're exactly what she needs and I'm sorry.
23 She just kept apologizing. And the student
24 stayed in Ms. Smith's class and did well.

25 Q: At the time when you and Ms. Smith was in North

1 Myrtle Beach, had you ever observed Ms. Smith
2 putting students out in the hall for long
3 periods of time?

4 A: No.

5 Q: You never --

6 A: That was, you know, we even talked about that.
7 She just said I just can't see putting them in
8 the hallway. You know, if I put them in the
9 hallway it's because I'm standing there to talk
10 to them. But they need to be in the classroom
11 for instruction. And Ms. Smith really did not
12 subscribe to putting kids in the hallway.

13 Q: Have you ever observe her yelling or demeaning
14 students?

15 A: No.

16 Q: If you had to describe Ms. Smith as a teacher
17 to this board, you know, you have 33 years of
18 educational experience, so I'm sure you've seen
19 a gambit of teaching styles. What would you --
20 how would you describe Ms. Smith to this board?

21 A: The first word I would use would probably would
22 be competent. I commended her on the amount of
23 work and effort she puts into teaching her
24 kids. She gives written assignments and I
25 would see her taking tons of papers home. And

1 I said what are you going to do with that. She
2 said, I've got to grade these. And she would
3 go through every one of those children's
4 papers, every night, and she would bring them
5 back and she would give them to the kids. And
6 each one had a comment on it. Because I -- I
7 checked. And I said well, I just don't see how
8 you can do it. But Ms. Smith would stay up
9 late many nights to get it done. And she said
10 well, I just can't see giving a child an
11 assignment to do if I'm not going to give them
12 some kind of feedback on it. And, you know,
13 her reading assignments, like she had the kids
14 to do reading logs and I know some teachers
15 just told the kids to read and they would have
16 to write down in the log the number of pages
17 they had. But Ms. Smith would give them a
18 particular assignment. Like if they were
19 reading for like the main character and they
20 would have to tell about the main character.
21 Or if they had -- they would have to tell her
22 what the them was. She would give them a
23 specific topic each week or each night that
24 they were reading in that log that they had to
25 read for that specific information. And I

1 thought that that was very good because if a
2 child just says I'm reading and they write down
3 pages, we don't know if they're really learning
4 from what they're reading. But with her
5 method, she actually could tell if the kids
6 were understanding what she had taught for that
7 particular skill.

8 Q: I don't have any more questions. Please answer
9 any questions opposing counsel may have.

10 MS. MAHONEY: We have no questions. Thank you.

11 THE CHAIRMAN: Kay?

12 MS. LOFTUS: Ms. Gore, you indicated that in your
13 capacity as counselor that sometimes you could
14 get touch with parents or teachers. Did you at
15 any time get in touch with a parent for Ms.
16 Smith?

17 A: Again, I can't remember exactly because that
18 was -- I know it was more than three years ago
19 now. I'm trying to think. Just hold on.
20 There was one -- there's one parent. I'm
21 trying to think of that parent's name. It was
22 a child that was -- I think the child was a
23 guidance situation where it was a confidential
24 matter and Ms. Smith needed to contact a
25 parent. And I think the only parent's name

1 that was on that child's record was a parent
2 that she was not suppose to -- that was not
3 suppose to have contact with the child. And I
4 knew someone who knew that child's mother who
5 able to get me her number to contact me.
6 That's the only one that I can think of right
7 now.

8 Q: Okay.

9 **THE CHAIRMAN:** The witness may be excused. Thank you
10 very much.

11 **MR. MAZYCK:** We would like to call -- Mr. Chairman,
12 we would like to call Ellen Gerald.

13 (Off the Record Discussion)

14 **ELLEN D. GERALD,** having been duly sworn, deposes and
15 testifies as follows:

16 **COURT REPORTER:** Please state and spell your name for
17 the record.

18 **MS. GERALD:** My name is Ellen D. Gerald. E-L-L-E-N,
19 D., G-E-R-A-L-D.

20 **MS. GERALD - DIRECT EXAMINATION BY MR. MAZYCK:**

21 Q: Good evening, Ms. Gerald.

22 A: Good evening.

23 Q: Where are you currently employed?

24 A: I'm employed at Georgetown County School
25 District.

- 1 Q: How long have you been in Georgetown County
2 School District?
- 3 A: This makes my third year.
- 4 Q: Prior to Georgetown County School District,
5 where were you employed?
- 6 A: In Horry County Schools.
- 7 Q: Which school in Horry County were you employed?
- 8 A: North Myrtle Beach Intermediate.
- 9 Q: And how do you know Ms. Smith?
- 10 A: She's a colleague and a friend.
- 11 MR. CHAIRMAN: If you could please speak into the
12 mic.
- 13 MR. NICKLES: If you could get closer to the mic,
14 please, ma'am.
- 15 Q: When did you meet Ms. Smith?
- 16 A: I met her -- I think it was back in -- I think
17 it was the 1999-2000 school year.
- 18 Q: What grade level did you teach at North Myrtle
19 Beach Intermediate?
- 20 A: I started out as third and ended with fourth.
- 21 Q: Did you ever teach with Ms. Smith?
- 22 A: Yes.
- 23 Q: What year did you teach with Ms. Smith?
- 24 A: 2003-2004 I think.
- 25 Q: In your time at North Myrtle Beach with Ms.

1 Smith, have you ever had any opportunity to
2 observe Ms. Smith in a classroom deliver
3 instruction?

4 A: Yes.

5 Q: What was your impression of Ms. Smith as she
6 delivered instruction?

7 A: I was impressed with Ms. Smith number one
8 because she had the highest test scores in the
9 school. And I wanted to know what was she
10 doing to make that happen and I wanted to take
11 some of that back to my class. And, as a
12 matter of fact, she did come to my class a
13 couple of times too.

14 Q: So she came in you class with models and
15 lessons for you?

16 A: Uh-huh (affirmative response).

17 Q: Is that a yes?

18 A: Yes.

19 Q: Have you ever seen -- in your time at North
20 Myrtle Beach, have you ever seen Ms. Smith
21 mistreat any students?

22 A: No.

23 Q: Have you ever seen her yell at any students?

24 A: No.

25 Q: Have you ever seen her single out or target any

- 1 Q: And in the South, we have a term raise up. Did
2 you help raise up anybody?
- 3 A: Yeah, my cousins. Everyone else had to work
4 and so I was the oldest out of all of the
5 cousins so I had to help while the family
6 worked.
- 7 Q: When you came home to have help with your
8 daughter, did you get a job in the Horry County
9 School District?
- 10 A: Yes, I did.
- 11 Q: Where was that?
- 12 A: I started out at Whittemore Park.
- 13 Q: And how long were you there?
- 14 A: I was there a year.
- 15 Q: And where did you go from there?
- 16 A: North Myrtle Beach.
- 17 Q: How long were you at North Myrtle Beach?
- 18 A: I was there for six years.
- 19 Q: Who were your principals at North Myrtle Beach?
- 20 A: Shelton Long and Judy Bradchard.
- 21 Q: While you were there -- were you there until
22 2003?
- 23 A: 2003. Yes, I was.
- 24 Q: And that was North Myrtle Beach Elementary
25 School?

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- 1 Q: Did that ever happen?
- 2 A: No, sir.
- 3 Q: Now, you heard all the testimony here today, is
- 4 that correct?
- 5 A: Yes, I did.
- 6 Q: And I believe that some of the records here
- 7 have gone back to 2006-2007.
- 8 A: Uh-huh (affirmative response).
- 9 Q: Is that right?
- 10 A: Yes.
- 11 Q: That is several years ago?
- 12 A: Uh-huh (affirmative response).
- 13 Q: Is that right?
- 14 A: Yes, sir.
- 15 Q: Now during that period of time had there been
- 16 occasions when you have come in opposition to
- 17 the district's administration?
- 18 A: Yes.
- 19 Q: This is not the first time you've testified in
- 20 a proceeding like this, is it?
- 21 A: It's not the first time.
- 22 Q: When was the first time you did that?
- 23 A: 2007 or '06. '06 or '07.
- 24 Q: Okay. Were you called as a witness for the
- 25 teacher or a witness for the administration in

1 that case?

2 A: A witness for the teacher.

3 Q: Now, did it seem to you that the attitude
4 towards you changed somewhat after that
5 experience?

6 A: Yes, sir, it did.

7 Q: Did you have more criticisms of your teaching
8 after that experience?

9 A: Yes, I did.

10 Q: Is that the first time you ever experienced any
11 criticisms about your teaching?

12 A: Yes, it was.

13 Q: How did that make you feel?

14 A: Not good at all.

15 Q: Well, let's talk about 2007-2008. I believe
16 that you heard Ms. Greene Graham talk about
17 that earlier.

18 A: Yes.

19 Q: You were teaching at North Myrtle Beach
20 Elementary that year, is that correct?

21 A: Yes.

22 Q: And did it come to pass that you had a dispute
23 with the principal?

24 A: I didn't hear you, sir.

25 Q: Did you have a dispute with the principal that

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1 year?

2 A: I wouldn't say a dispute but there was a
3 disagreement.

4 Q: And what type of disagreement did you have with
5 the principal?

6 A: It was in regards to her not sending parents to
7 me.

8 Q: Well, why is that important?

9 A: One of the things that I have learned while I
10 was -- as I have been teaching, it's very
11 important that parents come to the teacher for
12 communication because you never know what goes
13 home or what is said. And so I feel that it
14 was important that as a principal that she
15 should have sent the parents to me if there was
16 a concern.

17 Q: Did that happen?

18 A: No.

19 Q: And did that affect your relationship with the
20 parents and with the principal?

21 A: Yes, it did.

22 Q: In what way?

23 A: Because you would often get -- all you would
24 have to do is go to the principal. And then,
25 even with the administrator, that created some

1 problems with -- with -- between us.
2 Especially me asking please send my parents in
3 to me and then she in turn do things her way
4 from whatever she -- she thought based on what
5 the parent had told her.

6 Q: Did you think that was interfering in your
7 ability to do your job effectively as a
8 teacher?

9 A: Well, I -- I could still do my job but it --
10 actually, it will interfere if you have a child
11 that's being told something different than what
12 the teacher is telling them.

13 Q: So as a result of that disagreement that you
14 described, did you initiate a grievance
15 involving the principal of that school?

16 A: Yes.

17 Q: And do you recall about when you did that?

18 A: It was January -- sometime January of 2008.

19 Q: Okay. Did you utilize the district's grievance
20 procedure?

21 A: Well, I thought I was utilizing the district's
22 procedure.

23 Q: Okay. Look at tab number one in the spiral
24 bound materials, and if you'll turn to page
25 182. Do you see that page?

1 A: Yes, sir, I do.

2 Q: Are you familiar with this particular provision
3 in the board policies?

4 A: About complaints and grievances?

5 Q: Yes, ma'am.

6 A: Yes, sir.

7 Q: And does it promise that employees who utilize
8 grievance procedures have the right to do so
9 with complete freedom from reprisal?

10 A: I didn't hear you, sir. I'm sorry.

11 Q: The first paragraph, the last sentence. Do you
12 see that?

13 A: Yes.

14 Q: The employees who utilize the grievance
15 procedures have the right to do so in complete
16 freedom from reprisal. When you filed your
17 grievance in 2008, did you believe that?

18 A: Yes, sir, I did.

19 Q: Did you come to question that thereafter?

20 A: Yes I -- as far as the procedure and grievance,
21 I did.

22 Q: Okay. While you had filed a grievance against
23 your principal, did anything else happen
24 concerning your job?

25 A: I was transferred.

- 1 Q: And were you also put on administrative leave?
- 2 A: And put on administrative leave.
- 3 Q: Were you also investigated?
- 4 A: Yes..
- 5 Q: And then you were put in another school?
- 6 A: And placed in another school.
- 7 Q: Was that grievance ever resolved?
- 8 A: No.
- 9 Q: So when you were put at this other school it
- 10 was not your choice, was it?
- 11 A: Right.
- 12 Q: You had asked to move, but you wanted to move
- 13 at the beginning of the school year, is that
- 14 right?
- 15 A: Right.
- 16 Q: Where were you put?
- 17 A: At Carolina Forest Elementary.
- 18 Q: And how long were there?
- 19 A: The ending of February until the end of the
- 20 year.
- 21 Q: Okay. Was that a difficult experience for you?
- 22 A: Yes.
- 23 Q: Was it a humiliating experience for you?
- 24 A: Yes, sir.
- 25 Q: Did you still try to do your best?

1 A: Yes, I did.

2 Q: Well, what happened for the next school year,
3 the 2008-2009 school year. Where were you
4 then?

5 A: They sent me to Ocean Bay.

6 Q: Now, did you have a full continuing contract?

7 A: Yes, I did.

8 Q: And was Dr. Huddle your principal?

9 A: Uh-huh (affirmative response). Yes, sir.

10 Q: You saw her on television today?

11 A: Yes.

12 Q: And did you think that you were doing a good
13 job there?

14 A: Yes.

15 Q: Well, let me ask you to look at tab number six
16 in the spiral bound notebook. Do you recognize
17 the documents in this particular section of the
18 notebook?

19 A: Yes, sir, I do.

20 Q: What do they represent?

21 A: They're walkthroughs -- classroom visits.

22 Q: Did you believe the information that was being
23 given to you by Dr. Huddle and other people
24 while you were at Ocean Bay?

25 A: Believe?

1 Q: Believe you were doing a good job?

2 A: Yes.

3 Q: And then when somebody told you in March
4 students were really working hard, did you
5 think that was a compliment?

6 A: Right. Yes, sir, I did.

7 Q: If you look back in December, Dr. Huddle says
8 period of learning and instruction, did you
9 think that was pretty good?

10 A: Yes.

11 Q: Now, you see September 16, '08, thanks for the
12 positive environment. Huddle. Those aren't
13 criticisms are they?

14 A: I didn't hear you, sir.

15 Q: Those are not criticisms are they?

16 A: No, they're not.

17 Q: Now, you heard Dr. Huddle testify earlier on
18 video tape. She even contacted you after you
19 left, didn't she?

20 A: Yes.

21 Q: And she didn't tell you to go jump in the lake,
22 did she?

23 A: No, sir, she didn't.

24 Q: What did she tell you?

25 A: She was telling me about my test scores.

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1 Q: Complimenting you?

2 A: Yes.

3 Q: She didn't have to do that, did she?

4 A: No, she didn't.

5 Q: Did Dr. Huddle or anybody tell you that you
6 were being moved from Ocean Bay because
7 everybody hated you?

8 A: No, sir.

9 Q: Did they tell you you were being moved because
10 of a decline in the enrollment there?

11 A: Decline in the enrollment, yes.

12 Q: So if Dr. Huddle told Dr. Elsberry anything
13 different, it's not what she told you, is it?

14 A: Right. Yes, sir.

15 Q: Ms. Smith, let's look at I'll say about four
16 pages, five pages from the back of number six.
17 It's a note Jackie, as well as for you. You've
18 pulled wonderful scores for your last -- last
19 year. Great job. You should be proud. You
20 see that?

21 A: Yes, sir.

22 Q: And then the next item, we've obliterated the
23 names. We're not going to talk about
24 individual students. But who wrote at the top
25 of that fantastic scores?

1 A: Ms. Huddle.

2 Q: It wasn't you?

3 A: Right.

4 Q: While you were there at Ocean Bay, do you
5 remember getting anything in writing from Ms.
6 Huddle that was negative in nature or suggested
7 to you that you were not a welcome member of
8 the faculty there?

9 A: No, sir.

10 Q: Well, from there you went to Conway Middle
11 School?

12 A: Yes, sir.

13 Q: And again, that was an involuntary move. They
14 placed you there; you didn't ask to go there,
15 right?

16 A: Right. And Curlee had sent word to Ms. Huddle
17 and she called me in the office. And because
18 I had put in for that school previous the two
19 years, they were going to send me there.

20 Q: Okay. When you arrived, who was your principal
21 there?

22 A: Ms. Clark.

23 Q: And how would you describe your relationship
24 with her?

25 A: Ms. Clark was very supportive. And one thing

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1 I really loved about, not just the fact that
2 she was in support of, Ms. Clark would actually
3 sit down with you and go over with you the
4 different things. And you -- it would be you,
5 the parent and the student there. And she
6 would have everything there. And if she needed
7 to, she would call all teachers in. Because if
8 one teacher was having a problem, she -- she'd
9 often say I know there has to be a problem with
10 somebody else in another class. And so she
11 would call in all the teachers in if there was
12 a problem or either she would sit down. Just
13 the fact that knowing that she would sit down
14 with you and talk to you.

15 Q: Okay. Now, did you think you were doing a good
16 job under Ms. Clark?

17 A: Yes.

18 Q: And did she offer you a contract for the
19 current school year?

20 A: Yes.

21 Q: But then she wasn't there anymore?

22 A: Right.

23 Q: Now, this year you had a completely new
24 administration at Conway Middle School, is that
25 correct?

1 A: That's correct.

2 Q: How would you describe the style from that
3 administration compared to what you'd
4 experienced the year before?

5 A: She -- she really wasn't as supportive. She
6 wasn't supportive to me at all. She made the
7 demand you're going to do this, you know, and
8 she was just -- was always something with Ms.
9 Sordian. And I didn't know whether -- what to
10 do in situations. I didn't know how she would
11 react.

12 Q: Did you ever have occasion where you would
13 later learn that she's talked to a parent about
14 you but didn't include you in the conversation?

15 A: Yes.

16 Q: Okay. Now, there's been a lot of written
17 material that you have lately seen. Let me ask
18 you about that. There's been some stuff
19 presented to this board. Summaries of
20 conferences and summaries of allegations and
21 things like that. Was any of that material
22 ever shared with you while you were at Conway
23 Middle School?

24 A: I have been in conferences, but none of the
25 written material was shared with me.

1 Q: And does the school issue you a handheld device
2 where you can get all your e-mails on it while
3 you're away from school?

4 A: No, sir.

5 Q: So during this period of time that you're
6 grading papers and doing other things, you
7 don't have your e-mail in front of you do you?

8 A: No, sir.

9 Q: But when you get home, what happens?

10 A: When I get -- arrive at home, I have to cook
11 her something to eat or make sure she gets
12 something to eat and then get her ready for the
13 next day and go over her homework with her.

14 Q: Do you sometimes get tired?

15 A: Yes, sir, very tired.

16 Q: There's some e-mails that I have seen here that
17 you sent out on Sunday, for example. Did you
18 sometimes try to catch up on things in the
19 evenings, late evenings or on the weekend?

20 A: Yes, sir.

21 Q: Let's look at some of the other material in
22 this exhibit number seven. There is a e-mail
23 that we have already seen I think from Parent
24 A. And what prompted you on Sunday, September
25 the 12th, to send an e-mail to Mr. A and ask if

1 there were any concerns with his child?

2 A: Well, the guidance counselor send -- sent an e-
3 mail to myself -- sent an e-mail to Ms. Rivera
4 and myself about child A --

5 Q: Child A?

6 A: Oh, I'm sorry. Child A.

7 Q: Okay. Did that e-mail indicate to you that you
8 were the cause of any of that child's problems?

9 A: No, sir.

10 Q: And did the parents indicate to you that you
11 were the cause of any of their child's
12 problems?

13 A: No, sir.

14 Q: And did the principal indicate to you that you
15 were the cause of any of that child's problems?

16 A: No, sir.

17 Q: Was that child ever taken out of your class?

18 A: No, sir.

19 Q: I believe I heard earlier that she made an A,
20 a high A in your class?

21 A: Yes.

22 Q: Let's look at the next document. It has an
23 individual student report. This is for Child
24 A. What does this type of document represent,
25 Ms. Smith?

1 run into my academic time or my sixth block.
2 So, I'm going in there trying to get things
3 situated and teach and then I have my other
4 block to teach and by that time it's time to go
5 home and I'm trying to get things set up for
6 the next day and rush out of there and get to
7 my daughter. Because there was only -- they
8 would start calling me from North Myrtle Beach
9 if I'm not there by a certain time.

10 MS. MCILRATH: Okay. And last question, you voiced
11 that you didn't feel support from your
12 administrators. What should they have done for
13 you that you feel was not being done?

14 A: One of my big things is -- one of my big
15 concerns is that a parent see me. When you
16 keep a parent from me, you're doing nothing but
17 creating a conflict there. Not only between
18 the administrator and myself, there's a
19 conflict there, but I believe in communicating.
20 And I get in all parties together. But when
21 that's not happening, then to me, it's like no
22 support for the teacher. It's like I'm just
23 going to take the parent's side and go with it
24 and be done.

25 MS. MCILRATH: Were the parents bypassing you and

1 going straight to the principals?

2 A: Yes.

3 MS. MCILRATH: Okay.

4 MS. LOFTUS: Ms. Smith, you indicated that you at
5 one time supported a teacher and then after
6 that you began receiving criticism.

7 A: Uh-huh (affirmative response).

8 MS. LOFTUS: Who were you getting the criticism
9 from?

10 A: Administrators. Administrators were the ones
11 that would be criticizing every little thing I
12 do.

13 MS. LOFTUS: It wasn't the parents, then?

14 A: It wasn't the parents. It was never the
15 parents. Because I never really got a chance
16 to talk to those that if there was any
17 concerns, it was like they would hide them from
18 me. So, I never got a chance to find out what
19 actually was the situation or the problem that
20 was occurring. Not unless I was in on a
21 conference.

22 MR. HARDEE: Hello, Ms. Smith.

23 A: Hello.

24 MR. HARDEE: You stated earlier on in your
25 testimony that you pretty much had to help your

1 cousin and your siblings, I guess after school
2 probably, you were helping them with their
3 homework when you were growing up?

4 A: Uh-huh (affirmative response).

5 MR. HARDEE: So you understand how important the
6 homework is? And how it's the one interaction
7 between the school and the home life. Then you
8 have 25 years of teaching. You seem like a
9 pretty smart person. Someone that would be --
10 work very hard to have what you've got. And
11 where you've gotten yourself to this point.
12 You also seem to smart to have risked
13 everything you've worked for on one
14 misunderstanding about communication with
15 parents. And it's hard for me to believe that
16 your parents wouldn't come to you first on the
17 onset of any issue and start going straight to
18 administrator. Me, as a parent of three school
19 children at home, I want to be in communication
20 with that teacher.

21 A: Right.

22 MR. HARDEE: At some point early on in that
23 process, was there a problem or something that
24 caused those parents not to come to you?

25 A: No, sir. There would be parents that would

1. just go straight to the administrator.

2. MR. HARDEE: Okay.

3. A: And it's based on what their child said. And
4. half the time I didn't know.

5. MR. HARDEE: Was it one or two parents or was it
6. like the whole class?

7. A: Which ever ones they presented, it wouldn't be
8. the whole class.

9. MR. HARDEE: Okay. Let's fast forward a little bit
10. until we get to North Myrtle Beach with Ms.
11. Graham. She tried to work with you and she
12. stated you turned your back to her. I never
13. heard any justification for why there was no
14. communication back and forth. What was the
15. purpose of doing that?

16. A: I never turned my back to Ms. Graham. I always
17. talked to Ms. Graham and whenever -- if she
18. needed to see me, I went in her office to see
19. her. But as far as turning my back, I never do
20. -- just turn my back to anyone like that. That
21. is very rude and disrespectful.

22. MR. HARDEE: It is. And when communicating face to
23. face, you would shut down in front of each
24. other. You never did anything about that? You
25. never presented that time of attitude when you

1 MR. NICKLES: A point of protocol, Mr. Chair, but we
2 had stipulated earlier that the De Bene Esse
3 deposition of Anita Viola James would be
4 presented to you without objection.

5 MR. WILLIAMS: Without objection.

6 (Respondent's Exhibit Number Four was marked for
7 identification purposes.)

8 MR. NICKLES: This will be made part of the record.

9 This is a witness that could not be here
10 tonight, just as Dr. Huddle could not be here,
11 but we're just going to simply ask that you
12 review that. Place any consideration that you
13 wish on that testimony. Now, I would ask the
14 board (inaudible) what should happens in the
15 cases is dictated by the statutes. You have a
16 copy of the statutes. The controlling statute
17 in this case is 59-25-470. That's the
18 procedures that must be followed and you have
19 a copy of that. The General Assembly's
20 collection of statutes here. And it says, a
21 teacher has the privilege of being present at
22 the hearing with counsel and cross examining
23 the witnesses, and may offer evidence and
24 witnesses and present any and all defenses to
25 the charges. Ladies and gentleman, that's what

1 due process is. And when you present
2 information that's not supported by a witness,
3 that's a depravation of due process and that's
4 a violation of statute. Now, Ms. Mahoney said,
5 well, we were kind to them and we let them
6 introduce a statement that didn't have a
7 witness to support it. Even though they say it
8 was, it was Ms. Clark, their employee who they
9 had complete control over. They could have
10 brought Ms. Clark here if they wanted you to
11 hear from her. And remember, we don't have the
12 burden proof in this case. These folks have
13 the proof. And I ask the superintendent who
14 are these people, Mr. Huddle, Mr. Hickman, Dr.
15 Duquette, all these other folks whose names are
16 all over this record, she could have brought
17 them here and let you listen to them, but she
18 didn't. It's not my obligation to prove diddly
19 squat in this case. But they have to prove
20 their case and give the teacher, according to
21 the statute, the opportunity to cross examine
22 witnesses. You've heard the superintendent say
23 all right, forget about student statements. I
24 didn't rely on any of that stuff. Remember
25 that testimony? Strike it from the record.

1 Strike it from the record. Thank you.

2 **MR. POSTON:** Mr. Chairman?

3 **MR. CHAIRMAN:** Yes, sir?

4 **MR. POSTON:** I have a motion. I would like to move
5 that we go into brief Executive Session to
6 consider the two codes that are being placed
7 before us and get legal advisement on those
8 codes as well as discuss what we had taken
9 under advisement earlier today, sometime this
10 morning and decide if we can in Executive
11 session, discuss in Executive Session what our
12 options for those documents.

13 **MR. CHAIRMAN:** Do I have a second?

14 **MR. EISNER:** Second.

15 **MR. CHAIRMAN:** All those in favor of the motion,
16 please say Aye.

17 **ALL BOARD MEMBERS:** Aye.

18 **MR. CHAIRMAN:** Opposed? Hearing none, the motion
19 carries. Let's go back to the conference room.

20 (Off the Record from 10:56 p.m. to 11:07 p.m.)

21 **MR. CHAIRMAN:** We had a discussion, what is the
22 pleasure of the board brought to the procedural
23 issues, the objections were raised.

24 **MS. LOFTUS:** Mr. Chairman, I would like to make a
25 motion.

1 MR. CHAIRMAN: Yes, ma'am?

2 MS. LOFTUS: We have decided that we will make or
3 decision based on all the information in the
4 black binder and the spiral notebook and all
5 of the information that was presented to us
6 tonight in testimony.

7 MR. CHAIRMAN: Do I have a second?

8 MR. EISNER: Second.

9 MR. CHAIRMAN: I have a motion to second. Any
10 discussion? All those in favor of the motion,
11 please say Aye.

12 ALL BOARD MEMBERS: Aye.

13 MR. CHAIRMAN: Opposed? Hearing none, the motion
14 carries. Do I hear a motion that we go into --
15 no I don't. About to jump the gun. Closing
16 arguments. We're getting mighty close.

17 (Closing Arguments)

18 MR. WILLIAMS: Mr. Chair, and members of the board, I
19 appreciate your attention that you've paid
20 during what I think everyone would acknowledge
21 has been a long day. With that in mind, it is
22 my intent to make a few points and sit down.
23 I used to be in the habit of exactly telling
24 people the number of points I was going to make
25 and I was at a program once and the speaker

1 MR. CHAIRMAN: Opposed? Hearing none, we'll adjourn
2 back to the conference room so we have a place
3 to sit.

4 (Off the Record from 11:39 p.m. to 12:10 a.m.)

5 MR. CHAIRMAN: Do I have a motion to come out of
6 Executive Session please?

7 MS. LOFTUS: So moved.

8 MR. CHAIRMAN: Can I have a second?

9 MR. HARDEE: Second.

10 MR. CHAIRMAN: All in favor please say Aye.

11 ALL BOARD MEMBERS: Aye.

12 MR. CHAIRMAN: Please note that the reason for the
13 Executive Session was to discuss the procedure
14 regarding Ms. Jacqueline Smith. No votes were
15 taken in Executive Session. We will discuss
16 the matter in open session at this time. What
17 is the pleasure of the board?

18 MR. EISNER: Mr. Chairman?

19 MR. CHAIRMAN: Yes, sir.

20 (MOTION)

21 MR. EISNER: I'd like to make a motion to uphold the
22 recommendation of the superintendent regarding
23 the dismissal of Ms. Jacqueline Smith.

24 MR. CHAIRMAN: Do I have a second?

25 MR. HARDEE: Second.

1 MR. CHAIRMAN: I have a motion to second. Any
2 discussion?

3 MR. DEFEO: Yes, sir.

4 MR. CHAIRMAN: Mr. DeFeo?

5 MR. DEFEO: I have to vote no to the motion only
6 because I don't agree with the writing in the
7 violation of the state code 430 and 440. I
8 only think we could have done this termination
9 under 440.

10 MR. CHAIRMAN: Other comments? I will ask for a show
11 of hands on this vote. Please ma'am. All
12 those opposed to the motion, please say Aye or
13 raise your right-hand. I'm sorry.

14 ALL BOARD MEMBERS: Aye.

15 MR. CHAIRMAN: All opposed? Where's my recorder, I
16 need to record one too. Six to one. The vote
17 is six to one. Motion carries. Do I hear a
18 motion that we adjourn?

19 MR. HARDEE: So moved.

20 MS. LOFTUS: Second.

21 MR. CHAIRMAN: All those in favor to adjourn, please
22 say Aye.

23 ALL BOARD MEMBERS: Aye.

24 MR. CHAIRMAN: Opposed? Hearing none we'll stand
25 adjourned.

- 1 (There being no further testimony, the hearing
- 2 adjourned at 12:12 a.m.)

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(803) 252-3445 / (800) 822-0896



Horry County Schools

January 5, 2011

VIA U.S. MAIL:REGULAR MAIL AND
CERTIFIED MAIL, RETURN RECEIPT

Ms. Jacqueline P. Smith
3946 Horseshoe Road; Apt. 2-B
Little River, SC 29566

Dear Ms. Smith:

The purpose of this letter is to advise you that I am formally suspending your employment, with full pay and benefits, effective immediately, and recommending to the Horry County Board of Education that your employment with the District be terminated.

This action is being taken as a result of the administration's ongoing serious concerns with your performance that have been discussed with you on several occasions. I have summarized the concerns in greater detail in this letter.

While members of the administration have discussed these concerns with you on several occasions, I met with you on December 1, 2010, to discuss with you the administration's concerns with your performance and provide you with a full opportunity to respond to the concerns. At your request, no other member of the District administration was present. During our meeting, you stated that you were not aware of parent concerns about you other than the concerns raised at the eight parent conferences you attended with the administration. You suggested that students may think you are mean because you "stay on students constantly." You stated that you believe you have effectively communicated with the parents of your students, you have gone overboard talking with parents and meeting with parents, and you did not know what else you needed to do in order to communicate effectively with parents. When I asked you what you did differently after each of the parent conferences you attended with the administration present, you stated you did not know what to do differently than what you had been doing. You stated that you always responded to parent e-mails within 24 to 48 hours and that you did not raise your voice in any of the conferences with parents that you attended with the administration present.

During our conference, you also stated that the District and school administration have not been fair to you in their investigation of these concerns and you asked for an independent investigation. When Paul Hickman met with you as part of his investigation, he provided you with an opportunity to submit names of individuals you would like him to speak with as part of his investigation. You did not submit any names. When I met with you on December 1, I again

Ms. Jacqueline P. Smith
Page Two
January 5, 2011

gave you an opportunity to submit names to me of individuals you would like the administration to speak with as part of our investigation. You did not provide me with any names. Thus, I find no evidence to support your assertion that the investigation has not been fair.

As you have been advised, during the 2010-11 school year alone, out of the 86 students you taught, the parents of 25 students made 161 complaints about you to your principal, Margaret Sordian, since August 24, 2010. The types of complaints include such things as: you place students in the hall for periods of time without authorization or supervision; you make inappropriate comments to students; you yell at students; you embarrass students; you fail to respond to parents in a timely manner; you fail to communicate effectively with students and parents regarding work, testing, re-testing, grades and assignments; you fail to report grades in a timely manner; you humiliate students in front of others during class time; you are unprofessional when conferencing with parents; and you demonstrate an overall negative attitude towards students and parents. We also discussed that 47% of your 86 students received failing grades for the first nine weeks. In response, you asked how a "D" is unsatisfactory, as it is considered a passing grade. These facts suggest the concerns from parents are reasonable and legitimate. As you know, there have been numerous conferences with the administration and parents, initiated by the parents, to discuss their concerns with your teaching, communication with, and/or treatment of their children. You were advised by Mr. Hickman during his meeting with you that some students described you as mean, harsh, and hateful, and that you did everything you could to set them up to fail. You responded by stating that the word "mean" comes from students that have teachers that make them work hard.

You stated you have not received "documentation" of any complaints about you. However, the documentation contained in numerous emails from parents suggests otherwise. In many cases where parents have requested a conference, there are emails that establish they first attempted to communicate directly with you regarding their questions or concerns and they were not satisfied with your response or did not believe you responded in a timely manner. You have been present during most of the conferences in which parents raised concerns and you were provided with clear expectations from the administration. It is essential that we are responsive to concerns raised by parents and that we address their concerns in a timely and professional manner. While every concern raised by a parent is not always valid, the concern is important to the parent, so we must ensure our responses to parents are thoughtful and professional.

~~_____~~
~~_____~~
~~_____~~ However, a couple weeks later you reportedly called the Waccamaw Mental Health ("WMH") counselor assigned to Conway Middle School during class time in front of the class to discuss this same student and a possible referral, which was a complete violation of the student's privacy. You admitted that you made the call during class time to the WMH counselor because the student refused to do his work, but you stated that you were talking "low" and the students could not

Ms. Jacqueline P. Smith
Page Three
January 5, 2011

hear what you said. ~~_____~~
~~_____~~

Ms. Sordian sent you letters dated October 11 and 19, 2010, in follow up to meetings she had with you. In the October 11 letter, Ms. Sordian advised you that an assistance plan may become necessary. You wrote on the bottom of the letter, "Not in agreement with individualized assistance plan." When I asked you why you wrote that statement, you responded by questioning what you would have needed an assistance plan to address. Your refusal to accept assistance from the administration and refusal to believe that such assistance is necessary are of great concern to the administration and to me.

The administration has also advised you of concerns regarding the manner in which you conducted yourself during conferences with parents. You have come late to conferences with parents, attempted to avoid attending the parent conferences, and become confrontational with parents during conferences. In short, the attitude you have displayed during parent conferences either by creating the perception you did not wish to be at the conference or by setting the wrong tone during the conference, has exacerbated the problems. One particularly troublesome conference with parents occurred on October 27. Ms. Sordian reported that after you arrived late for the conference, which set the wrong tone, the parent began to ask you questions about her child's grades and assignments. It was clear from the discussion with the parents that they had previously raised their concerns with you directly and they were not satisfied with your response and lack of follow through. You began to yell at both parents stating such things as: "You want me to give her the answers?" You also yelled "No, I never give the wrong words. I don't need to tell you anything sir! You don't need to question me." You also stated, "I don't have time for this. I have things to do." This type of conduct is entirely unacceptable for a parent conference.

As I have reviewed and considered your situation, I have tried to determine what could have caused so many parents to have concerns about you. I wanted to determine if the problem may be associated with one class of students, or one administrator. However, I was unable to find a reasonable explanation. During the 2010-11 school year, you have been assigned to teach 7th grade ELA, and you have one accelerated ELA class, one honors ELA class, and two regular ELA classes. Thus, the abilities of your students are varied. Additionally, the documentation establishes that much of the conduct described in the letter you received on February 26, 2008, regarding your performance at North Myrtle Beach Intermediate School is reoccurring in your treatment of parents, students, and members of the administration at Conway Middle School. Similar concerns were also raised with your conduct when you were assigned as a teacher at Ocean Bay Middle School during the 2008-09 school year. The concerns included, among other things, your failure to respond to parents, lack of clarity on grades and assignments, and issues with attendance at meetings. When you were assigned to Ocean Bay, 13 students were removed from your class in the first four weeks of school at the parents' request. While approximately 100 students were assigned to your class at the beginning of the 2008-09 school year, only 68 students finished the year assigned to your class.

Ms. Jacqueline P. Smith
Page Four
January 5, 2011

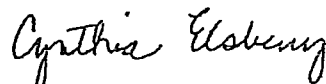
In summary, I am extremely concerned with your conduct and performance in all the areas described above. The parental complaints raised against you are excessive in number, and cannot legitimately be blamed on the administration, since you have received similar parental complaints at three different schools where you have been assigned. I am concerned that, even during my conference with you on December 1, you did not acknowledge that there are legitimate concerns with your performance and you did not demonstrate a willingness to accept assistance and improve. Thus, I must conclude that providing you with additional time and assistance would be futile. The documentation establishes that you have failed to demonstrate a willingness to work cooperatively with parents and students and be responsive to their legitimate questions and concerns. Your refusal to meet with the administration for various reasons, and failure to attend meetings in a timely manner is unprofessional and insubordinate and suggests you do not intend to work cooperatively with the administration to improve your performance.

For these reasons, I have concluded the above-described concerns with your conduct and performance have resulted in the loss of your ability to serve effectively as a professional employee of the District, and justify your dismissal pursuant to S.C. Code Ann. §§ 59-25-430 and 440.

As provided by Sections 59-25-450 and 59-25-470, you have the right to request a hearing on your suspension and the recommendation of termination, provided you do so in writing within 15 days of your receipt of this notice. Your request may be addressed to me, as Superintendent, or to Will Garland, Board Chairman.

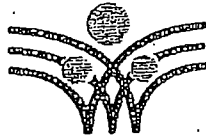
I would strongly encourage you to consider an alternative resolution to this matter. If you have any questions or concerns about the options available to you, please feel free to contact me.

Sincerely,



Dr. Cynthia Elsberry
Superintendent

c: Mr. Ed Curlee
Ms. Margaret Sordian



Horry County Schools

November 3, 2010

VIA U.S. MAIL: REGULAR AND
CERTIFIED, RETURN RECEIPT

Ms. Jacqueline Smith
3946 Horseshoe Road; Apt. 2-B
Little River, SC 29566

Dear Ms. Smith:

I am writing to follow up our conference on October 28, 2010, during which we met to review the concerns that have been brought to the administration's attention. Also present during our conference was Mike Dale, SCEA Representative, Margaret Sordian, CMS Principal, and Hope Randall HR employee who was present to record notes from our meeting.

As I advised in you in my letter dated October 26, 2010, which confirmed the scheduling of the meeting, our purpose in meeting with you was to talk with you about the numerous concerns regarding your performance and provide you with a full opportunity to respond to them.

You were advised that our conference on October 28, 2010, was scheduled for 8:00 am at the District Office. You showed up at 8:22 am, did not acknowledge you were late, made no apologies, and offered no explanation. While circumstances can arise that cause you to be late on occasion, your being late and failing to even acknowledge that fact is consistent with the concerns described by parents and your supervisor. Your lateness to this important meeting with your supervisors on October 28, without explanation, sent the message to us that the meeting was not important to you. Presumably parents receive the same message of indifference when you are late, without explanation or an apology, to meetings scheduled with them.

During the conference, we discussed the fact that out of the 86 students you teach this year, the parents of 25 students have made 161 complaints about you to Ms. Sordian since August 24, 2010. The types of complaints include such things as: you place students in the hall for periods of time without authorization; you make inappropriate comments to students; you yell at students; you embarrass students; you fail to respond to parents in a timely manner; you fail to communicate effectively with students and parents regarding work, testing, re-testing, grades and assignments; you fail to report grades in a timely manner; you humiliate students in front of others during class time; and you are unprofessional when conferencing with parents. We also

Ms. Jacqueline Smith
Page Two
November 3, 2010

discussed that 47% of your 86 students received unsatisfactory grades for the first nine weeks. These facts suggest the concerns from parents are reasonable and legitimate.

We reviewed numerous concerns that have arisen and provided you with an opportunity to respond. For example, you received a letter from Dr. Sherilyn Duquette on September 1, 2010, following up a conference with you in which she addressed a parent's concern. Specifically, a student reported that you told him you would like to "write white people up." You denied making the comment. A couple weeks later you reportedly called Waccamaw Mental Health during class time in front of the class to discuss this same student and a possible referral, which was a complete violation of the student's privacy. You responded that you did make the call during class time in front of the class, but students could not hear your comments. Your conduct towards this student in both instances was entirely inappropriate and unprofessional.

We provided you with the opportunity to respond to several additional complaints from parents. One incident involved your placing a student in the hall for asking questions about the proper way to staple her paper. You responded that the student was placed in the hall for 10-15 minutes for disturbing class. It was noted by the administration that school rules do not support placing students in the hall unsupervised for any amount of time. This rule was implemented school-wide for safety reasons. Your admitted actions with this student clearly show a violation of school rules on your part. In yet another parent concern, we discussed the fact that parents of a student in your honors class had already been in contact with you regarding their son's grades. This contact occurred in mid-October. The parents communicated with the administration on October 19 that there had been no follow-up from the previous communication and that several of their emails to you had gone unanswered. They requested a meeting ASAP to discuss their son's poor grades. The parent conference was held on October 20. One of the outcomes of the meeting was that you would respond to the questions raised by the parents within 48 hours. We also discussed another student/parent issue whereby you failed to report to the conference in a timely manner. The administration scheduled the conference for 12:45. You showed up for the conference at 1:00. This parent had numerous concerns about information that had been shared with students including questions as to the accuracy of some of the answers provided. The parent also questioned some of the activities assigned to students. The conference ended with the parent requesting a copy of the worksheet (Practice Test 2) to assist her son with the assignment.

Thus, there have been numerous conferences with the administration and parents, that were initiated by the parents, to discuss their concerns with your teaching, communication with, and/or treatment of their children.

You stated during our conference that you are left out of the picture and do not hear from parents or receive emails from parents until Ms. Sordian requests a conference. However, the documentation contained in numerous emails from parents suggests otherwise. In many cases where parents have requested a conference, there are emails that establish they first attempted to

Ms. Jacqueline Smith
Page Three
November 3, 2010

communicate directly with you regarding their questions or concerns and they were not satisfied with your response or did not believe you responded in a timely manner. You have been present during most of the conferences in which parents raised concerns and you were provided with clear expectations from the administration. You stated you do not believe Ms. Sordian has supported you, but she has taken the time on a regular basis to be present during these many conferences with parents to assist you in addressing the parents' concerns. While this has taken a great deal of your time, it has also taken a great deal of Ms. Sordian's time. However, it is essential that we are responsive to concerns raised by parents and that we address their concerns in a timely and professional manner. While every concern raised by a parent is not always valid, the concern is important to the parent, so we must ensure our responses to parents are thoughtful and professional.

There are several instances where the administration has had concerns with the attitude you demonstrated towards parents during a conference. The most recent example occurred when you became confrontational during a conference with a parent on October 27, 2010. Initially, you arrived 22 minutes late for the conference, and that was after Ms. Sordian went to get you. Dr. Duquette reminded you of the conference 20 minutes before the conference. She then found you in the library on her way to the conference and asked you to report to the conference. You told her you had things to do and told her this was harassment. When you still did not report to the conference, Ms. Sordian went to get you. All of these steps by the administration should not have been necessary, but your demonstrated attitude and delay in arriving caused the conference to begin with the wrong tone. From that point, the parent began to ask you questions about her child's grades and assignments. While the parents' questions were reasonable, your responses were not. You stated several times to the parents, "Today is not a good day for a conference." It was clear from the discussion with the parents that they had previously raised their concerns with you directly and they were not satisfied with your response and lack of follow through. You began to yell at both parents stating such things as: "You want me to give her the answers?" You also yelled "No, I never give the wrong words. I don't need to tell you anything sir! You don't need to question me." You also stated, "I don't have time for this. I have things to do." This type of conduct is entirely unacceptable for a parent conference.

As we also discussed, Ms. Sordian has sent you letters dated October 11 and 19, 2010, in follow up to meetings. In the October 11 letter, Ms. Sordian advised you that an assistance plan may become necessary. You wrote on the bottom of the letter, "Not in agreement with individualized assistance plan." During our conference, you were asked about why you wrote the statement on the letter. You did not respond at first. Then, after a long period of silence, you stated the assistance plan is not based on complaints from parents. This refusal on your part to accept assistance from the administration and refusal to believe that such assistance is necessary are of great concern to the administration.

Ms. Jacqueline Smith

Page Four

November 3, 2010

As we also discussed during the conference, it appears that much of the conduct described in the letter you received on February 26, 2008, regarding your performance at North Myrtle Beach Intermediate School is reoccurring in your treatment of parents, students, and members of the administration at Conway Middle School. Similar concerns were also raised with your conduct when you were assigned as a teacher at Ocean Bay Middle School during the 2008-09 school year. The concerns included, among other things, your failure to respond to parents, lack of clarity on grades and assignments, and issues with attendance at meetings. When you were assigned to Ocean Bay, 13 students were removed from your class in the first four weeks of school at the parents' request. While approximately 100 students were assigned to your class at the beginning of the 2008-09 school year, only 68 students finished the year assigned to your class.

In summary, the administration remains extremely concerned with your performance in all the areas described above. The parental complaints raised against you are excessive in number, and cannot legitimately be blamed on the administration, since you have received similar parental complaints from other schools where you have been assigned. As recently as our conference on October 28, we are concerned that you do not acknowledge that there are legitimate concerns with your performance. You have not demonstrated a willingness to accept assistance and improve. You have failed to demonstrate a willingness to work cooperatively with parents and be responsive to their legitimate questions and concerns. Finally, your refusal to meet with the administration for various reasons and failure to attend meetings in a timely manner suggests you ~~do not intend to work cooperatively with the administration to improve your performance.~~ We believe the situation has become serious and your conduct has been disruptive to the school and to the students and their parents. I advised you during our conference that effective teachers are expected to treat students as individuals, motivate them, provide a positive climate for learning in the classroom, cooperate with parents, and build a relationship between the teacher and the parent.

We will review these issues further as we continue our investigation. In the meantime, you will remain on administrative leave, with pay. We will be in touch with you in the near future.

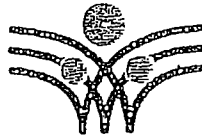
Sincerely,



Ed Curlee

Executive Director of Human Resources

c: Ms. Margaret Sordian



Horry County Schools

October 28, 2010

VIA U.S. MAIL: REGULAR MAIL AND
CERTIFIED MAIL, RETURN RECEIPT

Jacqueline Smith
3946 Horseshoe Road; Apt 2-B
Little River, SC 29566

Dear Ms. Smith:

The purpose of this letter is to inform you that due to allegations and complaints of unprofessional conduct, it has been recommended and approved that you be placed on administrative leave with full pay and benefits effective October 28, 2010. The administrative leave will continue until an investigation into the matter is complete.

In the meantime, you are not to return to Conway Middle School, nor enter other school district property, nor contact any of our schools' employees, students or their parents, without written permission from me or your principal. It may be necessary to contact you further as part of the investigation. Consequently, you are expected to be available by telephone during normal school hours while on administrative leave.

If you have any questions, please feel free to contact me.

Sincerely,

Ed Curlee

Executive Director for Human Resources

c: Employee's Personnel File
Dr. Cynthia Elsberry, Superintendent
Jeff Riddle, Chief Finance & Human Resources Officer /
Margaret Sordian, Principal



Horry County Schools

October 26, 2010

VIA FACSIMILE AND
HAND DELIVERED

Ms. Jacqueline Smith
3946 Horseshoe Road; Apt. 2-B
Little River, SC 29566

Dear Ms. Smith:

As you know, the administration has advised you of our need to meet with you to discuss several concerns that continue to arise regarding your performance so we can determine an appropriate course of action. We were scheduled to meet with you on Friday, October 22, 2010, at 2:45 p.m., but you called in sick. We rescheduled the meeting for Monday, October 25 at 2:45 p.m., but you called in sick again and indicated the meeting would have to be rescheduled. We then rescheduled the meeting for Tuesday, October 26 at 2:45 p.m. When Ms. Powell came to your classroom in advance of the 2:45 p.m. conference today to provide coverage for the students in your classroom, you stated in front of your students that you would not come to a meeting with the administration and you refused to meet with the administration without your representative present.

Your refusal to meet with the administration to discuss these very serious concerns is unacceptable conduct on your part. It is essential that you attend and participate in the meeting so you can be provided with a sufficient opportunity to respond to the concerns.

This is to advise you that you will be expected to report to a meeting at the District office located at 335 Four Mile Road in Conway on Thursday, October 28, 2010, at 8:00 a.m. I will be present at the meeting along with your principal, Margaret Sordian. You are free to bring an appropriate representative to the meeting, but you must understand that this meeting cannot be rescheduled again and we will need to proceed with this discussion.

The purpose of our discussion on October 28 is to talk with you about the numerous concerns regarding your performance that have arisen and provide you with a full opportunity to respond to them. For example, you received a letter from Dr. Sherilyn Duquette on September 1, 2010, addressing a parent's concern. You were told to contact Dr. Duquette if you needed assistance. Since that date, there have been numerous conferences with the administration and parents, that were initiated by the parents, to discuss their concerns with your teaching, communication, and/or treatment of their children. You have been present during most of the conferences in which parents raised concerns and you were provided with clear expectations from the

Ms. Jacqueline Smith
Page Two.
October 26, 2010

administration. Additionally, Ms. Sordian has sent you letters dated October 11 and 19, 2010, in follow up to meetings. In the October 11 letter, Ms. Sordian advised you that an assistance plan may become necessary. You wrote on the bottom of the letter, "Not in agreement with individualized assistance plan." This refusal on your part to accept assistance from the administration or refusal to believe that such assistance is necessary is of great concern to the administration.

The administration has received numerous complaints from parents, including such things as: you place students in the hall for periods of time without authorization, you make inappropriate comments to students, you yell at students, you embarrass students, you fail to respond to parents in a timely manner, you fail to communicate effectively with students and parents regarding work, testing and re-testing, and assignments. On each occasion when the administration has met with you along with a parent, at the request of the parent, the administration has provided you with very specific guidance. Despite this fact, the concerns raised by the parents have continued and have escalated. In one meeting a parent requested to schedule with you and the administration, you stated that you did not plan to attend the parent meeting unless your representative could be present. This is not an acceptable attitude with respect to a meeting with a parent that is requested by the parent.

In reviewing these present concerns, it appears that much of the conduct described in the letter you received on February 26, 2008, is reoccurring in your treatment of parents, students, and members of the administration. We believe the situation has become serious and your conduct has been disruptive to the school and to the students and their parents.

It is for these reasons that we will plan to meet with you on Thursday at 8:00 a.m. at the District office. We wish to review these concerns with you, and provide you with a full opportunity to respond and provide us with appropriate information. Please understand that if you refuse to attend this meeting, we will have no alternative but to view your refusal to meet as insubordination on your part and we will have to proceed to act accordingly.

We look forward to having further discussions with you on Thursday and provide you with a full opportunity to provide us with information responsive to our concerns.

Sincerely,

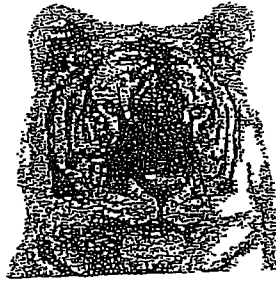


Ed Curlee
Executive Director of Human Resources

c: Ms. Margaret Sordian

Conway Middle School

Ms. Margaret B. Sordian, Principal



*Dr. Sherri Duquette, Assistant Principal
Mr. Charles Holden, Assistant Principal*

October 25, 2010

Dear Ms. Smith,

The meeting that was scheduled for Friday, October 22, 2010 was rescheduled for Monday, October 25, 2010. You were unable to attend the meeting on Monday, October 25, 2010 due to illness. That meeting has been rescheduled for Tuesday, October 26, 2010 at 2:45 PM. We will hold this meeting at the district office. Please plan to meet in the Human Resources Conference Room. The conference room is located in room B105.

Coverage has been arranged for your last block so that you can report to the meeting

Sincerely,

Margaret B. Sordian

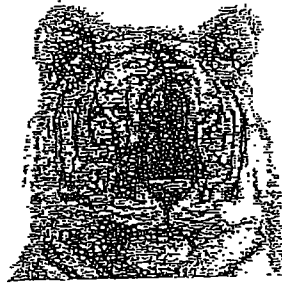
Cc: Mr. Ed Curlee, Executive Director Human Resources

Go Tigers!

1104 Elm Street, Conway, South Carolina 29526 Tel: (843)488-6040 Fax: (843)488-0611
Website: <http://cm.horrycountyschools.net/>

Conway Middle School

Ms. Margaret B. Sordian, Principal



Dr. Sherri Duquette, Assistant Principal
Mr. Charles Holden, Assistant Principal

October 21, 2010

Dear Ms. Smith,

The meeting that was scheduled for Friday, October 22, 2010, at 12:00 has been rescheduled. This meeting will be on Monday, October 25, 2010 at 2:45 PM. We will hold this meeting at the district office. Please plan to meet in the Human Resources Conference Room. The conference room is B105.

Coverage has been arranged for your last block so that you can report to the meeting as scheduled.

Sincerely,

Margaret B. Sordian
Margaret B. Sordian

Cc:

Mr. Ed Curlee, Executive Director Human Resources

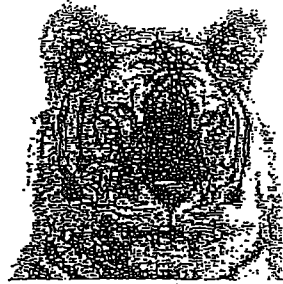
3:10 21 OCT-10
Refused to sign
Michael Dell would
Schedule meeting
C. Curlee
AP

Go Tigers!

1104 Elm Street, Conway, South Carolina 29526 Tel: (843)488-6040 Fax: (843)488-0611
Website: <http://cm.horrycountyschools.net/>

Conway Middle School

Ms. Margaret B. Sordian, Principal



Dr. Sherri Duquette, Assistant Principal
Mr. Charles Holden, Assistant Principal

October 19, 2010

Dear Ms. Smith,

The 7th grade ELA teachers were scheduled to attend district training with the ELA Learning Specialist on Friday, October 15, 2010. The training was to begin at 1:30 and we waited for you to arrive and finally began our session without you at 1:45. It was 1:48 when you arrived for the training (18 minutes past our beginning time).

Teachers were asked to bring lesson plans to the meeting and you failed to comply with this request. The meeting was stopped so that you could return to your room to get your lesson plans.

It is a professional responsibility to adhere to all time schedules as set for all professional development and other school related activities.

A copy of this letter of reprimand will be placed in your personnel file at the school and the district level.

Sincerely,

Margaret B. Sordian
Margaret B. Sordian

Cc: Employee's Personnel File (school and district level)

Mr. Ed Curlee, Executive Director Human Resources

MS. Smith refused
to sign without her
ASCEA Ref. I gave her
the letter.
C. J. [signature]
(9 OCT 10

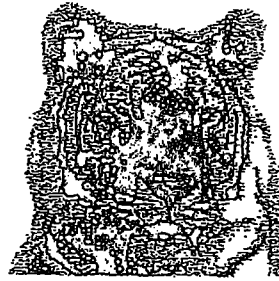
Go Tigers!

1104 Elm Street, Conway, South Carolina 29526 Tel: (843)488-6040 Fax: (843)488-0611

Website: <http://cm.horrycountyschools.net/>

Conway Middle School

Ms. Margaret B. Sordian, Principal



Dr. Sherri Duquette, Assistant Principal
Mr. Charles Holden, Assistant Principal

October 11, 2010

Dear Ms. Smith,

Thank you for meeting with me on October 11, 2010 at 12:00. As you requested, Mr. Mike Dale, SCEA representative, was in attendance as your representative at this meeting. Dr. Sherrilyn Duquette, Assistant Principal, attended the meeting as the 7th grade administrator.

The purpose of the meeting was to discuss continuing concerns from parents and students in regard to assignments, grading procedures, and classroom instruction. Numerous parent complaints are being placed at both the district and school levels.

As discussed in our meeting, an Individual Assistance Plan (IAP) may become necessary. At your request, Mr. Lee, Executive Director of Middle Schools, will be contacted to arrange a meeting with you and Mr. Dale at the district level. This meeting will be to address a grade change requested by me that you have failed to change.

A copy of this letter will be placed in your personnel file at the school and district level.

Sincerely,

Margaret B. Sordian

Margaret B. Sordian

Cc: Employee's Personnel File (school and district level)

Mr. Ed Curlee, Executive Director Human Resources

Go Tigers!

1104 Elm Street, Conway, South Carolina 29526 Tel: (843)488-6040 Fax: (843)488-0611

Website: <http://cm.horrycountyschools.net/>

Please address all the concerns and what I stated as

*Not in agreement with individual where
Jagade Smith - 10/12/10 after meeting discuss
Mike Dale will need to receive a copy of this letter - plan*



Horry County Schools

February 26, 2008

VIA U.S. MAIL: REGULAR MAIL AND
CERTIFIED MAIL, RETURN RECEIPT

Ms. Jacqueline Smith
4640 Greenbriar Drive, Apt. C-1
Little River, SC 29566

Dear Ms. Smith:

The purpose of this letter is to summarize our conference held on Thursday, February 21, 2008, where we discussed your placement on administrative leave with pay for allegations of unprofessional conduct and insubordination toward the administration at North Myrtle Beach Intermediate School. Also present at the meeting were Paul Hickman, Director of Special Projects; Jeff Riddle, Chief Finance and Human Resources Officer; and Abdullah Mustafa, whom accompanied you.

During our meeting, I informed you that Mr. Hickman had an opportunity to investigate the allegations of unprofessional conduct and insubordination. Based on the investigative findings, it has been determined that you exhibited unprofessional behavior toward the school's administration and blatantly disregarded several directives issued to you.

The issues regarding unprofessional behavior began with concerns about the curriculum. Parents had raised questions regarding your homework assignments. It is our understanding that Principal Graham brought the matter to your attention and requested conformity with the school's initiatives and standards. However, you failed to follow this directive even after a review by Learning Services staff determined that too much work was being assigned to the students as homework. You informed Ms. Graham and parents that you would be making changes with your assignments, but failed to do so. When Principal Graham met with you to discuss your refusal to make the agreed upon changes, you stated that you had conferred with other principals and teachers who supported your efforts and you did not feel the need to change the student

assignments. However, you never informed your principal that you had done this; thus undercutting her credibility with the parents to whom she ensured the homework assignments would be modified.

During the District's investigation into the allegations, several other concerns were discovered. It was determined that you were tardy for parent conferences, specifically you arrived 15-20 minutes late for a scheduled parent conference and announced that you would be in attendance for only five minutes due to a prior commitment. On numerous occasions, you failed to sign in and out as required by the school's administration. Several incidents have occurred where you failed to participate in planning meetings at the school level during and after school with the appropriate persons. Also, it was brought to our attention that you discussed your situation with other teachers at North Myrtle Beach Intermediate and with community members after having been told that it was a personnel matter that was to be kept confidential.

The District's investigation identified several situations where your conduct was a total disregard to directives issued by the school's administration. On or about January 17, 2008, Principal Graham requested that you submit your grade book to her prior to January 22nd. However, you refused to produce the grade book and grades for students. You stated that Principal Graham would receive the grades at the same time grades would be issued to parents and students.

On Tuesday, February 12, 2008, Principal Graham requested your attendance in a meeting with the administration and curriculum specialist to discuss parental concerns with your class. Initially, you refused to attend the meeting, but later decided to attend. You were present at the meeting, but did not participate in the discussions. Principal Graham asked you to participate in the discussion, but you refused to do so. You further refused to provide pertinent information about the students' work with the school administration and curriculum specialists.

Based on our investigation, we have determined you engaged in unprofessional conduct and acts of insubordination toward the school's administration. This type of conduct will not be tolerated. As a teacher, you are to follow the directives issued to you by the school's administration at all times. Should you continue to behave in such a manner, you will be subject to further disciplinary action which could include, but is not limited to, your being recommended for termination from employment with Horry County Schools.

We further discussed the need for you to remove your personal belongings from North Myrtle Beach Intermediate School. You are asked to contact the administration to make arrangements to remove your personal belongings outside of the regular school hours. Please contact Principal Graham to arrange an appropriate time to retrieve any personal belongings from North Myrtle Beach Intermediate School.

I trust you understand the seriousness of our concerns and expect you will conduct yourself in a professional manner at all times. Please be informed that your job performance and conduct will determine your contract status and assignment for next school year.

Please contact me at 488-6724 if you have questions.

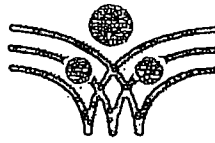
Sincerely,

A handwritten signature in black ink, appearing to read 'Ed Curlee', written over a horizontal line.

Ed Curlee
Executive Director for Human

Resources

c: Bobby L. Nalley, Acting Superintendent
Jeff Riddle, Chief Finance/Human Resources Officer
Employee's Personnel File



Horry County Schools

February 22, 2008

VIA U.S. MAIL: REGULAR MAIL AND
CERTIFIED MAIL, RETURN RECEIPT

Ms. Jacqueline P. Smith
4640 Greenbriar Drive, Apt. C-1
Little River, SC 29566

Dear Ms. Smith:

The purpose of this letter is to notify you that you have been removed from administrative leave effective Monday, February 25. Additionally as we discussed in our meeting of February 21, it has been recommended and approved by the Superintendent that you be reassigned to Carolina Forest Elementary School effective Monday, February 25. The necessary paperwork to complete your new teaching assignment will be completed by the Human Resource Office.

We also discussed the need for you to remove your personnel belongings from North Myrtle Beach Intermediate School. You are asked to contact the administration to make arrangements to remove your personnel belongings outside of the regular school hours. Ms. Graham has been notified of this information and is expecting to hear from you concerning the scheduling of a time for the stated purpose.

Thank you for your support of the information shared in this communication. We wish for you a successful experience in your new position at Carolina Forest Elementary School.

Sincerely,

Jeffrey S. Riddle
Chief Finance/Human Resources Officer

c: Melissa Spearman, CFES Principal
Michelle Graham, NMBIS Principal
Employee's Personnel File
Account Manager

November 20, 2006

Ms. Smith,

A few weeks ago we spoke about the number of parent complaints and possible reasons why. During our conversation I made some suggestions. I have been unable to get with you to see how things are going. This is a follow-up to that conversation. I have had a few additional calls since we last spoke. Please take a look at my recommendation and see me if you do not feel you can implement them or need more assistance.

Recommendations:

- Give every student a copy of the spelling list every week. Do not rely on students to copy words correctly. (Most recent parent complaint)
- When parents call you and make reasonable request such as send a printed spelling list please comply. (An ounce of prevention is worth a pound of cure.)
- Model what you expect from students: Be on time, turn in things on time, and send things as promised i.e. weekly letter.
- When you send the weekly update letter, allow parents to keep the document that has the upcoming dates and assignments. You can ask them to sign something and send it back, but it kind of defeats the purpose of the newsletter if they must bring it back the next day. I gave an example in our last meeting of parents putting them on the fringe and referring to them all week to help their child.
- Examine your procedures to be sure they are not too ridged and unforgiving. Your students need to see you model compassion and understanding when things happen. Things can not be all or nothing when dealing with 10 year old children.
- Watch your tone when talking to students. (Ongoing complaint, most recent Friday)

You can continue to have high expectations for students and provide a nurturing environment conducive to learning. During our conversation I recommended that we do a survey for your eyes only. I wanted you to have feedback from your students. I still think the survey would be a good idea, but do not want students to miss interpret me giving it. I encourage you to give your students a survey or develop some other means of assessing where your class is and what needs to happened to improve your report with them. We have had in excess of 10 complaints this year and I really feel the only way to resolve the issue is to build relationships. I would also recommend that you participate in any training listed on the Horry County website offered as it pertains to student relationships and effective classroom management.

Thanks,
M. Graham

September 10, 2010

Conference with Mrs. Smith. Mrs. Sordian and Dr. Duquette present.

Mrs. Sordian called a conference to discuss parent complaints being received. She explained that Dr. Duquette was present because I am 7th grade administrator. She informed Mrs. Smith that out of her second block of students (15) that she had already spoken with ten or more parents that have complaints on her instructional delivery. Mrs. Sordian discussed Mrs. Smith's background qualifications and experiences with her. Mrs. Smith shared this is her second year at Conway Middle. She came after school started last year because her class was cut at Ocean Bay Middle. She shared that this is her 19th year in education. She reported she has taught accelerated, honors, and regular ELA in middle school and elementary in her career. Mrs. Sordian then shared the notes that she has received from parents.

1. Mrs. [redacted] said Mrs. Smith had responded to her concerns in an offensive tone and quoted Mrs. Smith in her email to Mrs. Sordian. Mrs. Smith responded that the class had been MAP testing and students had notebooks in their lockers. Mrs. [redacted] daughter had wanted to show Mrs. Smith something that she had received a 0 for. Mrs. Smith said she would have to refer to her gradebook and that she changes grades once they are completed. Mrs. Smith was told to pull up the grades and show her.
2. Mrs. Sordian shared second complaint that during MAP testing she was counting down time and gave a stem quiz in the computer lab without sufficient time given to do the quiz. Mrs. Smith responded that she did give them a quiz because she was trying to stay with the pacing guide.
3. Third complaint was shared that a parent felt her child was forced to do reading, language, and math MAP in one day or be punished. Mrs. Smith responded that she was told that we wanted to be finished by Friday and was trying to make kids comply.
4. Next, Mrs. Sordian shared a note from [redacted] about doing a project in the media center. She doesn't have a computer at home. Mrs. Smith gave her a pass to the media center, but [redacted] did not know where to go so she went to Mrs. Smith and was questioned why she did not have her assignment. She had typed her poem and it was in Mrs. Sordian's office.
5. Parent called and complained that racial comments were being made in class. Dr. Duquette followed it up with a letter to Mrs. Smith. Mrs. Smith disagreed with Dr. Duquette's letter.
6. Student [redacted] was discussed because his mom called about MAP rush, stem test given and other things that were due in same MAP testing block of time.
7. Mrs. Smith was told about report from student that she embarrassed the student when she said "What's wrong with you? This is the third day without your pencil. She then put her hand on the student's desk and told her to spit out her gum and to get out of her class."
8. A parent called about Daily Oral Language quiz that was given with three questions and students were told that they had two minutes to complete it. Mrs. Smith admits she said two minutes, but actually gave them five minutes. She said the kids were told about the quiz on Monday.

9. Oral book report rubric was given to students on same day report was due to be presented. Mrs. Sordian explained that accelerated parents want to know expectations ahead of time and usually hold their children to higher standards and expectations. They want to know so that their children can practice at home before presenting something at school for a grade.
- Mrs. Sordian explained that she could not support these type of incidents. She encouraged Mrs. Smith to show some understanding of students. Mrs. Sordian asked about her progressive discipline plan and was told that she called parents during class time by stepping into the main hall with the student and using her cell phone to call home. Mrs. Sordian responded that this is a waste of instructional time and that she was leaving the rest of her class without supervision and demonstrating an unacceptable practice of using cell phones during instructional blocks. She went on to explain better ways of handling classroom disruptions.
- Mrs. Sordian asked if Mrs. Smith had had these complaints before and was told by Ms. Smith, "Not usually, but I've always emailed and communicated with parents." Meet Mrs. Sordian reminded Mrs. Smith that kids need to know upfront what is expected of them and so do their parents.

Mrs. Sordian summarized the conference with the following suggestions:

1. Make sure agenda and objective to match what is actually being taught.
2. Make sure all lesson plans are aligned with activities being conducted.
3. Handle all parents with kid gloves.
4. Have 10 out of 15 parents requesting kids be moved out of her class.

September 16, 2010

Conference held with [redacted]s parents in regard to Mrs. Smith's class: Mrs. Sordian, Dr. Duquette, Mr. & Mrs. [redacted] present.

The parents requested a meeting with Mrs. Sordian to discuss the following concerns:

1. [redacted] is scared of Mrs. Smith and is crying at night and does not want to come to school until after Mrs. Smith's block (first). She says she is scared of her because she makes remarks to people when they do not know the answers and makes them go to the board anyway. Her friend was embarrassed by Mrs. Smith when she told her she didn't know the answer and Mrs. Smith responded "Well you should know the answer, you are in a honors class. It is not what you want to do in this class, but what you have to do." She was sent to the front board and stand while Mrs. Smith continued to ask her questions she didn't know the answers to. [redacted] became scared that she would be next as a target and grew very uncomfortable.
2. [redacted] reported to parents that Mrs. Smith often screams at them and that makes her afraid.
3. Mrs. Smith took class to the library and told kids to choose a book for a book report. First Mrs. Smith told the class it would be an oral book report, but changed it to oral and written on Friday to be presented on Monday. Then on Friday, she told them that it could be presented on a poster board or etc. [redacted] confused on what she was supposed to do exactly and became upset because the book she had checked out had content she was uncomfortable presenting orally in front of the class. (Mrs. Sordian & Dr. Duquette agreed to pull book for a review after listening to content—book title is Just Another Hero and deals with many problems associated with older teens).
4. One day last week, Dad had to physically carry [redacted] in the building with help from Mr. Holden. Mrs. Lennon was called to his office to talk with her. Once she was told that she could go to second block and skip Mrs. Smith's class, she calmed down. Parents have made a doctor appointment with child psy (Dr. Honnick) for evaluation. Will share results with Dr. Duquette
5. Mrs. Lennon told parents that Mrs. Smith would contact them five days ago, still have not heard from her.
6. Vocabulary (stems) are a problem in how they are being presented to class—no modeling is being done for students. [redacted] lost 2 points because she wrote a definition on a stems quiz that was more than one word, but still defined the stem.

Mrs. Sordian said she would follow up on all concerns. It would be difficult to change her class since students are on academic teams unless [redacted] could be moved to an entirely different team. Parents did not want to do this at this point because [redacted] is doing well in all other classes. Mr. & Mrs. [redacted] will let us know if they want to schedule another conference with Mrs. Smith present. They fear she will take out concerns on [redacted] by making her a target in class.

September 16, 2010

Conference with Mrs. Smith and [REDACTED] father, Mrs. Sordian, and Fr. Duquette.

Father came in for a conference with Ms. Sordian, Dr. Duquette, and Mrs. Smith. Mrs. Smith was emailed by Dr. Duquette that conference was going to be held in Mrs. Sordian's conference room at 12:30 on Thursday. She was reminded again by Dr. Duquette during lunch that a conference was scheduled and was told by Mrs. Smith that she did not plan to attend a meeting with us unless her representatives from SCNEA and local organizations could be present. She asked Dr. Duquette who the building representative was told that she wasn't sure because of being new to the building, but thought it was Kelly Moran. At 12:30, the conference began with the parent without Mrs. Smith and Mrs. Sordian sent Mrs. Gaddy (curriculum coach) to go find her. Mrs. Smith joined the conference at 12:42.

Mr. [REDACTED] shared that [REDACTED] currently has a 61 average in an honors class due to 0s in several assignments that he says were completed. Mrs. Smith described the activities that he had received the 0s in and said [REDACTED] did not do illustrations for vocabulary when asked nor has she seen completed work. She explained the stem vocabulary process and Dad responded that finding what she was requesting was very difficult even using the internet. A Stem quiz was discussed that was given on the Friday before conference in which she asked them to find a common meaning. Dad questioned if this journal of work is allowed to come home for study. [REDACTED] was called out of class and told to go get his journal to review with everybody at this point

[REDACTED] joined conference a few minutes later and showed vocabulary stem assignment in question. He said he tried to show it to Mrs. Smith a day late and was told she would change the 0, but it was not done. Mrs. Smith responded she takes 10 points off for each day late on assignments and did not remember him showing her his journal late. Dad stated he wants more communication and asked if the only thing the class is currently working on is Stems and book reports. He wanted to know when the class would study a novel. Mrs. Smith responded that she plans to let the class decide on one soon. Dad then asked when grades would be posted weekly in powerschool and said they aren't put on consistently. Dad requested [REDACTED] be given the stem quiz over and Mrs. Smith agreed he could have a retake after the journal assignments were reviewed by Mrs. Sordian. One stem item was counted off when actually correct—ego. Mrs. Smith was looking for definition of I. [REDACTED] put self or me. When questioned why it was marked wrong, Mrs. Smith responded because district map gives I as definition. Both Mrs. Sordian and Dad then questioned why students aren't given the district definition instead of having to search for definitions if the district definition is the only one accepted for tests.

[REDACTED] also shared that he had emailed Mrs. Smith on Monday and still had not received a reply.

Conference dismissed at 1:20 with understanding that [REDACTED] would be given credit for work completed and he would be allowed to retake stem test.

Mrs. Margaret Sordian-Principal

Dr. Sherrilyn Duquette-Assistant Principal
(7th grade, A-L 8th grade)

Mr. Charles Holden-Assistant Principal
(6th grade, M-Z 8th grade)

CONWAY MIDDLE SCHOOL



October 5, 2010

Dear Mrs. Sordian,

This morning a parent came to school wanting to see you about Mrs. Smith. Since you weren't in the building, I met with her. Mrs. [REDACTED] shared that yesterday, Mrs. Smith was yelling at the students and had made a comment indicating that she did not like some of the white students. Mrs. [REDACTED] said her daughter [REDACTED], was very offended because she is biracial. According to Mrs. [REDACTED] her daughter feels Mrs. Smith is disrespectful to students and reported to her mother that Mrs. Smith had referred to her as a child with an attitude and mean in front of the class which embarrassed her. Mrs. [REDACTED] went on to say that she had called Mrs. Smith the week before and had not received any response. She then emailed Mrs. Smith on Thursday of last week and as of today has not received a response to address concerns about [REDACTED]'s interim report card. Mrs. [REDACTED] says she is concerned that Mrs. Smith often uses her cell phone during class time and is setting a bad example since students get disciplinary action for using their cell phones. The last concern she discussed was that Mrs. Smith randomly picks out students to use as examples-putting them out of class, etc. Her daughter does not want to go to class.

I did not discuss this with Mrs. Smith. I wanted to wait and discuss with you first.

Sincerely,

Dr. Sherrilyn Duquette
Dr. Sherrilyn Duquette

October 11, 2010

Present: Mrs. Smith, Mr. Mike Dell, Mrs. Sordian, Dr. Duquette
Time 12:00

Problem stated by Mrs. Sordian that she is still getting parent complaints about classroom management and instructional practices in Mrs. Smith's ELA classes.

1) Grade for [REDACTED] is still under debate. Mrs. Smith told the father during a conference that [REDACTED] would be allowed to retake the test in question. She did not explain that the two grades would be averaged during this conference. [REDACTED] made a 40 on the first quiz and 80 on the second. Mrs. Smith recorded final quiz grade as a 60. Father does not agree with this since during conference with him this practice was not made clear. Mrs. Sordian stated that there had been back and forth correspondence about the grade between herself and Mrs. Smith. On 9/28 Mrs. Smith had emailed that she disagreed with Mrs. Sordian and refused to change the grade and would like to discuss it with Dr. Elsberry. Mrs. Sordian asked her if this was still her desire to take it to the district level and if so, she would contact Mr. H.T. Lee, Executive Director of Middle Schools to set up a conference time with him or see what he would think best for the next step. Mr. Dell responded that he will let Mrs. Sordian know after he and Mrs. Smith discuss the outcome of today's conference.

2) We will be looking at an individual assistance plan for Mrs. Smith if parent concerns continue to come to Mrs. Sordian.

Mrs. Sordian asked if Mrs. Smith had any concerns. Mrs. Smith responded, "Did these students come to me for help? What students are we talking about? No student has come to me outside of class for additional help."

Mrs. Sordian asked, "Have students asked for your help in class?"

Mrs. Smith responded, "Yes. In class, but not outside of the regular class block. None have come during Tiger Time except those needing to retest on something."

Mrs. Sordian replied, "This is how we are going to leave this today:

- 1) I'll contact Mr. Lee about setting up a meeting to resolve [REDACTED]'s grade.
- 2) The next step is to meet to discuss an AIP for Mrs. Smith related to instructional practices.
- 3) I have shared parental concerns brought to me during this past week.

October 14, 2010

Those in attendance: Mr. [REDACTED] Dr. Duquette, Mrs. Sordian, Mrs. Smith

Time: 12:10

Recap of October 13, 2010: Mrs. Sordian and Dr. Duquette met with Mr. [REDACTED] on October 13 when he came to school upset. Upon listening to his concerns, a parent conference was scheduled with Mrs. Smith for the October 14 at 12:00.

Mr. [REDACTED] shared his concerns with Mrs. Smith:

He is not backing [REDACTED] because she is his daughter, but because she has been coming home complaining about her ELA class since the first week of school. He feels it was time to intervene when his daughter requested to change classes because of Mrs. Smith. He stated that the last three weeks have been the worst for [REDACTED]. The final problem happened on Tuesday.

- 1) [REDACTED] has told her father that there is a tension between her and Mrs. Smith that is interfering with her learning. She said that the notebooks in class is where all papers are kept for classwork. Mrs. Smith handed out some papers that had to be stapled into the notebook and she did not know if they needed to go in the front or back and so she asked Mrs. Smith. Mrs. Smith responded, "There's a difference" several times when [REDACTED] continued to ask for directions on where to put her papers. After three or four times of asking, Mrs. Smith told her to get out of her class and go stand in the hall. [REDACTED] left the room as a quiz was being given out. She had to come back to ELA during Tiger Time to take the quiz.
- 2) When she arrived back in class following her being put out in the hall, she did not have an assignment that was given to the class while she was out in the hall, she tried to tell Mrs. Smith. Mrs. Smith responded to her, "This is an honors class..." [REDACTED] says she is trying very hard to keep up but that she wasn't in honors before and doesn't always know everything. She feels made to feel inferior when she receives such remarks instead of a straight answer from Mrs. Smith.

Mrs. Smith responded:

She has previously called Mrs. [REDACTED] about [REDACTED] being disrespectful and has spoken to [REDACTED] about her tone of voice and attitude. She went on to explain on the day of question, she had arrived late to school (around 9:00) due to running out of gas. She came into class without her quiz ran off and started trying to print them and give out from her printer. [REDACTED] kept asking questions and she sent her out of the room because she was talking while Mrs. Smith was trying to organize herself. She said she called [REDACTED] back into the class at 9:30 and discussed why she was sent out. [REDACTED] left her class and started crying. Mrs. Smith says at that point she discussed the incident with Mrs. Chestnut. She did not feel she needed to call the parents.

Mrs. Sordian responded:

"Mrs. Smith, can you give us some examples of what [redacted] says back to you?" Mrs. Smith responded, "she mumbles". Mrs. Sordian stated that no student is to be put out of a class to stand in the hall and that all removals should be a part of the team disciplinary plan. She also stated that such behavior would need a parent contact. Mrs. Sordian asked what grade [redacted] received on the quiz she made up during Tiger Time (96). Mrs. Sordian then asked Dr. Duquette if she had ever seen [redacted] for discipline. The answer was NO. Mrs. Sordian asked Dad if [redacted] had discipline problems last year and was told minor things associated with adjusting to middle school.

Mr. [redacted] stated that Mrs. Smith's recall of what happened did not agree with what [redacted] had told him. "I don't believe that it is all [redacted] after speaking with you. I know I would have received calls from other teachers if she was being disrespectful. The problem is continuing. You and [redacted] are butting heads daily. I feel that your bad day, Mrs. Smith, made the matters worse on [redacted] and that you took out your frustrations on her which added fuel to the fire. You admitted that you were late to school, not prepared to give your quiz, and trying to do it from the computer in your room. Regardless of all, [redacted] will continue to have good grades, I will see to that."

Mrs. Sordian asked Mrs. Smith, "Can you tell us about the stapling?" Mrs. Smith responded, "I don't know what you are talking about. Usually the kids paste or use glue sticks to put their papers in their journals."

Mrs. Sordian stated, "Our goal is to deliver what kids need to be successful." She asked if Mrs. Smith has any conflicts with this. Mrs. Smith responded, "I don't have a conflict with the students. I am here to do a job."

Mrs. Sordian summarized:

- 1) We will not put kids out in the halls unsupervised.
- 2) Parent should be contacted about misbehaviors and a conference scheduled.
- 3) Respect, Restraint, Responsibility is practiced, modeled, and taught at CMS.
- 4) Student agenda will be used for class, hallpass, and communication tool.
- 5) Teacher is to look at agendas last 2 or 3 minutes of class for parent notes or signing those needing signature.

Mrs. Smith asked the Dad to contact her through school email or phone if any other concerns arise.

Dad stated another concern is that [redacted] is often tardy to second block because Mrs. Smith keeps children over. This does not allow ample time to go to the restroom or get to next class on time and then she has to fill out a tardy slip for Mrs. Rivera.

Went back to the paper stapling incident, Mrs. Smith asked [redacted] "Where does reading go in the notebook? In the front. Where does DOL go? In the back. So where would the poems go?" Mrs. Smith also stated that the students know that they are to ask their group a question before asking her.

Dad responded, "So are you saying that while passing out a test, you wanted [redacted] to ask others questions instead of you? Do you allow them to talk during a test?"

Mrs. Smith responded that the incidents actually occurred on two separate days. [redacted] disagreed. Stapling the poetry in notebook and being put out of class.

Mrs. Sordian intervened and asked, "How can we move forward? Can we agree on some things?"

- 1) Teacher should give an answer to students when they ask a question that is specific to question asked.
- 2) Both of you feel the other is being disrespectful.
- 3) No student shall be left alone in the hallway.
- 4) Any concerns related to [redacted] should be addressed with Mr. [redacted] by phone [redacted]
- 5) Three R's must be demonstrated by all parties.
- 6) We must all work for the same goals.

Dad asked, "Mrs. Smith what is your plan to fix the friction? I know what [redacted] will do. She will not be disrespectful to you anymore. She will talk to you or go to Dr. Duquette. I would like to hear your plan of action."

Mrs. Smith responded, "I don't have a problem with [redacted] but I do have a problem with her disrespect. I try to teach that's what I do. I guess I will call you."

Dad "[redacted] do you want to share your feelings?"

[redacted] responded, "I wasn't in an honors class last year and I don't know a lot of what you think or what was taught last year. I don't like your attitude in class that you usually have. If I ask a simple question, I would like an answer. For example when I asked where to staple the papers, you replied there is a difference. I didn't know and needed you to just say in the front."

Mrs. Sordian, "Are you afraid to ask questions?" Dad said, "Lots of times you have said Mrs. Smith was mean. We need to know."

[redacted] responded, "She has an attitude with me."

Mrs. Smith responded, "I run a very structured classroom. I always call you in after class if there is a problem. I always try to have fun with your group."

[redacted] responded, "You raise your eyebrows, and your voice is always loud."

Mrs. Smith responded, "You know your group is large and your group gets very loud."

Mrs. Sordian dismissed Mrs. Smith and [redacted] at 1:20.

Mr. [redacted] finalized conference by stating, "I just wanted to hear Mrs. Smith say she wouldn't come to school with an attitude. That she would enjoy the kids and not take out personal frustration on any of them. She did not give me answers to any of my questions. I don't feel that this is resolved."

October 20, 2010

Present: Mr. & Mrs. [REDACTED] Mrs. Sordian, Mrs. Smith, Dr. Duquette

Mrs. Sordian introduced everyone and told the parents that they could share their concerns.

Mr. [REDACTED] started by questioning [REDACTED]'s interim report card grade of 73. He shared that he sent an email to Mrs. Smith on Monday morning and did not receive anything back from her. He shared that historically [REDACTED] has always been an "A" student.

Mrs. Smith replied, "[REDACTED] is easily distracted."

Mrs. [REDACTED] then showed us [REDACTED]'s progress report and questioned his grades.

Mrs. Smith replied, "I normally put 1st grade, 2nd grade and I can't recall [REDACTED] taking this word stem test over (40) during Tiger Time." However, she did agree he retook the test but that he hasn't received any feedback on it. "I go over grades with them individually and so I don't have them all in yet."

Mrs. [REDACTED] replied, "But this is not typical of him."

Mrs. Smith said, "Right. We have had several tests since he was out."

Mrs. [REDACTED] responded, "He hasn't been out since September. Did he retake the test?"

Mrs. Smith replied, "I just can't remember."

Mrs. Sordian asked, "Do you have a paper copy of your classes grades?"

Mrs. Smith replied, "No, I just keep my grades in the computer. You know [REDACTED] talks a lot with [REDACTED]."

Mrs. [REDACTED] asked, "What about homework?"

Mrs. Smith said, "Some days they have reading, or word web, or a handout."

Mrs. [REDACTED] asked, "Is the word webs due on Tuesdays?"

Mrs. Smith said, "No. Each student does only one stem and word part and then they share with their group."

Mrs. [REDACTED] asked, "So, is he responsible for only his group's one word? How about Compass? How do you grade that?"

Mrs. Smith replied, "They only do one lesson at a time. I check their folders when it comes up it is an average for the lessons completed. I use the average. Mr. Franklin allows them to work on it in his room also."

Mr. [REDACTED] asked, "What about the weights of grades?"

Mrs. Sordian asked, "Mrs. Smith, when will the grades be in?"

Mrs. Smith replied, "I want everything done for me by Friday."

Mrs. Sordian questioned her about previous grades not already recorded.

Mrs. Smith replied, "I have grades on a sheet in my classroom."

Mrs. Sordian asked, "You can't recall what his grade is?"

Mrs. [REDACTED] replied, "What you are telling us is that by Friday you will have all his grade in and the compass grades also?"

Mrs. Smith replied, "Yes I am looking for his average on Compass."

Mrs. [REDACTED] stated, "[REDACTED] isn't sure how many lessons on Compass he should have completed."

Mrs. Smith replied, "I gave Mr. Franklin what I expect."

Mrs. [REDACTED] responded, "But I don't want him depending on doing it in Mr. Franklin's room. His class ends soon."

Mrs. Sordian asked if there were any more concerns for today?

Mrs. Smith responded, "No. [REDACTED] is a good student except for his talking."

Mrs. Sordian summarized the conference:

- 1) Make sure you have current contact numbers for the parents, go upstairs and get grades for missing items and email them to parents and me before the end of the day.
- 2) Is [REDACTED] using his student agenda? Use this for teacher correspondence with the parents. Emails and phone calls should have a response from the teacher within 24 hours but no longer than 48 hours.

October 20, 2010

Present: Mrs. [REDACTED] Mrs. Smith, Mrs. Sordian, Dr. Duquette
Time: 12:45

Mrs. Smith did not show up for conference. Mrs. Sordian had to excuse herself and go look for her. They entered at 1:00PM. Mrs. Sordian made arrangements for a curriculum coach to cover her class while conference proceeded.

Mrs. [REDACTED] began conference by questioning progress report. [REDACTED] still did not have a grade for work assignment August 26.

Mrs. Smith responded that [REDACTED] had not shown it to her. Then she asked the mother, did he?

Mrs. [REDACTED] responded, "how would I know?" Mom then questioned Mrs. Smith about the next grade on stems quiz.

Mrs. Smith responded, "I want to conference with students. I have to have all my grades in by Friday."

Mrs. Sordian stated, "Mrs. Smith, I want you to call Mrs. [REDACTED] with these grades today."

Mrs. [REDACTED] gave her phone number [REDACTED].

Mrs. Sordian confirmed, "Mrs. Smith, you will call Mom today with these grades."

Mrs. [REDACTED] continued to question other assignments with low or no grade posted. She shared one on sentence fragments in which [REDACTED] did not have the back side printed and had tried to get Mrs. Smith to acknowledge it in class, but she would not give him another copy, nor would she give it to mom when she came to school after the bell rang and tried to get one from her. Mom shared that she finally asked Dr. Duquette to get it for [REDACTED].

She shared that [REDACTED] has a diagnosis of ADHD and doesn't always understand everything and that is why he needs to ask for clarification. She expressed that she is concerned that [REDACTED] has not mastered this standard due to not receiving the complete assignment when Mrs. Smith stated she did not receive part of it back from [REDACTED]. Dr. Duquette confirmed that she had given the sheet Mrs. Smith gave her to [REDACTED]. Mom had it to show. Mrs. Smith said it had other sheets too and stated that she put them on Mrs. Sordian's desk. Mrs. Sordian responded she did not have them nor were they placed on her desk.

Mrs. Smith argued, "Yes he did. I stand beside him to make sure he has what he needs in class. I can't understand how he didn't have it." Began discussing a current assignment on the Lottery and said that [REDACTED] did not have his handout in class today. Mom asked, "What did you do?" Mrs. Smith responded, "I gave him another sheet with second copy marked on it."

Mrs. [REDACTED] asked, "How did [REDACTED] do on his word parts?"

Mrs. Smith responded, "I graded and gave back everybody's test. I sent progress reports home on Monday. [REDACTED] did not come back to finish his test."

Mrs. [REDACTED] replied, "He doesn't feel comfortable coming back. I am not going to argue with you about this too."

Mrs. Smith responded, "Tiger Time is the time to come take retests or finish up incomplete work."

[redacted] entered room and Mrs. Sordian asked him about the Lottery assignment. [redacted] responded that he thinks he has all the sheets now because she gave him the rest today.

Mrs. Smith stated, "As a team they all know we have Tiger Time and if it is tiger time, I don't have time to fuss with him."

Mrs. Sordian responded, "[redacted] will retake his stem test tomorrow. Mrs. Smith clarify for us how you intend to grade him? What will his grade be?"

Mrs. Smith, "I'll average the two grades."

Mrs. [redacted] stated she did not agree that was a retake.

Mrs. Sordian responded, "How the grade will need to be determined will be decided now."

Mrs. Smith responded, "As a honors student. Mrs. Sordian interrupted with "I don't care if he is honors or regular education, a student should feel comfortable. So Mrs. Smith are you saying you plan to average the grades? He did not have ample time to finish the quiz in class, but got seven out of eight completed correct?"

Mrs. Smith stated, "Yeah, well there are a lot of parents talking around the community."

Mrs. [redacted] responded, "Yes there are. But today, I am only concerned about [redacted] and his grades. I don't understand why you have marked this wrong when you tell kids to find the definitions to the stems at home and then you mark them wrong if they don't agree with the one you have. Why not just give them the definition you want instead of making them spend hours looking them up to only be marked wrong even if they are right?"

Mrs. Smith responded, "I am following the district's definitions."

Mrs. [redacted] asked who to contact about if the district's definition was the only one to be accepted and yet students aren't given it how can that be fair.

Mrs. Smith told her to contact Ashley Blankenship. Mrs. [redacted] said she would.

Mrs. Sordian intervened and reminded participants that we want to conduct a calm meeting and that these are things agreed upon:

- 1) [redacted] will retake his stem test tomorrow with a grade of what he makes not an average.
- 2) She will get clarification from the district in writing about the stem definitions.
- 3) She is the instructional leader of the school and all teachers are expected to do what is best for the students.
- 4) Dr. Duquette will write a pass for [redacted] to go during Tiger Time to take his test in his student planner.

Mrs. Smith then told Mrs. [redacted] that she would be giving a grade on the entire journal. Mom asked to be provided written directions about what should be included for this grade.

"

October 27, 2010

Attended by: Mrs. Sordian, Dr. Duquette, Mr. & Mrs. [redacted] and Ms. Smith

Time Scheduled: 12:00

Mrs. Sordian reminded Dr. Duquette of the parent conference with the [redacted]'s around 9:00 am. At approximately 11:40, Dr. Duquette approached Ms. Smith at recess and reminded her that a parent conference was scheduled for 12:00. She replied that she did not know anything about it and was told that she had been sent an email by Mrs. Sordian. She replied, "I haven't opened it, I'll look when I go in."

At 12:00, Mrs. Sordian called for Dr. Duquette and Mrs. Smith to come to the conference room to meet. Dr. Duquette called Ms. Smith's room, but she wasn't there. Dr. Duquette radioed Mrs. Sordian that she would check the library on her way down. Dr. Duquette went into the library and informed Ms. Smith that she was needed immediately in the conference. Ms. Smith made several remarks "I don't understand, I have things to do this is harassment, and continued making comments". Dr. Duquette left her thinking she was coming and went to the conference room.

At 12:05, Dr. Duquette entered the conference room and introduced herself to Mr. & Mrs. [redacted]. Mrs. Sordian asked where Ms. Smith was and Dr. Duquette told all that she had told her to come to the conference room. After five minutes, Mrs. Sordian left the room and went to look for Ms. Smith. She returned with Ms. Smith at 12:22. Ms. Smith entered the room, introduced herself and made the statement "I did not know about this conference." Mrs. Sordian, corrected her saying "Ms. Smith, I understand that you were told about this conference by Dr. Duquette during recess and again when she found you in the library and asked for you to come with her. In addition, you were sent an email by me."

Ms. Smith sat down. Mrs. [redacted] began by asking Ms. Smith about a grade on [redacted]'s progress report. Ms. Smith replied, "I would have to see her notebook. Today is not a good day for a conference." She then looked directly at Mrs. Sordian and repeated, "Today is not a good day for this conference." Mrs. [redacted] again asked Ms. Smith about the grade and stated "we need clarification on a few assignments that still have not been recorded. Ms. Smith what about this assignment?" Ms. Smith replied, "I don't know without her notebook." Mrs. Sordian stated, "That won't be a problem, I will get [redacted] to bring it to us." She stepped out to the secretary and had her call for [redacted].

Mrs. [redacted] asked, "Ms. Smith,, can you explain to us about the stem quiz?" and pointed at the progress report.

Ms. Smith replied, "Mam, I have been out Friday and Monday."

Mrs. [redacted] answered, "Ms. Smith I know you were out, but this was questioned before you were out."

Ms. Smith responded, (voice loud) "She knows what to do. She knows the meaning of the words."

Mr. [redacted] said, "No, you gave them words that you did not cover or give to them in class."

Ms. Smith replied yelling, "That's the reason they use context clues."

Mr. [REDACTED] stated, "Ms. Smith there are thousands of words in the dictionary, how should the children know which ones they are being tested on if you don't tell them?"

Ms. Smith then yelled at the parents "YOU WANT ME TO GIVE HER THE ANSWERS? I pick from different groups the words and use what the district gives me. I am preparing them for PASS."

Mr. [REDACTED] replied, "It is not helping her or the other students. She doesn't understand."

Ms. Smith screamed, "YOU cannot talk about other students. That is the problem, you are going out and talking in your little groups to other parents and then they come and talk to Mrs. Sordian."

Mrs. [REDACTED] intervened, "Ms. Smith, do not yell at us."

Mr. [REDACTED] "No, she isn't given the words."

Ms. Smith replied loudly, "She isn't doing what she is supposed to."

Mrs. [REDACTED] asked, "O:K, Ms. Smith, give us an example of what she isn't doing. I would like give an example using the stem corpse..

Ms. Smith cut her off angrily, "I .." Mrs. [REDACTED] stopped her holding up her hand and saying, "Please Ms. Smith let me finish and then you can respond."

Mrs. Sordian called time out and opened the door for [REDACTED] to enter. Mom took the journal and opened it to an ungraded page and asked Mrs. Sordian to please excuse [REDACTED] from the room. She was sent back to class.

Mrs. Sordian asked Ms. Smith, "Address this page Ms. Smith, what is [REDACTED]'s grade?"

Ms. Smith raised her voice to Ms. Sordian and asked, "What do you mean? I've been out."

Mrs. [REDACTED], "Ms. Smith, I have already talked to you about this grade several times before you were out and it still hasn't received a grade. I believe it has been over two weeks ago."

Ms. Smith responded, "I've been in meetings a lot like today. I am trying to get my grades finished before 1:00 for Ms. Frye. I said today is not a good day to meet."

Mrs. [REDACTED] "Well, Ms. Smith, that should tell you something!"

Mrs. Sordian asked, "Ms. Smith can you look at this assignment and tell the parents what [REDACTED]'s grade will be?"

Ms. Smith, "Today is a bad day!"

Mrs. Sordian, "Tell us the grade for this."

Ms. Smith, "I give all students a 100 for it if it is completed on time. Hers was late."

Mr. & Mrs. [REDACTED] "But you gave her the wrong words."

Ms. Smith yelled, "NO, I NEVER GIVE THE WRONG WORDS. I DON'T NEED TO TELL YOU ANYTHING SIR! YOU DON'T NEED TO QUESTION ME."

Mrs. Sordian, "Have you told them where to get information about the stems?"

Ms. Smith, "YES. They can go to the district office and talk to Ashley Blankenship."

Mr. [REDACTED] "O:K then. We will go to the district office!"

Ms. Smith responded with loud voice, "She can tell you. I don't need this."

Mrs. [REDACTED] replied, "Ms. Smith, you do not need to continue having an attitude with me. If you have this kind of attitude with my daughter, we will be having real problems."

Ms. Smith responded, "I don't have time for this! I have things to do!"

Ms. Sordian stopped her. "Are you telling the parents to go to the district office to get information about your class?"

Ms. Smith responded, "Yes, they can or they can go on the website."

Mrs. Sordian replied, "Ms. Smith, [REDACTED] will receive 100 on this assignment. I will check on the demos stem and if it was written incorrectly, she will receive a corrected grade."

Ms. Smith replied, "I disagree. Her assignment was late."

Mrs. Sordian responded, "Ms. Smith, this is at the principal's discretion. Her grade will be 100. Do you understand? You may be excused."

Ms. Smith left the conference room.

Mrs. [REDACTED] told Ms. Sordian, "If she continues with this attitude, she will not teach my daughter."

Mrs. Sordian replied, "Mr. & Mrs. [REDACTED], would you prefer that I place [REDACTED] in another teacher's class for a few days and allow us to revisit it on Monday morning? I will call the district office at the conclusion of our meeting and share today with Mr. Curlee."

Mr. [REDACTED] agreed. Mrs. [REDACTED] replied, "We will be calling him also."

Mrs. Sordian gave both parents her business card and asked them to keep in touch with Dr. Duquette or herself if anything else should happen before Monday.

Dr. Duquette called [REDACTED] out of class and told her to report to Mrs. Rivera's class until further notice during Ms. Smith's block. She followed up with an email to Ms. Smith.

November 2, 2010

The following statement has been prepared at the request of Mr. Paul Hickman, Investigator for Horry County Schools:

Ms. Jacquelyn Smith is a 7th grade English Language Arts (ELA) teacher at Conway Middle School. I have served as her direct supervisor (principal) since school began in August of 2010. Ms. Smith is assigned to a four man teaching team. She teaches one accelerated ELA class, one honors ELA class and two regular ELA classes. Currently, she has eighty-six students assigned to her for English Language Arts.

During the time that I have served as Ms. Smith's principal, I have received numerous complaints and concerns from students and parents. In addition, I have concerns as her direct supervisor in regard to her lack of professionalism and delivery of content (instruction).

Twenty-five parents of the eighty-six students that Ms. Smith teaches have expressed concerns at the administrative level. The concerns, when last counted, amounted to a total of 161. Some of these concerns have reached the district level and conferences have been held with the Superintendent regarding parent concerns. In many cases, the parents have requested to come to school for a parent/teacher/principal conference after not being able to resolve the issues at the teacher/parent level. These conferences have been attended by Ms. Smith. Other school employees present have included Dr. Duquette, 7th grade Assistant Principal, and me.

Each conference has concluded with a summary of the meeting and a list of next steps. The next steps are the actions to be taken by the student and/or teacher to make sure students are given every opportunity to be successful. Parents have contacted me following conferences to share areas of concerns that have not been addressed as agreed upon in parent conferences.

I have shared these concerns with Ms. Smith in teacher/principal meetings. Dr. Sherrilyn Duquette, Assistant Principal at CMS, has attended the same meetings and taken notes from such meetings. Ms. Smith has refused to meet with the administration without her SCEA representative. She has requested Mr. Dale's presence in all meetings. In one meeting, Mr. Mike Dale, (SCEA representative), was present at the request of Ms. Smith.

During one conference, I suggested the possible implementation of an Individualized Assistance Plan for Ms. Smith. However, Ms. Smith wrote on my letter following the meeting, that she would not agree with an Individualized Assistance Plan (IAP).

Complaints and concerns have been documented in the following areas:

- having students take content area tests in the middle of MAP testing,
- MAP testing being timed,
- telling students they will have to remain after school to finish MAP testing,
- placing students in the hall during class,
- no credit for completed assignments,
- making inappropriate comments during class,
- embarrassing students,
- failing to provide clear instructions,
- not responding to parents in a timely manner,
- not answering questions pertaining to curriculum,
- breaking student confidentiality,
- reporting fifteen or more minutes late to scheduled parent conferences,
- reports by students of racial comments being made in class by teacher,
- playing RAP music,
- teacher using cell phone in class,
- not returning parent phone calls or emails,
- students that are afraid of the teacher,
- student anxiety about attending ELA class,
- yelling at students,
- requiring students to read for pleasure on their Lexile levels,
- throwing student's book bag in the hall because "it doesn't belong in class,"
- not allowing *Tiger Time* to begin on time,
- taking reading time from students,
- releasing students late from class (making them tardy to their next class),
- requiring oral book reports with no discussion as to requirements,
- requiring the "exact" definition on a word part and not providing such definition,
- failure to give full credit on a retest without first clarifying that to the parents and students.

Documentation has been kept on incidents reported.

In addition, Ms. Smith has failed to report to professional development trainings on time, failed to bring necessary papers with her to such meetings and has placed students outside of class unsupervised for various periods of time. She has failed to follow the progressive discipline plans prior to sending students to the assistant principal for disciplinary reasons. She has refused help by the means of an Individualized Assistance Plan. Rather than answering parents questions directly that relate to her curriculum, she has suggested that they contact the ELA District Learning Specialist for

an answer. She has exhibited unprofessional conduct in parent conferences and has yelled at parents in such conferences.

Of the forty-one regular education students Ms. Smith teaches, twenty-five have received D's or F's on their first nine weeks report card. Forty six percent of those students have failed with an F. Eleven percent of her honors class has received F's on report cards, and one student in her accelerated class has received an F.

The administration has devoted much time meeting and conferencing with disgruntled parents only to have no resolve in many cases. It has not been uncommon to devote as much as three hours a day to these continual concerns. On an average, I would estimate as much as 30-40% of my time has been devoted to this concern during the first nine weeks. This makes it extremely difficult to attend to instructional leadership and daily operations.

During my years of service as an administrator, in both Florida and South Carolina, I have never had to devote this much time to concerns with just one employee. I have great concern about this employee continuing as a teacher in any system where the quality of education is of value. These issues have compromised student safety, instructional quality and teacher morale in our building.

As the principal, I am extremely concerned over the quality of instruction that has been given to eighty-six of our 7th grade students for English Language Arts.

Sincerely,

Margaret B. Sordien

OFFICIAL STATEMENT

FROM: Yvonne L. Williams, Teacher, Conway Middle School
TO: Horry County Schools
REF: Phone Call Received on Friday, October 29, 2010 @ 7:15AM
DATE: November 1, 2010

On Friday, I received a call on my cell phone at the above mentioned date and time. The caller's tone was rude, offensive, and totally unprofessional.

The brief conversation went something like this (my disclaimer for a lack of exactness is because I was totally caught off guard, and was just about to leave to go to school):

The person identified himself as Adullah Mustafa. He instantly started talking, and had no sense of concern as to whether or not it was a good time for me to have a conversation with him. He said, "This IS the Mrs. Williams that works at Conway Middle School isn't it?" He said he was calling as a representative of an organization (?) run by Al Sharpton; He said the organization is looking into the fair treatment of African-American administrators and teachers who work for Horry County Schools.

Mr. Mustafa asked me if I would supply names of disgruntled African-American employees, namely at Conway and/or Forestbrook Middle Schools. He said he understood that I have a friend at Forestbrook that may have been mistreated by Ms. Sordian. He asked me to supply that teacher's name and number.

I told him that I am not aware of any employees that were or are presently being mistreated, and that I have no intention of supplying him with information pertaining myself or any other HCS employee.

I was instantly offended by his tone and sarcasm in response to my decision not to cooperate with him. After I said I would not supply any information, he continued to try to tell me that I have an obligation to help out with this endeavor because I am an African-American whether I'm being mistreated or not. He also said, "YOU do know that to whom much is given, much is required." I felt the intent of his comment was based on the assumption that I am probably a 'supposed-to-be' Christian.

At that point, I reiterated that I have no intention of being involved with something that I don't agree with regardless of my heritage or belief. Finally, I felt it was time to hang up because my husband could sense that I was being 'interrogated'/'bullied' on the phone. My husband told me, not to respond anymore and just hang up.

My immediate feeling after speaking with Mr. Mustafa was, "What was that all about?" I knew then that it was important that I should let Ms. Sordian know about the phone call. I had NO idea who Mr. Mustafa was or even why he would be calling me. I knew that the only way he would have access to

my cell phone number is through another CMS employee because the only place my cell phone number published on our CMS emergency call list.

When I arrived at school I let Ms. Sordian know that I had some information to share with her about a phone call I received that morning. I did not get a chance to speak with her during the school day because she was in meetings during my planning periods.

Because I did not want to leave without letting someone know what had transpired that morning, I mentioned the incident to our assistant principal Dr. Duquette while she was outside on car duty. Dr. Duquette told me that it was very important that I share the situation with Ms. Sordian.

I ended up relaying the conversation with Mr. Mustafa to Ms. Sordian, Mr. Hickman, and Dr. Duquette. Afterward, I was instructed by Mr. Hickman to put the occurrence in writing, sign it, and turn it in by Monday, November 1, 2010.

Submitted by,

Yvonne L. Williams
Conway Middle School
LA Teacher

OFFICIAL STATEMENT

FROM: Yvonne L. Williams, Teacher, Conway Middle School
TO: Horry County Schools
REF: Incidents I directly witness, in reference to Ms. Jackie Smith
DATE: November 2, 2010

Statement given to Mr. Hickman in reference to incidents I witnessed involving Ms. Jackie Smith:

When Ms. Smith arrived at Conway Middle School, we were both assigned to teach 7th Grade English Language Arts. At the time, I was also the chair of the ELA Department. It was my 8th year teaching at CMS and the fourth year as department chair.

On her arrival I felt it was my duty to make sure Ms. Smith was acquainted with how we operated at CMS in reference to ELA. She would often respond with statements like, "That's not the way we did things at Ocean Bay Middle School" From the very beginning I thought she would be a tough person to work with.

The students were also immediately offset by Ms. Smith. They would say things like, "She doesn't explain anything", "She gets MAD when we ask her questions", "Can you help me with this assignment?, because I don't understand it." Etc.

My initial response was to give her the benefit of the doubt, however, after having several students come to me for support I began to see a negative trend. Because she was new I tried the, "let's share ideas approach." That did not work because she would say, "That's not how I do it."

My next attempt to intervene on behalf of her students was when I asked her about an assignment that she had given to the students. I asked her if she could help me understand what she wanted the students to do, so I could help them with their homework. Ms. Smith immediate response was, "Who is it that is asking you for help?!" I said, "I help some students with their homework. More specifically, I made sure the young ladies on my Step Team completed their homework before we practiced our step routines." Again her response was, "Who is it?" I told her who they were and her

mediate reaction was to literally stomp over to the table where they were sitting and berate them about the fact that they should know what to do. She also said she was not going to explain anything, because they should already know. The end result was that neither the students nor I never fully understood what the assignment required. One of the students was literally crying from frustration and embarrassment when she finished.

As a professional, I felt disillusioned because I was not able to help the students. I took an example of the aforementioned assignment to Ms. Clark, who said she would check on the situation. I was told it could be taken care of and that I should not feel obligated to help rectify the situation. The only thing I noted was that the curriculum coach (Kristy Powell) was a little bit more hands on about checking out what exactly was going on in her classroom.

The only thing I felt I could do was to try to console students that were frustrated or upset with her methods. I gave students stem lists, I helped them proofread papers, and I explained the things that I understood. Finally, I could only tell them to hang in there and do their best.

Fast forward.....

This school year, I noted incidents of students being openly berated in the hallways, in the library, in the cafeteria. What prompted me to be a little bit more assertive about sharing my concerns is the stress of some of the young ladies that are on my step team this school year.

I began to see another season of a negative trends with some of my step team members. There were some ladies that were doing well in every class, except for Ms. Smith's class. They said, "Please Ms. Williams can you help us?" The first thing I thought was, "Here we go again!" I mentioned my concerns to one of our curriculum coaches (Ms. Gaddy). We did not discuss any specifics about the situation, but I still felt confident that I was being heard and that it had been already noted that there were concerns with some of Ms. Smith's students. After speaking with Ms. Gaddy, I told my step members that confided in me, that I would make note of their concerns and really try to make sure they were heard.

Fortunately, after being deposed by Mr. Hickman concerning a phone call I received (the first typed statement in I turned in on Monday, 11/1/10.. I was asked if there was anything that I directly observed about Ms. Smith's treatment of students. That is when I described the above incidents and questionable methods I noted in reference to Ms. Smith.

I honestly noted that Ms. Smith was combative with most of her students. I observed that she would openly berate the African American students. While the other students were more prone to receive strong words within the classroom. This is my opinion from direct observation and listening to students comments and reactions to their experience with her methods.

Sadly, Ms. Smith and I did not get a real chance to collaborate and/or build a professional and personal rapport because of our schedules. This year, we briefly began to speak a little more than last year, however, I still did not feel close enough to broach some of the concerns that I had about her treatment of the majority of her students.

Submitted by,

Yvonne L. Williams
Conway Middle School
ELA Teacher

Documentation of Concerns

(Parent concerns, complaints, observations, and email correspondences)

Ms. Jacquelyn Smith

ELA 7th Grade Teacher

Current Assignments:

One Honors, One Accelerated and Two Regular 7th Grade ELA classes at Conway Middle School

Ms. Smith is in her 2nd year of teaching at Conway Middle School. She has 19 years experience. Her first nine years were in Jasper County, SC. She has served as a teacher at the following Horry County Schools: North Myrtle Beach Intermediate and Ocean Bay Middle Schools.

Concerns Noted:

9-1-10 Ms. Smith received a letter from Dr. Duquette to mention in writing items discussed in a conference held with Dr. Duquette, Ms. Smith and me. One parent reported his belief that a racial comment was made to his son by Ms. Smith during the week of Aug. 23rd. In addition, another student was discussed that Ms. Smith was having difficulty dealing with. She called for administrators on two occasions to assist with this student.

9-3-10 Mrs. [REDACTED] came in unannounced to voice a complaint over her son's testing environment for MAP testing and reported lower than normal scores for [REDACTED]. She reported that students were told if they didn't finish MAP testing during class they would be required to stay after school.

9-3-10 [REDACTED] mother reported that Ms. Smith was counting down remaining time for students during MAP testing.

9-3-10 Mrs. [REDACTED] reported that her daughter, [REDACTED] was told to "Get out of my classroom when she was caught with gum in her mouth. In addition, she embarrassed her by stating, "What's wrong with you? This is the third day in a row with NO pencil!"

9-7-10 I conducted a 45 minute observation. There was a MAJOR loss of instructional time. (Students were given 15 minutes to answer 4 simple questions and no discussion followed. Papers were not collected and then students were told to finish at home if necessary.)

9-7-10 A parent reported that students were required to take a stems test in the computer lab during MAP testing. Students were told that they had x number of minutes left to complete testing and were rushed as the teacher counted down remaining time to them. This parent requested their child be re-tested. (Student-[REDACTED])

9-7-10 A parent asked about two zeros reported in PowerSchool. A response was not supplied for two days. Her son was not given credit for a word definition for "ego." He reported it as self but was told only "I" was acceptable. (Mrs. [REDACTED])

9-8-10 A parent called and then came to school to share the following complaints: A 3 question quiz was given with only 2 minutes given for completion, MAP testing-stems test given at the same time and students were told they would have to stay after school if not completed, oral book presentation on Friday and no directions are given. (Mrs. [REDACTED])

9-8-10 Same complaints as above (Mrs. [redacted])

9-8-10 Parent called to complain that Ms. Smith was discussing his son with the WMHC without his permission. She told the counselor that he was not doing his work but never called the parent to report the problem.

9-9-10 30 Minute observation conducted by curriculum coach...Very little student-teacher interaction and a reported loss of instructional time.

9-9-10 A student visited my office to report a concern over an assignment. She did not have a computer at home to type her poetry. Ms. Smith gave her a pass to use the computer in the media center but did not clarify the time she was to report to the media center. When the assignment was due the following comments were reported to have been said by the teacher, "Why don't you have your assignment? Everyone else does! I told you to go at 7:15 AM." The student was very upset and I gave her a note to give to Ms. Smith stating that she was to accept the assignment with no penalty. (Holly Holmes)

9-9-10 A parent sends an email to Ms. Smith expressing concern over zeros and lack of a response to her emails. The parent asked for clarity. Ms. Smith responded in her email with these words, "How could I get the grade and look at the work at the same time? Impossible! I will contact you today for clarity." Parent responds back, "You stated, "How could I get a grade and look at the work at the same time? Impossible!" You did give her a grade-a zero. Two zeros to be exact." (Mrs. [redacted])

9-10-10 I conducted an observation. Students were presenting oral book reports. There was NO specific content feedback or probing questions asked. The students were given the rubric on the same morning as the reports were to be presented. Tiger Time did not begin on time and there was no closure to the lesson.

9-10-10 I gave a note to Ms. Smith requesting that she meet with Dr. Duquette and me at 12 in my office to discuss parent concerns. "I would like to discuss parent concerns that have been shared with me concerning your classes and comments made to students."

Dr. Duquette and I met with Ms. Smith and the conference summary notes are attached to this summary.

9-11-10 I received an email from a parent stating she has major concerns with one of my teachers. She sends me several emails that the teacher did not respond to. (Mrs. [redacted])
Questions regarding the oral book report requirement, a stems test and where to locate definitions.

9-12-10 Parent requests a parent conference with teacher through an email to me. (Mrs. [redacted])
additional complaints

9-14-10 Parent email to teacher. Her child received a zero for a homework assignment. She left it in her locker but returned later during the day to Ms. Smith with the assignment. She was not given credit for the assignment. (Mrs. [redacted])

9-14-10 Dr. Duquette received an email from a parent with several complaints regarding the accelerated class. Complaints noted: students rarely receive Tiger Time/MIRP, students were told they would receive zeros if they did not finish MAP testing in a specified time period, library books were due

but students were not given time to return the books, students are required to read books on their Lexile levels and complete reports every two weeks. (Mrs. [redacted])

9-14-10 An observation was conducted by the curriculum coach. Content information given to the students was incorrectly stated!

9-15-10 Continual emails sent to teacher by this parent with lack of teacher response. Frustrated parent forwards email communication attempts to me. Concerns include zeros in PowerSchool, POP tests, request for notification of upcoming assignments and tests, clarity on expectations for assignments, several requests for a conference and no response from the teacher. (Mr. [redacted])

9-15-10 I received an email from our lead guidance counselor on parent concerns she received regarding Ms. Smith's classes. The common complaint is yelling at students, and lack of student understanding of what they are expected to do. Students are afraid to ask for understanding. [redacted]

[redacted], and [redacted]

9-15-10 A team teacher reports receiving complaints regarding Ms. Smith's class from the following parents: Mrs. [redacted], Mrs. [redacted], Mrs. [redacted]. Not enough time to prepare for tests, taking points off of a grade because the teacher can't read if the word was spelled correctly, child told to stay after school if MAP tested not completed, and a child being told to stand in the hall for SMILING in class.

9-15-10 Dr. Duquette sends an email to Ms. Smith stating that I had requested she meet with us for a parent conference at 12:30 on September 16th.

9-16-10 Ms. Smith does not report to my office at the requested time. She does not answer her classroom telephone when I call to look for her. It is then reported to me that she said she was NOT coming to the meeting. I sent the curriculum coach to locate her as the parent was present and waiting.

In the meantime, I received a call from Mr. Bradley stating that a teacher was requesting a SCEA rep and a NAACP rep with her to meet with me. I explained to Mr. Bradley that my request was for a parent meeting. Mr. Bradley was alerted via email. I checked my email and found the same email in which Ms. Smith stated that she believed the matter had become discriminatory. Ms. Smith sent a copy of her email to Abdullah Mustafa (president of NAN), Mickey James (president of NAACP) and Mike Dale (SCEA rep).

9-16-10 I notified Mr. Ed Curlee of Ms. Smith's email and Mr. HT Lee of the same.

9-16-10 Ms. Smith did finally report to the conference (15 minutes later) This caused the parent to be late back to work. (Mr. [redacted])

9-17-10 The lead guidance counselor reports receiving a complaint from a parent regarding Ms. Smith. Ms. Smith threw his son's bookbag in the hall after telling him that bookbags were not allowed in class. (Mr. [redacted])

9-20-10 Mr. [redacted] sent an email stating that despite our plan of action written in the conference meeting, his son had not been retested. Ms. Smith responded with a requirement to come at a certain time and not during any other time.

9-20-10 I spoke with Mr. [redacted] on the phone. He also reported that in addition to the bookbag incident, that Ms. Smith told another parent that [redacted] was the cause of his daughter being in trouble so often.

9-20-10 I removed [redacted] from class and gave him a hall pass to take the test on the morning of 9-21-10. I provided him with a copy of the book report rubric and the stems example (both were requested repeatedly by the father).

9-20-10 Mr. [redacted] sent an email at 9:24 PM to report additional concerns and his continued frustration with this teacher.

9-21-10 I requested Ashley Blankenship visit CMS and observe this class setting along with the other 7th grade ELA classes. She will observe on 9-23-10 and report her findings to me.

9-21-10 I received an email from another parent voicing a complaint against Ms. Smith. We have a conference scheduled to discuss these concerns on Friday, September 24 at 3:15 PM. Ms. Smith has been informed via email of the conference date and time.

9-22-10 [redacted] was given a retest and scored a grade of 80. However, the two grades were averaged and the new grade was reported as a 60. This was not discussed in the conference. I sent Ms. Smith an email and asked her to correct his grade to reflect his second score as the averaging was never discussed in the conference. (Mr. [redacted])

9-22-10 I received an email from Mrs. [redacted] requesting a parent conference to discuss her concerns with Ms. Smith. She wants to make sure that her child receives what he needs to be successful next year and during high school. Mrs. [redacted] has been in for a parent conference (unannounced one afternoon after habitual frustration with procedures or lack of). [redacted]

9-22-10 Mr. [redacted] sends another email with additional complaints regarding lack of understanding and clarity in regard to assignments for students. "As I said before, if parents are asking legitimate questions and they are not being properly addressed and you have to continue to probe for answers, then how in the world are students suppose to get answers to their questions when they need clarification?"

9-23-10 At the end of the school day a parent walked into a leadership meeting unannounced to complain about Ms. Smith (Mrs. [redacted]). She had asked repeatedly that her son be allowed to retake a test from over three weeks ago. Yet, Ms. Smith had still failed to let him retest. The mother had just come from her room where she reported that Ms. Smith spoke to her in a very unprofessional manner and refused to give her vocabulary words for a stems test. Ms. Smith replied that she had no additional copies and that the student was already given one. I escorted the mother to the classroom to get her son's journal book. The teacher had signed out and was not in the classroom. Mrs. [redacted] wants to know what other teacher in this building can teach her child properly!

9-23-10 [redacted] (parent of [redacted] and [redacted]) spoke to me at the football game. She wanted me to know she would be requesting a conference with Dr. Elsberry over the continual concerns in this ELA class.

9-23-10 Assistance has been requested from the ADEPT office (Dr. Overton) to provide an observer to conduct a classroom observation and offer recommendations for improvement.

9-23-10 A parent called to complain. Telling her son to leave the classroom for what the teacher believed to be misbehavior. An inappropriate comment was made to the student by the teacher after she told him to leave the room. The comment was, "Go to McDonalds and get everyone a hamburger." Scheduled conference pending (Mrs. [REDACTED])

9-23-10 I received two emails from Ms. Smith. One was to tell me she did not agree with being out of class for a conference and asking to have a representative present with her. The second email was to address my request to honor a grade for a retest. She would not change the grade even though that was not clarified in the parent conference.

9-27-10 An assistance plan will be developed during the week of 9-27-10 for this teacher.

Compiled by

Margaret B. Sordian

Margaret Sordian, Principal

Conway Middle School

September 23, 2010

Conway Middle School

1104 Elm Street
Conway, South Carolina 29526
(843) 488-6040

PARENT CONFERENCE

STUDENT

Side

Date

9/24

Area(s) of Concern: ☒ ELA ☐ Math ☐ Science ☐ Social Studies

☐ Attendance ☐ Behavior

Notes

Brought in sheets for Mrs Smith with
Parent Signature. Mom said [redacted] called
saying she'd get referral if not signed.
Mom still concerned about stem process.

Took signed papers.

Recommendations

Follow up needed

Discharged [redacted] is completely w/
Mrs Smith.

Conference Signatures:

Teacher

Parent

Teacher

Parent

Teacher

Student

Teacher

Administrator



Mail

Calendar

Contacts

Deleted Items (16)

Drafts [62]

Inbox (570)

Junk E-mail

Sent Items (1)

Click to view all folders ≈

Manage Folders...

Reply Reply All Forward Move Delete Junk Close

Re:

[redacted]@gmail.com]

Sent: Monday, September 13, 2010 3:14 PM

To: Jacqueline Smith

She is overwhelmed with 7th grade. She is easily distracted- organizationally challenged-shuts take a daydream trip. For her studying it would be optimal to have weekly or monthly list of as Please let us know as parents what we can do to help you to help her.

Thank you,

[redacted]
on [redacted]@gmail.com

On Sun, Sep 12, 2010 at 10:13 AM, Jacqueline Smith <JSmith003@horrycountyschools.net> w

Mr. [redacted],

Are there some concerns with [redacted]? Please email me.

Jacqueline Smith Ed.S

7th/8th grade English Language Arts

Conway Middle School

1104 Elm Street

Conway, SC 29526

(843)488-6040

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Margaret Sordian

From:

Wednesday, October 20, 2010 7:55 PM

Margaret Sordian

Subject:

Re: Inquiry

Per our conversation, I am sending this email to advise you that we have not received anything from Ms. Smith. Power School has been updated with all of the missing grades however the 40 on the run on sentence test has not been changed.

Thank you so much for your attention to this and for what you are doing for our school.

-----Original Message-----

From: Margaret Sordian

To:

Subject: RE: Inquiry

Sent: Oct 19, 2010 10:13 PM

Mr. [REDACTED]

I am just reading your email and I would be more than happy to schedule a conference time for all of us to meet. The 7th grade teachers are free around 11:45 - 1:15 and that time frame would be best if it works for you and your wife.

Since I was late in responding to this email, it may be that Ms. Smith has already responded to you. If not, I would like to resolve this as soon as possible. I know we have a conference on Friday, but I am not sure about tomorrow or Thursday. My calendar is at school and I can check in the morning and get back to you. Please let me know if either tomorrow or Thursday at 12 would be convenient.

Your concerns are valid and certainly deserve a response from the teacher. I will make sure that all of your questions are addressed.

Thank you for making me aware of the continual concerns.

Margaret B. Sordian, Principal
Conway Middle School
1104 Elm Street
Conway, South Carolina 29526
(843)

<http://www.google.com/imgres?imgurl=http://thebsreport.files.wordpress.com/2009/10/siberian-tiger-6.jpg&imgrefurl=http://thebsreport.wordpress.com/2009/10/11/idiots-sneak-into-calgary-zoo-at-night-tiger-wasnt-in-the-mood-to-receive-guests/&usq=FbAjJbDaWZFndnS2wTag5fwLi8U=&h=718&w=566&sz=90&hl=en&start=9&itbs=1&tbnid=z6vAmJ5RTuieiM:&tbnh=140&tbnw=110&prev=/images%3Fq%3Dtiger%26hl%3Den%26safe%3Doff%26sa%3DN%26gbv%3D%26ndsp%3D20%26tbs%3Disch:1> 488-6040

Go Tigers!

From: [REDACTED]

Date: Tuesday, October 19, 2010 12:06 PM

To: Margaret Sordian

Subject: Inquiry

Margaret Sordian

From:

Wednesday, October 20, 2010 8:01 AM

To:

Margaret Sordian

Subject:

Re: Inquiry

Mrs. Sordian,

Thank you very much for the reply. I have not received anything from Ms. Smith at this time. I am available today at 12. I will see you then.

-----Original Message-----

From: Margaret Sordian <MSordian@horrycountyschools.net>

To:

Sent: Tue Oct 19 22:13:52 2010

Subject: RE: Inquiry

Mr.

I am just reading your email and I would be more than happy to schedule a conference time for all of us to meet. The 7th grade teachers are free around 11:45 - 1:15 and that time frame would be best if it works for you and your wife.

Since I was late in responding to this email, it may be that Ms. Smith has already responded to you. If not, I would like to resolve this as soon as possible. I know we have a conference on Friday, but I am not sure about tomorrow or Thursday. My calendar is at school.

I can check in the morning and get back to you. Please let me know if either tomorrow or Thursday at 12 would be convenient.

Your concerns are valid and certainly deserve a response from the teacher. I will make sure that all of your questions are addressed.

Thank you for making me aware of the continual concerns.

Margaret B. Sordian, Principal

Conway Middle School

1104 Elm Street

Conway, South Carolina 29526

(843)

<http://www.google.com/imgres?imgurl=http://thebsreport.files.wordpress.com/2009/10/siberian-tiger-6.jpg&imgrefurl=http://thebsreport.wordpress.com/2009/10/11/idiots-sneak-into-calgary-zoo-at-night-tiger-wasnt-in-the-mood-to-receive-guests/&usq=__FbAjJbDaWZFndnS2wTaq5fwLi8U=&h=718&w=566&sz=90&hl=en&start=9&itbs=1&tbnid=z6vAmJ5RTuJeIM:&tbnh=140&tbnw=110&prev=/images%3Fq%3Dtiger%26hl%3Den%26safe%3Doff%26sa%3DN%26gbv%3D2%26ndsp%3D20%26tbs%3Disch:1> 488-6040

Go Tigers!

From:

Sent: Tuesday, October 19, 2010 12:06 PM

To: Margaret Sordian

Subject: Inquiry

Mrs. Sordian,

I sent the following message to Mrs. Smith yesterday. The message is self-explanatory. Last night we were given a progress report from Mrs. Smith to sign which was printed on 10/11/2010 and was not up to date. When checking Power School last evening, we noticed some additional grades have been added, but the ones I have questions about still have not been addressed. I sent the progress report back with written notes about some of the grades I have questions about and also advised Mrs. Smith that she should have received an email from me and would she please reply. I have not received anything from her at this time.

Is there another process that you would advise I utilize to get my questions answered? Can I request a conference with Mrs. Smith? I would appreciate any assistance you can offer me in this matter. Grades are due Monday, with report cards being issued the following Monday. I would like to have this resolved as soon as possible.

I think you should also know that my wife has also emailed Mrs. Smith numerous times with most of them unanswered.

Thank you for your time,

[REDACTED]
[REDACTED]
From: [REDACTED]
Sent: Monday, October 18, 2010 10:49 AM
To: 'JSmith003@horrycountyschools.net'
Subject:

Ms. Smith,

In looking at [REDACTED]'s grades, I have a real concern about the 73 in your class. He has nothing less than a 90 in any other academic class, and a 73 is very much outside of his previous history. I know that my wife has been in communication with you about this also. I am under the impression that he was allowed to retake the Run-on Sentences DOL Test since he made so poorly on it. [REDACTED] tells me this has been completed, but the grade has remained unchanged. I see a grade missing from September 10th for an oral book report, and there are some grades from this month that are not entered for word parts and an independent project. Can you tell me if these projects have been completed or when the grades will be updated?

With the first quarter ending Monday, and report cards being issued the following Monday, time is getting short. It is my belief that [redacted] is not a D student, as all of his other grades in your class As and Bs, and he is doing well in his other classes. I do not have your grading rubric, so I do not understand the 73. The one test score is low, [redacted] says he took the test over, and has not received any feedback, and he also says he has completed all other projects.

We take education very seriously, and review his progress almost daily. We have not received any negative reports from you about [redacted], so I am reaching out to you for some feedback. I do not think this grade reflects [redacted] as a student, unless you have some additional information that I am not aware of. I look forward to your reply.

Sincerely,

[redacted]

[redacted]

08/26/2010

PRAC

Literary Elements organizer

90/100

90

08/27/2010

PRAC

Back To School Activity

90/100

90

RE: [REDACTED]

7th/8th grade English Language Arts
Conway Middle School
1104 Elm Street
Conway, SC 29526
(843)488-6040

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RE: [REDACTED]

Jacqueline Smith

Sent: Saturday, October 23, 2010 9:26 AM

To: [REDACTED]

Not in school yesterday! Out sick. Please feel free to come in for any conferences.

Jacqueline Smith Ed.S
7th/8th grade English Language Arts
Conway Middle School
1104 Elm Street
Conway, SC 29526
(843)488-6040

From: [REDACTED]

Sent: Friday, October 22, 2010 7:00 PM

To: Jacqueline Smith; Margaret Sordian

Cc: [REDACTED]

Subject: RE: [REDACTED]

[REDACTED] told us and so did you in the conference that [REDACTED] retook this test for you. We had the conversation about the lights in your room being out and he came the next day, do you remember? You told me numerous times via email that the test had been retaken...the date it was retaken was 9-30-10. Mrs. Smith you need to please look through your papers for this retake. I have been more than fair and patient with these grades but it is now the end of the nine weeks and this is unacceptable. You expect more than this from your students and I expect more from his teachers. I would appreciate this matter being handled promptly, if I need to come back to CMS for another conference I most certainly will.

From: Jacqueline Smith [mailto:JSmith003@horrycountyschools.net]

Sent: Friday, October 22, 2010 12:38 AM

To: [REDACTED] Margaret Sordian

Subject: [REDACTED]

[REDACTED]

Grades~

Project 90

Oral Book Report 82

Run on Sentence- 40 ; needs to see me about retaking the test

Jacqueline Smith Ed.S

Margaret Sordian

From:

at:

Wednesday, October 27, 2010 1:27 PM

Margaret Sordian

Cc:

Sherrilyn Duquette;

Subject:

Ms. Smith

Importance:

High

Mrs. Sordian,

I am coming to you again with an issue with Ms. Smith. The issues with [redacted]'s grades has not been resolved to our satisfaction. As you know, we had a conference 10/20/2010 in the conference room. Ms. Smith told us that [redacted] was caught up with all of his work and that she had not updated his grades due to a desire to follow up with each student individually with regard to their projects. She also told us [redacted] completed the re-take of the DOL Test for Run On Sentences. She was supposed to contact us that evening with an update on these grades. That contact was never made, and the grade report was not updated either.

We reviewed the Power School report on 10/22/10 and found some grades had been added, but the re-take for the DOL test was unchanged. [redacted] received an email that was also addressed to you at 12:38 am on 10/22/10. In that email, Ms. Smith gives us the update that we should have received on 10/20, but says [redacted] needed to see her about the re-take of the DOL test. (I would be under the impression from that statement that she did not have a record of the grade.) [redacted] replied to her (and copied you) Friday morning that we were told [redacted] had completed the second attempt and to please update the grades. Ms. Smith replied Saturday morning that she had been out sick, and to feel free to come in for any conferences. We have received no other correspondence from Ms. Smith.

Tuesday, 10/26/10, Ms. Smith told [redacted] in class that she did not have a re-take grade for that test. Then, last night we found a different grade for the test on Power School. When [redacted] investigated, she found that a second grade of a 70 had been recorded and was averaged with the first grade to obtain a new score of 55. I first question if this is even the grade or if she made it up. I would like to see the test for myself. If that is what he scored, I am fine with that, but it seems funny that all these inquiries a score just suddenly appears. Secondly, I do not think the two should be averaged. The score should be the higher one earned. Additionally, grades are now supposed to be final, but [redacted] is still missing one Test grade. It was for a Subject Verb agreement test that was taken on 10/15. This is also unacceptable to me.

If that was not enough of an issue, I have also done some research into the Seventh Grade curriculum and expectations and it is our belief that the rigor and expectations are not up to standard. Several of the assignments that [redacted] has been given are below what we think should be honors level work for seventh grade ELA. Recreating the cover of a book by copying what was included in the original is not a very high order of thinking. [redacted] also comes home with assignments without much information or instruction. Initially I thought this may be the mind and retention value of an adolescent boy, but after having a conversation with Ms. Smith and not getting any answers myself I am under the impression that there is a general lack of instruction and no grading rubric for the students and parents to go by. This makes it very difficult as you might imagine. If I am off base here, please educate me so I can understand.

Mrs. Sordian, as I told you when we met, we do not live in a vacuum. As big as Conway is, it is still a small community in many ways. We have many friends with children at CMS, and we are aware of several issues regarding Ms. Smith. While those children and their issues are not really any of my business, (and I am not coming to you on their behalf) we are aware that there is a pattern of behavior that is unacceptable for an educator in our middle school. I have been told that her parents have been directed to the District Office or are choosing that path on their own. I am not adverse to that course of action, but I am hesitant to make that move without first giving you the opportunity to correct the problems and run your school. I am a manager of a large department, and I can empathize with you over tough personnel matters.

It is also not pleasant when we have outside influence in our matters, but sometimes it becomes necessary. My question would be then, is it appropriate for all of us as concerned parents to make the trek to the District Office? I am very pleased with the job you have done and the leadership that has been provided at CMS since the end of the year last spring. I do not want to cause problems for you at the District Level. I have faith in your abilities in the short time I have known you, but I am weary of continued issues with this teacher, and we have just completed the first quarter of the school year.

I have copied Dr. Duquette on this as well because I think it appropriate to do so, and I imagine the two of you will discuss it either way. Please advise me how I should continue. I would either request another conference with Ms. Smith, Dr. Duquette, and yourself; or I would take my concerns to the District level along with other parents if you think that is the appropriate course of action. I am anxious to bring this to a resolution, as I am sure you are as well, so we can get on with the rest of the school year and activities.

Thank you both for your time and efforts.

[REDACTED]

[REDACTED]
Office: [REDACTED]
Mobile: [REDACTED]

v.horrycountyfirerescue.com

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Rhonda Huggins

From: Connie Huddle
Sent: Monday, September 29, 2008 5:32 PM
To: [REDACTED]
Cc: Rhonda Huggins
Subject: RE: ELA question

I will have Mrs. Huggins in Guidance look at the schedule and adjust. It appears that the 5th period ELA class with another teacher is the move possible. This will move the SS to 4th. I will have Mrs. Huggins make the change. Thanks!
Connie huddle

From: [REDACTED]
Sent: Thursday, September 25, 2008 8:39 PM
To: Connie Huddle
Subject: ELA question

September 25, 2008

Mrs. Huddle,

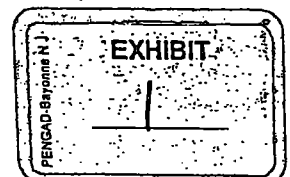
First, I want to say thank you for taking the time to meet with me this morning. I feel uncomfortable, however, as I reflect back on our conversation and the concerns I still have for [REDACTED] education. Based on this, I would like to request to have [REDACTED] moved to a different English class at this time, rather than waiting.

I understand and support completely the idea of instilling coping skills in [REDACTED] and not trying to "rescue" him, but this is the position I feel I must take to assure my child is being given every opportunity to succeed.

In light of [REDACTED]'s history and educational needs, especially in English, I am concerned that without an optimal educational environment, he may show regression in areas he has greatly progressed in.

Please give this further consideration and I will trust in your

0/20/2010



judgment. Thank you again for your help and support. I will be in
Atlanta Friday through Sunday. My cell phone is (843) [REDACTED]
Please call me anytime. Thank you!

Sincerely,

[REDACTED]

[REDACTED]

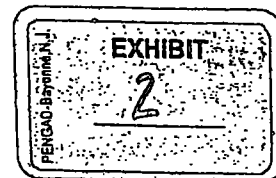
[REDACTED]
From: [REDACTED]
Sent: Wednesday, October 01, 2008 2:15 PM
To: Jackie Smith
Subject: Conference

Hey there,
[REDACTED] mom has called to request a conference.
Will Friday at 2 work for you?
Please don't shoot the messenger! :-)

Rhonda Huggins

Guidance Counselor
Ocean Bay Middle
843.903.8432
843.903.8495 (fax)

10/3/2008



Connie Huddle

From: [REDACTED]
Sent: Tuesday, October 21, 2008 11:13 AM
To: 'Leslie'; Connie Huddle
Subject: RE: [REDACTED]
Importance: High

This is getting very frustrating for us (and especially for [REDACTED]).... We can not help him, if we have no idea what is going on in this class.... ELA is a very important subject, and to start off like this, with the problems we are encountering, is not beneficial to him....

We are requesting him to be moved from this class, to another ELA class.... as soon as possible...

If you would like to schedule another conference, please contact my wife, so I can be present for this Mrs. Huddle...

Best Regards...

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

From: Leslie [mailto:lbelack@scoast.net]
Sent: Tuesday, October 21, 2008 10:46 AM
To: Connie Huddle
Cc: [REDACTED]
Subject: Fw: [REDACTED]

This is the recent E-mail from Mrs. Smith. Still do not understand how this is going to help him complete his assignment due tomorrow. There is very poor instructional guidance. We cannot help our son to complete assignments if we ourselves do not understand. This is 6th grade ELA. Please contact me to discuss what we need to do.

Thank you
Mrs. [REDACTED]

— Original Message —

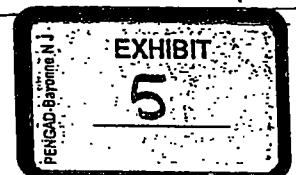
From: Jackie Smith
To: [REDACTED]
Sent: Tuesday, October 21, 2008 9:41 AM
Subject: RE: [REDACTED]

[REDACTED] came to me at the beginning of 4th block (after lunch) and asked for sentence strips. I told him I needed to see his rough draft to make sure he was doing everything correctly.

Smith

From: [REDACTED]

10/21/2008



Rhonda Huggins

From: Jackie Smith
Sent: Wednesday, January 28, 2009 11:31 AM
To: Rhonda Huggins
Subject: RE: conference
I will be addressing these concerns.

J.Smith

From: Rhonda Huggins
Sent: Wednesday, January 28, 2009 11:04 AM
To: Jackie Smith
Subject: RE: conference

Ms. Smith,
You'll need to speak w/ Mrs. Huddle about these concerns. I am not the one who makes the decision as to whose classes are changed.
Rhonda Huggins

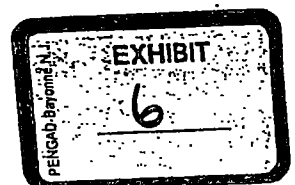
From: Jackie Smith
Sent: Wednesday, January 28, 2009 10:28 AM
To: Rhonda Huggins
Subject: RE: conference

Ms. Hoggins,
I did call her and scheduled a conference for this morning! She cancelled because she stated someone else was suppose to be in the conference. For what I do not know. If a child is average in all subjects, it seems to me there is a personal problem with the teacher. This is the same with [REDACTED]. I feel as though I am wasting my time meeting if you are going to move a child anyway. What reasons were there for moving [REDACTED]? This teaches a child that if I do not want to do the work, I can be moved. Was she moved from any other teachers?

Jackie Smith

From: Rhonda Huggins
Sent: Wednesday, January 28, 2009 8:28 AM
To: Jackie Smith
Subject: FW: conference

Ms. Smith,
[REDACTED]'s mom has called again. She *really* wants to have a conference. She first called me on Friday, Jan. 23. You'll see the original email I sent you down below.
Please call her to set up a conference. You can reach her at [REDACTED].
Thank you,
Rhonda Huggins



1	2/18/9	Wednesday
		Conference w/ Jackie Smith

+ [REDACTED] - for + parents Mom

Rd. 180 - I suggested b/c of lexile map.

Originally requesting he be moved from Smith's class. After we talked + found out he felt it was too hard, we came up w/ some ways to help him.

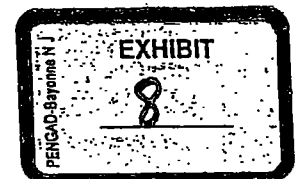
i.e. Rd 180

After school tutoring
Extra help from Smith

He seemed pleased w/ arrangements as did mom.

Mom left mtg. telling Mr. Smith to be tough on him. She would support her.

His first language was Hebrew.



Rhonda Huggins

From: Jackie Smith
Sent: Wednesday, April 01, 2009 11:52 AM
To: Rhonda Huggins
Subject: RE: student

I will definitely call her!

Jacqueline Smith
6th grade English Language Arts
Ocean Bay Middle School
905 International Drive
Myrtle Beach, SC 29579
843-903-8420 Ext. 52614

From: Rhonda Huggins
Sent: Tuesday, March 31, 2009 2:20 PM
To: Jackie Smith
Subject: student

Hey there,

You might want to give [redacted]'s mom a call b/c [redacted] has her convinced that she turned in an assignment but that you didn't give her credit for it.

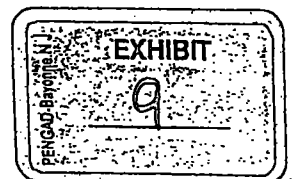
Apparently, it's one of the summaries. I told mom that it was hard to tell which one she was talking about b/c [redacted] has 3 summaries not turned in. She said it was on Marley and Me.

Thanks,

R

Rhonda Huggins

Guidance Counselor
Ocean Bay Middle
843.903.8432
843.903.8495 (fax)



Jackie Smith was moved to Ocean Bay Middle for the 2008-2009 school year from Carolina Forest Elementary School. She was placed in 6th grade as an English Language Arts teacher. She was assigned three regular ELA classes and one Honors ELA. During the school year there were approximately twenty-eight students moved from Mrs. Smith's class by parent requests. At the end of the school year there were sixty-eight students total in her classes over four classes. The other sixth grade ELA teachers each ended the year with around ninety students each. By September 30, 2008, Guidance had removed 14 students from Ms. Smith's class due to parent/student requests and concerns. By the end of the school year there were approximately 28 students moved from her classes. Parent requests were based on concerns over:

- Teacher-student relationship
- Claims that Ms. Smith lost work
- Unclear directions for assignments from teacher
- Treatment of students
- Poor communication
- Lack of returning calls or contacts with parents
- Tones and rudeness to parents in emails and during conferences
- Students expressing discomfort with Ms. Smith
- What students
- Unclear grading
- Late in getting grades in
- Students expressing she did not help or assist them
- Feedback to students in regard to performance

Our procedure when we receive a request for a change from a class is to set up a conference first with parents and teacher to discuss issues with the goal to work through the concerns. This was done with the student-parent requests for change. At a point in the year Ms. Smith stated she would not meet. She informed Ms. Huggins, Guidance, that she would not meet and that she had lost too much planning time due to having to meet with parents: 2009-2010

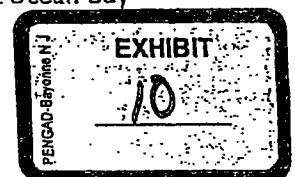
The following year Ms. Smith was assigned to teach Language I. She expressed from the beginning that she was not pleased with the assignment. She wrote a letter to the district with her disagreeing of the assignment. The Language I is an English Language Arts program that is designed to increase student reading and writing. It is a program which there is a clear curriculum and reduced class size. The issues of the previous year were factors in that assignment. It has clear pacing, grading and is designed for smaller class size. With the new assignment she would have three classes of approximately 15 students each.

The year began and Ms. Smith began the assignment. Requests for moving students out of her class began the first week of school.

The number of students enrolled at Ocean Bay Middle for the 2009-2010 year was less than projected. After the first three weeks of school we lost two teaching positions to Conway Middle. Ms. Smith was the last ELA staff member and so she was moved at the first of October.

Mr. Ed Curlee has a copy of some of the emails and notes as of the time Ms. Smith was at Ocean Bay Middle.

Connie Huddle, Principal Ocean Bay Middle 11/5/2010



North Myrtle Beach Intermediate School
Teacher Assistance Plan
2006-2007

Teacher: Jacqueline Smith

Date: January 8, 2007

Teacher Performance Area:

TPA 3 The teacher establishes and maintains an environment that promotes learning. The teacher creates a non-threatening environment that is conducive to learning. The classroom environment promotes student collaboration, choice, and student centered learning.

TPA 5 The teacher fulfills all professional obligations in a professional and timely manner.

Objective:

TPA3

1. Decrease the number of valid parental complaints.
2. Decrease the number of requests for change of classes due to teacher/student relationships.
3. The teacher will demonstrate comfort in interacting with students as will the students with the teacher. The teacher will convey an understanding of, and sensitivity to, the social and cultural backgrounds of students.
4. The teacher will develop a positive rapport with students, with open lines of communication.
5. Students will demonstrate that they can go to their teacher with any issue and feel supported.

TPA5

1. The teacher will compete various administrative tasks (grades) in a timely (as per due dates) and effective manner.
2. The teacher will establish positive and productive relationships with the parents or guardians of their students. As needed, they communicate with the parent or guardian about students' progress and offer advice for supporting students' learning and development.
3. The teacher will listen and, to the extent possible, address parent/guardian concerns.

Intervention Strategies

TPA 3

- Participate in Flight for Success workshop
- Participate in workshops directly related to rapport with students, parents, and peers
- Conduct a parent/student needs assessment
- Participate in reading and reflection with administration. Reading materials will be provided. Follow-up meetings will be held to gauge progress and application in the classroom.

Evidence of Completion

- Completion of Flight for Success
- Workshop certificate
- Needs Assessment Document
- Reflection Journal
- Meeting Schedule

Teacher Signature _____

Principal _____

Other _____

Conference took place @ 1:45, Mr. Prince was present as well as the Ms. Smith. The plan was discussed. Teacher not in agreement and refused to sign.

From: Michelle Graham
To: Jackie Smith
Date: 11/13/2006 12:34:31 PM
Subject: [REDACTED]

Hi Jackie,

Thursday afternoon the [REDACTED] came in to see me about [REDACTED] schedule. They said it was their doctor's recommendation to move him due to the stress he puts on himself about your class. They even gave me a doctor note with the request. Due to medical reasons I have made the change. I spoke to Barbara this morning about getting a student. I will be moving him to Mrs. Rhodes effective tomorrow.

As a result of you losing one you will be getting [REDACTED] from Mr. Faulx's class. This will start tomorrow as well. Please see me if you have any questions. [REDACTED] mother requested you.
Michelle

= Mr Prince met with [REDACTED] parents
and teacher 11/2
- Meeting with ^{Graham/Parents} [REDACTED] Parents 11/9
and 11/10

There is a meeting Thursday, February 14, 2007 with Mrs. Graham and Ms. Pilkey. I always communicate with my parents. It is the administrator job to follow the proper procedures when parents have concerns. In the meeting at the district, we discussed the proper protocol that should be followed when parents complain. (Most schools follow this protocol) When a parent contacts a principal to voice a concern about a classroom problem or practice, the first thing the administrator should do is refer the parent to the teacher. This can be done simply by asking the teacher to call the parent. The teacher is the professional in charge of the classroom and therefore should be the first person to respond to the concern. For their part, teachers must be sure to keep the administrator informed about the progress of the complaint and its resolution. The administrator should not attempt to intervene before the parent and teacher have discussed the matter themselves.

I see one of my parents occasionally at the gym, but not at the school for a conference. I really need for this parent to come in. I have met three times with the other parent (twice with the Math and Science teacher- we both had concerns and once with Mrs. Graham. I am constantly meeting for the same issues that I discussed at the district office. My parents are sent the following every week:

- Weekly report- includes grades, behavior, incomplete/complete classwork and homework for the week, parent's comments, if a parent conference is requested, etc.
- Planners are signed everyday before students exit the class- parent's signature needed everyday- if I/parent need to short notes about homework
- Parent/students can email me if they need- I have students emailing me about assignments

The principals are the instructional leaders at the school; therefore, they should be able to explain the curriculum as well as Horry County expectations. The principal wants one teacher to meet to do a curriculum based planning session. How does that sound? I meet every Tuesday with my team for staff development with the curriculum person (Jackie Myers). Another question that comes to mind is why would the curriculum person and the assistant principal need to be in on a parent meeting. (Are the issues with curriculum and one person is still learning the curriculum?) Parent strategies workshop was held two weeks ago by Mrs. Bessant (Parent/School Coordinator). I know Mrs. Bessant will share her wonderful ideas or recommend books from her resource center.

I would never refuse a meeting with administration, but I believe in having representation at meetings especially when my career is being threatened. My administrator misinterprets what has been stated in a meeting, types the information up, and forwards it to the personnel file. An administrator does not come up to you and state that there will be a meeting at a given time without asking me. Appointments could be scheduled elsewhere. Thank you for reply. I know administrator have the power

I will be able to make the scheduled appointment on Thursday at 3:00 with an outside person.

Jacqueline Smith

Michelle Graham

From: Jackie Smith
Sent: Monday, January 07, 2008 1:05 PM
To: Michelle Graham
Subject: RE: [REDACTED] - 5th grade

Mrs. Graham,

I am requesting a meeting with all dissatisfied parents. Have they contacted me? If they have not communicated with me, this is a problem. I am also requesting Mr. Nalley be in on these meetings.

Jackie Smith

From: Michelle Graham
Sent: Sunday, January 06, 2008 7:48 PM
To: Jackie Smith
Subject: RE: [REDACTED] - 5th grade

Good Morning,

Ms. Smith I would like to meet with you on your planning. I received a number of calls last week from dissatisfied parents. One came in to meet with me. If you are unavailable on your planning today, please let me know when you will be.

Thanks,

Michelle Greene-Graham
Principal

From: Jackie Smith
Sent: Friday, January 04, 2008 6:53 PM
To: [REDACTED]
Cc: Michelle Graham
Subject: RE: [REDACTED] - 5th grade

[REDACTED]

This is the first email I've received since the conference. Again, I stated that I can meet with you in the afternoons. I talked to your husband [REDACTED] the last time we tried to schedule a conference. I waited for you to contact me. I do not know where the email was sent, but I did not receive one. Are you sure the email wasn't sent to officer smith, she is a J. Smith also. This is why I asked that parents signed the planner on a daily basis because I will definitely see it.

Jackie Smith

From: [REDACTED] [mailto:[REDACTED]]
Sent: Friday, January 04, 2008 10:02 AM
To: Jackie Smith
Cc: Michelle Graham; Ben Prince
Subject: [REDACTED] - 5th grade
Importance: High

Ms. Smith,

I'm very upset about the grades that we received last night from your classes for [REDACTED]. I'm upset with [REDACTED] for not doing
1/14/2008

January 9, 2008

Meeting notes from conference with Jackie Smith, at 1:10pm. Present at the meeting were Ben Prince, Michelle Graham, and Jackie Smith

Most of the talking was done by Michelle Graham. She discussed with Mrs. Smith:

- The number of parent complaints that have come in the past week
 - The number of parents who felt they needed to go beyond the school to the district with their complaints
 - The accusations that parents had shared with Michelle
 - Reading log is too hard
 - Lack of Communication with parents
 - Perceived lack of concern for students and their academic performance
 - Need for compromise in any given situation
 - Need to recognize when there must be compromise
 - The need to establish and foster good relationships with the parents and students
1. During the conversation Mrs. Graham recommended that Ms. Smith take another look at the reading log and really examine it's effectiveness as opposed to the one provided to all teachers during staff development in August.
 2. Ms. Smith said that her reading log was not that big of a deal, and she would be ok with replacing it with the one provided by the school. She agreed that most of her parent complaints circle around the read log. Ms. Smith agreed to suspend the use of her reading log and implement the school wide reading log.
 3. Mrs. Graham suggested to Ms. Smith to help resolve the situation about the outstanding reading logs that students be excused from turning in logs and students that have turned in logs be given extra credit points. All agreed that the logs were designed to confirm that students were reading at home. Ms. Smith stated that she could tell if the student had read at home just through her conferences with students.
 4. Mrs. Graham discussed with Ms. Smith that since this is a homework assignment, it should be counted as such and not like a class work or test grade.
 5. Ms. Smith agreed to give all students a missing task report, have a conversation with them about the log, allow the class to vote on which log to continue with for second semester, and give them a deadline to complete all missing task.
 6. During the conversation Mrs. Graham also advised Ms. Smith that the conflict with parents was a school level situation that could in fact be resolved at the school level if all parties work together. Mrs. Graham advised Ms. Smith against meeting with the superintendant and all parents with a complaint at the same time. This was a request of Ms. Smith prior to this meeting. Mrs. Graham advised her to contact the superintendent's office if she felt she needed to have a conversation with him. Ms. Smith replied that she would. Mrs. Graham informed her that she would not get involved in that request.
 7. At the conclusion of the meeting Ms. Smith agreed with the request and stated that she would contact all parents provided by the principal to hear their concerns and work for resolution.

January 10, 2008

Conference notes with Ms. Smith and [redacted] mother. The conference was scheduled in advance by Ms. Smith and [redacted] mother. Ms. [redacted] informed me of it and I asked if I could join them. Mrs. [redacted]'s mother thought it was a great idea. I waited with Mrs. [redacted] for about 10 minutes after school. I did two all calls through the building. At 3:15 I had the secretary call Mrs. Smith's room. There was not answer. Shortly there after, we did another all call. Ms. Smith showed up with her purse and book bag. Before even greeting the parent; she said I was on my way out; I only have maybe 5 or 10 minutes. I tried to lighten the mood by asking Ms. Smith if she had a busy day and forgot the conference. She replied that she had not; she was waiting in her room.

The conference began by me asking Mrs. [redacted] to share the reason she requested the conference with Ms. Smith. She stated that she was confused by Ms. Smith grading of spelling test. I had copies of [redacted]'s packet of work, so I took out one. Ms. Smith and I explained that each word counts 7 points and actually calculated the grade with her. She was ok realizing that she thought the enrichment words were not a part of the grade. Ms. [redacted] then shared that the year did not start well for her and Ms. Smith because when she called her about [redacted]'s lost social studies book and the fact that she had just made a 40 on a test, Mrs. [redacted] said Ms. Smith told her she didn't need the book anyway for the test. Mrs. [redacted] thought Ms. Smith could have been more helpful. I was actually called about the book and I asked they teacher to do a book check and provide [redacted] another book to use. It turned out that the test was on a primary source document. They have primary source test weekly. Mrs. [redacted] asked if they could be brought home because as we reviewed [redacted]'s printout we saw that she had been scoring low on them. Ms. Smith first said no, they are for the classroom use. When I began to press her and ask if there was any way that students could have access to the document to take home for review, Ms. Smith changed and said there is a copy in the student's folder and they can take them home. Mrs. [redacted] became a little upset and pointed out to Ms. Smith that she just changed her story and she understands now why her child is so confused. Ms. Smith became more defensive. I ended by saying great, now we know that all students can take them home for study. I told Ms. [redacted] if [redacted] comes home without hers to contact us and we will get her one.

Ms. [redacted] then addressed the fact that [redacted] did not have a grade on either of her interims and papers were four weeks delayed. She said she had no idea that [redacted] had fallen to a low C. Ms. Smith again was defensive and said she gave out papers every week except Christmas. [redacted] must not have taken them home. Mrs. [redacted] replied that she knew that was not true because she knew others in the class and had seen their papers as well. Mrs. [redacted] also reminded us what a good student [redacted] is. She tells the truth and does the right thing. Mrs. [redacted] also reminded me that the Thursday she got the papers, she parked at car riders and walked right in to show me. I confirmed that I had seen them and that they were in fact dated back to November 3rd. Ms. Smith adamantly said that was not true. Mom and Ms. Smith went back and forth a few times. I intervened to tell the mother, I apologize for the obvious break down in communication and that we would do better to ensure [redacted] got her papers weekly as promised.

There was a few seconds of silence. I turned to Mrs. [redacted] and asked if there were any other issues she wanted addressing. She responded no; that she had heard enough. I again assured her that I would continue to follow [redacted]'s progress as I do all students. I told her she knew how to reach me if she needs to contact me for any reason. I turned to Ms. Smith and asked her to keep me informed.

The meeting adjourned with Mrs. [redacted] thanking both of us for our time. She then left. I sat at the table and shook my head a little. Ms. Smith looked at me and smiled. I told her we would talk tomorrow.

Michelle Greene-Graham

Michelle Graham

From: Michelle Graham
Sent: Tuesday, January 15, 2008 9:42 AM
To: Jackie Smith
Cc: Ben Prince
Subject: follow-up
Sensitivity: Confidential

Good Morning Ms. Smith,

I just wanted to follow-up with you about our meetings last week. Last Wednesday, Mr. Prince and I spoke with you about [REDACTED] and [REDACTED]. During the meeting we identified the common thread in all of the parent complaints and it was the weekly student reading log. After much conversation and input from all three parties, we decided that the school wide reading log would accomplish the same goal as your teacher designed log and alleviate some of the stress students and parents are feeling. We knew that it will be difficult to recalculate grades, but we also agreed that students who actually completed the teacher designed reading logs should receive credit for their work, and students who were unable to complete them would not be penalized. We agreed to give extra credit points to the students compiling the log and wipe the slate clean for those who did not. Please respond back to me and let know if you have spoken to your students, as agreed, about the change in the reading log, met with the parents listed, and recalculated all students' grades. Please respond back to me by the end of today, Tuesday, January 15, 2008. If Mr. Prince or I can assist you in any way, please let us know.
Michelle Graham

1/17/2008

Michelle Graham

From: Michelle Graham
Sent: Monday, February 11, 2008 10:11 AM
To: Jackie Smith
Cc: Ben Prince; Jackie Myers
Subject: meeting request

Tracking:	Recipient	Delivery	Read
	Jackie Smith	Delivered: 2/11/2008 10:11 AM	
	Ben Prince	Delivered: 2/11/2008 10:11 AM	Read: 2/11/2008 10:19 AM
	Jackie Myers	Delivered: 2/11/2008 10:11 AM	
	Ed Curlee	Delivered: 2/11/2008 10:11 AM	Read: 2/11/2008 10:28 AM

Good Morning Ms. Smith,

I would like to meet with you on Tuesday, February 12, 2008 at 2:45pm. This meeting will be a curriculum based planning session for which we will address some of the curriculum concerns expressed by parents of students in your class and discuss strategies for our parent meetings. This meeting is in preparation for a meeting with the parents and no individuals outside the school should be involved in to the meeting. Ms. Smith please bring any information concerning [redacted] and [redacted] including grades, samples of work, and anything else that would be helpful as we review the student's performance. I have invited Mrs. Myers to provide some curriculum input. Mr. Prince and I will also be at the meeting. We will meet in your classroom immediately following the buses. Thank you in advance for your time,
Michelle Graham

1:35 uncertain if Ms. Smith had renewed the email, I
- hand delivered a copy in a sealed envelop.
- Her door was locked, I knocked, then commanded that I had set up a meeting date for tomorrow and I wanted to be sure she had ample planning time. Ms. Smith did not take the letter at first then took it saying let me make my call right now so I can have someone here. I replied you may want to read the email first. It's just us with no folks from the outside. Ms. Smith continued to make a call and I left.

2/11/2008

After school I called Mr. Curlee to share

Michelle Graham

From: Jackie Smith
Sent: Monday, February 11, 2008 1:53 PM
To: Michelle Graham
Cc: Ed Curlee; Jackie Myers; Ben Prince; Gretta Gore; Cindy Magrath
Subject: RE: meeting request

Mrs. Graham,

If there are discussion or concerns, I suggest that parents contact me. I have not heard anything from parents concerning the issues. Weekly reports have been sent and signed and I have offered additional help my first recommendation is that parents contact me about my classroom. As an administrator, you should be able to explain the curriculum. We can schedule a meeting with representatives from NAACP and SCEA.

Jacqueline Smith

From: Michelle Graham
Sent: Monday, February 11, 2008 10:10 AM
To: Jackie Smith
Cc: Ben Prince; Jackie Myers
Subject: meeting request

Good Morning Ms. Smith,

I would like to meet with you on Tuesday, February 12, 2008 at 2:45pm. This meeting will be a curriculum based planning session for which we will address some of the curriculum concerns expressed by parents of students in your class and discuss strategies for our parent meetings. This meeting is in preparation for a meeting with the parents and no individuals outside the school should be involved in to the meeting. Ms. Smith please bring any information concerning [REDACTED] and [REDACTED] including grades, samples of work, and anything else that would be helpful as we review the student's performance. I have invited Mrs. Myers to provide some curriculum input. Mr. Prince and I will also be at the meeting. We will meet in your classroom immediately following the buses. Thank you in advance for your time,
Michelle Graham

2/11/2008

Michelle Graham

From: Ed Curlee
Sent: Monday, February 11, 2008 4:48 PM
To: Jackie Smith
Cc: Michelle Graham
Subject: RE: meeting request

Ms. Smith,

I am in receipt of your copied response where you refused to meet with Principal Graham regarding a planning session to address parental concerns. Please be advised that as principal, Ms. Graham has the authority to oversee the instructional program of North Myrtle Beach Intermediate School which certainly includes addressing parental issues over instruction and curriculum. A meeting of this nature is a means to resolve issues and improve communication with parents. The presence or participation of representatives from the NAACP or SCEA would not be acceptable since this meeting will deal with a student and confidential information. This is a school matter and needs to be resolved at the school level.

I appreciate your meeting with Ms. Graham, Ms. Myers and Mr. Prince to develop a response to the parental concerns. Should you refuse to do so, Ms. Graham is well within her right to seek disciplinary action for insubordination. I trust that you understand the seriousness of my concerns and will maintain your professionalism in our efforts to do what is in the best interest of students.

Thank you,

Ed Curlee

From: Jackie Smith
Sent: Monday, February 11, 2008 1:53 PM
To: Michelle Graham
Cc: Ed Curlee; Jackie Myers; Ben Prince; Gretta Gore; Cindy Magrath
Subject: RE: meeting request

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Michelle Graham

2/11/2008

February 12, 2008

Mrs. Myers and I entered Ms. Smith's classroom. We both greeted her. She never made eye contact and did not respond. I asked Ms. Smith where she would like for us to sit. She did not respond.

Mr. Prince, Mrs. Myers and I pulled up chairs to sit at a pod of desk. Ms. Smith did not join the group. Ms. Smith began to put a new tape in her tape recorder. I informed Ms. Smith that she could not record this session. She continued and I told her again that she could not record the session. She then stopped and came and sat down.

I started the meeting by saying to Ms. Smith that the purpose of the meeting is to work together to develop a plan that will assist struggling students and some parent concerns that have been raised with administration.

Ms. Smith responded that she did not have anything to say. I asked again if she would participate in this planning session. I told her I had invited Mrs. Myers for her curriculum background and Mr. Prince for his expertise and I felt sure that together we could review the students' grades, look for the areas they seem to struggle most, and come up with a plan.

Ms. Smith responded that she had nothing to say. I asked Ms. Smith if she had student A and student Bs grades. She responded that she sends home grades every week to parents and they have their grades. I told her it would be really helpful during the session. She responded she had nothing to say.

Ms. Smith told me to direct any parents with concerns to her and she would talk to them.

I asked Ms. Smith if she would join us in the planning session to come up with strategies to help get these students on track. She responded that she would not until I follow proper protocol.

At the time I told Ms. Smith if she was unwilling to speak to us about the students or the issues, I do not see that we can plan anything during this session. I asked her one last time to participate. Ms. Smith responded that she had nothing to say until proper protocol was followed. I adjourned and thanked her for her time.

Michelle Greene-Graham

Michelle Greene Graham
Outline of Events
February 15, 2008

November 25, 2007

I emailed Ms. Smith to let her know that neither the curriculum coach nor I were receiving her weekly lesson plans. I also expressed to Ms. Smith that it appeared that she was not doing Interactive Reading Alouds a school wide initiative.

November 28, 2007

Ms. Smith responded that I should be receiving her lesson plans. She said they were posted in her room. She also responded that she knew we wanted to see interactive read alouds, but sometimes we seem to forget that it is just one instructional strategy and there are so many others that can be seen in a classroom.

November 28, 2008

Later in the day Ms. Smith sent me another email on the subject. She responded "Sorry! I did not finish the message. Creating additional plans (Besides lesson plans, that's a lot) I have a life outside of school with a daughter, and I will not be stressed this year!"

December 18, 2007

██████████ mother came in to speak to Mr. Prince about her frustrations with Ms. Smith's class. Mr. Prince referred her to me. I met with Mrs. ██████████ and she was very frustrated with Ms. Smith's class. The parent alleged that she had made many attempts to meet and talk with Ms. Smith, but to no avail. She said Ms. Smith would not return phone calls, and that her child is "terrified" of Ms. Smith. She did not feel her child could remain in the class. Mrs. ██████████ contacted me earlier in the year with her concerns as well. I referred her to Ms. Smith. Once the parent was unable to establish a line of communication with Ms. Smith she demanded her child be moved. Ms. Smith was out of school the day Mrs. ██████████ came in. I did move ██████████ and notified Ms. Smith by email. We met when Ms. Smith returned to school on December 18th. Please see the attached email I sent Ms. Smith.

January 3, 2008

██████████ mom called upset about ██████████'s grades. She said, Ms. Smith would not return her calls. She also said there were no grades on ██████████'s interim. ██████████ came home in January with a packet of work dating back to November. The parent stated she had no idea her child was struggling. I told Mrs. ██████████'s mother I would speak to Ms. Smith and have her call her. Evidently, Ms. Smith did call Mrs. ██████████'s mom because I did not hear back.

January 4, 2008 (Friday)

██████████'s mother sent me a cc. to an email sent to Ms. Smith. (Attached) While doing Principal cluster walkthroughs, I saw Mrs. ██████████'s mother. She expressed to that ██████████ was having problems in Ms. Smith English's class. She also expressed that she tried to get in touch with Ms. Smith but could not. When I returned to

school I called Ms. Smith to let her know to call Mrs. [REDACTED]. To my understanding the two met. [REDACTED]'s mother sent in [REDACTED]'s grade report for my review.

January 6, 2008 (Sunday)

I emailed Ms. Smith to request a conference during her planning to discuss Mrs. [REDACTED]'s mother's email.

January 7, 2008 (Monday)

Dottie Brown called me to ask what the situation was with [REDACTED]'s mother as she had contacted Will Garland. Dottie advised me to call Mrs. [REDACTED], [REDACTED]'s mother and call her back once I had. I called Mrs. [REDACTED] and left a voice mail. She returned the call and shared her concerns. Most were directly related to [REDACTED]'s averages in English and Social Studies. His averages were 34% and 14%. His parent expressed that she had no idea her son was doing so poorly. She expressed that she had made many attempts to speak with Ms. Smith and Ms. Smith would not return her calls. On that Monday, I did meet with Ms. Smith to share Mrs. [REDACTED]'s concerns. I also asked her if she had in fact gotten Mrs. [REDACTED]'s email. She replied that she had and that [REDACTED] was not doing well because his home life was not stable. He spent half the week with dad and half with mom and she did not really know who to talk to. Ms. Smith also agreed to get any missing work together so [REDACTED] would have the opportunity to complete it. She was to contact Mrs. [REDACTED], [REDACTED]'s mother. In the attached email where I requested the meeting, Ms. Smith replied that none of the complaining parents had contacted her and that she wanted to meet with them all with "Mr. Nalley". (Attached)

January 7, 2008

I met with [REDACTED] to ask him why his grades were so poor in Ela/Social Studies. He gave me a variety of reasons, Ms. Smith does not like me, she is mean, it is too much, and I need help. I told [REDACTED] that Ms. Smith was going to give him a list of his missing assignments. I told him to look at them and if there were any he could not do, come see me and I would get him help. [REDACTED] agreed. I then called Mrs. [REDACTED] to let her know that she would be hearing from Ms. Smith, but we both agreed that [REDACTED] would have the opportunity to make up missing work and would ask for help if he needed it. Mrs. [REDACTED] thanked me. I told her not to hesitate to call if she needs additional assistance.

January 7, 2008

I called up [REDACTED] to have a talk with him about his grade. I asked why he had such low grades. He said the class was too hard and he acknowledged that he had not been doing his very best. I asked him if I spoke with Ms. Smith on his behalf and got his missing work, would he do it. He agreed. I spoke with Ms. Smith about giving him his missing work.

January 8, 2008

[REDACTED]'s father stopped by the office to see me after a conference with Ms. Smith. He expressed that his son was failing and showed me the child's missing task report. I pointed out that [REDACTED] had a lot of missing assignments. They were the nightly reading log writing assignments and the nightly/weekly paragraph assignments. [REDACTED]'s father

expressed that neither he nor the child's mother could help him with the assignments. [redacted] is my next door neighbor, so I offered to keep him here each afternoon to complete some of the missing assignments before the end of the marking period then bring him home with me. The parent agreed. That afternoon I let Ms. Smith know I would be trying to help [redacted] catch up. [redacted] stayed four afternoons.

January 8, 2008

Mrs. [redacted] came into the front office asking for Ms. Smith. When the secretary told her that Ms. Smith was not in, she became visibly upset. I was dismissing school at the time and witnessed her speaking to the secretary. Mrs. [redacted] began to tell Mrs. Dewitt how upset she was because she could not get [redacted]'s teacher on the phone now she had taken off early and still could not get her. I walked over and introduced myself and invited Mrs. [redacted] to my office. She shared her concerns with me stating that [redacted] was not a good writer and the reading logs and weekly writing assignments were killing his grades. Mrs. [redacted] also stated that she was a more mature parent and did not know how to help [redacted] with these assignments because school has changed so much. I asked if she had spoken to Ms. Smith. She replied that she had early on, but could not get her lately. She also said the assignments were all at home assignments and were taking hours and hours each night. I offered to schedule a conference with Ms. Smith for her. She stated that she does not get off work until 4:30 daily and had gotten off early today and could not another day. I scheduled the meeting for Thursday at 7:15am giving Ms. Smith two days notice. Mrs. [redacted] left fine.

January 8, 2008

I sent Ms. Smith an email with all of the students/parents that had contacted me about their child's performance. I asked her to make contact with them that day if she had not already. (Attached)

January 9, 2008

While I was at A-Team (1/2 day) [redacted]'s father came in to complain about Ms. Smith ELA class and the difficulties his daughter was having in the class. He told the secretary that he wanted his daughter moved out of Ms. Smith's class. He said he knew that the problem was not just his daughter because his daughter had told him lots of others were doing poorly too.

January 9, 2008

Mr. Prince and I visited Ms. Smith's room during her planning. Please see attached meeting notes. When I returned to my office I called [redacted]'s father, [redacted]'s mother, and [redacted]'s mother to let them know to expect a call from Ms. Smith and expect their child's missing work to come home.

January 10, 2008

Mrs. Smith was 15 minutes late to a meeting with Mrs. [REDACTED]. This meeting had been scheduled by me and I gave Ms. Smith two days notice. I gave verbal and written notice. I even asked if the time was ok with Ms. Smith. She responded it would be fine. We had to do several all calls through the building after calling her classroom while the parent waited. Mrs. [REDACTED] arrived about 10 minutes early. She ended up waiting 25 minutes for Ms. Smith to arrive. Later in a meeting I confronted Ms. Smith about her tardiness to the meeting and expressed that it was unprofessional to show up late especially in light of the fact that the parent was unhappy coming in. Ms. Smith responded to me that I knew she was not a morning person so I should not have scheduled a morning meeting. I expressed to Ms. Smith that sometimes we have to work with the parent and their schedule.

Ms. Smith and I met with Mrs. [REDACTED] about [REDACTED] performance and her concerns. The meeting was positive. Ms. Smith shared Mrs. [REDACTED]'s concerns that [REDACTED]'s writing skills were weak. She said she would help him more.

Ms. Smith scheduled a conference with [REDACTED]'s mother based on my request. Mrs. [REDACTED], [REDACTED]'s mother called me on the 9th to tell me she was not going to bring [REDACTED] to the conference. She said [REDACTED] was afraid. She also said that Ms. Smith called [REDACTED] a liar, and she was uneasy about the conference. I offered to attend. Conference notes attached.

January 14, 2008

Ms. Smith sent [REDACTED] and [REDACTED] up for me to talk to. Both did not turn in their reading initiative. I spoke with the boys and gave them one more day to turn it in. I worked with them recess to get them started.

January 15, 2008

[REDACTED]'s mother called back to say [REDACTED] is still struggling. She tried helping him with the assignment Ms. Smith and I sent home and could not help him. Mrs. [REDACTED] wanted her child in a class where a teacher provided writing instruction and not just assignments. Please see attached.

January 16, 2008

[REDACTED]'s mother sent in a letter to express concerns. She also sent in a grade report. (Attached)

January 17, 2008

Mr. Prince and I met with Ms. Smith. Meeting notes attached [REDACTED]'s dad also emailed concerns about Ms. Smith and unprofessionalism. (Attached)

January 23, 2008

I received an email from Mrs. [REDACTED] (Attached) [REDACTED]'s schedule was changed after conferring with Mr. Curlee and Mrs. Dottie Brown.

January 28, 2008

[redacted] s mom sent another email to express concerns. (Attached)

February 6, 2008

[redacted] s mother sent in a note expressing concerns and that he be moved.

(Attached) [redacted] mother also sent in a letter requesting her child be moved.

(Attached)

February 11, 2008

I receive a parent call from [redacted] s mother. [redacted] was having a lot of trouble in Ms. Smith class. (Conversation notes attached)

February 11, 2008

Around 9:15 am I called Ms. Smith to reschedule a meeting to discuss concerns raised by two parents in the form of a letter. Ms. Smith responded that she had nothing to say and did not want to meet with us. Ms. Smith said she would only meet with us if she could bring someone from the outside or had a district representative. I informed her that this was a school level issue that could easily be resolved through communication. Ms. Smith again replied she would not. I sent Ms. Smith an email requesting a meeting to discuss the issues raised by concerned parents. (Please see attached) In the attached response you will see that Ms. Smith would only meet with members of the NAACP and SCEA present.

February 11, 2008

Mr. Curlee sent Ms. Smith an email informing her that her refusal to meet with me would be viewed as insubordination. (Email attached)

February 11, 2008

Ms. Smith sent the attached response. She did not even acknowledge whether or not she was going to attend the planning meeting.

February 12, 2008

Mr. Prince, Mrs. Myers and I attempted to meet with Ms. Smith. The meeting did not take place. (Statements from all three attached)

Summary

Ms. Smith was asked to reinstate the school wide reading log. She agreed during the conference, met with me with parents and verbalized that she would be reinstating the school wide log, then did not. When questioned about not reinstating the log Ms. Smith said she had talked to two principals and several teachers in-house and had decided not to suspend the use of her log. When asked did she not feel the need to tell administration since we came to the agreement together. She said no, other teachers get to make decision in their classroom without consulting administration. I reminded her that this situation was different because I was responding to numerous parent complaints and

concerns that surrounded the log. I also reminded her that this is a part of the school wide initiative. Ms. Smith also never got in touch with parents.

Ms. Smith was asked to only give one spelling test weekly based of the "Blue Book"; she agreed and stated that she would call parents to let them know there would only be one test. Ms. Smith gave two spelling test that week even after I had verbalized to a concerned parent that called that Ms. Smith would be in touch with them and there would only be one test.

January 17, 2008, during a conference I requested that Ms. Smith provide administration with a break down of how her grades were weighted and a copy of her grade book. Mrs. Smith refused saying she purchased her grade book and that we had no right to it. Ms. Smith stated if I asked everyone to turn in their grade book then she would produce hers. She said she would only provide grades to parents. January 22, 2008 a follow-up letter was sent and one of the requests again was for her grade book. Ms. Smith has yet to explain her grading scale or provide her grades.

February 11, 2008, I requested a conference with Ms. Smith. It actually was a planning session between the assistant principal, curriculum specialist, and me. She refused, saying she would only meet with us if the NAACP and SCEA were present. We attempted to have the meeting. Ms. Smith would only reply, I have nothing to say.

Ms. Smith has been notified about not signing in by the bookkeeper many times. At one time the bookkeeper sent me an email to inform me that she had notified Ms. Smith and to no avail. Ms. Smith signs in and out about 50% of the time. Ms. Smith has been notified by the curriculum specialist and me that we are not receiving lesson plans consistently. Ms. Smith only turns in lesson plans about 50% of the time.

During the conference February 12, 2008, Ms. Smith was instructed not to speak with NMBI staff members about being placed on administrative leave. It was reported to me by the technology specialist that teachers had confronted her to ask what was going on the Ms. Smith. They alleged that Ms. Smith told them as she left that she had been placed on administrative leave.

Recommendation

It would be difficult for Ms. Smith to step back into her current position and regain the trust of her parents. Her actions have not only compromised her relationship with her parents, but also administrations relationship with her parents. There were numerous occasions when we would agree on a curriculum issue, relay the decision to parents, then Ms. Smith simply did not follow through. Parents would then call me to question both teacher and administration.

I also believe that Ms. Smith has no intentions of following directives given by me or this administration. She has demonstrated time and time again by her actions. Her actions have not only compromised relationships with parents, but faculty members as well. Ms.

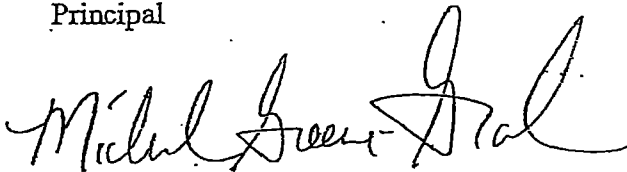
Smith has been openly speaking to colleagues about the current situation. This has compromised the relationship of administration with staff. Issues which force staff members to take sides compromise moral. I feel her actions to some degree have.

Ms. Smith placed herself on the transfer list. I feel she knows that it is time for her to move on as well. Ms. Smith has expressed her unhappiness on numerous occasions. I don't feel people do their best work when they are placed in a situation that they are unhappy.

It also concerns me that an alarming number of Ms. Smith's students have a D or F in her class after a full semester. 45% of her students have a D or F. The mere fact that Ms. Smith is not willing to review her curriculum practices with administration clearly speaks to me that she is not willing to refine her practices or listen to suggestions about her practices even at the demise of her students.

It is my recommendation that Ms. Smith's request for transfer be granted immediately. As stated in other statements, Ms. Smith's delivery of instruction is one of her strengths. I think a crucial part of Ms. Smith's success where ever she is teaching and the success of her students will depend on intensive staff development in the area of relationships and classroom environment. I feel an assistance plan would be in order. Ms. Smith would need to attend workshops that specifically target how to determine if students are in trouble, how to help struggling students, how to communicate effectively with parents and colleagues, and handling one self professionally in the workplace.

Michelle Greene-Graham
Principal

A handwritten signature in cursive script, reading "Michelle Greene-Graham". The signature is fluid and stylized, with the first and last names being more prominent than the middle name.

STATE OF SOUTH CAROLINA
BEFORE THE HORRY COUNTY SCHOOL BOARD

COUNTY OF HORRY

DR. CYNTHIA ELSBERRY,

Petitioner,

vs.

JACQUELINE SMITH,

Respondent

VIDEOTAPED

DEPOSITION OF: CONNIE HUDDLE

DATE: March 22, 2011

TIME: 11:30 a.m.

LOCATION: HORRY COUNTY SCHOOL DISTRICT
335 Four Mile Road
Conway, SC

TAKEN BY: Counsel for Petitioner

REPORTED BY: Karen V. Andersen, RMR, CSR

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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20
21
22
23
24
25
(INDEX AT REAR OF TRANSCRIPT)

1 (PETITIONER'S EXH. 1, E-mail Chain
2 dated 9/25/08 and 2/29/08, marked for
3 identification.)

4 (PETITIONER'S EXH. 2, Memo dated
5 10/1/08 from Rhonda Huggins to Jackie Smith, marked
6 for identification.)

7 (PETITIONER'S EXH. 3, Letter dated
8 10/6/08 to Mrs. Huggins from Jacqueline Smith, marked
9 for identification.)

10 (PETITIONER'S EXH. 4, Letter dated
11 10/20/08, marked for identification.)

12 (PETITIONER'S EXH. 5, E-mail strings
13 dated 10/21/08 between Connie Huddle and Mike Belack,
14 marked for identification.)

15 (PETITIONER'S EXH. 6, E-mail strings
16 dated 1/28/09 between Jackie Smith and Rhonda
17 Huggins, marked for identification.)

18 (PETITIONER'S EXH. 7, E-mail string
19 dated 2/16/09 between Jackie Smith and Rhonda
20 Huggins, marked for identification.)

21 (PETITIONER'S EXH. 8, Handwritten note
22 dated 2/18/09, marked for identification.)

23 (PETITIONER'S EXH. 9, E-mail string
24 dated 3/31/09 and 4/1/09 between Rhonda Huggins and
25 Jackie Smith, marked for identification.)

1 (PETITIONER'S EXH. 10, Summary of
2 Connie Huddle, Principal Ocean Bay Middle dated
3 11/5/10, marked for identification.).

4 MR. WILLIAMS: I'm Vernie Williams,
5 attorney for the administration of Horry County
6 schools in the matter involving the administration
7 and Ms. Jackie Smith. We are here for the purpose of
8 the de bene esse deposition of Connie Huddle. Prior
9 to going on the video, I want to make a statement
10 regarding some documents we intend to introduce. We
11 labeled a series of documents as Exhibits 1 through 9
12 to the deposition of Connie Huddle. I intend to ask
13 Ms. Huddle about Exhibits 1 through 9 as a group,
14 with the understanding that counsel for Ms. Smith has
15 an objection to the admissibility of some of the
16 documents, which the parties will address at the
17 hearing.

18 And have I stated that correctly?

19 MR. MAZYCK: He has.

20 THE VIDEOGRAPHER: We are now on the
21 record. Today's date is Tuesday, March 22nd, 2011.
22 The time is approximately 11:39 a.m. This is the
23 videotaped deposition of Connie Huddle. The location
24 is the Horry County School District, Conway, South
25 Carolina. My name is Michael Andersen, legal

1 videographer representing A. William Roberts, Jr. &
2 Associates. This deposition is taken in the matter
3 of Dr. Cynthia Elsberry vs. Jacqueline Smith. At
4 this time would counsel please introduce themselves
5 for the record.

6 MR. WILLIAMS: I'm Vernie Williams,
7 counsel for the school district administration

8 MR. MAZYCK: I'm Dwayne Mazyck, counsel
9 for Jacqueline Smith

10 THE VIDEOGRAPHER: Would the court
11 reporter please swear in the witness.

12 CONNIE HUDDLE,

13 having been duly sworn, testifies as follows:

14 EXAMINATION

15 BY MR. WILLIAMS:

16 Q. Please state your full name for the record
17 please.

18 A. My full name is Constance Elma Huddle.

19 Q. And you go by Connie Huddle; is that
20 right?

21 A. Connie, yes.

22 Q. We won't be that formal. And, Ms. Huddle,
23 what is your position with Horry County schools?

24 A. I'm principal at Ocean Bay Middle School.

25 Q. And how long have you served as principal

1 of Ocean Bay?

2 A. This is our sixth year, and I've been
3 principal since the school opened.

4 Q. How many years of experience have you had
5 in education prior to becoming principal of Ocean Bay
6 Middle School, and in what positions?

7 A. Yeah, I have like a total of 34 years in
8 education; 33 of those have been with Horry County.

9 Q. And do you know Ms. Jackie Smith?

10 A. Yes.

11 Q. When did you meet Ms. Smith, or how do you
12 know her?

13 A. Ms. Smith was placed at Ocean Bay Middle
14 School for the 2008/2009 school year.

15 Q. Okay. And do you recall what courses and
16 subjects Ms. Smith taught during that school year?

17 A. Yes, she was sixth grade ELA. She had
18 both regular and honors ELA.

19 Q. Okay. During the time as Ms. Smith's
20 principal, did you have to address any concerns with
21 her?

22 A. Over the year, there were some concerns
23 and issues that were brought to administration from
24 parents and students in regard to concerns that they
25 had.

1 Q. What is your process for handling parent
2 or student complaints once they are brought to your
3 attention?

4 A. We have set a procedure in place in which
5 conferences are requested to be set up. The parents
6 are asked for the opportunity to have a conference
7 with the teacher. Some of the conferences are
8 arranged through guidance, some through
9 administration, and some are directly through the
10 teacher.

11 Q. And did you follow that same process that
12 you just described in handling the concerns regarding
13 Ms. Smith?

14 A. Yes.

15 Q. Did the parental concerns regarding
16 Ms. Smith continue throughout the school year?

17 A. We had concerns brought to us from first
18 part of the school year through the end of that
19 school year.

20 Q. Were any students removed from Ms. Smith's
21 classes during that school year?

22 A. Throughout the year, there were a number
23 of students that were changed by request to other ELA
24 classes.

25 Q. And do you have any recollection of

1 approximately how many students were removed?

2 A. Approximately in the upper 20s. I believe
3 28 were removed and placed in other ELA classes.

4 Q. How did the number of students in
5 Ms. Smith's class compare to the number of students
6 in your other sixth grade classes?

7 A. Initially, the numbers were similar across
8 all sixth grade ELA classes. And by the end of the
9 school year, Ms. Smith had approximately 63 students
10 assigned to her over four classes, in comparison to
11 the other ELA classes that were, by the end of the
12 year, in the high 90s.

13 Q. Okay. What was the nature of the parental
14 concerns regarding Ms. Smith?

15 A. There were concerns brought that their
16 children had expressed to them that they felt
17 uncomfortable in the classroom, that they were
18 confused on assignments, and that the classroom
19 atmosphere was harsh. And that they expressed
20 through the parents and through -- students came
21 directly to administration as well, that they felt
22 that the environment wasn't allowing them to have the
23 optimum learning.

24 Q. Did you have any concerns with Ms. Smith
25 based on your own personal observations?

1 A. In observing in the classroom, visiting
2 the classroom, the concerns that were shared were
3 tone, in terms of communication with students, the
4 interaction. But I did observe in her class a number
5 of times, and observed the curriculum, the pacing,
6 the following of the district standards, and found
7 that those were in place in her classroom.

8 Q. Okay. How would -- you mentioned
9 something about tone in Ms. Smith's communication
10 with parents. How would you describe or characterize
11 her tone based on your own observations?

12 A. Can I ask, are you asking observations of
13 her interactions with others?

14 Q. With parents.

15 A. With parents?

16 Q. Correct.

17 A. Okay. On occasion during conferences,
18 there did appear to be some conflict between a parent
19 and Ms. Smith in terms of the parents in making
20 statements and in bringing information. There were
21 times when Ms. Smith would become defensive because
22 of some of the accusations and some of the claims
23 that parents were sharing that their children had
24 brought to them.

25 Q. Okay.

1 A. Or that they had experienced themselves
2 through conversations, through phone calls, or
3 through previous conferences.

4 Q. Okay. Do you recall any specific examples
5 about Ms. Smith having or a parent having a
6 disagreement about a student's assignment or a
7 student losing an assignment?

8 A. Yes. There were a number of claims that
9 work was misplaced, and that students were not given
10 credit for what they claimed to have handed in and to
11 have completed. And there were occasions where the
12 parents claimed that they also saw the work and that
13 their child claimed to have handed it in, but it was
14 misplaced.

15 Q. Do you know if parents ever were able to
16 prove, so to speak, that the child had, in fact,
17 turned the work in?

18 A. I do know that there was a specific, where
19 the child actually brought the paper, and it was
20 graded by Ms. Smith, and it did have comments on it,
21 and that there had been a zero in the grade book,
22 which would indicate that it was not, but it actually
23 was located, and it had been graded.

24 Q. Did you always move students upon a
25 parental request?

1 A. No. Our first usual contact is through
2 guidance. Parents call guidance, and because
3 guidance does do scheduling, they assume that that's
4 where they would go in order to get a child changed
5 out of a class. So if guidance receives a call from
6 a parent requesting a change, the procedure is that
7 guidance sets up a conference, and that it's
8 explained that students would be -- the issues would
9 be met about, conferenced on, before any changes
10 would occur.

11 Q. And did you follow that same process with
12 Ms. Smith?

13 A. Yes. There were later in the -- as the
14 school year progressed, some requests that parents
15 opted to not have a conference, because they shared
16 they already had communication through either e-mail
17 or previous conferences, and that they just requested
18 the child be moved.

19 Q. Did you share with Ms. Smith the parent
20 concerns that you received?

21 A. Yes. What we would do is we, when I say
22 we, it could have been the assistant principal with
23 the sixth grader, or it could have been guidance,
24 went to Ms. Smith to share that a parent had
25 contacted us in regard to various issues. I know

1 that a specific was parent claiming that the -- they
2 were not receiving the grade reports. And I did go
3 directly to Ms. Smith, and we went through her
4 process, because we use e-mail. And oftentimes, the
5 e-mails are sent via -- the grade reports via e-mail.
6 And I did meet with Ms. Smith. And specifically she
7 demonstrated how she sends the grade reports. So
8 there were a number of occasions where I did go to
9 Ms. Smith outside of the conferences and shared the
10 concerns.

11 Q. Okay. I'm handing you a series of
12 documents that's marked as Exhibits 1 through 9 for
13 the purposes of your deposition. Could you briefly
14 look through those documents and identify them for
15 the record.

16 A. These are e-mails or notes from -- memos,
17 for the school year 2008/2009. And these are
18 correspondence in regard to either conference
19 requests or follow-ups of conferences with Ms. Smith.

20 Q. Okay. Would you say that Ms. Smith was
21 receptive to meeting with parents?

22 A. Initially, I would say she was.

23 Q. Okay. Did that ever change?

24 A. I think as the year progressed and the
25 number of conference requests, I know that Ms. Smith

1 expressed that it was becoming cumbersome in terms of
2 taking up planning time.

3 Q. What plans did you make for Ms. Smith's
4 teaching assignment for the 2009/'10 school year?

5 A. The 2009/2010 school year, in forming our
6 master schedule and teaching assignments, Ms. Smith
7 was assigned to teach an ELA class called language
8 exclamation, and it was for a sixth grade section, a
9 seventh and an eighth.

10 Q. And why did you decide to assign her to
11 the language exclamation class or program?

12 A. In looking at any assignment for a
13 teacher, we look at the skills of a teacher, the
14 experiences they've had, the training. And I
15 determined that the language exclamation would be a
16 good fit for Ms. Smith, because it is a lower class
17 size. It is a program that is researched. And it is
18 what you would refer to as a scripted program. It
19 has multiple components to it. It also has a grading
20 system that is input into a portal, which is a data
21 process where the grades are input into the program.

22 Q. And you mentioned grading, did you ever
23 have any concerns with Ms. Smith's grading or her
24 method of grading?

25 A. There were concerns that were brought and

1 examples from students work in which one child may
2 have been graded using a rubric, and then another
3 child, same assignment, in which there could appear
4 to be different feedback or greater amount of
5 feedback which justified the grades.

6 Q. How would you best summarize your concerns
7 with Ms. Smith overall?

8 A. I would have to say that the concerns, in
9 accumulated package, were that students did not feel
10 that the classroom environment was the most conducive
11 to learning, and that the difficulties that were
12 shared by the parents to administration and to
13 guidance and to Ms. Smith, I would have to say, made
14 the learning environment not the best for some
15 students.

16 Q. Did you ever prepare a written summary of
17 your experiences working with Ms. Smith?

18 A. I did. I did a summary for human
19 resources that they requested, a summary of the
20 concerns and the issues that we had dealt with the
21 previous year.

22 Q. I'm handing you a document that's labeled
23 Exhibit Number 10 for the purposes of your
24 deposition. Could you identify that document,
25 please?

1 A. Yes, this is a summary that I did on
2 November 5th, 2010, and it was for the human
3 resources that they requested that I ...

4 Q. Is that summary an accurate description of
5 the concern you had with Ms. Smith?

6 A. In terms of a summary, yes.

7 MR. WILLIAMS: Please answer any questions
8 Mr. Mazzyck may have for you.

9 EXAMINATION

10 BY MR. MAZYCK

11 Q. Ms. Huddle, we meet again. I just have a
12 few questions.

13 Mr. Williams asked you a couple of
14 questions regarding your interactions with Ms. Smith
15 as far as observing her classroom, and I asked you
16 that question a couple weeks ago. And can you tell
17 me again what you saw when you observed Ms. Smith in
18 the classroom?

19 A. Okay. We do -- there's two types of
20 observations, or visits to classrooms. One is a, we
21 call it a CWT. Those are very short visits in which
22 we are looking for specific elements.

23 Then there are observations that may be 30
24 minutes, they may be 45 minutes. And so throughout
25 any school year, I do both, a combination. I may go

1 in for four minutes at the beginning, four minutes at
2 the end, middle, and then go in at another time in
3 which I stay a longer period of time. So over the
4 year, I did visit Ms. Smith's classes, we do every
5 class. And I did find that she -- the ELA
6 curriculum, which our district provides us with the
7 pacing guides and the standards, I did find that
8 those were in place in Ms. Smith's class, both the
9 content of her instruction, materials, and her pacing
10 was in line with the other sixth grade ELA.

11 Q. Did it seem like she was fostering a good
12 educational environment in her classroom while you
13 were there?

14 A. I think that in my observations, she was
15 always providing instruction. I did not observe
16 where she was not.

17 Q. Okay. And we talked a little bit about 28
18 students being removed. Do you have an account for
19 why each person was moved from her classroom?

20 A. I have either an e-mail that would have
21 outlined some of the questions or issues that parents
22 brought. I do have recollection of many of the
23 students' concerns that were brought to us. Could I
24 say 100 percent that I know exactly all 28, no.

25 Q. So it is possible that some of the

1 students could have been removed for other reasons
2 other than having a personal conflict or parental
3 conflict with Ms. Smith?

4 A. I do know that there were some -- I
5 believe it was three -- that were moved to another
6 level, which is -- it could have been accelerated
7 through a district meeting, in which the parent
8 requests accelerated classes. If a student doesn't
9 qualify for it, they must go through a meeting. I do
10 know that there were three students that were moved
11 to accelerated classes.

12 Q. And it could be more?

13 A. The reason I know it's three, I believe,
14 is because those have to go through a meeting through
15 the district.

16 Q. And I believe you testified that prior to
17 a student being removed, it is your procedure -- I
18 know all procedures are not perfect, but if you had
19 it the way you set it up, is you have conferences --

20 A. Right.

21 Q. -- with the parents and the teacher, and
22 see if there is going to be some type of meeting of
23 the mind?

24 A. Right.

25 Q. And everybody move on?

1 A. Right.

2 Q. Can you tell me if that was done with each
3 of the students that was alleged moved because of
4 parental or a student conflict with Ms. Smith?

5 A. Majority of them were. I do remember that
6 there were some in which the parents had had previous
7 contacts, either through their conferences with
8 Ms. Smith or through phone or through e-mail, and
9 they expressed to me that they did not feel
10 comfortable in having another conference, and they
11 were adamant that their child be removed.

12 Q. And how would you handle that situation as
13 far as with Ms. Smith? How would Ms. Smith know that
14 these parents don't want to meet with her and they
15 want -- would she know that before she went to school
16 the next day and the kid is removed from the
17 classroom?

18 A. I would hope that we had properly
19 communicated with her. I do know that guidance may
20 have been the ones who notified her of a schedule
21 change for a student, or I may have, but that is what
22 we try to practice.

23 Q. So it is possible that nobody communicated
24 with her, and the child was just removed?

25 A. It could have happened that a parent

1 requested it today, it was done, and then it wasn't
2 until, say, the afternoon and she may have had the
3 child in the morning. I won't deny that that could
4 have happened.

5 Q. And when you have these conferences, would
6 any feedback be given to Ms. Smith regarding -- and
7 it's a two-fold question, so let me get the first one
8 out.

9 A. Okay. Sorry.

10 Q. When you had a meeting, personal meeting
11 with Ms. Smith and a parent, would there be any
12 feedback to Ms. Smith regarding, you know, what the
13 meeting was, and what the expectations are going
14 forward?

15 A. Yes. I spoke with Ms. Smith on many
16 occasion in regard to the concerns.

17 Q. When you say you've gone to her, that may
18 have been just a verbal feedback, and no written
19 feedback?

20 A. Yes, it could have, depending on the
21 situation, yes.

22 Q. Would there have been feedback -- and you
23 may have answered this question, and if you have, I
24 apologize. Would there have been feedback if a
25 student was removed, and Ms. Smith was not a part of

1 the process, would there be something in writing and
2 follow-up to say, Ms. Smith, Joe Blow was moved
3 because of X, Y and Z?

4 A. There could have been, and there could
5 have been written or verbal.

6 Q. Do you think, as a building supervisor,
7 and you've been in education a long time, do you
8 think it's important to have feedback with your
9 teachers, whether it's written or verbal?

10 A. Yes.

11 Q. What resources, if any, was provided to
12 Ms. Smith regarding the gamut of concerns that you
13 have in this 11/5/2010 memo, which we will get to in
14 a minute, but was she given any assistance, an
15 improvement plan, or any written directives that this
16 is what you need to do going forward?

17 A. In our school, we do an ongoing staff
18 development in which we do collaborative planning,
19 and teachers attend on one to two days during the
20 week during their planning, staff development often
21 provided through our curriculum coach. In addition
22 to the in-house staff development, I did contact
23 Jackie Stanley, who is with Horry County schools, to
24 ask for some assistance in determining what we could
25 do to assist in the atmosphere and tone of

1 Ms. Smith's classroom in order to alleviate the
2 concerns that students were bringing to us and to
3 their parents.

4 Q. And -- I'm sorry. Go ahead, finish.

5 A. And so Ms. Stanley is an individual
6 through the district office that assists oftentimes
7 in that. And she was contacted and did come to Ocean
8 Bay Middle to assess and look at the atmosphere to
9 give us some assistance.

10 Q. So it is your understanding that

11 Ms. Stanley observed Ms. Smith?

12 A. I believe that she came, and she was
13 contacted, and there is notes in there, to assess and
14 work with Ms. Smith.

15 Q. Do you know if there were any feedback
16 provided to you or Ms. Smith regarding her
17 observation?

18 A. I know that her -- Ms. Smith met with, I
19 believe, Ms. Stanley.

20 Q. But you don't know of any feedback, or if
21 any written feedback or any verbal feedback was given
22 to her?

23 A. No, I do not know.

24 Q. And that would be important because her
25 whole job was to assist?

1 A. Uh-huh, uh-huh.

2 Q. And that's a yes?

3 A. I can't say that I personally have any
4 written feedback.

5 Q. Okay. And when was the last school year
6 that Ms. Smith was under your supervision?

7 A. She was -- during the 2009/2010 school
8 year, she was scheduled to be at Ocean Bay Middle.
9 And after the 10-day count, our numbers were down.
10 Our projected number was not where it was, and so we
11 lost positions. So it was during that beginning of
12 that school year that she was moved to Conway Middle.

13 Q. And that was not under your direction;
14 that was a district decision?

15 A. Right. We lost two positions that year.

16 Q. So she was under your supervision for the
17 whole 2008/2009?

18 A. Yes.

19 Q. And was she formally evaluated in
20 2008/2009?

21 A. She was a continuing contract, and was
22 through the GBE, which is goal-based.

23 Q. And continuing contract teachers also
24 avail themselves to be put on a safety team or depth
25 evaluation, whatever your district uses?

1 A. Yes.

2 Q. And she was not on that in 2008/2009?

3 A. No.

4 Q. And did you offer her a contract, or did
5 you recommend her for a contract for the '09/'10
6 school year?

7 A. Yes, she was scheduled to return to Ocean
8 Bay Middle.

9 Q. Did you put any stipulations on her
10 contract, or did you recommend any stipulations on
11 her contract on the 2009/2010 school year?

12 A. No.

13 Q. Was she under any formal evaluation under
14 your supervision in 2009/2010?

15 A. No, she was under the GBE.

16 Q. Now, you have been shown what has been
17 marked 10. And if you look at the very bottom of
18 this memo, can you tell me the date that this -- the
19 date that appears at the bottom of this memo?

20 A. It's 11/5/2010.

21 Q. And can you identify this document for me?

22 A. Yes.

23 Q. What is this document?

24 A. It was a summary that I wrote to submit to
25 the district office, human resources, that they

1 requested during this school year, which this would
2 have been the November of this school year.

3 Q. All right. Was she under your supervision
4 in '09/'10?

5 A. No, this was after she had moved to Conway
6 Middle School.

7 Q. Did you -- who asked you from district
8 office to prepare this document?

9 A. Paul Hickman was -- notified me that he
10 was working on information in regard to the period of
11 time that Ms. Smith was assigned to Ocean Bay Middle,
12 and that he requested that -- after speaking with me,
13 he requested a follow-up summary of what I had shared
14 with him.

15 Q. Okay. Do you know whether Ms. Smith
16 received a copy of this memo?

17 A. I do not know.

18 Q. Did it surprise you that they were asking
19 you about Ms. Smith when she was not under your
20 control or under your supervision, for lack of a
21 better word, for the school year?

22 A. No, I wouldn't say it surprised me.
23 Oftentimes, when a teacher is either moved or placed
24 in another school, and there's situations, I am
25 sometimes asked to recall the time that they were in

1 our building.

2 Q. And when you put -- I think there are a
3 couple, I don't know how many bullets. I know we had
4 one that should have been two --

5 A. I have one, yeah, correct.

6 Q. One, two, three, four, five, six, thirteen
7 bullets, and I think one is actually the second part
8 of another one.

9 A. Yeah. Sorry.

10 Q. That's okay. I make mistakes all the
11 time. Out of all these concerns that you put here,
12 what documents did you have in your possession that
13 reminded you that these were the concerns that you
14 had with Ms. Smith almost two years or a year and a
15 half prior?

16 A. I had -- in my file, I had copies of
17 e-mails. I had copies of parent correspondence, and
18 some notes of meetings that had been held.

19 Q. Okay. And we will get to the e-mails in a
20 minute. So e-mails, when -- what was your process
21 for a parent e-mailing Ms. Huddle, that she had
22 concerns with a teacher, okay, what would you do once
23 you got that e-mail as far as communicating with the
24 teacher to see if these things are even viable, or if
25 it's even true?

1 A. I can tell you that I do not often forward
2 an e-mail to a teacher that comes from a parent. If
3 it is something that is informational or -- but when
4 it's in regard to, let's say, concerns or criticisms
5 of a teacher, I don't make a practice of just
6 forwarding that to the teacher. Because I have found
7 that that wouldn't be a fair practice to -- you know,
8 if there's something harsh in it from a parent or an
9 accusation, that it doesn't help the relationship.
10 I've just found that as an experience.

11 Q. And I guess my question is, how is
12 Ms. Smith supposed to know whether Ms. James, Sean
13 James' mother is disappointed in a homework
14 assignment, because she didn't e-mail Ms. Smith, she
15 e-mailed Ms. Huddle, how do you go about
16 communicating that disconnect between the teacher and
17 the parent?

18 A. Well, there's two ways. One, I would ask
19 that we set up a conference. Another is that I would
20 go to the teacher and say, you know, this situation
21 was brought to me, can you share information about
22 what you know about it. And I think in most cases,
23 those conferences were arranged, like I said, either
24 through guidance or through the sixth grade teachers.
25 Teachers as a group may have one child that four of

1 them meet together with the parent.

2 Q. So it was your practice that if you got a
3 complaint via e-mail regarding one of your teachers
4 that you would communicate this complaint? You may
5 not forward the e-mail, the actual e-mail --

6 A. Right.

7 Q. And I understand that practice, but you
8 would at least communicate with the teacher that
9 there is a complaint and there may be a problem that
10 needs to be addressed?

11 A. Yes.

12 Q. Did you do this all of the time?

13 A. I could never sit here and say I did it
14 every single time, because I cannot remember if there
15 were occasions that it didn't occur.

16 Q. Okay. So most of these came from
17 information you had in your file?

18 A. Yes, or situations that I remembered.

19 Q. Okay. And of all these things that you
20 listed, and these were '08/'09 concerns --

21 A. Yes.

22 Q. -- tell me which ones you felt going
23 forward for 2009/2010 -- well, tell me what things at
24 the conclusion of '08/'09 you thought were no longer
25 a concern.

1 A. Let me see.

2 Q. Take your time please.

3 A. Okay. The one I do remember, that was
4 late in getting grades in. And that was Ms. Smith
5 had the previous year, at the end, been in an
6 elementary school, and they did not use electronic
7 grade books, and they did not put the grades directly
8 into, at that time what was called is that SASSY.
9 And so as the year progressed, Ms. Smith did receive
10 training in the inputting of grades into the grade
11 book, so that they were in on time in order for the
12 upload to occur. I do know that that improved with
13 Ms. Smith's experience in working with it. I do know
14 that for sure.

15 In looking at these areas, even at the
16 close of that school year, as late as May, some of
17 those were still shared by parents --

18 Q. Okay. So to your knowledge, the --

19 A. -- and students.

20 Q. -- the only one that you knew that were no
21 longer a concern was late getting grades in?

22 A. As the year progressed, we did see fewer
23 too, I would say, in the end, improvement in the
24 claims of work being misplaced or lost.

25 Q. Do you remember telling me in your last

1 deposition that you thought that the communication
2 regarding instruction became clearer to students, you
3 weren't having as many concerns about unclear
4 directions?

5 A. Yes. And I will also say that throughout
6 the year, we work with, through our staff
7 developments, the anatomy of a lesson, the use of
8 objectives, and that did become a better situation
9 with, like I say, her experience in what was expected
10 in our school.

11 Q. You were also given a handful of e-mails,
12 and we won't go through the e-mails at this point,
13 Mr. Williams didn't ask you questions, he just asked
14 you if you can identify them. But would it be fair
15 to say that if an e-mail did not have you in the
16 title, or you as a recipient, that you would not have
17 first-hand knowledge to that e-mail? And let me make
18 it clear. For example, if the e-mail says from
19 Dwayne Mazyck to Vernie Williams, and Connie Huddle
20 is not involved in the e-mail string, would you agree
21 with me that then you are not a first-hand recipient
22 of that e-mail?

23 A. True.

24 Q. Okay. And let's just make this clear.

25 In '09/'10, Ms. Smith was removed based on the needs

1 of the district because your numbers fell?

2 A. Right.

3 Q. And she was placed at Conway Middle
4 School?

5 A. Conway Middle.

6 Q. And you never made a recommendation for a
7 nonrenewal regarding Ms. Smith's contract, have you?

8 A. No.

9 Q. You didn't make a recommendation in this
10 matter that Ms. Smith's contract be terminated, did
11 you?

12 A. No, I didn't.

13 Q. You have no knowledge, other than what
14 happened in '08 and '09 and the little part of
15 '09/'10 regarding Ms. Smith, is that correct?

16 A. Right, I did not know Ms. Smith prior to
17 that. And the observations and all of my
18 professional contacts were during that school year
19 and the beginning -- it was about a month or less
20 that she was at Ocean Bay for the 2009/2010 school
21 year.

22 Q. And would it be fair to say the only
23 reason that you are here being deposed is because
24 somebody asked you to write a statement and be a
25 witness in this matter? You didn't voluntarily ask

1 to be involved in this?

2 A. No, no.

3 Q. And regarding Ms. Smith and her abilities
4 and all, do you remember what Ms. Smith's statewide
5 test scores were for that full year of '08/'09 that
6 she was with you?

7 A. Yes. The scores come in in the summer,
8 and we analyze them. We look at each teachers, each
9 grade level and each area. And I do recall that
10 Ms. Smith's were -- I looked at every teachers. And
11 I actually provided them to Ms. Smith after she had
12 left our school. And I did -- I know I sent her an
13 e-mail telling her that I was sending those to her.
14 And I do recall that I stated in it that I was
15 pleased with her results of her -- it was PASS
16 testing.

17 Q. And when you say you were pleased --

18 A. Yes, they were -- she had large percent of
19 met standard and exemplary. She had very few that
20 are what we call not met, which means they didn't
21 meet standard.

22 MR. MAZYCK: Standard. All right. I
23 don't have any other questions.

24 EXAMINATION

25 BY MR. WILLIAMS:

1 Q. Just a couple things on follow-up. The
2 statement you prepared that's Exhibit 10, and I
3 believe Mr. Mazyck asked you if you knew that
4 Ms. Smith had been provided with a copy of this
5 statement, and you said you didn't know. Did you
6 share the concerns, the bulleted concerns that are
7 listed in that statement with Ms. Smith during the
8 time you were her principal?

9 A. Yes. These were all situations that I had
10 conferenced with her about, discussed, or we had met
11 on.

12 Q. So some of this in here is some of that
13 you discussed with Ms. Smith?

14 A. Yes. None of these are any situations
15 that were not brought to me, and then either
16 discussed in a parent conference. Some of these were
17 brought out during parent conferences.

18 Q. Okay. You have a note there about tones
19 in parent conferences and that sort of thing.

20 A. Uh-huh.

21 Q. Was there ever an incident where a parent
22 taped Ms. Smith?

23 A. Not during a conference.

24 Q. Okay.

25 A. A parent brought a tape recording of a

1 phone conversation, which I explained to the parent I
2 can't -- I can't take that. That's -- that was -- I
3 believe that they taped the conversation between
4 Ms. Smith and them.

5 Q. Did they play the conversation for you?

6 A. They did play it for me.

7 Q. Did you have any concerns just as relates
8 to Ms. Smith's part of that conversation?

9 A. I do recall that Ms. Smith, in the
10 conversation, became very defensive during the
11 conversation.

12 Q. Okay. Did you discuss your concerns with
13 Ms. Smith regarding that?

14 A. Yes. We had a meeting on that child. And
15 I'm going to be honest with you, I can see the parent
16 in my office, but I cannot recall the name.
17 MR. WILLIAMS: That's fine. That's all I
18 have.

19 EXAMINATION

20 BY MR. MAZYCK:

21 Q. In that conference -- this is the first
22 time I heard of that tape. So you did not get
23 possession of the tape?

24 A. No, no.

25 Q. Did anybody hear the tape other than you?

1 A. I believe Ms. Shelley, who is the
2 assistant principal with sixth grade, I believe she
3 was in that involved.

4 Q. Was Ms. Smith --

5 A. No, Ms. Smith was not. They brought it to
6 me.

7 Q. I'm sorry. I'm talking over to you, and I
8 apologize. I didn't let you finish.

9 A. No, no, no, no.

10 Q. So you think Ms. Shelley heard the
11 conversation?

12 A. I believe she did.

13 Q. But Ms. Smith was not afforded the
14 opportunity to hear it?

15 A. No. Can I say something too?

16 Q. Sure. Absolutely.

17 A. Ms. Smith did not know that that parent
18 taped her.

19 Q. Sure, sure. Tell me the parental concern
20 at that time; do you remember what the parental
21 concern was?

22 A. Yes. It was in regard to their child
23 expressing that they wanted out of the class, that
24 they didn't feel comfortable, and that they felt that
25 in order for them to progress, they could not remain

1 in that class.

2 Q. Do you think it becomes a common theme
3 that if kids, all they have to do is request to be
4 removed out of a teacher's class, that another child
5 is like, well, Sam did it, now I can do it, and it
6 becomes an epidemic if these concerns aren't
7 addressed with the teacher? So it seems to me that
8 the students go home and complain to the parent, and
9 it could be, would you agree with me, it could be
10 because Ms. Smith is a firm, no-nonsense teacher?

11 A. In some cases, student do complain when it
12 is an environment that they feel is firmer or -- yes,
13 I'm not going to deny that that can happen.

14 MR. MAZYCK: Okay.

15 EXAMINATION

16 BY MR. WILLIAMS:

17 Q. I hate to keep going back and forth. Just
18 so we are clear, Mr. Mazyck was asking about concerns
19 being raised that the teacher is not aware of. Were
20 there parentAL concerns or students concerns directed
21 to you that you did not make Ms. Smith aware of?

22 A. I did not recall any that were not
23 addressed or discussed with Ms. Smith.

24 MR. WILLIAMS: That's all I have.

25 THE VIDEOGRAPHER: This concludes today's

1 videotaped deposition of Connie Huddle. The time is
2 approximately 12:27 p.m.. We are now off the record.

3 (The deposition was concluded at 12:27
4 p.m.)

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7 Demo

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CERTIFICATE OF REPORTER

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I, Karen V. Andersen, Registered Professional
Reporter and Notary Public for the State of South
Carolina at Large, do hereby certify that the
foregoing transcript is a true, accurate, and
complete record.

I further certify that I am neither related
to, nor counsel for, any party to the cause pending
or interested in the events thereof.

Witness my hand, I have hereunto affixed my
official seal this 22 day of March, 2011, at
Charleston County, South Carolina.

Only

Karen V. Andersen, RMR, CSR
My Commission expires:
September 14, 2016

I N D E X

EXAMINATION

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Witness Name	
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EXHIBITS

Exhibit	Page	Line
PETITIONER'S EXH. 1	3	1
E-mail chain dated 9/25/08 and 2/29/08		
PETITIONER'S EXH. 2	3	4
Memo dated 10/1/08 from Rhonda Huggins to Jackie Smith		
PETITIONER'S EXH. 3	3	7
Letter dated 10/6/08 to Mrs. Huggins from Jacqueline Smith		
PETITIONER'S EXH. 4	3	10
Letter dated 10/20/08		
PETITIONER'S EXH. 5	3	12
E-mail strings dated 10/21/08 between Connie Huddle and Mike Belack		
PETITIONER'S EXH. 6	3	15
E-mail strings dated 1/28/09 between Jackie Smith and Rhonda Huggins		

1	EXHIBITS (continued)		
2	PETITIONER'S EXH. 7	3	18
3	E-mail string dated 2/16/09 between Jackie Smith and Rhonda Huggins		
4	PETITIONER'S EXH. 8	3	21
5	Handwritten note dated 2/18/09		
6	PETITIONER'S EXH. 9	3	23
7	E-mail string dated 3/31/09 and 4/1/09 between Rhonda Huggins and Jackie Smith		
8	PETITIONER'S EXH. 10	4	1
9	Summary of Connie Huddle, Principal Ocean Bay Middle dated 11/5/10		

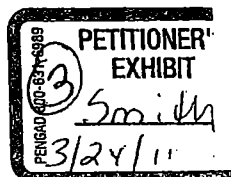
SECTION 59-25-430. Dismissal of teachers; grounds; opportunity for hearing; suspension pending resolution of charges.

Any 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; provided, however, that notice and an opportunity shall be afforded for a hearing prior to any dismissal. Evident unfitness for teaching is manifested by conduct such as, but not limited to, the following: persistent neglect of duty, willful violation of rules and regulations of district board of trustees, drunkenness, conviction of a violation of the law of this State or the United States, gross immorality, dishonesty, illegal use, sale or possession of drugs or narcotics.

Notwithstanding the provisions of Section 59-25-450, when any teacher is charged with a violation of the law of this State or the United States which upon conviction may lead to, or be cited as a reason for, dismissal, such teacher may be suspended pending resolution of the charges and receive his usual compensation during the suspension period, such compensation not to exceed the term of his teaching contract. If the teacher is convicted, including pleading guilty or nolo contendere to the charges, he may then be subject to dismissal proceedings. If no conviction results, his suspension shall be terminated.

SECTION 59-25-440. Written notice to teacher of possible dismissal; school administrator required to make reasonable effort to assist teacher in corrective measures; reasonable time for improvement required.

Whenever a superior, principal, where applicable, or supervisor charged with the supervision of a teacher finds it necessary to admonish a teacher for a reason that he believes may lead to, or be cited as a reason for, dismissal or cause the teacher not to be reemployed he shall: (1) bring the matter in writing to the attention of the teacher involved and make a reasonable effort to assist the teacher to correct whatever appears to be the cause of potential dismissal or failure to be reemployed and, (2) except as provided in Section 59-25-450, allow reasonable time for improvement.



Nonschool Employment of Classified Staff

The District will allow classified staff to receive compensation for nonschool employment as long as these activities do not interfere with the proper discharge of their assigned duties or do not cause poor public relations within the community. The District expects the employee to carry on any outside activity in a businesslike and ethical manner.

An employee must not engage in any other employment or in any private business during the hours necessary to fulfill District-assigned duties.

Revised: 7-1-04.

Discipline, Suspension, and Dismissal of Professional Staff

It is the responsibility of the school administration to operate District schools in a manner that will maintain a broad community confidence in and support of the schools. In the absence of such support, the District cannot maintain a strong, effective educational program.

Therefore, it is the policy of the Superintendent to recommend to the Board the removal from employment of any teacher (or administrator) who shall fail, or who may be incompetent, to give instruction (or provide appropriate administration of a school or a program) in accordance with the directions of the Superintendent or who shall otherwise manifest an evident unfitness for teaching (or administration), as determined by the Superintendent.

Evident unfitness for teaching or administration is manifested by conduct including, but not limited to, the following: persistent neglect of duty; willful violation of the policies, rules, regulations, or procedures of the District; drunkenness; conviction of a violation of the law of this State or the United States; gross immorality; dishonesty; and illegal use, sale, or possession of drugs or narcotics.

The dismissal or non-renewal of certified employees who hold induction or annual contracts shall be carried out in accordance with S.C. Code § 59-26-40.

The dismissal or non-renewal of certified employees who hold continuing contracts shall be carried out in accordance with the S.C. Employment and Dismissal of Teachers Act, S.C. Code § 59-25-410, et seq.

The dismissal of retired professional employees is addressed above in the section titled "Hiring of Retirees."

Reporting terminations and resignations of certified educators

The Superintendent will report to the S.C. Board of Education the name and certificate number of any certified educator who is dismissed, resigns, or is otherwise separated from employment with the District based on allegations of misconduct including, but not limited to: misconduct involving drugs, sexual misconduct, the commission of a crime, immorality, dishonesty, or other conduct that the Superintendent reasonably believes would constitute grounds for revocation or suspension of the employee's professional certificate.

Whenever a principal or other school administrator charged with the supervision of a teacher finds it necessary to reprimand a teacher for a reason that he/she believes may lead to dismissal or cause the teacher not be re-employed, he/she shall generally take the following steps in consultation with his/her executive director or an appropriate representative from Human Resources or the District's staff attorney.

Performance concerns

Except for outrageously unacceptable behavior on the part of a staff member, concern about the staff member's performance will be addressed generally in the following manner:

1. If the issue involves a performance problem, the principal or other administrator shall discuss the concern(s) with the professional staff member and provide him/her with an opportunity to respond to the concerns. The principal or other administrator should, where appropriate, follow up such a conference in writing.
2. If an informal discussion does not resolve the matter, the principal or other administrator shall again meet with the teacher and bring the concern(s), in writing, to the attention of the staff member involved. The administrator shall make a reasonable effort to assist him/her to correct whatever appears to be the cause of potential dismissal or failure to be re-employed. Such efforts may include formally evaluating the staff member, placing him/her on an improvement plan, and/or some other acceptable means of notice and assistance. Except in those cases warranting immediate suspension and recommendation for termination, the principal or other administrator should allow reasonable time for improvement.
3. If the performance problem is serious or repetitive, the principal or other administrator shall send a copy of his/her memoranda, etc., to the employee's District personnel file, with such action clearly indicated on the correspondence. Cases involving egregious behavior may lead to a recommendation for termination of employment.

Misconduct concerns

If the issue involves misconduct, the principal or designated school administrator shall immediately confer with the Executive Director of Human Resources and/or other appropriate District administrator. The District administration, after consultation with the Board's legal counsel (if approved by the Superintendent), shall advise the principal regarding appropriate actions to take.

Any decision to recommend the termination or non-renewal of an employee's contract shall be done in accordance with S.C. Code § 59-26-40 for induction and annual contract teachers, and in accordance with § 59-25-410 et seq for continuing contract teachers.

Legal references.

State.

S.C. Code § 59-25-410 et seq – Teacher Employment and Dismissal Act.

S.C. Code § 59-26-10 et seq – Training, Certification and Evaluation of Public Educators.

State Board of Education Regulation R 43-58.1 – Reporting terminations of certain school district employees.

Revised: 8-25-05; 7-1-06.

Classified Staff Separation

The District will discipline, suspend or dismiss classified employees whenever good and sufficient reasons for doing so present themselves. With respect to dismissal, such action shall be based on the recommendation of the principal, supervisor, and/or appropriate executive officer and following a pre-termination opportunity before the Superintendent or his/her designee for the employee to present reasons why the recommendation of dismissal should not be accepted. The administration has established appropriate procedures for a classified employee to appeal his/her termination.

The principal, supervisor, and/or appropriate executive officer may recommend to the Superintendent that a classified employee be dismissed. The recommendation should be made in writing and should state the reason(s) for the recommendation. Any supporting documentation should be attached to the dismissal recommendation. The recommendation should be sent to the Executive Director of Human Resources or his/her designee. If the Executive Director of Human Resources or his/her designee determines that the recommendation appears to be properly documented and/or appropriate, he/she shall have an appropriate person meet with and advise the employee that a recommendation of dismissal is being considered, the basis for the recommendation, and provide the employee with an opportunity to offer reasons why he/she should not be dismissed. If the Executive Director of Human Resources or his/her designee is not persuaded that the recommendation be withdrawn at that point, he/she shall place the employee on administrative leave, with full pay and benefits, and notify the employee in writing of the

Student Questions

I asked students the following questions during my interview with them:

1. How do you like seventh grade?
2. How do you like your teachers? All but one, why?
3. How did you like sixth grade?
4. Give some examples of why Ms. Smith yelled at the class?
5. What type of assignment would Ms. Smith give you to start and not let you finish? Examples:
6. How were your grades?
7. You said you have seven teachers, right? You said you only disliked one teacher, why is that?
8. When Ms. Smith got mad in class what would she say?
9. What do you dislike most about that class?
10. What do you like best about that class?
11. What do you least about that class?
12. Anything else you can tell me about Ms. Smith's class or any of your other classes?
13. How would you describe her as a teacher?
14. Do you have any problems in your other classes?
15. Has Ms. Smith ever put students in the hallway?
16. Why is it that your lowest grade is in Ms. Smith's Language Arts class?

1 Q: How long have you held that position?

2 A: Since July 1st of 2008.

3 Q: As superintendent, have you had the occasion
4 before January 5, 2011 to recommend the
5 termination of a continuing contract teacher in
6 this district?

7 A: No, I don't believe so.

8 Q: Okay. What is your understanding if any of the
9 circumstances under which a continuing contract
10 teacher may be terminated from employment?

11 A: There are reasons that are stated in the law
12 and I can't state those verbatim, but I would
13 reference that law and I know immorality would
14 be one of those reasons or not being able to
15 perform the duties of the job satisfactorily
16 and I'm not sure that I can quote all of them.

17 Q: All right. Is it your understanding, Dr.
18 Elsberry that as a part of that legal scheme,
19 the School District is required to provide
20 notice to the employee of the reasons for the
21 termination?

22 A: Yes.

23 Q: Okay. And is your letter of January 5, 2011
24 the notice provided to Ms. Smith of the reasons
25 for your recommendation that she be terminated?

1 A: Yes.

2 Q: Apart from those reasons that are stated in
3 your letter of January 5, 2011, are there other
4 reasons that you will recommend to the board
5 that Ms. Smith's employment be terminated?

6 A: This is a comprehensive list here and I would
7 not be aware of any other reasons other than
8 the ones that are listed here.

9 Q: All right. In this letter, Dr. Elsberry, you
10 reference a meeting that you had on December 1,
11 2010. Do you recall that meeting?

12 A: I do.

13 Q: Okay. Prior to that meeting of December 1,
14 2010, had you had any conversations with Ms.
15 Smith concerning her conduct or her performance
16 as a teacher in this district?

17 A: No conversations.

18 Q: Okay. Had you had the opportunity personally
19 to observe her performance as a teacher in the
20 classrooms of this district?

21 A: Yes.

22 Q: When did you do that?

23 A: I can't give you a date. It was during a board
24 visit and I believe it was this current school
25 year.

1 Q: Okay. Do you recall anything specific
2 concerning that observation?

3 A: Yes.

4 Q: What do you recall?

5 A: I recall speaking to a student and asking them
6 about their work. I don't recall what the
7 student said. I remember looking ... typically
8 what I do is look at the agenda on the board
9 and see what the lesson objective is. I
10 remember Ms. Smith being near the front of the
11 room. I don't recall that she was speaking to
12 the class. I think they were doing an
13 assignment and that's all I really recall. It
14 was a brief visit.

15 Q: Okay. Was there anything in that visit that
16 caused you any alarm regarding Ms. Smith's
17 performance as a teacher?

18 A: No, I was in there for about five minutes tops.

19 Q: Okay. And would it be fair to say that nothing
20 in that observation contributed to your
21 recommendation in this case?

22 A: Did you say would it be fair to say that? Yes,
23 it would be fair to say that.

24 Q: All right. Have you had conversations with any
25 students in reference to Ms. Smith's

1 performance as a teacher?

2 A: No, I have not.

3 Q: Have you had conversations with any parents
4 concerning Ms. Smith's performance as a
5 teacher?

6 A: Yes, I have.

7 Q: Okay. Can you tell me about those?

8 A: Directly, I've only spoken to one parent who
9 requested a conference with me to discuss her
10 concerns about Ms. Smith. And the concerns
11 that she expressed were some of the same that
12 you see in my letter to her. It had to do with
13 lack of explanation of material when her child
14 had a question. It had to do with uncertainty
15 about assignments that were given. She also
16 expressed concerns that in communications with
17 the teacher, she felt like her questions had
18 not been addressed adequately or that the
19 response had avoided the question that she was
20 asking.

21 Q: Do you recall when that conversation took
22 place?

23 A: No, I don't. It was this current school year,
24 but I can't tell you exactly when.

25 Q: Do you know whether it would have been before

- 1 or after the middle of October?
- 2 A: Not without checking.
- 3 Q: Do you maintain a calendar that would indicate
- 4 when that conversation took place?
- 5 A: Yes.
- 6 Q: Do you recall the name of that parent?
- 7 A: Mary Anderson.
- 8 Q: Do you recall the child's name?
- 9 A: No. It starts with a T I think. But that's
- 10 all I can recall.
- 11 Q: What, if anything, did you do upon hearing
- 12 these concerns expressed by the parent?
- 13 A: I went to the Executive Director for Middle
- 14 Schools, Mr. H.T. Lee and asked him to do some
- 15 research on the concerns that had been
- 16 registered.
- 17 Q: Okay. Did he report to you that he had
- 18 preformed that task?
- 19 A: Yes.
- 20 Q: When did he do that if you recall?
- 21 A: I don't know exactly.
- 22 Q: Was it a verbal or a written report?
- 23 A: It was verbal.
- 24 Q: Okay. What did he say to you?
- 25 A: He had spoken with the principal. The

1 principal had shared the documentation that she
2 had regarding the teacher so that Mr. Lee would
3 understand the breadth of her concerns and the
4 interactions that she had had with parents and
5 with Ms. Smith herself. And he reported back
6 with what the principal had shared.

7 Q: And what was that?

8 A: Well, the things, the interactions she had with
9 Ms. Smith, the documentation she had. And he
10 supplied all of that to me. All the
11 documentation. Expressed, really I guess I
12 could go through this letter and state the
13 things that are in the letter or the things
14 that he reported to me about his research.

15 Q: Now, did he provide you a copy of written
16 materials that he received from the principal?

17 A: I think he had those, but I didn't review each
18 and every one of those.

19 Q: Okay. Did he indicate that he had spoken to
20 the teacher?

21 A: I don't believe so.

22 Q: Okay.

23 A: I don't recall if he said that he talked to the
24 teacher or not.

25 Q: Okay.

1 A: So, but I think that he said that he had only
2 spoken with the teacher.

3 Q: Okay.

4 A: He did share that he had spoken with the
5 assistant principal also.

6 Q: And on your calendar, would there be a notation
7 of when you met with Mr. Lee about this?

8 A: I believe so.

9 Q: Did you take any action based on the
10 information that Mr. Lee provided to you?

11 A: If I recall correctly, and I would like the
12 liberty to check my calendar to confirm this,
13 but I believe that Mr. Ed Curlee, who is the
14 Executive Director of Human Resources, and Mr.
15 Lee and I met simultaneously. And so the
16 information that was shared was then given to
17 Mr. Curlee to research and to advise me based
18 on his review of all the documentation.

19 Q: And did you get a report from Mr. Curlee?

20 A: Yes.

21 Q: What did that report ... was that a written
22 report or a verbal report?

23 A: Verbal report.

24 Q: What did he have to say?

25 A: He had reviewed the documentation and he felt

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1 like there was a pattern of behavior that was
2 reflected in the documentation. He had
3 reviewed the personnel file and shared with me
4 concerns that were expressed from her previous
5 assignments and from that meeting, this letter
6 was developed that specified the concerns that
7 the documentation supported.

8 Q: When you say this letter, are you meaning
9 Exhibit Number One in front of you or was there
10 an earlier letter?

11 A: I'm not sure. I'm trying to reflect back.
12 Yes, there was an earlier letter because Ms.
13 Smith was placed on administrative leave prior
14 to this letter being composed.

15 Q: And would that letter have been signed by Mr.
16 Curlee?

17 A: Probably.

18 Q: Okay. So, is it your testimony that you
19 received some verbal report from Mr. Curlee
20 that, as a result of that, Ms. Smith was placed
21 on administrative leave?

22 A: Yes.

23 Q: Before Ms. Smith was placed on administrative
24 leave, did you bring her into your office or
25 meet with her at the school and share with her

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1 any concerns that you had about her conduct or
2 performance as an employee of the District?

3 A: No, I did not.

4 Q: Okay. Tell me how Mr. Hickman got involved in
5 all of this.

6 A: Mr. Hickman does investigative reports in
7 relation to employee matters and also in
8 relation to student discipline issues. And it
9 is not uncommon for HR to request that he
10 investigate any type of an employee matter
11 where there is a discrepancy in the reports
12 regarding that matter. In this case, we had
13 some discrepancy. Ms. Smith did deny and still
14 denies that she did many of the things that are
15 reflected in this letter. Yet the principal
16 and the assistant principal had documentation
17 to the contrary, so that would be a typical
18 time when we would ask for his assistance in
19 resolving the differences.

20 Q: Okay. When you say documentation to the
21 contrary, would it be fair to say that there
22 were allegations by parents and students
23 concerning Ms. Smith's conduct in the
24 classroom, assignments and grading among other
25 things?

1 A: Well, I think that's reflected in the letter.
2 It talks about parents of 25 students made 161
3 complaints about you to the principal, so yes,
4 certainly there were many, many complaints that
5 were documented.

6 Q: Did you take any effort on your own to evaluate
7 the credibility of those complaints?

8 A: Yes.

9 Q: In what respect?

10 A: The fact that Mr. Hickman conducted this
11 investigation. I read Mr. Hickman's
12 investigation, assessed in his reports, he
13 gives the accounts of all the different
14 individuals that were interviewed, so that was
15 probably the major means by which I evaluated
16 the concerns.

17 Q: Well, let me ask for some specific examples ...
18 in this you indicate that Ms. Smith reportedly
19 told a student that she would like to write up
20 white people and that Ms. Smith denied making
21 that comment. That's in the last paragraph of
22 the second page of your letter.

23 A: I see it.

24 Q: Did you suggest to Mr. Hickman, Mr. Lee, Mr.
25 Curlee that there be any assessment of Ms.

1 Smith's disciplinary referrals to see if there
2 was a racial pattern to her referrals?

3 A: I didn't ask for that.

4 Q: Okay. Did you notice whether or not making
5 that allegation gave inconsistent reports of
6 what was said and the context of the statement?

7 A: No, I didn't research any of this myself.

8 Q: Okay. Well, it's a pretty serious charge to
9 say that a teacher is making racial comments to
10 students. I mean that's pretty bad, isn't it?

11 A: Yes.

12 Q: Okay. And it says here that I guess you denied
13 it, however a couple of weeks later you
14 reportedly called a Waccamaw Mental Health
15 counselor assigned to Conway Middle School
16 during class, in front of the class to discuss
17 the same student and a possible referral which
18 is a complete violation of the student's
19 privacy. Do you see that?

20 A: I do.

21 Q: Now, were you aware of the context of that call
22 as related by Ms. Smith?

23 A: What I have was what is in Mr. Hickman's report
24 and yes, I think that Ms. Smith spoke to that
25 in that report.

1 Q: Did it concern you at all in Mr. Hickman's
2 report that he completely discounted everything
3 that Ms. Smith had to say?

4 A: I didn't see that he discounted what Ms. Smith
5 had to say in that report.

6 Q: Well, didn't he make factual findings that were
7 exactly contrary to the information he provided
8 to him?

9 A: It's probably been three months since I read
10 that report, so I'd hate to make an assessment
11 of exactly what was said.

12 Q: Okay. Of course, Mr. Hickman was the same
13 person that conducted what's been called an
14 investigation in 2008 at Ms. Smith's former
15 school. Did you look at that investigation?

16 A: No, I did not.

17 Q: Did you know that he had been previously in
18 investigation concerning Ms. Smith?

19 A: No, I did not.

20 Q: Did you know then, I guess you did not know
21 that he had made similar findings against Ms.
22 Smith in an earlier investigation?

23 A: I have not read any earlier investigative
24 reports by Mr. Hickman, so I could know
25 anything that's in those.

1 Q: Okay. So, would it be fair to say then, that
2 in making your recommendation to this board,
3 having no knowledge of any prior investigation,
4 you didn't rely on that information?

5 A: No. No, that wouldn't be accurate. Because I
6 did look at the personnel file and saw what was
7 reflected in the file. I was aware of concerns
8 at Ocean Bay Middle School because I was ... I
9 don't recall that I ever spoke to the
10 principal, Ms. Huddle about the concerns, but
11 those were ... the concerns we relayed to me by
12 Mr. Lee and Mr. Curlee at the time of the
13 transfer from one school, from Ocean Bay Middle
14 to Conway Middle.

15 Q: So, was it your testimony then, that the reason
16 for the transfer from Ocean Bay to Conway was
17 because of the concerns by Dr. Huddle?

18 A: That was one of the reasons.

19 Q: Do you know if that was ever expressed to Ms.
20 Smith?

21 A: No, I do not know if that was expressed to her.

22 Q: Okay. As I recall and I believe as reflected
23 in your January 5, 2011 letter, Ms. Smith
24 indicated that she had not received notice of
25 many of the concerns which had been brought

1 against her. Do you remember her telling you
2 that?

3 A: Yes.

4 Q: Okay. Did you ever look at Mr. Hickman's
5 investigate file?

6 A: I saw his investigative report, but I didn't
7 see a file outside of the report.

8 Q: Did you read something that would have been
9 maybe 60 or 70 or 100 pages that he compiled?

10 A: I don't recall how many pages it was.

11 Q: Did you ever review student statements that he
12 had students in this class write up?

13 A: I don't know. Do you have something there I
14 can review to see if it looks familiar?

15 Q: I mean they're your documents. I would be
16 happy to let you take a look at them. Here is,
17 for example, a table of contents for an
18 investigative file showing a summary of
19 statements and documentation from parents,
20 statements from students, statements and
21 documentation from students not interviewed,
22 interview questions, statements from principal
23 and so forth and so on. It has nine sections.
24 Is that something you reviewed in its entirety?

25 A: What I received from Mr. Hickman in Ms. Smith's

1 case and in all cases, is an executive summary.

2 Q: All right. I have something that's 15 pages or
3 so. Is that what you recall seeing?

4 A: I'm not sure. This looks like the report that
5 I saw from Mr. Hickman. I believe I recall
6 seeing ... I have a stack of Mr. Hickman's
7 investigative reports that is very extensive.
8 And in most of those I have some statements.
9 There are no statements in what you just gave
10 me, so I'm not sure that that's the complete
11 document that I saw.

12 Q: And I'm not suggesting to you that it is. You
13 said that you saw a summary?

14 A: Yes.

15 Q: And what I provided to you has been represented
16 to me as a summary.

17 A: Right.

18 Q: And there are other components as I revealed to
19 you here that say statements from parents,
20 statements from students.

21 A: I understand.

22 Q: And what I'm trying to get from you is when you
23 wrote your letter, did you, in writing this
24 letter, already review all these materials or
25 did you rely upon the summary?

1 A: I don't know. I have not seen all of the
2 materials that you have there. I don't think.
3 I haven't looked at all of them. All I recall
4 seeing is an executive summary and I don't
5 recall if there were any statements in there or
6 not.

7 Q: Okay.

8 A: But typically, Mr. Hickman's reports have the
9 statements in them. It looked like there were
10 statements ... oh, those were student
11 statements. Okay. Typically, I get some
12 copies of statements in his reports.

13 Q: And believe me, I'm not trying to trick you or
14 anything Dr. Elsberry.

15 A: I understand.

16 Q: What I'm trying to find out is you're the
17 Superintendent?

18 A: Yes.

19 Q: You have the responsibility of making a
20 recommendation to the board. I want to know,
21 in making that recommendation to the board, did
22 you go back and did you read the source
23 material that Mr. Hickman put together, that
24 packet?

25 A: No, I did not read anything that was four to

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1 five inches thick.

2 Q: All right. Would it be fair to say, then, that
3 in making your recommendation to the board that
4 you were relying upon Mr. Hickman, Mr. Curlee,
5 Mr. Lee to provide information to you upon
6 which you would formulate your recommendation?

7 A: Partially, yes.

8 Q: And what's the other part?

9 A: The executive summary from Mr. Hickman and the
10 documentation from Ms. Sordian and the
11 conversation with the parent as well as a
12 conversation with the principal.

13 Q: Now, in the documentation from Ms. Sordian, you
14 said that she gave that to Mr. Lee, I believe?

15 A: Right. Actually, she handed it to the two of
16 us at the same time.

17 Q: And you read over that?

18 A: Yes.

19 Q: Okay. And you did not speak with Ms. Smith
20 about it. You accepted it as information,
21 correct?

22 A: Correct that I accepted it as information, but
23 that was not the end of it. That's what Mr.
24 Lee was sent and deployed to investigate.

25 Q: Okay.

1 A: At my direction.

2 Q: I noticed that in your summary, you make
3 reference to the 2008-2009 school year at Ocean
4 Bay Middle School. You said similar concerns
5 were raised with your conduct when you were
6 assigned as a teacher there. Who raised those
7 issues with Ms. Smith?

8 A: Is your question who spoke to her when she was
9 working at Ocean Bay Middle School about those
10 concerns?

11 Q: Yes, ma'am.

12 A: I'm certain it was the principal.

13 Q: Were you present?

14 A: No, I was not.

15 Q: Okay. Did the principal, Dr. Huddle, I
16 believe, tell you that he had face to face
17 conversations with Ms. Smith, he or she, I
18 don't know.

19 A: She.

20 Q: Excuse me, she.

21 A: She did say that she had spoken with Ms. Smith
22 about her concerns.

23 Q: Was there anything in her personnel jacket to
24 indicate that was the case?

25 A: I cannot remember every piece of paper that's

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1 in 5,400 employee's files, so I'm going to say
2 I don't know.

3 Q: Well, and I'm not going to ask you about any of
4 those other 5,399 employees, but particularly
5 as to Ms. Smith, you indicated earlier that you
6 had reviewed her personnel file.

7 A: Yes.

8 Q: I don't expect that's the case with every
9 employee that you have.

10 A: I need to correct that. I didn't personally
11 hold her personnel file and review it. I asked
12 for a report from HR on what was in the
13 personnel file.

14 Q: Okay. Would it surprise you, Dr. Elsberry, if
15 the information in Ms. Smith's personnel file
16 does not contain the allegations, the reports,
17 the complaints that are in the investigation
18 file?

19 A: Would that surprise me?

20 Q: Yes, ma'am.

21 A: No.

22 Q: Okay. In this district, if something is to be
23 placed in an employee's personnel file, is it
24 required that the employee be provided a copy
25 or notice that that document is being placed in

1 the file?

2 A: Not that I'm aware of.

3 Q: Is it good practice to do that?

4 A: Yes.

5 Q: And ordinarily when a document that could have
6 impact on an employee's career is provided, do
7 you request that it be signed or provided by
8 hand or certified mail?

9 A: No, we do not. And I have to add as a former
10 principal, there was much documentation that I
11 retained as a principal about the staff in my
12 school that might not have ever made it to a
13 personnel file, but it was a reflection of my
14 ongoing documentation of that particular staff
15 member. So, I think there are personnel
16 concerns that occur frequently that are
17 documented by principals, but they might not
18 make it to the personnel file, but that doesn't
19 mean that they haven't been addressed with that
20 staff member.

21 Q: And to the extent, though, that a concern known
22 to a principal is at a level that could be
23 effecting the career of that employee, wouldn't
24 you expect at least at that point that the
25 principal would reveal that document to the

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1 employee and say look, I want you to know that
2 I've been having this problem and I need to
3 relate it to you out of fairness?

4 A: I think the difficulty, Mr. Nickles, comes in,
5 there is no definitive point when you cross
6 that border. We believe that we should support
7 teachers and help them to improve their
8 practice and give them assistance. We don't
9 approach any teacher or staff member from the
10 perspective that we want to begin creating
11 documentation to rid ourselves of this staff
12 member. We believe in formative assessments
13 and building and assisting teachers. So,
14 there's no definite point where we say okay,
15 this is the moment when we begin to terminate
16 this particular staff member.

17 Q: And in this instance, for example, the
18 materials I've been provided indicate that
19 before your meeting with Ms. Smith on December
20 1, 2010 there had been a substantial file
21 developed that included statements from
22 parents, statements from students, statements
23 from faculty members, statements from
24 administrators and that information was not
25 shared with Ms. Smith before your meeting with

1 her on December.

2 A: That's not what's reflected here. This letter
3 states that she received letters from her
4 principal on October 11th and 19th and the 11th
5 letter advised her that an assistance plan may
6 become necessary. So, we've reflected
7 communication.

8 Q: But you don't disagree with me that the
9 investigative file that Mr. Hickman put
10 together was not provided to Ms. Smith before
11 you met with her on December 1?

12 A: I can't recall the timing of Mr. Hickman's
13 investigation. So, I don't ... I would not
14 imagine that Ms. Smith had seen that
15 investigative report.

16 Q: Well, you told me that the investigative report
17 was provided to you, correct?

18 A: Yes.

19 Q: Was it provided to you before you met with her
20 on December 1?

21 A: Yes.

22 Q: Okay. So you had the investigative report.
23 Ms. Smith, you know during your meeting said
24 I'm at a disadvantage, I don't have this
25 information and it was only after that point in

1 time that the material was revealed to her,
2 isn't that right?

3 A: I'm not sure.

4 Q: Did you read the questions that Mr. Hickman
5 asked students?

6 A: I don't recall if that was in the executive
7 summary or not.

8 Q: Okay. Questions like give me some examples of
9 why Ms. Smith yelled at the class. Do you know
10 what a leading question is Ms. ... Dr.
11 Elsberry?

12 A: I've heard the term and I can imagine what it
13 is. I haven't read the definition in
14 Webster's.

15 Q: It's a question that suggests an answer. Give
16 me some examples of why Ms. Smith yelled at the
17 class. It assumes that something happened,
18 doesn't it? That she yelled at the class.

19 A: I don't know if it does or not, Mr. Nickles.

20 Q: Okay.

21 A: I'm not a lawyer.

22 Q: What type of assignment would Ms. Smith give
23 you to start and not let you finish? Does that
24 sound like a fair question to you to give to a
25 ten year old?

1 A: I don't know if it is fair or not. You are an
2 attorney and you could judge that, I suppose,
3 better than I. What I would say is that I'm
4 sure that any investigative reporter or anyone
5 doing an investigation, not a reporter, but
6 someone doing an investigation is going to take
7 the accusations that have been made and ask
8 questions that will either affirm those
9 accusations or would deny that they are
10 truthful. So, I'm assuming that's how he
11 designed his questions.

12 Q: When Ms. Smith got mad in class, what would she
13 say? A question to a ten year old. And I take
14 it that you were aware that these questions
15 were being asked to these ten year olds after
16 Ms. Smith had been removed from the classroom
17 and she was no longer their teacher?

18 A: As I recall, I don't know when Mr. Hickman ...
19 I don't remember the date of his investigation.

20 Q: There is no mention in your recommendation of
21 the '09-2010 school year. Any reason for that?

22 A: No reason.

23 Q: Okay. Because you skipped over that year.
24 Went back to 07-08, talked a little bit about
25 08-09. And skipped 09-2010.

1 A: That may have been the year she had a partial
2 year at two different schools. I'm not sure.

3 Q: I don't believe so. I think she was at Conway
4 Middle School that year. Full time.

5 A: What's reflected here are the concerns about
6 Ms. Smith's performance.

7 Q: Did you ask Mr. Lee or Mr. Curlee or Mr.
8 Hickman well, wait a minute, there weren't any
9 problems in 09-2010, what's going on now? Did
10 it occur to you that there might be some reason
11 for that?

12 A: We had a different principal. I do recall
13 that. This is Ms. Sordian's first year at
14 Conway Middle, so the prior school year, which
15 would have been 09-10, Ms. Clark, Mary Clark
16 was principal there. So, different leaders
17 have different styles and we have principals,
18 we have 50 principals in our district and there
19 are some that do a really good job of
20 documenting teacher performance and others that
21 don't. That could have been the reason, but
22 no, what I did was took what I had and assessed
23 it.

24 Q: Okay. Have you ever heard of the snowball
25 effect? Where one snowflake will fall and it

1 will start to accumulate other snowflakes and
2 become bigger and bigger and bigger until it
3 rolls out of control?

4 A: I've heard of that.

5 Q: Okay. When parents learn that they can go to
6 a principal and get their child moved out of a
7 classroom, do you think that stays a secret?

8 A: Nothing we do in schools stays a secret. We
9 don't try to keep secrets.

10 Q: Do you think that if a parent is in a meeting
11 where a teacher is overruled on a grading issue
12 by a principal that that stays a secret?

13 A: Like I just said, most things don't stay a
14 secret because we are dealing with children and
15 parents that share what they experience.

16 Q: Is it your understanding that it's within the
17 norm for a student to be able to go to an
18 administrator within a school, complain about a
19 teacher, and then get a grade changed? Is that
20 typical activity in this district?

21 A: I missed the first part of your question.
22 You're asking if that would be typical for a
23 grade to be changed?

24 Q: Yes.

25 A: No. But does it happen, yes.

1 Q: Okay. If I were one of your constituents, a
2 parent, and I came in and said well, Johnny
3 wasn't able to complete a test and I want a
4 retest, is it this district's policy that the
5 student is entitled to a retest and gets the
6 new grade without any consequence of the first
7 test at all?

8 A: There's not a policy that would rule every
9 circumstance. Oftentimes we look at a teacher
10 could have a lot of failures on one test and
11 that test might not count. So, it depends on
12 the circumstances.

13 Q: If a teacher raises concerns about the fairness
14 of allowing one student to get a new grade
15 while others that took the test whose parents
16 didn't complain, maintain the grade that they
17 achieved, I mean is that unreasonable for the
18 teacher to voice that concern?

19 A: I guess anyone can express any concern. But
20 again, it goes back tot he individual
21 circumstances and whether what's being shared
22 is accurate or not.

23 Q: Okay. You've been both a teacher and an
24 administrator?

25 A: That's right.

1 Q: Ever had an occasion where a student didn't
2 turn in their work and claimed to have done so?

3 A: I think I may have had a graduate student one
4 time.

5 Q: It can happen, can't it?

6 A: Yes.

7 Q: If a teacher tells a principal that I disagree,
8 I do not believe an improvement plan is
9 warranted, the principal can say I'm sorry you
10 disagree, but you're on an improvement plan,
11 isn't that right?

12 A: Yes.

13 Q: Okay. So, the expression of disagreement is
14 not insubordination in and of itself, is it?

15 A: It depends on the circumstances.

16 Q: You expressed concern about the number of
17 parental complaints brought to the
18 administration's attention about Ms. Smith,
19 isn't that correct?

20 A: Yes.

21 Q: Do you know how many of these were copy cat
22 complaints?

23 A: I'm not sure what you're ...

24 Q: Do you know how many of these parents talked
25 with each other?

1 information. It says that her conversation was
2 a complete violation of the student's privacy.

3 Q: In what respect?

4 A: When it is class time, she is a teacher and is
5 supposed to be teaching children, attending to
6 children and yet she's on the phone and it
7 appears from the documentation that I have that
8 she was talking about a student. I think her
9 own admission is that she talked about the
10 student, with her back, if I recall correctly,
11 her back was turned and she was speaking in a
12 low tone, but regardless, she was assigned to
13 teach the class at that point in time and
14 obviously, from her own admission, she was
15 talking about a student to someone else who was
16 not in the classroom.

17 Q: Well, Dr. Elsberry, you have telephones in that
18 classroom, don't you?

19 A: Obviously. She used it.

20 Q: And is it ... if you have a student in the
21 classroom that is disruptive or adamantly
22 refusing to participate and to learn, is it a
23 violation for the teacher to call and ask for
24 assistance with that student so that
25 instruction can resume with the remainder of

1 the classroom?

2 A: Your question is multifaceted, so I'm going to
3 take it one step at a time. There are policies
4 and procedures for when and how a teacher
5 should use the phone in the classroom. There
6 are also policies that teachers are to be
7 instructing students during that class time.
8 I don't recall whether this was an emergency
9 and she was calling for assistance, but I don't
10 recall if that was the case in this particular
11 case, but we have crisis plans that we write
12 for all of our schools that have protocol to
13 follow and ... if I recall the testimony, Ms.
14 Smith said she was discussing with this
15 counselor her concerns about the student and
16 they were ongoing concerns. It wasn't one
17 particular incident.

18 Q: Okay. Did you ever talk to the counselor
19 yourself?

20 A: No, I did not.

21 Q: Do you know if any of your investigative team
22 talked to the counselor?

23 A: I do not know.

24 Q: Mary Anderson, the parent you spoke to?

25 A: Yes.

1 Q: You already knew Ms. Anderson?

2 A: Yes.

3 Q: She's an employee in this district?

4 A: Yes.

5 Q: A principal in this district?

6 A: Yes.

7 Q: Did she make an appointment to meet with you?

8 A: Yes.

9 Q: Was it during school time?

10 A: No.

11 Q: Have you talked to any board members about Ms.
12 Smith?

13 A: Not that I can recall.

14 Q: Have you given any written material to any
15 board member about Ms. Smith?

16 A: No, I have not.

17 Q: Okay. Have you received any inquiry from any
18 board member about Ms. Smith?

19 A: I don't recall any.

20 Q: You don't recall getting any telephone calls or
21 questions like what the heck is going on with
22 Ms. Smith? What the heck is going on out there
23 at Conway Middle School? I've got constituents
24 out there that are calling me up and
25 complaining about stuff?

1 A: Not from board members.

2 Q: Well did Ms. Sordian or anybody else say that
3 they had gotten a call from a board member
4 about Ms. Smith?

5 A: I don't recall.

6 Q: Okay. Has anything happened between January 5,
7 2011 and today in reference to Ms. Smith that
8 would cause you to modify, supplement or in any
9 way change your letter of January 5, 2011?

10 A: No.

11 Q: Okay. Those are all the questions I have right
12 now.

13 (There being no further questions, the deposition
14 concluded at 4:23 p.m.).

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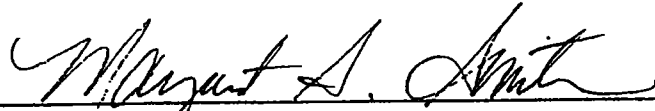
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CERTIFICATE

This is to certify that the deposition of DR. CINDY ELSBERRY, consisting of Thirty-Eight (38) pages, is a true and correct transcript of the testimony given by said deponent after being duly sworn; said deposition was reported by the method of Stenomask with Backup.

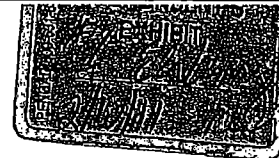
I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on February 22, 2011.



Margaret S. Smith
Court Reporter

Notary Public for South Carolina
My Commission Expires: January 13, 2020



Horry County Schools

January 5, 2011

VIA U.S. MAIL: REGULAR MAIL AND
CERTIFIED MAIL, RETURN RECEIPT

Ms. Jacqueline P. Smith
3946 Horseshoe Road; Apt. 2-B
Little River, SC 29566

Dear Ms. Smith:

The purpose of this letter is to advise you that I am formally suspending your employment, with full pay and benefits, effective immediately, and recommending to the Horry County Board of Education that your employment with the District be terminated.

This action is being taken as a result of the administration's ongoing serious concerns with your performance that have been discussed with you on several occasions. I have summarized the concerns in greater detail in this letter.

While members of the administration have discussed these concerns with you on several occasions, I met with you on December 1, 2010, to discuss with you the administration's concerns with your performance and provide you with a full opportunity to respond to the concerns. At your request, no other member of the District administration was present. During our meeting, you stated that you were not aware of parent concerns about you other than the concerns raised at the eight parent conferences you attended with the administration. You suggested that students may think you are mean because you "stay on students constantly." You stated that you believe you have effectively communicated with the parents of your students, you have gone overboard talking with parents and meeting with parents, and you did not know what else you needed to do in order to communicate effectively with parents. When I asked you what you did differently after each of the parent conferences you attended with the administration present, you stated you did not know what to do differently than what you had been doing. You stated that you always responded to parent e-mails within 24 to 48 hours and that you did not raise your voice in any of the conferences with parents that you attended with the administration present.

During our conference, you also stated that the District and school administration have not been fair to you in their investigation of these concerns and you asked for an independent investigation. When Paul Hickman met with you as part of his investigation, he provided you with an opportunity to submit names of individuals you would like him to speak with as part of his investigation. You did not submit any names. When I met with you on December 1, I again

Ms. Jacqueline P. Smith
Page Two
January 5, 2011

gave you an opportunity to submit names to me of individuals you would like the administration to speak with as part of our investigation. You did not provide me with any names. Thus, I find no evidence to support your assertion that the investigation has not been fair.

As you have been advised, during the 2010-11 school year alone, out of the 86 students you taught, the parents of 25 students made 161 complaints about you to your principal, Margaret Sordian, since August 24, 2010. The types of complaints include such things as: you place students in the hall for periods of time without authorization or supervision; you make inappropriate comments to students; you yell at students; you embarrass students; you fail to respond to parents in a timely manner; you fail to communicate effectively with students and parents regarding work, testing, re-testing, grades and assignments; you fail to report grades in a timely manner; you humiliate students in front of others during class time; you are unprofessional when conferencing with parents; and you demonstrate an overall negative attitude towards students and parents. We also discussed that 47% of your 86 students received failing grades for the first nine weeks. In response, you asked how a "D" is unsatisfactory, as it is considered a passing grade. These facts suggest the concerns from parents are reasonable and legitimate. As you know, there have been numerous conferences with the administration and parents, initiated by the parents, to discuss their concerns with your teaching, communication with, and/or treatment of their children. You were advised by Mr. Hickman during his meeting with you that some students described you as mean, harsh, and hateful, and that you did everything you could to set them up to fail. You responded by stating that the word "mean" comes from students that have teachers that make them work hard.

You stated you have not received "documentation" of any complaints about you. However, the documentation contained in numerous emails from parents suggests otherwise. In many cases where parents have requested a conference, there are emails that establish they first attempted to communicate directly with you regarding their questions or concerns and they were not satisfied with your response or did not believe you responded in a timely manner. You have been present during most of the conferences in which parents raised concerns and you were provided with clear expectations from the administration. It is essential that we are responsive to concerns raised by parents and that we address their concerns in a timely and professional manner. While every concern raised by a parent is not always valid, the concern is important to the parent, so we must ensure our responses to parents are thoughtful and professional.

Additionally, you received a letter from Dr. Sherilyn Duquette on September 1, 2010, following up a conference with you in which she addressed a parent's concern that you reportedly told a student you would like to "write white people up." You denied making this comment. However, a couple weeks later you reportedly called the Waccamaw Mental Health ("WMH") counselor assigned to Conway Middle School during class time in front of the class to discuss this same student and a possible referral, which was a complete violation of the student's privacy. You admitted that you made the call during class time to the WMH counselor because the student refused to do his work, but you stated that you were talking "low" and the students could not

Ms. Jacqueline P. Smith

Page Three

January 5, 2011

hear what you said. Your conduct towards this student in both instances was entirely inappropriate and unprofessional.

Ms. Sordian sent you letters dated October 11 and 19, 2010, in follow up to meetings she had with you. In the October 11 letter, Ms. Sordian advised you that an assistance plan may become necessary. You wrote on the bottom of the letter, "Not in agreement with individualized assistance plan." When I asked you why you wrote that statement, you responded by questioning what you would have needed an assistance plan to address. Your refusal to accept assistance from the administration and refusal to believe that such assistance is necessary are of great concern to the administration and to me.

The administration has also advised you of concerns regarding the manner in which you conducted yourself during conferences with parents. You have come late to conferences with parents, attempted to avoid attending the parent conferences, and become confrontational with parents during conferences. In short, the attitude you have displayed during parent conferences either by creating the perception you did not wish to be at the conference or by setting the wrong tone during the conference, has exacerbated the problems. One particularly troublesome conference with parents occurred on October 27. Ms. Sordian reported that after you arrived late for the conference, which set the wrong tone, the parent began to ask you questions about her child's grades and assignments. It was clear from the discussion with the parents that they had previously raised their concerns with you directly and they were not satisfied with your response and lack of follow through. You began to yell at both parents stating such things as: "You want me to give her the answers?" You also yelled "No, I never give the wrong words. I don't need to tell you anything sir! You don't need to question me." You also stated, "I don't have time for this. I have things to do." This type of conduct is entirely unacceptable for a parent conference.

As I have reviewed and considered your situation, I have tried to determine what could have caused so many parents to have concerns about you. I wanted to determine if the problem may be associated with one class of students, or one administrator. However, I was unable to find a reasonable explanation. During the 2010-11 school year, you have been assigned to teach 7th grade ELA, and you have one accelerated ELA class, one honors ELA class, and two regular ELA classes. Thus, the abilities of your students are varied. Additionally, the documentation establishes that much of the conduct described in the letter you received on February 26, 2008, regarding your performance at North Myrtle Beach Intermediate School is reoccurring in your treatment of parents, students, and members of the administration at Conway Middle School. Similar concerns were also raised with your conduct when you were assigned as a teacher at Ocean Bay Middle School during the 2008-09 school year. The concerns included, among other things, your failure to respond to parents, lack of clarity on grades and assignments, and issues with attendance at meetings. When you were assigned to Ocean Bay, 13 students were removed from your class in the first four weeks of school at the parents' request. While approximately 100 students were assigned to your class at the beginning of the 2008-09 school year, only 68 students finished the year assigned to your class.

Ms. Jacqueline P. Smith
Page Four
January 5, 2011

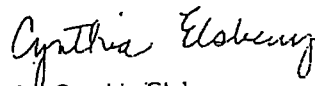
In summary, I am extremely concerned with your conduct and performance in all the areas described above. The parental complaints raised against you are excessive in number, and cannot legitimately be blamed on the administration, since you have received similar parental complaints at three different schools where you have been assigned. I am concerned that, even during my conference with you on December 1, you did not acknowledge that there are legitimate concerns with your performance and you did not demonstrate a willingness to accept assistance and improve. Thus, I must conclude that providing you with additional time and assistance would be futile. The documentation establishes that you have failed to demonstrate a willingness to work cooperatively with parents and students and be responsive to their legitimate questions and concerns. Your refusal to meet with the administration for various reasons, and failure to attend meetings in a timely manner is unprofessional and insubordinate and suggests you do not intend to work cooperatively with the administration to improve your performance.

For these reasons, I have concluded the above-described concerns with your conduct and performance have resulted in the loss of your ability to serve effectively as a professional employee of the District, and justify your dismissal pursuant to S.C. Code Ann. §§ 59-25-430 and 440.

As provided by Sections 59-25-450 and 59-25-470, you have the right to request a hearing on your suspension and the recommendation of termination, provided you do so in writing within 15 days of your receipt of this notice. Your request may be addressed to me, as Superintendent, or to Will Garland, Board Chairman.

I would strongly encourage you to consider an alternative resolution to this matter. If you have any questions or concerns about the options available to you, please feel free to contact me.

Sincerely,


Dr. Cynthia Elsberry
Superintendent

c: Mr. Ed Curlee
Ms. Margaret Sordian

STATE OF SOUTH CAROLINA) BEFORE THE HORRY COUNTY
COUNTY OF HORRY) SCHOOL BOARD

Dr. Cynthia Elsberry,
Petitioner,

v.

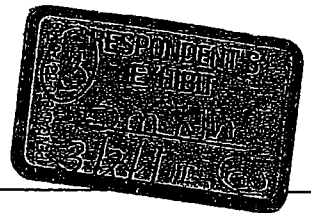
Jacqueline Smith,
Respondent,

COPY

THE DEPOSITION OF
PAUL HICKMAN

Friday, February 11, 2011
10:05 a.m. - 11:28 a.m.

The deposition of Paul Hickman, taken on behalf of the Respondent at the Horry County School District Offices, 335 Four Mile Road, Conway, South Carolina, on the 11th day of February, 2011 before Margaret S. Smith, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to agreement of counsel.



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(803) 252-9445 / (800) 822-0896

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 Attorney for the Respondent

Also Present:
 Jacqueline Smith

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EXHIBITS

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(Investigative Summary)	
Respondent's Exhibit Number Two	28
(Summary of Allegations at Conway Middle)	
Respondent's Exhibit Number Three	56
(Smith's 11/11/10 Interview)	

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby waived.

1 the answer to, I do not want you to speculate.
2 This is not a test. I just want to know what
3 you have to provide to me in the form of
4 information. So if you don't know the answer,
5 please just tell me I do not know. Will you do
6 that?

7 A: Yes, sir.

8 Q: Tell me what your position is with the Horry
9 County School District.

10 A: I'm currently a principal specialist.

11 Q: What does that mean?

12 A: Technically, I do internal investigation for
13 the District.

14 Q: Okay. Who assigns the matters that you
15 investigate?

16 A: HR primarily and the chief officer.

17 Q: Do you report to any particular individual?

18 A: Edward Curlee and the staff attorney.

19 Q: How long have you been doing this job?

20 A: This particular job, probably nine years,
21 eight, nine years.

22 Q: Okay. Before taking on these responsibilities,
23 were you employed with the School District?

24 A: Yes, sir.

25 Q: In what capacity?

1 conducted that Ms. Smith was on what's called
2 administrative leave?

3 A: Say that again.

4 Q: Were you aware that while you were conducting
5 your investigation, Ms. Smith was on
6 administrative leave?

7 A: Yes, I was.

8 Q: Okay. Were you aware that Ms. Smith had been
9 prohibited from speaking to students, speaking
10 to teachers, or speaking to parents or coming
11 on school grounds while she was on
12 investigative leave?

13 A: That's standard procedure for anybody going on
14 leave and I was aware of that. But that didn't
15 prohibit me from giving me names of persons
16 that I could talk to on her behalf.

17 Q: Did the people that the principal name for you
18 to interview already have some form of
19 communication with the school?

20 A: They were parents and teachers and students.

21 Q: Isn't it rather difficult, Mr. Hickman, to name
22 folks to respond to allegations when you don't
23 know the exact allegations that are being made?

24 A: I assume that when she was placed on leave, I
25 don't assume that, I know that any time you're

1 placed on administrative leave there's some
2 reason given as to why you're placed on leave.

3 Q: Did you see the letter placing her on
4 administrative leave?

5 A: Yes.

6 Q: It's like one paragraph, isn't it? Said you're
7 on administrative lave.

8 A: That's the standard letter.

9 Q: Don't come to school; don't talk to people. I
10 mean that's what they tell you to do on
11 administrative leave, right?

12 A: That didn't prohibit her from giving me names
13 of people that she wanted me to talk to on her
14 behalf and I am in the school district.

15 Q: Well, was Ms. Smith the last person you
16 interviewed?

17 A: Typically.

18 Q: So you had interviewed some parents, is that
19 correct?

20 A: Yes, sir.

21 Q: And some students, correct?

22 A: Yes, sir.

23 Q: And some of the staff at the school?

24 A: Yes, sir.

25 Q: And Ms. Smith asked you to tell her who those

1 relied on administration to do that.

2 Q: Okay. This is the same administration that is
3 accusing Ms. Smith of insubordination and
4 mistreatment of students, correct?

5 A: If you say that.

6 Q: Well, I mean the investigation came to you from
7 somewhere. Didn't it come from the school?

8 A: Yes, it did.

9 Q: So you relied on the people complaining about
10 Ms. Smith to identify the students that you
11 should interview?

12 A: I relied on the people that were responsible at
13 that school as leaders of that school to
14 provide the information that I needed and who
15 has access to that information.

16 Q: Well, we're talking Ms. Sordian and Dr.
17 Duquette, correct?

18 A: Yes, sir.

19 Q: And those are the two people that selected the
20 folks for you to interview, correct?

21 A: Yes, sir, by and large.

22 Q: And you didn't go beyond the individuals
23 identified by Ms. Sordian and Dr. Duquette in
24 conducting your investigation?

25 A: No, sir.

1 Q: Let's look at your investigative summary there
2 at page 15 of 15, please, sir. This is
3 entitled Student Questions, correct?

4 A: Yes, sir.

5 Q: Did you prepare these questions?

6 A: Yes, sir.

7 Q: Did anybody suggest any of these questions to
8 you?

9 A: No, sir.

10 Q: Did you ask each of these questions to each of
11 the students you interviewed?

12 A: Primarily.

13 Q: What does primarily mean?

14 A: I did ... if they had already answered the
15 question before, I didn't ask the same
16 question.

17 Q: And are the interviews you conducted with these
18 16 questions preserved on CD or audiotape?

19 A: Probably, yes.

20 Q: And if so, would that be in the same location
21 ...

22 A: Yes.

23 Q: ... with your file? Who was present during
24 your interviews?

25 A: Either Dr. Duquette or Ms. Sordian.

- 1 Q: Okay.
- 2 A: An administrator was always present.
- 3 Q: Where were they conducted?
- 4 A: Conference room.
- 5 Q: At where, what school?
- 6 A: Conway Middle School.
- 7 Q: Were they all conducted in one day?
- 8 A: No, sir.
- 9 Q: Over what period of time did you conduct the
- 10 interviews?
- 11 A: Two days.
- 12 Q: Were the students called from class in order to
- 13 be interviewed?
- 14 A: They were sent for one at a time.
- 15 Q: And were these students then released to go
- 16 back to their class after the interviews?
- 17 A: Yes, sir.
- 18 Q: Did any of the interviews take place before
- 19 lunch time?
- 20 A: Yes, sir.
- 21 Q: Did any of the interviews take place after
- 22 lunch time?
- 23 A: Yes, sir.
- 24 Q: Would it surprise you if the students who were
- 25 interviewed early talked about their interviews

1 with their friends?

2 A: It wouldn't surprise me but I can't swear that
3 they did.

4 Q: Now, in your training and experience as an
5 investigator, have you been instructed to use
6 open-ended questions when you're talking to
7 students?

8 A: By and large, yeah.

9 Q: And by open-ended, I mean questions that don't
10 give information or suggest an answer; is that
11 your understanding of what that means?

12 A: For the most part.

13 Q: Well, your fourth question here, give me some
14 examples of why Ms. Smith yelled at the class
15 is certainly not open-ended, is it?

16 A: They gave me what they saw, what they heard,
17 and the situations that existed that prompted
18 her to ...

19 Q: Well, you provided, you prepared these
20 questions before your interviews, didn't you?

21 A: I prepared these questions, sir, based on my
22 interviews with teachers, administrators and
23 parents and what I would do, as I would ... as
24 I write these questions, I was put the mark by
25 the frequency in which these comments would

1 Q: Okay. Would you expect a teacher to know the
2 number of complaints about her colleagues that
3 were made by parents? Would that be
4 professional for a principal to say to a member
5 of the team, I'm getting a heck of a lot of
6 complaints about your colleague over there.
7 That wouldn't be appropriate, would it?

8 A: I was simply show her the percentage number,
9 percentage of complaints that have been
10 received for her compared to her colleagues.

11 Q: Well, how could she possibly know that unless
12 she was being told what other people were being
13 complained about? I mean, she couldn't, could
14 she.

15 A: Say that again.

16 Q: I mean, unless she knew or was told that there
17 were complaints about other teachers, how could
18 she possibly compare herself to another
19 teacher?

20 A: I was doing that at that time.

21 Q: Okay. Throughout this interview process, you
22 asked Ms. Smith to respond to specific
23 allegations and she kept telling you I haven't
24 seen the documentation or the complaints, isn't
25 that correct?

1 A: Yes.

2 Q: And you had the opportunity to enlighten her
3 about that, to provide that information, but
4 you said that privacy interests of the others,
5 you did not do that, correct?

6 A: That's correct.

7 Q: Okay. Question 25, students say you play rap
8 music in the classroom and dance around the
9 class when they did their assignments. The
10 impression you received is this was some kind
11 of regular event, right?

12 A: I was told she did it on more than one
13 occasion.

14 Q: And her response is no, we had hip-hop versus
15 classical poetry. Students wanted to hear the
16 different sounds and make a comparison. They
17 only a portion of songs. I never danced to the
18 rap music in the classroom. That sounds like
19 a reasonable response, doesn't it?

20 A: No student gave me that rationale ...

21 Q: Okay.

22 A: ... about that.

23 Q: Well, did you go back after having heard this
24 explanation from Ms. Smith and talk to any
25 student and say, you know, Ms. Smith says that

STATE OF SOUTH CAROLINA) BEFORE THE HORRY COUNTY
) SCHOOL BOARD
COUNTY OF HORRY)

Dr. Cynthia Elsberry,)

Petitioner,)

v.)

Jacqueline Smith,)

Respondent.)

COPY

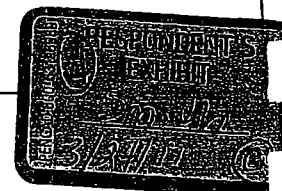
De Bene Esse
DEPOSITION OF

ANITA VIOLA JAMES

Wednesday, March 16, 2011
3:54 p.m. - 4:15 p.m.

The de bene esse deposition of ANITA VIOLA JAMES, taken on behalf of the Respondent at the law offices of the BARR LAW FIRM, 319 West Main Street, Kingstree, South Carolina, on the 16th day of March, 2011 before Carla S. Dominick, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to agreement of counsel.

CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-4240 / (800) 822-0896



APPEARANCES:

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 NICKLES AND SOLOMON, LLC
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 Columbia, South Carolina 29201
 Attorney for the Respondent

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EXHIBITS

Respondent's Exhibit Number One	15
(Statement of Anita James dtd 4/27/10)	

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby waived.

1 A: Uh-huh (affirmative response).

2 Q: Would you describe her demeanor as friendly?

3 A: Very.

4 Q: Was she friendly towards you?

5 A: Oh, definitely. Very helpful.

6 Q: In what way?

7 A: Helpful as far as when I came there my
8 attention was -- when I came to that particular
9 school, was for a talent show that I was
10 planning on putting -- a talent and a step show
11 I was trying to get over at the Canal
12 Recreation Center and she gave me some
13 information far as who was what upon the stage,
14 as far as the student, what teacher I needed to
15 contact as far as at that particular school and
16 other schools because I was trying to do
17 something.

18 Q: Okay. And were the students and the other
19 members of the audience African-American and
20 Caucasian as well?

21 A: Yes, sir.

22 Q: And did there seem to be any difference in the
23 way that Ms. Smith interacted with someone on
24 the basis of their race?

25 A: No, sir.

1 Q: Ms. James, when you left employment --

2 A: Hold on one second. Excuse me.

3 Q: When you left employment with the Horry County
4 School District, was that a voluntary act on
5 your part?

6 A: No, it was not.

7 Q: Okay. As a non-certified employee, did you
8 have the right to appear before the Board to
9 contest any discharge of your employment?

10 A: Did I have the right?

11 Q: Did you have the same rights that teachers
12 have?

13 A: No.

14 Q: Did you attempt to express concerns about your
15 separation from employment?

16 A: Yes, I did.

17 Q: And to whom were those expressed?

18 A: To Mr. Curlee, the superintendent, other
19 resource person, Ms. Durant who I was kind of
20 friendly with, Valarie Bessant.

21 Q: Were there allegations made that you thought
22 were untrue?

23 A: Yes.

24 Q: Were you given the opportunity to confront,
25 that is, be in the same room with those people

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1 --

2 A: No.

3 Q: -- who said those things about you?

4 A: No, sir.

5 Q: Did you want the opportunity to do that?

6 A: Yes, sir, I did.

7 Q: And were you denied that request?

8 A: Yes, sir, I was.

9 Q: And do you today feel that you were treated
10 fairly or unfairly by the District?

11 A: Unfairly.

12 Q: Answer any questions that Mr. Williams might
13 have for you.

14 MS. JAMES - EXAMINATION BY MR. WILLIAMS:

15 Q: Thank you, Ms. James, just for the record, my
16 name is Vernie Williams and I represent the
17 administration in this case involving Ms. Smith
18 and the Horry County School District. I'll
19 just be asking you a few questions. The
20 interaction that you just described for Mr.
21 Nickles where you observed Ms. Smith around
22 students at the talent show, was that the only
23 time you've ever observed her in that type of
24 capacity?

25 A: Yes, sir.

1 Q: And do you know when that was?

2 A: I don't know. I don't remember the talent show
3 date, no.

4 Q: Okay. Would you say it was more than two years
5 ago?

6 A: No. I don't think so.

7 Q: I was just trying to get an idea of the time
8 frame if you knew.

9 A: I don't think so.

10 Q: But that would have been the only time you
11 observed her interact with the students?

12 A: Yes. Uh-huh (affirmative response).

13 Q: And I assume you don't have any children that
14 have ever been taught by Ms. James?

15 A: Ms. who?

16 MR. NICKLES: Ms. Smith.

17 Q: Ms. Smith. I'm sorry.

18 A: Thank you for giving me that.

19 Q: Smith and James. They're common last names.
20 You can forgive me that.

21 A: No, sir.

22 Q: And you've never had occasion to supervise her
23 I assume?

24 A: No. No, sir.

25 Q: Other than that one time you mentioned at the

1 talent show, did you ever observe Ms. Smith
2 interact with her colleagues, other teachers,
3 fellow teachers and that sort of thing?

4 A: Far as being around them or --

5 Q: Yes, just being around them; talking to them.

6 A: Just talking, yeah. Just talk in general.

7 Q: How many times would you say you observed that?

8 A: Because I was with her until we left. Let me
9 see. We sat down.

10 Q: And I may not have been clear in my question.
11 I'm talking about other occasions; not just
12 this one day.

13 A: Oh, just that day.

14 Q: So just that day.

15 A: Uh-huh (affirmative response).

16 Q: How about observing her interact with
17 supervisors? I'm assuming beyond that one day
18 you were not there. You did not observe them.

19 A: No. There was no supervisor that I know of
20 around.

21 Q: Now, you offered some testimony to Mr. Nickles
22 as far as your termination from the district.

23 A: Yeah.

24 Q: And you said -- I believe I understood you to
25 say you didn't believe it was fair, is that

1 right?

2 A: Correct.

3 Q: And I'm not asking you whether you agree with
4 it or not, but is it fair to say that the basis
5 the district gave you for terminating you was
6 listed as several incidents of unprofessional
7 and inappropriate behaviors towards students
8 and co-workers.

9 A: Excuse me?

10 Q: I'm trying to figure out what the district told
11 you as far as why they were terminating you.
12 I'm not asking whether you agree with it.

13 A: No, I do not agree with it.

14 Q: I understand that but I guess my question is
15 was the reasons listed --

16 A: Oh, listed, yeah.

17 Q: -- several incidents of unprofessional and
18 inappropriate behaviors towards students and
19 co-workers?

20 A: That's what they have.

21 Q: Okay. That's all the questions I have.

22 MS. JAMES - RE-EXAMINATION BY MR. NICKLES:

23 Q: Just as a follow, Ms. James. Mr. Williams
24 asked you about the accusations by the
25 district. Did you ask for the opportunity to

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1 do that.

2 A: No.

3 Q: So you did not give that statement?

4 A: Not like that, no.

5 Q: Okay.

6 A: No.

7 Q: Can we go off the record for a second.

8 (Petitioner's Exhibit Number One was marked for
9 identification purposes was marked during the break.)

10 (Off the Record)

11 Q: Ms. James, I'm handing you a copy of a
12 statement that's been marked as I think
13 Petitioner's Exhibit Number One. I'm going to
14 ask you to take a look at that statement and
15 identify it if you can. Do you recognize that
16 statement?

17 A: Yes, I do.

18 Q: And what do you recognize that statement to be?

19 A: As far as, they accusing me of pinching Carman.

20 Q: Right. And is this a statement -- I'm sorry.
21 Were you finished? Is this a statement that
22 you yourself prepared?

23 A: Yes, I did.

24 Q: And so the signature on the bottom there,
25 that's your signature?

1 A: Yes.

2 Q: Could you read that statement for me, please?

3 A: Read the whole thing?

4 Q: Yes, ma'am.

5 A: Dear Mr. James, on the day of questioning,
6 Monday, November 26, 2010, Carman Duvall an
7 autistic child, has a habit of biting, head
8 butting and kicking people as well as myself
9 had pinched me and I, in turn, gently pinched
10 her to let her know that it was not nice to do.
11 Carman continues to head butt people. Ms. Sue
12 or Debbie tells me to put in time out for a
13 period of time. I remember the situation as
14 what the cause was -- as what the cause of her
15 doing the pinching because Carman all the time.

16 Q: And then your name.

17 A: Well, yeah.

18 Q: And so when I asked you earlier if you had
19 given a statement where you acknowledged gently
20 pinching this special education student, should
21 the correct answer have been that you did give
22 that statement?

23 A: Gently pinch is not considered way when I had
24 shown Mr. Curlee. What they took way out of
25 context. Can I show you?

April 27, 2010

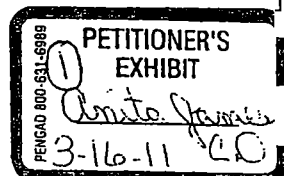
Dear Mr. James:

On the day of questioning, (Monday, April 26, 2010) Carmen Duvall, an autistic child who has a habit of biting, head-butting, and kicking people and as well as myself had pinched me, and I in turn gently pinched her to let her know that it was not nice to do. When Carmen continues to head-but people, either Ms. Sue or Debbie tells me to put her in time out for a period of time.

I do not remember the situation as what the cause of her doing the pinching because Carmen and I play all the time.

Anita James-Paraprofessional(PBS)

Anita James



STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-26-3689

Jacqueline Smith
PLAINTIFF(S)

Horry County Schools
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(b), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

- ☒ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☒ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

The decision of the Horry County School Board on March 25, 2011, upholding the recommendation of the Horry County School District to terminate the appellant's employment is AFFIRMED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$ N/A

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Benjamin H. Culbertson

Benjamin H. Culbertson, Circuit Court Judge

2148

Judge Code

September 20, 2012

Date

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2012-213509

Jacqueline Smith.....Appellant.

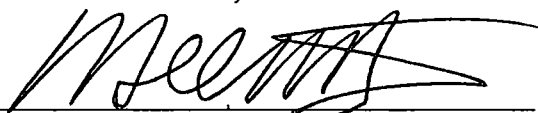
v.

Horry County School District.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all materials proposed to be included by any of the parties and not any other materials.

NICKLES LAW FIRM, LLC


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Attorneys for Appellants

Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2012-213509

JACQUELINE SMITH.....Appellant

v.

HORRY COUNTY SCHOOLS.....Respondent

APPENDIX TO RECORD ON APPEAL

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Attorneys for Respondent

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SC Court of Appeals

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STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Jacqueline Smith,
Complainant,
vs.
Horry County Schools,
Respondent.

C.A. No. 2011-CP-26-3689

ANSWER AND RETURN

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HARRIS COUNTY
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The Respondent, responding to the appeal of Appellant, would respectfully show unto the court:

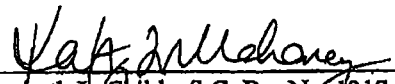
The Respondent denies each and every allegation of the appeal of the Appellant herein.

Wherefore, the Respondent, having fully answered the appeal of the Appellant, prays that the same be dismissed with costs.

Respectfully submitted,

CHILDS & HALLIGAN, P.A.

By:


Kenneth L. Childs, S.C. Bar No. 1217
Kathryn Long Mahoney, S.C. Bar No. 65332
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Attorneys for Respondent

May 3, 2011
Columbia, South Carolina

CERTIFICATE OF SERVICE

The undersigned of Childs & Halligan, P.A., hereby certifies that she has served the following counsel of record with the foregoing ANSWER AND RETURN by hand delivering a copy of same to the following on this 3 day of May, 2011:

W. Allen Nickles, III, Esq.
Nickles & Solomon, PA
1519 Richland Street
Columbia, SC 29201

Dwayne T. Mazyck, Esq.
The Solomon Law Group
1519 Richland Street
Columbia, SC 29201

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JULY 11 - 4 PM 12:47
CLERK HUGGINS-WARD

Sheri L. Wainscott
Sheri L. Wainscott

in one or more specifically named school activities which will occur within the nighttime restriction period, thereby creating a transportation problem for the student.

After checking the SCDMV's website for the current regulation, the school official writing such a letter should:

- Require the parent to submit a written request for the letter;
- After writing a letter addressed to the SCDMV, have the letter notarized and give it to the parent (keep a copy and file it in the student's cumulative record along with the parent's written request);
- Should state the reason for the waiver in the notarized statement:
[Example: Johnny Driver is a member of our high school marching band; therefore, he is required to participate with the band at evening sports events and band competitions];
- Avoid making any recommendation as to whether or not the SCDMV should grant a waiver;
- Have the principal or his/her designee sign or co-sign the statement (although the SCDMV only requires a "school official" to sign the statement).

Legal reference.

State.

S.C. Code § 56-1-180 -- Special restricted licenses for certain minors.

Adopted: 7-1-04.

Grievances Filed by Students

The District has established a grievance procedure as a formal method for the positive and productive resolution of grievances concerning the treatment of students by District personnel. Grievances may consist of allegations of violations of District policies or legal rights including, but not limited to, harassment or discrimination based on race, sex, color, religion, national origin, age, disability, immigrant status, English-speaking status, or any other characteristic protected by applicable federal or S.C. law. The decision of the principal shall be final: (1) in matters concerning the lawful assignment of students to classes and/or teachers and (2) in grade disputes except that grade disputes are grievable within one month of the posting of a final grade (see "Grading and Academic Performance" and "Grievances Filed by Parents and Other Community Members").

A student (grievant) who wishes to file a grievance should comply with the following procedure:

1. The grievance should be brought to the attention of a teacher or administrator who will provide the student and/or his/her parent the opportunity to discuss a decision or situation which the student considers unjust or unfair.
2. If the grievance remains unresolved, the student, his/her parent, or the teacher or administrator may bring the matter to the principal's attention for consideration and action.
3. A student may bring a school-wide matter, when appropriate, to the attention of class officers or the student council for possible presentation to the principal.
4. If the matter remains unresolved after the procedure outlined above, the student may bring the issue to the Superintendent or his/her designee for consideration except the decision of the principal shall be final in matters concerning lawful non-selection of students for, and lawful dismissal of students from, extra-curricular activities such as, but not limited to, athletic teams, cheerleading, National Honor Society, mock trial teams, and clubs.
5. If the student is dissatisfied with the decision of the Superintendent or his/her designee, the student may file an appeal with the Board. Such an appeal must be in writing and filed with the Superintendent within ten working days following receipt of the decision of the Superintendent or his/her designee. The Superintendent will present the request for a grievance appeal to the Board at its next regularly scheduled meeting.

A grievance hearing before the Board lies within the sole discretion of the Board. The student will be notified within a reasonable time of the Board's decision regarding whether or not it will hear the appeal. Should the Board decide to hear the appeal, the meeting will be informal and non-adversarial.

A homeless student has additional rights if the Board's decision is unacceptable to him/her - see "Homeless Students."

Title VI, Title IX, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act

The grievance procedures set forth above are to be used to process student complaints based on alleged violations of Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments Act of 1972; Section 504 of the Rehabilitation Act of 1973; and Title II of the Americans with Disabilities Act of 1990, referred to collectively as "civil rights grievances."

In the event that a student files a grievance alleging violation of one of the above-referenced laws, the grievance shall be considered to be a "formal" grievance for purposes of these procedures.

With respect to alleged violations of Title VI, if the response of the District-level administrator does not resolve the grievance to the satisfaction of the student, the student may appeal in writing to the District's Civil Rights Coordinator, Kenneth Generette, Staff Attorney, 335 Four Mile Road, Conway, SC 29526, telephone: 488-6700. With respect to alleged violations of Section 504 or the Americans with Disabilities Act, if the response of the District-level administrator does not resolve the grievance to the satisfaction of the student, the student may appeal in writing to the District's Coordinator of Special Services, Mrs. Mollie Laut, Director of Special Education, 335 Four Mile Road, Conway, SC 29526, telephone: 488-6700. With respect to alleged violations of Title IX, if the response of the District-level administrator does not resolve the grievance to the satisfaction of the student, the student may appeal in writing to the District's Title IX Coordinator, Mr. Paul Hickman, Principal Specialist, 335 Four Mile Road, Conway, SC 29526, telephone: 488-6733.

If the student fails to appeal within 15 working days of receipt of the written response from the District-level administrator, the right to appeal is waived. If an appeal is made to any of the above-referenced Coordinators, the Coordinator may conduct further investigation, if necessary. The Coordinator shall hold a hearing with the student within 15 working days of receipt of the grievance, or within 15 working days of completion of any further investigation, if necessary. The Coordinator shall then render a decision on the matter in writing within 15 working days after the hearing is conducted.

After appeal to the appropriate Coordinator, a student may request a meeting with the Board for the purpose of discussing his/her grievance. The request must be made in writing to the Superintendent within ten working days of the Coordinator's response to the grievance. The Superintendent will, at the next regularly scheduled Board meeting, present the request that the grievance be heard, together with copies of all correspondence and responses from the lower administrative levels.

A grievance hearing before the Board lies within the sole discretion of the Board. The student will be notified within ten working days of the Board decision regarding whether or not it will hear the appeal. Should the Board decide to discuss the grievance with the student, the meeting will be informal and non-adversarial.

Revised: 7-1-02; 7-1-03; 6-15-05; 2-17-06; 3-24-06; 6-19-06; 7-1-07; 7-1-09.

Grievances Filed by Parents and Other Community Members

Situations may arise in the operation of the District which are of concern to parents or other community members. Concerns should be resolved at the lowest possible level of decision making by the individuals closest to the concern; therefore, concerns are best dealt with through communication with the appropriate staff members, such as teachers, principals, and administrators. The decision of the principal shall be final: (1) in matters concerning the lawful assignment of students to classes and/or teachers and

1 MR. CURLEE: Ed Curlee, C-U-R-L-E-E.

2 MR. CURLEE - EXAMINATION BY MS. MAHONEY:

3 Q: Mr. Curlee, if you would, please state your
4 name for the record.

5 A: Ed Curlee.

6 Q: What is your position with the District?

7 A: I'm the executive director for human resources.

8 Q: I wanted to see if you were listening. How
9 long have you been executive director for human
10 resources?

11 A: This is my fifth year.

12 Q: And how many total years of experience do you
13 have in education and in what capacities?

14 A: I think this is my 33rd year in education and
15 during that tenure I have served as a
16 principal, assistant principal, executive
17 director for secondary education and then my
18 current position.

19 Q: In the interest of efficiency and the Board's
20 patience, I'm going to cut right to the chase.
21 When is the first time you had to deal with an
22 issue involving Jacqueline Smith in the
23 District, please?

24 A: The first time that I was involved with Ms.
25 Smith would have been in the 2007-2008 school

1 year when Ms. Smith was employed at North
2 Myrtle Beach Intermediate School.

3 Q: And what caused you to become involved with her
4 at that point?

5 A: I was actually in communication pretty much
6 throughout that year with the principal, Ms.
7 Graham, concerning some issues that she was
8 having with Ms. Smith's performance, Ms.
9 Smith's, some of her behaviors or
10 communication. There were several issues that
11 she and I had talked informally about.

12 Q: And what did you then -- did you ever any
13 direct contact with Ms. Smith during that 2007-
14 08 school year about any of these concerns?

15 A: I did. Actually, we were trying to work with
16 Ms. Graham. There were several issues that she
17 was trying to address with Ms. Smith and she
18 was attempting to meet with Ms. Smith and had
19 attempted on several occasions to schedule a
20 meeting with Ms. Smith. And Ms. Smith for
21 whatever reason, there were reasons given that
22 she had not met with the principal. And the
23 reason for the meeting was to discuss a number
24 of parent complaints that the administration
25 was receiving and also to discuss some of the

1 issues that had been brought to the
2 administration's attention. I went to the
3 school at the direction of the then
4 superintendent, Dr. Bobby Nalley, to make sure
5 Ms. Smith knew that a meeting was scheduled
6 with the administration and also I believe the
7 curriculum coach. The purpose of that meeting
8 was to address the concerns and to talk about
9 strategies. And I had received word from the
10 principal that there is still concern that Ms.
11 Smith was not willing to meet.

12 Q: So what did you do then?

13 A: I went to the school to make sure that Ms.
14 Smith understood that the importance of the
15 meeting and that it certainly was the
16 principal's prerogative to call a meeting. I
17 actually went to her classroom along with the
18 assistant principal, Mr. Prince, and had a
19 conversation with Ms. Smith to make sure that
20 she knew the importance of the meeting and also
21 the fact that she really needed to be in the
22 meeting that afternoon. And I delivered that
23 message.

24 Q: How did Ms. Smith respond to that message?

25 A: Ms. Smith became upset with me. She told me

1 that she actually was not going to stay
2 initially. Then she took out her cell phone
3 and made a cell phone call and I asked her to
4 put the cell phone up. That I just wanted to
5 make sure that she understood while I was
6 there. She did put the cell phone up finally
7 and I explained to her the importance of the
8 meeting and that it was really necessary for
9 her to be a participant in the meeting. And
10 tell her if she did not, it could be perceived as
11 she was being insubordinate. I also shared
12 with her that the principal had made several
13 attempts to schedule the meeting
14 unsuccessfully. She then went, after a brief
15 conversation with me and Mr. Prince, the
16 assistant principal, she went to the telephone,
17 a land line, and picked it up and called
18 someone. She talked briefly on the phone and
19 then asked me to come to the phone. I
20 explained to her that I was not there to have
21 a conversation with anyone except her and that
22 we needed to proceed with Ms. Graham with the
23 meeting. She then talked on the phone briefly
24 and hung the phone up and I asked her if there
25 were any more questions and at that point in

1 time, I left and Ms. Graham and I believe the
2 curriculum coach along with Mr. Prince, the
3 assistant principal, proceeded with the
4 meeting.

5 Q: What happened at the end of that meeting or
6 shortly thereafter?

7 A: Ms. Graham called me later on that afternoon to
8 let me know that Ms. Smith did come to the
9 meeting. She did not participate. She refused
10 to sit with the rest of the individuals in the
11 meeting and when questions were put on the
12 table, she would not respond or if she did, it
13 was a yes or no answer, short answer. And Ms.
14 Graham called me somewhat frustrated after the
15 meeting because obviously nothing had been
16 accomplished as far as what they had intended
17 it for and that was discussion about concerns
18 and developing strategies in how to deal with
19 it. After she had called me, I contacted my
20 supervisor, Mr. Riddle, and we had a
21 conversation with Dr. Nalley and made the
22 decision that based on the things that had
23 taken place and Ms. Smith's response, that we
24 placed her on administrative leave effective
25 the next day. The next morning, I went back to

1 North Myrtle Beach Intermediate School and met
2 with Ms. Smith the first thing in the morning
3 and explained to her what we were doing from
4 the administration's perspective and I'm
5 talking about the District's administration,
6 why we were doing it and also gave her
7 communication at that time which did place her
8 on administrative leave with pay while we
9 conducted an investigation into some of the
10 accusations and allegations that had been
11 presented.

12 Q: Okay. Was that a pretty unusual measure to
13 place a teacher on administrative leave?

14 A: Well, I won't say that it's unusual, but I will
15 say that we don't place a lot of teachers on
16 administrative leave but if it's like a very
17 serious situation, obviously, and to be able to
18 take that step I think to us is a very serious
19 matter.

20 Q: Then if you would turn to tab ten, please.
21 It's the black notebook - -

22 A: You said ten?

23 Q: -- in front of you, if you'd turn to tab ten,
24 please.

25 A: That's the February 26 letter, is that correct?

1 Q: Correct. Before we talk about that, after Ms.
2 Smith was placed on leave, what happened next?

3 A: Basically after Ms. Smith left that day, we
4 then notified Mr. Hickman and Mr. Paul Hickman
5 who works at the District Office, the
6 administrative team who works with our
7 department, the HR department, to conduct
8 interviews. We contacted Mr. Hickman and asked
9 him if he would to be in communication with Ms.
10 Graham, that there were some concerns that had
11 been shared with us about a teacher and
12 identified the teacher and asked him at that
13 point in time to conduct an investigation.

14 Q: And after the conclusion of all that, what
15 happened with Ms. Smith's employment?

16 A: Actually, it was our decision for several
17 reasons that we would move Ms. Smith and Ms.
18 Smith was reassigned to Carolina Forest
19 Elementary School and I believe that was in the
20 latter part of February that we met with her
21 and discussed the assignment. There were
22 numerous reasons for the move, but the biggest
23 concern we had at this point in time was the
24 relationship, somewhat hostile relationship,
25 that we perceived existed between the principal

1 and in this case, Ms. Smith. And that was
2 somewhat confirmed by the investigation that
3 Mr. Hickman had completed.

4 Q: Behind tab ten, the letter dated February 26,
5 2008, which you said that summarized the
6 concerns we discussed with her and ultimately
7 the reassignment?

8 A: Yes, ma'am, that's the letter that I sent to
9 Ms. Smith and that was after we actually met
10 with Ms. Smith and discussed reassignment. I
11 believe that was on the 20th or 21st of
12 February and this letter basically summarized
13 our concerns and also included some of the
14 findings of Mr. Hickman's investigation.

15 Q: And in February of 2008, who was the
16 superintendent of Horry School District at that
17 time?

18 A: That would have been Dr. Bobby Nalley and he
19 was serving as interim superintendent.

20 Q: Dr. Elsberry wasn't here yet, is that correct?

21 A: That's correct.

22 Q: So the remainder of the 2007-08 school year,
23 Ms. Smith was at Carolina Forest Elementary
24 School. Was she assigned a class of students
25 for the remainder of that school year?

1 A: No, it was my understanding Ms. Smith was
2 actually assigned to work with students on a
3 pull-out basis. We actually felt that position
4 and we had that position at a lot of schools
5 initially, Ms. Smith, she was actually, based
6 on my understanding, working with groups of
7 students who were deficient in some areas and
8 she was providing instruction to help mediate
9 their deficiencies.

10 Q: Where was Ms. Smith assigned to teach during
11 the 2008-09 school year?

12 A: After the conclusion of the year at that
13 school, we assigned Ms. Smith to Ocean Bay
14 Middle School. We actually made that
15 assignment for several reasons. One, Ocean Bay
16 Middle School was experiencing tremendous
17 growth and they had several vacancies. Ms.
18 Smith had also made a request the previous year
19 that she would like to be considered for a
20 transfer into the middle school grade area. I
21 think at the time she specifically pointed out
22 several years in the Conway area. Carolina
23 Forest is not that far away. Carolina Forest,
24 excuse me, Conway and we had vacancies there in
25 ELA so we made the decision to assign Ms. Smith

1 to Ocean Bay Middle School as an ELA teacher.

2 Q: Now, was Ms. Smith placed on a formal
3 evaluation for the 2008-09 school year when you
4 assigned her to Ocean Bay Middle School?

5 A: She did leave, but she was not placed on a
6 formal evaluation. There was an assistance
7 plan that Ms. Graham had tried to put in place
8 in the 06-07 year and I believe she did put
9 that plan in place and part of Ms. Smith, I
10 believe, when she was reassigned, part of that
11 understanding was that she would have
12 additional assistance when she moved to
13 Carolina Forest but when she went to Ocean Bay
14 Middle School, to answer your question, no.

15 Q: Was that an option to put her on formal
16 evaluation?

17 A: Not really because putting someone on formal
18 evaluation is a process and there are certain
19 procedures that have to be followed. The fact
20 that she was reassigned in February to Carolina
21 Forest Elementary School and then reassigned
22 again to Ocean Bay Middle School certainly
23 would have disrupted the process of procedures.
24 Normally we notify teachers when they receive
25 their contract if they're going to be put on

1 A: I can only give you my opinion. Some of the
2 concerns and complaints that we were having to
3 me were not necessarily those that would be
4 addressed by a formal evaluation. A formal
5 evaluation process through ADEPT in the South
6 Carolina Department of Certification for
7 teacher certification actually focuses on a lot
8 of areas but some of the most important areas
9 is what was taking place with instruction and
10 those type activities. The issues that we were
11 dealing with Ms. Smith at that point in time
12 were the concerns we had of perception of
13 insubordination, her comments of whatever that
14 she was making to parents , whatever those
15 relationship pieces. Those were the issues
16 that we had. So I'm not really sure that
17 putting her on a formal evaluation would have,
18 from my perspective, been the appropriate
19 measure.

20 Q: The 2008-09 school year, she's at Ocean Bay
21 Middle School. How did things go that year?
22 Who was the principal, Connie Huddle?

23 A: Connie Huddle was the principal and I believe
24 after a week, possibly two weeks, Ms. Huddle
25 called our office and said that she was having

1 numerous complaints from parents about one of
2 her teachers and she didn't really know that
3 much about the teacher. And she went on to
4 share with me that the teacher was Ms.
5 Jacqueline Smith. And I asked her basically
6 what kind of concerns or complaints and she
7 started out outlining to me, outlining to me
8 the fact that students were not understanding
9 assignments, the parents did not understand the
10 grades and a lot of times grades were not being
11 placed properly or not being reported. And I
12 think there was some general confusion or I
13 guess more than anything else students were
14 going home and complaining they didn't know
15 what to do and some of them even to the point
16 that they were afraid to go to class. And Ms.
17 Huddle shared these thoughts with me and we
18 talked about them briefly and at that point in
19 time, she shared with me what she was doing to
20 address the concerns and that was to talk with
21 Ms. Smith and certainly parents requested to
22 set up conferences.

23 Q: After the conclusion of the 2008-09 school
24 year, where did Ms. Smith teach after that?

25 A: Actually, Ms. Smith was, of course, at Ocean

1 Bay Middle for that year and then at the
2 conclusion of that year, we actually had a
3 conversation with Ms. Huddle, the principal,
4 and talked about the things that had occurred
5 that year. And there had been several
6 situations that had occurred throughout the
7 year, the students being moved from the class
8 at parents' requests or whatever in an effort
9 to try to help both Ms. Smith and certainly the
10 parents with their expectations as far as
11 school was concerned. Ms. Huddle and I
12 discussed the possibility of putting Ms. Smith
13 in some type of an assistance plan or
14 evaluation for the next year. And at that
15 point in time, the School District was
16 developing and implementing a new language
17 program and I'm sorry, I don't know the name of
18 the program, but Ms. Huddle said that it was a
19 very scripted program, one that required a lot
20 of details and procedures that were in place
21 that had to be followed and she thought it
22 might be an excellent opportunity for Ms. Smith
23 to work with that program at Ocean Bay Middle
24 School. So she, after our discussion she then
25 met with Ms. Smith and discussed that and let

1 her know that she was going to be putting her
2 in charge of that program. That program also
3 come with the idea she would be trained for the
4 program as a program being put in, I believe,
5 all the middle schools, not just Ocean Bay.
6 Ms. Smith was very upset about the assignment.
7 She wrote a lengthy letter saying that she
8 didn't think it was fair and that she basically
9 did not want to participate in that program or
10 at least be the person responsible for that
11 program. But anyway, she did. School started
12 the next year, she was still at Ocean Bay
13 Middle School at that point in time. Each
14 time, and I'll be very brief, each year we look
15 at the enrollment the first two weeks of school
16 and Ocean Bay Middle School's enrollment had
17 dropped substantially and Ms. Huddle had to
18 reduce their staff in a couple of positions.
19 And in looking at the process and procedures,
20 Ms. Smith being one of those individuals that
21 would be moved, we had a need for an ELA
22 teacher at Conway Middle School. So on or
23 around the second week of school when we were
24 making some changes, Ms. Smith was moved to
25 Conway Middle School.

1 somewhere along I shared that we've actually
2 placed Ms. Smith in several different locations
3 under different principals with different
4 leadership styles. Students have some
5 similarities but in different parts of the
6 District but yet we were still seeing some of
7 the initial problems that we had at North
8 Myrtle Beach Intermediate School in all of the
9 other locations as well. At this point in time
10 after her being moved and this was the fourth
11 time, four schools she had been in just four
12 years, we were somewhat concerned as to what we
13 could do. And during that time, we had various
14 forms of assistance that had been given or
15 offered to Ms. Smith to try to assist her in
16 certainly becoming more effective to address
17 some of the concerns that we were getting from
18 the parents and complaints. But from my
19 perspective in my dealings with Ms. Smith, Ms.
20 Smith would never acknowledge that there were
21 any issues. When I met with her, she
22 consistently said that she was unaware of any
23 problems, that if there were problems with
24 parents, the parents should be sent to her and
25 she would deal with it. But basically she was

1 aware that there were problems and if you'd
2 look at the e-mails that were going back and
3 forth between Ms. Smith and the administration,
4 you'd know that she was aware that there were
5 complaints coming in on a regular basis.
6 Additionally, in talking with all three
7 principals at different times in reference to
8 send me the parents, follow up procedures,
9 these were comments that Ms. Smith was making.
10 That was tried, but what happened on numerous
11 occasions that as soon as Ms. Smith met with
12 them, the parent then would go call the
13 principal and demand a meeting, in some cases
14 demand the child to be taken out of the class.
15 So for these reasons and the patterns that I
16 mentioned earlier, and the fact that we had
17 tried in this case four different schools and
18 we we're still having these problems, I think
19 you can see what our problems were as far as
20 continuing with her employment.

21 Q: Thank you. Please answer any questions Mr.
22 Mazyck may have.

23 MR. CURLEE - EXAMINATION BY MR. MAZYCK:

24 Q: Good afternoon, Mr. Curlee.

25 A: Mr. Mazyck.

1 information. But I asked her about the parent
2 concerns and she said that she wasn't aware of
3 parent concerns except for the eight
4 conferences that she had had since the
5 beginning of the school year. And I asked her
6 what she would have done -- what she could do
7 differently, what could she change to address
8 the concerns that the parents were expressing
9 in the eight conferences that she was aware of
10 and she said she didn't know of anything. That
11 she was not aware of anything she could have
12 done that would have changed the concerns that
13 the parents had. And I asked her after the
14 conferences, after she heard what they had
15 shared, did she do anything differently, did
16 she change her behavior, did she change her
17 communication style and she said no, she did
18 not change anything. And I was taken aback by
19 that. I'll just have to be honest that it
20 seemed -- it sounds like I'm being dishonest.
21 I'd would like to reword that statement. She
22 -- I was taken aback that she didn't realize
23 that they -- she didn't see anything that she
24 could have done differently to allay parents
25 fears, to alleviate their concerns. She also

1 -- we also talked about the grades. I was very
2 concerned about almost half of her students
3 making D's or F's and her comment was I don't
4 know why you consider that failing. A D is not
5 a failing grade and I didn't feel like I was
6 able to communicate with her that that is not
7 acceptable. That when a teacher's students,
8 when more than almost half of them make a D or
9 an F, that is not acceptable. And I didn't --
10 I didn't get any perception that Ms. Smith saw
11 that that was a concern or an issue that she
12 needed to address as a teacher and that was
13 just unacceptable to me.

14 Q: Let me ask you this question.

15 A: Okay.

16 Q: Did she mention during this conference that she
17 thought the district and school administration
18 was not being fair in their investigation? If
19 you'll turn back to the first page of your
20 letter --

21 A: Yes.

22 Q: -- at the bottom of the paragraph.

23 A: Yes.

24 Q: What do you recall about that discussion?

25 A: We talked briefly about Mr. Hickman's

1 investigation and, because she was alleging it
2 was not fair, I suggested that maybe there were
3 other people I needed to talk to. She felt
4 like Mr. Hickman's investigation didn't go far
5 enough or there were people that were not
6 heard. Who else do I need to speak with and I
7 requested that she give me names of people.
8 And she gave me none that day but indicated
9 that those would be forthcoming. As of today
10 I've received no names of any individuals that
11 I should talk with to learn more about the
12 situation that existed at Conway Middle School.

13 Q: You can go back to where you were. I didn't
14 mean to interrupt, sorry.

15 A: That's okay.

16 Q: Any other concerns from the conference that
17 stood out to you?

18 A: The conversation with the Waccamaw Mental
19 Health counselor was concerning to me and she
20 indicated that it wasn't exactly like it was
21 reported. So I gave her a chance to talk to me
22 about that conversation and what happened
23 during that conversation. And Ms. Smith
24 indicated that she did make a call during class
25 time, so I would have expected her to follow

1 that with a very urgent reason for making that
2 call. And she indicated that she called
3 because the student wasn't doing his work. I
4 could not quite figure why you would stop class
5 and go call a mental health counselor because
6 the student wasn't completing their work. That
7 just didn't resonate with me. When we talked
8 about the confidentiality, her explanation was
9 she turned her back to the class and she spoke
10 silent -- spoke quietly. Obviously she was
11 overheard because it was reported to the
12 principal.

13 Q: But did she acknowledge she made the call to
14 the counselor during class time?

15 A: Yes, she did.

16 Q: Did she acknowledge that students were present
17 in the room?

18 A: Yes, she did. On the assistance plan, again,
19 I was trying to determine does Ms. Smith know
20 of something that would be helpful to her? Is
21 there something we've overlooked. And when we
22 talked about the assistance plan that Ms.
23 Sordian had discussed with her and I asked her
24 why she wrote at the bottom of that document
25 that no plan was needed or no assistance was

1 needed, she said, I don't need any help. She
2 indicated that she said that because there were
3 no issues and there was nothing that needed to
4 be provided to her. Again, very troubling to
5 me. The allegations about yelling and raising
6 her voice, Ms. Smith denied all of that and I
7 didn't have anything to counter that with but
8 I had hoped that if she had given me additional
9 names of people that I could talk to that could
10 verify what she was saying, that that would
11 have been helpful, but she did not do that.
12 The removal of students from her class was a
13 pattern that was repeated at all three of the
14 schools that she was in and that was what the
15 parent that met with me expressed was the
16 concern that she didn't want her child to
17 remain in this class and be subjected to what
18 she was subjected to in Ms. Smith's class. And
19 I think that -- I think I've covered the main
20 points from that meeting.

21 Q: Okay. If you turn back to the bottom of page
22 three, your last paragraph there, halfway down
23 the paragraph it begins with additionally,
24 could you read that section, please?

25 A: Additionally, the documentation establishes

1 that much of the conduct described in the
2 letter you received on February 26, 2008,
3 regarding your performance at North Myrtle
4 Beach Intermediate School is reoccurring in
5 your treatment of parents, students and members
6 of the administration at Conway Middle School.

7 Q: Is there any question in your mind that this
8 letter that ultimately formed the basis of your
9 termination recommendation was including her
10 conduct at North Myrtle Beach Intermediate
11 School, Ocean Bay Middle School and Conway
12 Middle School?

13 A: No, there was no question that all three
14 schools were included.

15 Q: And does a lot of this paragraph refer to the
16 other schools as well?

17 A: Yes, I mentioned Ocean Bay Middle School also.

18 Q: After meeting with Ms. Smith on December 1st
19 when you had this conference with her where you
20 reviewed those concerns, after reviewing
21 appropriate information based on everything you
22 knew at that point to your own direct knowledge
23 did you reach a conclusion regarding what your
24 recommendation would be regarding Ms. Smith's
25 continued employment?

1 A: No, sir.

2 Q: Did anybody, I guess up until October of 2010,
3 tell you that you're in danger of losing your
4 livelihood?

5 A: Yes.

6 Q: That's what happened in October of 2010?

7 A: Uh-huh (affirmative response).

8 Q: In years past, had that happened? Now, Ms.
9 Smith, looking through these other items I see
10 contracts for several years and they start back
11 in 1999-2000. Is that when you first came to
12 work here?

13 A: To the district.

14 Q: And they asked you each year if you wanted to
15 return and you said yes?

16 A: Uh-huh (affirmative response).

17 Q: Did you mean it?

18 A: Yes, I did.

19 Q: And you see that the contract goes through and
20 all the way up to this year. Now, if your
21 principal at any of these schools had wanted to
22 put you on a special evaluation, is there a
23 process in this district that they could have
24 done that?

25 A: Yes.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COUNTY
Horry County Court of Common Pleas

Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2012-213509

JACQUELINE SMITH.....Appellant(s)

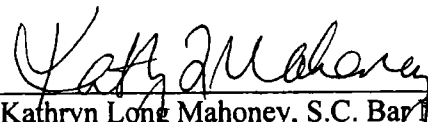
v.

HORRY COUNTY SCHOOLS..... Respondent(s).

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Appendix to the Record on Appeal contains all additional materials proposed to be included by Respondent and not any other materials.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2012-213509

Jacqueline Smith.....Appellant.

v.

Horry County Schools.....Respondent.

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STATEMENT OF ISSUES ON APPEAL

1. Whether the Circuit Court erred in upholding the Board's decision which was rendered in violation of due process.
2. Whether the Circuit Court erred in upholding the Board's decision when it was in violation of its own Board policies.
3. Whether the Circuit erred in upholding the Board's decision which was not supported by substantial evidence.
4. Whether the Circuit Court erred in upholding the Board's decision without identifying supporting facts and legal conclusions.

STATEMENT OF THE CASE

This is an appeal from the Horry County School Board ("Board") decision to terminate Appellant Jacqueline Smith ("Ms. Smith"), a veteran teacher.

By letter dated January 5, 2011, the Horry County School District ("District") notified Ms. Smith of its recommendation that she be terminated from employment as a continuing contract teacher. (R. pp. 231-234) Ms. Smith timely requested a hearing before the Board which was held on March 24 and 25, 2011. On March 25, 2011, the Board voted to uphold the District's recommendation that Ms. Smith be terminated. On April 25, 2011, Ms. Smith filed a Notice of Appeal with the Horry County Circuit Court requesting that it reverse the Board's decision. Respondent Horry County Schools filed an Answer and Return dated May 3, 2011.

After both parties submitted briefs, the Honorable Benjamin Culbertson held a hearing on September 13, 2012. Judge Culbertson issued a form Judgment on September 20, 2012, without an accompanying written order, affirming the Board's decision. (R. p. 1) The Judgment was filed with the Clerk of Court on October 26, 2012. Ms. Smith timely filed and served a Notice of Appeal to this Court. (R. pp. 5-9)

STATEMENT OF THE FACTS

Ms. Smith began teaching in the District in 1999, and in 2003, received the Teacher of the Year award for North Myrtle Beach Elementary School. Prior to her termination, the District issued Ms. Smith continuing contracts to teach for each year of her employment.¹

¹ Ms. Smith maintains a professional teaching certificate and has been employed under a continuing contract in Dillon County since the 2011-2012 school year.

During the 2007-2008 school year, Ms. Smith taught at North Myrtle Beach Intermediate School. Due to conflicts with her principal, in January 2008, Ms. Smith filed a grievance pursuant to Board policy. Ms. Smith was concerned that the principal was not including her in discussions with parents about her teaching. (R. p. 205)

Soon after filing her grievance, Ms. Smith was placed on administrative leave and reassigned to a new school, Carolina Forest Elementary School for the remainder of the school year. (R. pp. 175-178; pp. 205-209) The District's Human Resources Director testified that the administration was concerned about Ms. Smith's relationship with her principal and wanted to give her a "fresh start." Notably, the District did not issue an improvement plan or place Ms. Smith on a conditional contract, measures established by law and policy to provide formal notice of perceived substandard performance. (R. p. 172)

Ms. Smith was reassigned to Ocean Bay Middle School for the 2008-2009 school year. Because of a significant drop in student enrollment the following fall, Ms. Smith was transferred to Conway Middle School for 2009-2010 under the supervision of Principal Mary Clark. During 2008-2009 and 2009-2010, Ms. Smith was routinely reemployed under continuing contracts.

Beginning the 2010-2011 school year, Ms. Margaret Sordian was named principal of Conway Middle School. Ms. Sordian testified that she immediately began receiving a large number of parental complaints about Ms. Smith. (R. p. 158) District policy calls for the teacher to be advised and included in parental conferences. (R. pp. 447-448) Nevertheless, Ms. Smith was not offered an opportunity to meet with or participate in the majority of "complaints" identified by Ms. Sordian. (R. p. 219)

On October 28, 2010, fewer than nine weeks into the school year, Ms. Smith was placed on administrative leave with pay. Ms. Smith did not return to the classroom. Instead, by letter dated January 5, 2011, the District's Superintendent informed Ms. Smith that she was being recommended for termination from employment. State law requires that continuing contract teachers like Ms. Smith receive written notice of reasons for discharge and an opportunity to confront the District's witnesses. S.C. Code Ann. §§ 59-25-460 and 470.

The termination letter issued to Ms. Smith identified S.C. Code Ann. § 59-25-430, requiring proof of incompetence manifesting an unfitness to teach. The letter also identified § 59-25-440, requiring written notice of perceived deficiencies, assistance and a reasonable time for improvement. (R. pp. 231-234) Ms. Smith submitted a timely request for a hearing before the Board to challenge the recommended termination. By law, this required the District to present evidence establishing "good and just cause" for termination. S.C. Code Ann. § 59-25-470.

At the outset of the hearing, the District submitted numerous proposed exhibits, including documents containing hearsay statements by parents and students who were not identified as witnesses. (R. pp. 231-238; 240-241; 246-248; 250-269; 274-300; 303-320) Ms. Smith objected to the admission of any exhibits or testimony that contained hearsay statements unsupported by witnesses available for cross-examination. The Board did not rule on the objection when presented, but voted at the conclusion of the hearing to consider all of the exhibits and testimony presented, including all of the hearsay statements. R. pp. 98-103; pp. 224-227) After considering the disputed evidence, the Board voted 6 to 1 to uphold the recommendation to terminate Ms. Smith's employment.

The dissenting member commented that the Board could only terminate Ms. Smith under S.C. Code Ann. § 59-25-440, requiring written notice of her shortcomings and reasonable time for improvement, and that the District did not satisfy these requirements. (R. p. 229) By letter dated March 29, 2011, the Board Chair confirmed in writing the Board's decision to uphold the recommendation of the superintendent that Ms. Smith's employment with the District be terminated. (R. p. 2) The letter states only that the Board found "good and sufficient reasons to justify the termination of your employment" without providing any factual findings supporting its decision. Id.

STANDARD OF REVIEW

On appeal from termination of a continuing-contract to teach, the Court of Common Pleas has the authority and duty to correct errors of law. Lexington County School District one Board of Trustees v. Bost, 282 S.C. 32, 316 S.E.2d 677 (1984) Where, as here, the challenged action arises from immediate termination, the record must contain evidence of unfitness to teach that is "undeniably and abundantly present." Kizer v. Dorchester County Vocational Educ. Bd. of Trustees, 287 S.C. 545, 550, 340 S.E.2d 144, 147 (1986) The Court may reverse or modify a decision if it is affected by an error of law or is arbitrary or capricious. S.C. Code Ann. § 1-23-380(5)(d), (f) (Supp. 2010) Additionally, the Court has the authority to reverse any decision "made upon unlawful procedure" or in excess of "statutory authority." S.C. Code Ann. § 1-23-380(6) (Supp. 1997), cited in Adamson v. Richland County School District One, 332 S.C. 121, 128, 503 S.E.2d 752, 755-56 (Ct. App. 1998)

This appeal is governed by the Teacher Employment and Dismissal Act. ("TEDA") S.C. Code Ann. § 59-25-410 et seq. In Sections 59-25-460 and 470, TEDA

requires that a continuing contract teacher be provided substantive and procedural due process by the school district's board within the time frames specifically delineated by statute. The hearing process established by the General Assembly in TEDA compels school boards to provide teachers the opportunity to confront witnesses and to challenge the introduction of evidence offered to substantiate any charges presented. Appellate courts have the responsibility of enforcing TEDA and ensuring that teachers are afforded the full process required by law.

Because school boards are delegated the responsibility to see and hear witnesses called to testify, review of the factual issues on appeal from teacher dismissals is determined by substantial evidence. Barr v. Bd. of Trs. of Clarendon County Sch. Dist. No. 2, 319 S.C. 522, 462 S.E.2d 316 (Ct. App. 1995) 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. Laws v. Richland County School District 1, 270 S.C. 492, 243 S.E.2d 192 (1978) The court must reverse an adverse decision that is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. S.C. Code Ann. § 1-23-380(A)(6)(e)(Supp. 1997); Lark v. Bi-Lo, 276 S.C. 130, 276 S.E.2d 304 (1981) Moreover, this deferential standard of review does not require a reviewing court to accept a decision at face value without an explanation for the reasoning exercised below. Porter v. South Carolina Public Service Commission, 333 S.C. 12, 21, 507 S.E.2d 328, 222 (1998)

LEGAL ARGUMENT

I. The Circuit Court erred in upholding a decision that was rendered in violation of due process.

The South Carolina Constitution guarantees all citizens the right to due process of law. S.C. Const. art. I, § 3. Additionally, the Constitution states that no person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency except on due process and an opportunity to be heard. S.C. Const. art. I, § 22. This same section provides that no person shall be deprived of liberty or property “unless by a mode of procedure prescribed by the General Assembly.” Id.

The General Assembly established the mode of procedure to be used in the dismissal of public school teachers in Title 59, Chapter 25, Article 5 of the Code of Laws. See, S.C. Code Ann. §§ 59-25-410 et seq. These statutes provide continuing contract teachers specific rights, including:

1. Notice of reasons for potential separation (§59-25-440);
2. The right to a hearing (§59-25-460); and
3. Substantive and procedural due process including the opportunity to cross-examine witnesses (§ 59-25-470)

To support its recommendation to terminate Ms. Smith the District presented evidence, over the objection of counsel, consisting of hearsay statements of numerous students and parents. Although only two parents testified at the hearing, the hearsay statements of numerous others were accepted by the Board. The students and parents who made these statements were not present to testify.² Despite the clear language of the state

²For example, the letter recommending termination was presented as the administration’s first exhibit to the Board. This letter alleges that “during the 2010-11 school year alone, out of the 86 students you taught, the

constitution and TEDA, the Board did not honor Ms. Smith's right to cross-examine the witnesses whose statements were used against her.

Because this appeal is governed by TEDA, due process requirements guaranteed in that Act control. The "primary rule of statutory construction is that the Court must ascertain the intention of the legislature." Cooper v. Moore, 351 S.C. 207, 212, 569 S.E.2d 330, 332 (2002) Where the terms of a statute are clear, the court must apply those terms according to their literal meaning without resort to subtle or forced construction to limit or expand the statute's operation. Moody v. Dairyland Ins. Co., 354 S.C. 28, 30-31, 579 S.E.2d 527, 529 (Ct. App. 2003) If a statute's language is plain, unambiguous, and conveys a clear meaning, "the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 582 (2000) Further, it is manifest error to look beyond the literal wording of the statute itself when the language is clear and plain. Paschal v. State Election Commission, 317 S.C. 434, 454 S.E.2d. 890 (1995) This Court need look no further than the plain language of TEDA to determine that Ms. Smith was not provided the full due process to which she was entitled.

Our Supreme Court affirmed the right to be heard in a meaningful fashion in Brown v. S.C. Board of Education, 301 S.C. 326, 391 S.E. 2d 866 (1990) Citing Board of Regents v. Roth, 408 U.S. 564, 92 S.Ct. 2701 (1972), the Court in Brown held "[t]he fourteenth amendment Due Process Clause requires procedural due process be afforded an individual deprived of a property or liberty interest by the State." In reversing the revocation of the teacher's certificate, the Court stated "the Board must comply with the

parents of 25 students made 161 complaints about you to your principal." (R. p. 232) The District did not identify the parents or students and offered no admissible evidence to substantiate these alleged complaints.

statutes and regulations providing for the revocation of a teaching certificate *before* depriving [appellant] of her teaching certificate.” Brown, 301 S.C. at 330, 391 S.E.2d at 868 (emphasis added) Twenty years later, in Brown v. James, 389 S.C. 41, 697 S.E.2d 604 (Ct. App. 2010), this Court held that the language of TEDA is unambiguous regarding procedure and that “the observance of the procedural requirements of the Employment and Dismissal Act is **mandatory and not a matter of discretion.**” Id. at 53. (emphasis added) In that case, a teacher was not afforded the hearing required by § 59-25-470 prior to a vote upholding the recommendation of termination. In reversing summary judgment in favor of the district, this Court found that the “procedure is set in place to afford the teacher a meaningful review of the evidence prior to the Board making a final determination...” Id. at 55. Here, Ms. Smith was not afforded a meaningful review of the evidence because she was deprived the opportunity to fully challenge hearsay presented to support her termination.

In other jurisdictions, even where a statute did not specifically provide for cross-examination, courts have recognized the due process right of public employees to confront and cross-examine witnesses who provide evidence used against them in termination proceedings. For example, Case v. Shelby Civil Service Merit Board, 98 S.W.3d 167 (Tenn. App. 2002), holds that due process requires an opportunity to confront and cross-examine adverse witnesses where facts giving rise to the public employee’s termination are in dispute. As noted in Case, other jurisdictions have reached the same conclusion. See, Bartlett v. Krause, 209 Conn. 352, 551 A.2d 710 (1988); Ohio Assoc. of Pub. Sch. Emp. v. Lockwood City Sch. Dist. Bd. of Educ., 68 Ohio St.3d 175, 624 N.E.2d 1043 (1994) See also, Winegar v. Des Moines Indep. Comm. Sch. Dist., 20

F.3d 895 (8th Cir.), cert. denied, 115 S. Ct. 426 (1994)(public school teacher was denied due process because he was not given the opportunity to confront and cross-examine witnesses against him); Garraghty v. Comm. of Va. Dept. of Corrections, 52 F.3d 1274, 1282-83 (4th Cir. 1995)(public employee who was fired based on allegations that he engaged in sexual harassment was denied due process because the employer failed to afford him the opportunity to confront and cross-examine the witnesses against him); Casada v. Booneville School Dist. No. 65, 686 F.Supp. 730 (W.D. Ark. 1988)(failure to allow teacher to cross-examine witnesses against him was a denial of due process and violated the state teacher dismissal act)

McClure v. Independent School Dist. No. 16, 228 F.3d 1205 (10th Cir. 2000) found that a school district violated due process when it failed to allow cross examination of adverse witnesses at a pre-termination hearing. The plaintiff, a school principal, brought suit in federal court alleging violation of her due process rights by introduction of affidavits from thirteen witnesses. Id. at 1211. Because no post-termination hearing was held, due process was governed by post-termination requirements. Finding “a ‘full post-termination hearing’ is understood to include the right to representation by an attorney and the right to cross-examine adverse witnesses, the court held that allowing the affidavits to be used against plaintiff violated her due process rights.” Id., citing Workman v. Jordan, 32 F.3d 475, 480 (10th Cir. 1994)

As in McClure, Ms. Smith’s due process right to confront and cross-examine adverse witnesses at her termination hearing was violated. The Board was provided numerous documents replete with statements of anonymous parents accusing Ms. Smith of wrongdoing to which she could not adequately respond. Some examples include:

- District Exhibit 19 contains 27 anonymous parental complaint and concerns, including one that a guidance counselor reported receiving complaints that Ms. Smith yelled at students, failed to provide clear expectations and that students were afraid to ask for clarification.

(R. pp. 274-278)

- District Exhibit 26 contains 19 anonymous complaints, including allegations that Ms. Smith would not return phone calls, that a child was “terrified” of her and that she had been “unprofessional” to a parent.

(R. pp. 314-318)

- District Exhibit 17 contains a list of complaints against Ms. Smith including that she made inappropriate comments in class, embarrassed students, failed to give clear instructions, released students late from class and played “RAP” music.

(R. pp. 267-269)

The District may argue that hearsay and improperly admitted documents were “cumulative” and “harmless.” This argument, however, ignores the mandatory nature of TEDA acknowledged by the Supreme Court in Johnson v. Spartanburg Co. School Dist. No. 7, 314 S.C. 340, 444 S.E.2d 501 (1994) and by this Court in Brown. Because the process below was infected by the admission of anonymous and hearsay statements, the Board’s decision to consider all information presented renders Ms. Smith’s termination invalid *per se*.

II. The Circuit Court erred in upholding actions taken in violation of Board policies.

A public agency must follow its own rules. In Hogsed v. Lancaster Area Schools Board of Trustees, 283 S.C. 42, 320 S.E.2d 724, 727 (S.C. App. 1984), this Court held that policies adopted by a school board are contractual and binding upon the district administration as well as its employees. As our Supreme Court emphasized in Triska v. DHEC, 292 S.C. 190, 355 S.E.2d 531 (1987), [an agency] "must also follow its own regulations and the provisions of the Administrative Procedures Act ... in carrying out the legitimate purposes of the agency." Id. at 194, 533. When a government agency does not follow its regulations or procedures, due process is violated and its action cannot stand. See, United States v. Heffner, 420 F.2d 809, 811-12 (4th Cir. 1969), citing the rule established in United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260, 74 S. Ct. 499, 98 L. Ed. 681 (1954) that an agency of the government must scrupulously observe rules, regulations, or procedures which it has established. When it fails to do so, its action cannot stand and courts will strike it down.

In the instant case, the District violated a number of its own policies in actions leading up to Ms. Smith's termination. For example, when a recommendation for termination is based upon performance deficiencies, the District is required to provide a teacher with written notice of the perceived deficiencies and a reasonable time to for improvement. (R. pp. 361-362) This policy also requires that the administration make reasonable efforts to assist the teacher including formal evaluation and/or placement on an improvement plan. Prior to her termination, Ms Smith was not placed on an

improvement plan or formally evaluated. Instead, she was placed on leave with no assignment for almost six months.³

Despite claims at the hearing of long-standing concerns about her performance, the District issued Ms. Smith a continuing contract for every school year leading up to her termination. If her performance was a concern, Ms. Smith was entitled to assistance and evaluation through a formal process in keeping with her continuing contract. The District's policy on Evaluation of Instruction and Administrative Staff, which refers to the Personnel Handbook, states that a continuing contract teacher identified as having deficiencies may be placed on a "continuing with conditions" contract. (R. p. 172, lines 1-12) The District did not take this step, thereby depriving Ms. Smith the benefit of this policy. (R. pp. 361-362)

The District primarily relied upon parental complaints in making its recommendation to terminate. However, the District did not follow its own policies in dealing with parental complaints. Under the policy entitled Grievances Filed by Students (R. pp. 447-448), if a student or parent has a complaint about a teacher, the complaint should first be brought to the attention of the teacher. In most instances, however, complaints went directly to the principal without giving Ms. Smith an opportunity to address and possibly alleviate the concern. (R. pp. 220-223) If the principal reported a concern, Ms. Smith was often denied specifics or not told student or parent making the complaint so that she could not adequately explain or defend herself. Id. The District's policy is in place for a reason - so that matters can be handled quickly and with the most information available. When the policy is violated, as it was in this case, the teacher

³ Ms. Smith's principal presented her with an assistance plan in the fall of 2010. When Ms. Smith disagreed with the need for improvement, the District withdrew assistance and removed her from the classroom rather than comply with its statutory duty.

cannot adequately defend herself against serious complaints. Because the District failed to follow its own policies, Ms. Smith's termination must be reversed.

III. The Circuit erred in upholding a termination not supported by substantial evidence.

The District argued to the Board that its witnesses and evidence reflected a "common theme...of numerous parental complaints." (R. p. 104, lines 10-14) The District's Director of Human Resources, responsible for overseeing the investigation of Ms. Smith's alleged deficiencies while she was on leave, conceded that he recommended termination because of a "pattern" of parental complaints. (R. pp. 173-174) Nevertheless, evidence offered to support parental complaints was overwhelmingly hearsay, including documents containing and referring to alleged statements of parents and students who were not called to testify. Although the District asserted that it had received complaints about Ms. Smith from the parents of 25 students, only **two** parents testified at the hearing. Both parents were allowed to testify for their children and neither had any first hand information about Ms. Smith's conduct in the classroom. (R. pp. 139-140; 148-149) The submission of absent parental and student complaints had the intended effect of prejudicing the Board against Ms. Smith, without affording her the opportunity to confront or examine her actual accusers.

In an attempt to bolster its termination recommendation, the District argued that its concerns about Ms. Smith at the start of the 2010-2011 school year were similar to concerns encountered in 2008. However, the Human Resources Director testified that in 2008 the District did not issue Ms. Smith a conditional contract (one that required improvement in performance) because there was no intent to express concerns about her

performance. (R. p. 172, lines 1-19) During the next two school years, Ms. Smith worked with different supervisors and had no notice of major issues with her performance. In fact, Ms. Smith was commended for her students' wonderful test scores. (R. pp. 211-213) Following her transfer to Conway Middle in 2009-2010, Ms. Smith's principal offered strategies for improvement and she complied. (R. pp. 181-183) Thereafter, District issued Ms. Smith a continuing contract for 2010- 2011 with no conditions or requirements to improve her performance.

In contrast to the District's reliance on hearsay, Ms. Smith presented witnesses at the hearing who testified to her strengths as a teacher and their first-hand knowledge of her teaching. Anita Chestnut, a teacher at Conway Middle taught on same team as Ms. Smith. (R. pp. 184-185) Ms. Chestnut testified that she worked well with Ms. Smith, and never heard her yelling. (R. p. 185) Gretta Gore, a school guidance counselor at North Myrtle Beach Intermediate, testified that her grandchild was a student in Ms. Smith's class. (R. pp. 190-191) Ms. Gore testified that Ms. Smith was very cooperative and, based upon personal observation of her in the classroom, commended her on the amount of work and effort she put into teaching. On one occasion, Ms. Gore dealt with a parent who was upset with what she perceived to be unfair treatment of her daughter by Ms. Smith. When Ms. Smith explained the assignment to the parent and the student admitted not having finished it, the parent apologized to Ms. Smith. (R. pp. 191-199) Ellen Gerard, a teacher at North Myrtle Beach Intermediate, testified that she was impressed with Ms. Smith's high test scores. (R. pp. 200-202) Ms. Gerard never observed Ms. Smith mistreat or yell at a child and characterized her as hardworking and dedicated. Id.

Ms. Smith began teaching in 1993 and became employed with Horry County in 1999. (R. p. 203) After Ms. Smith testified on behalf of another teacher at a hearing before the Board, she began to experience criticism of her teaching. (R. pp. 204-205) During the 2007-08 school year, Ms. Smith had problems with her principal because the principal failed to send parents to her when they expressed concerns about assignments or instruction. As a result, Ms. Smith filed a grievance in January 2008. Rather than address her grievance, the District placed Ms. Smith on administrative leave in February 2008 and transferred her to another school for the remainder of the school year. (R. pp. 205-211)

Ms. Smith taught for the next two years without incident, and had good relationships with both principals. (R. pp. 213-215) The 2010-2011 school year was much different. From the beginning Ms. Smith's new Principal, Ms. Sordian, was not supportive. (R. p. 215) For example, early in 2010, Ms. Smith met with the administration and was told that she might need an improvement plan, but no plan was ever presented. (R. p. 218) When Ms. Sordian told Ms. Smith that parents had complained, she did not offer any specifics that Ms. Smith could address. (R. p. 219) Regarding Parent A who testified at the hearing, Ms. Smith testified that while she had received an e-mail that the student was having problems, the parents never indicated that she was the source of the problems. That student received an "A" in Ms. Smith's class. (R. pp. 216-217)

Considering the record as a whole, the decision to terminate Ms. Smith's employment is not supported by substantial evidence. As stated above, 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 public body reached or must have reached in order to justify its action. Laws v. Richland County School District 1, 270 S.C. 492, 243 S.E.2d 192 (1978) A constitutional violation, including the right to process established by statute, as guaranteed in Article I, § 22 of the South Carolina Constitution, is a wrong that demands a remedy. See LaSalle, 386 S.C. at 281, 688 S.E.2d at 123 (due process requires a rehearing) The procedural requirements of TEDA are mandatory, thus the District does not have the discretion to ignore them. Brown v. James, *supra*. Removing improper hearsay from consideration renders the decision to terminate Ms. Smith's employment unsupported by substantial evidence in violation of S.C. Code Ann. § 59-25-470.

IV. The Circuit Court erred in upholding the Board's decision without identifying supporting facts and legal conclusions.

Our Supreme Court has held that administrative bodies, including school boards, must make sufficient findings of fact to enable a reviewing court to determine whether the findings are supported by the evidence and whether the law has been applied properly to those findings. Lee County School District Board of Trustees v. MLD Charter School Academy Planning Committee, 371 S.C. 561, 567-568, 641 S.E.2d 24, 28-29 (2007), citing Porter v. South Carolina Public Service Commission, 333 S.C. at 21-22, 507 S.E.2d at 332, 333 (1998) "Where material facts are in dispute, the administrative body must make specific, express findings of fact." Id. at 21. The Court went on to hold that the reviewing courts will not *sua sponte* search the record for substantial evidence supporting a decision when an administrative agency's order inadequately sets out the

agency's findings of fact and reasoning. Id. In Porter, the Supreme Court found the PSC's order deficient because it made no findings of fact and failed to provide any explanation of its conclusion, reciting instead the conflicting testimony and general legal principles. Id. at 21-22.

In this case, the Board voted at the conclusion of the fourteen hour hearing to uphold the recommendation of termination without providing any explanation for its decision. (R. pp. 228-229) The letter recording Board's action identifies no factual findings and does not identify the statutory basis for Ms. Smith's termination. (R. p. 2) Similarly, the Circuit Court offered no explanation for its judgment affirming the Board's action.

In argument to the Circuit Court, the District portrayed Ms. Smith as a cruel and unfeeling teacher who instilled fear in her students. For example, the District highlighted the following description of Ms. Smith offered by Ms. Sordian, her principal in the fall of 2010:

I felt like a good number of Ms. Smith's students were afraid of her, fearful of asking questions in her class for fear of embarrassment or humiliation and many, many times very unclear of what to do with their assignments. There was no clear example or clarity of assignments and many were confused as to what they should do.

(R. p. 170, lines 10-17)

Like her principal, the District's superintendent had no first-hand knowledge about Ms. Smith's conduct or performance in the classroom. Nevertheless, the District relied upon the superintendent's testimony about "concerns that all of the schools [forming] the basis for her termination" to support Ms. Smith's termination. (R. pp. 55; 228-230) The District also presented the Circuit Court the superintendent's testimony

that she received "reports from the parents [that] were just reprehensible and something I didn't want to allow in our schools." (R. p. 53 *citing* pp. 179-180)

The arguments advanced by the District to the Circuit Court establish that hearsay testimony played a central role in the effort to terminate Ms. Smith's employment. The District attempted to minimize this reliance by arguing to the Circuit Court that a hearing under TEDA is "quasi-judicial" and "not governed by the . . . rules of evidence." (R. p. 62) The District further argued that the Board had the right to rely upon any direct testimony in reaching its decision. As stated above, however, this argument ignores the express guarantee of confrontation provided in TEDA and required for purposes of due process by Article I, § 22 of our constitution.

As a consequence of the District's reliance upon hearsay and attempts to justify termination on the basis of an alleged "pattern" of misconduct, Ms. Smith and this Court can only speculate as to the basis for the decisions reached by the Board and the Circuit Court. For example, although two different statutes were referenced in the letter recommending Ms. Smith's termination, there is no way to know under which statute the recommendation was upheld. The two statutory sections identified in the termination notice require different findings and involve different burdens of proof.

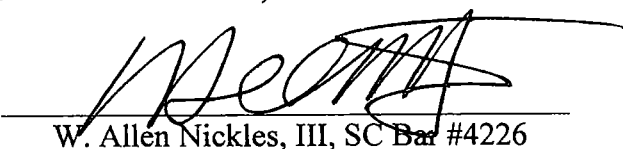
Specifically, S.C. Code Ann. § 59-25-430 provides that a teacher may be dismissed for "evident unfitness for teaching" at any time. An immediate termination can only be upheld where evidence of unfitness for teaching was "undeniably and abundantly present." Kizer v. Dorchester County Vocational Educ. Bd. of Trustees, 287 S.C. 545, 550, 344 S.E.2d 144, 147 (1986) As recognized by this Court, however, S.C. Code § 59-25-440 (1990) applies to "[o]ther deficiencies or shortcomings...[and] must be addressed

In view of the numerous, significant violations of Ms. Smith's right to confront her accusers, the differing burdens of proof under the two statutes relied upon by the District, and the absence of specific findings by the Board or the Circuit Court, at a minimum justice requires remand for a new, fair hearing with the opportunity to examine all the persons whose "complaints" caused the District to recommend termination.

CONCLUSION

Ms. Smith has not received the fair hearing to which she was entitled. As a result, she was deprived the property interest provided by her continuing contract in violation of established state law and constitutional principles. Only the intervention of this Court can remedy the statutory and constitutional rights that have been violated. For these reasons, Ms. Smith respectfully requests that this Court reverse the Board's decision and order her reinstatement, subject to the institution of a lawful hearing. Young v. Charleston County School District, 397 S.C. 303, 725 S.E.2d 107 (2012) (reversing a board decision on due process grounds and remanding for a proper hearing); Stono River Environmental Protection Ass'n. v. S.C. DEHC, 305 S.C. 90, 406 S.E.2d 340 (1991) (holding that art. I, § 22 requires notice, opportunity to be heard and cross-examination regarding the merits of a contested case)

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2012-213509

JACQUELINE SMITH.....Appellant

v.

HORRY COUNTY SCHOOLS.....Respondent

FINAL BRIEF OF THE RESPONDENT

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I. STATEMENT OF ISSUES ON APPEAL

Appellant's appeal from the decision of the Horry County School District Board of Education ("School Board") to terminate her employment under the Teacher Employment and Dismissal Act ("the Act"), S.C. Code Ann. §§ 59-25-410 through -530, presents the following issues for the Court's review:

1. Whether Appellant's termination hearing before the School Board satisfied the requirements of due process;
2. Whether the School Board's termination of Appellant's employment complied with its policies;
3. Whether the School Board's decision to terminate Appellant's employment is supported by substantial evidence; and
4. Whether the form of the School Board's decision to terminate Appellant's employment is proper under the Act.

II. STATEMENT OF THE CASE

This is an appeal under the Act from the Circuit Court's order affirming the School Board's termination of Appellant's employment with the Horry County School District ("District").

Pursuant to the Act, S.C. Code Ann., §§ 59-25-410 through -530, on January 5, 2011, the District's Superintendent, Dr. Elsberry advised Appellant that she was recommending her termination from employment for the reasons set forth in her letter. (R. pp. 231-234, Compl. Ex. 1.) Appellant was granted an adversarial hearing before the School Board on March 24, 2011. At the hearing on March 24, 2011, which lasted approximately 16 hours, Appellant took advantage of her right to be represented by legal counsel, her right to produce witnesses and other evidence, and her right to cross-examine the District's witnesses. Appellant was represented by legal counsel, Dr.

Elsberry was represented by legal counsel, and the School Board was represented by Kenneth S. Generette, Esq. Following the hearing, in the early morning hours of March 25, 2011, the Board issued its decision upholding the Superintendent's recommendation of termination. Appellant was notified of the Board's decision on that date, and the Board's decision was subsequently confirmed in writing on March 29, 2011. (R. p. 2 (Copy of the Board's decision letter).) Appellant filed her appeal to the Circuit Court under the Act on April 20, 2011, pursuant to § 59-25-480. (R. pp. 5-9, Notice of Appeal.) The District filed its Answer and Return to the appeal on May 3, 2011. (App. R. pp. 445-446.) Appellant's appeal was heard by the Honorable Benjamin H. Culbertson on September 13, 2012. Judge Culbertson entered judgment in favor of the District, affirming the School Board's termination of Appellant on September 20, 2012, which was filed with the Clerk of Court on October 26, 2012. (R. p. 1). Thereafter, Appellant appealed to this Court. (R. pp. 441-442.)

For the reasons set forth below, Appellant's appeal should be dismissed and the decision of the Circuit Court and the School Board affirmed.

III. STATEMENT OF FACTS

Appellant was employed by the District from 1999 until her termination from employment on March 29, 2011, following a full and adversarial evidentiary hearing before the School Board. (R. pp. 228-229; App. R. p. 471.) During the course of her employment with the District, Appellant was assigned to teach at four schools: North Myrtle Beach Intermediate School; Carolina Forest Elementary School; Ocean Bay Middle School; and Conway Middle School.

A. Assignment at North Myrtle Beach Intermediate School.

Appellant was assigned as a teacher at North Myrtle Beach Intermediate School ("NMBIS") from 2000 through February 21, 2008, when she was placed on administrative leave, with pay, and subsequently reassigned to Carolina Forest Elementary School ("CFES"), effective February 25, 2008. (R. pp. 246-249 (Compl. Exs. 10, 11).)

Beginning with the 2006-07 school year, Michelle Green-Graham was assigned as principal at NMBIS. (R. p. 105.) At the beginning of the 2006-07 school year, there were concerns with Appellant's teaching performance and some parents had expressed concerns. Since Ms. Green-Graham did not know a lot about Appellant and her teaching style, she took the opportunity to observe Appellant in the classroom. Ms. Green-Graham realized there were deficiencies with Appellant's teaching performance that needed to be addressed. (R. pp. 105-106.)

In November 2006, Ms. Green-Graham began placing her concerns with Appellant's performance in writing. On November 13, 2006, Ms. Green-Graham communicated to Appellant that she was granting the request of the parents of a male student to remove their son from Appellant's class for medical reasons based on anxiety the student was experiencing in her class. The parents presented a statement from their physician supporting the request. (R. pp. 106-107, 303; Compl. Ex. 25, p. 1).) According to Ms. Green-Graham the classroom environment created by Appellant "did not lend itself to the absence of threat." (R. p. 107.) Following up on these concerns, Ms. Green-Graham met with Appellant and sent her a letter from their conference dated November 20, 2006. In the letter, Ms. Green-Graham outlined several expectations for Appellant's performance. Among other things, she told her to model what she expects from her students; examine her procedures to be sure they are not too rigid and unforgiving; comply with reasonable parent requests; and watch her tone when talking to

students. Ms. Green-Graham stated, "Your students need to see you model compassion and understanding when things happen. Things can not be all or nothing when dealing with 10 year old children. Watch your tone when talking to students." (R. p. 250 (Compl. Ex. 12).) Ms. Green-Graham further stated in her letter that as of November 2006, she had received in excess of ten complaints regarding Appellant, and she felt the only way to resolve the issue was for Appellant to build relationships. (R. pp. 250, 107-110 (Compl. Ex. 12).)

Ms. Green-Graham notified Appellant of the parents and/or students who were making complaints about her and the substance of the complaints in order to provide her with an opportunity to address them. (R. pp. 111-112.) Ms. Green-Graham explained her standard practice for handling a parent complaint: first she listened to the parent and asked if they had spoken with the teacher, since usually issues could be handled at the teacher level; if she refers a parent to the teacher and the parent comes back to her, that is an indicator the issue was not resolved and that she needs to become involved. (R. pp. 123-124.) Ms. Green-Graham testified that not all students or parents that had complaints were moved. She discussed the complaints with Appellant and Appellant would tell her to send them to her. Ms. Green-Graham further testified, "And I did, until we got to number ten, and I couldn't just continue sending them to her because there was no resolve." (R. pp. 111-112.)

After Appellant received the November 2006 letter from Ms. Green-Graham, Appellant did not accept any of the responsibility for the situations or concerns. Instead, Appellant was often defiant, and Ms. Green-Graham found it was challenging just to have a conversation with Appellant. (R. pp. 112-113.) As a result of these problems, Ms. Green-Graham developed a teacher assistance plan for Appellant on January 8, 2008, and a meeting was held on that date to discuss the plan with her. (R. pp.

113-115, 301-302 (Compl. Ex. 24).) Ultimately, Appellant refused the assistance offered in the plan. Ms. Green-Graham testified:

When we attempted to discuss the goals, the objectives, the areas of concern, Appellant often sat with her back to us. She never really pulled up to the table. If we read a sentence that she felt was not correct, she would correct us in a defiant type manner. In fact, by the time we got to the end, she got up and walked out and slammed the door and refused to sign it.

(R. p. 115.)

In describing Appellant's conduct during conferences with parents, Ms. Green-Graham stated the following:

I spent a lot of time being a buffer, I felt like, within the conferences. A parent might make an accusation such as, my daughter says that she did turn in her work or my daughter says you haven't given them their signed papers since before Christmas. And I was witness to a conference where she flat out told the parent that your daughter's lying, I give them every week, she must not have brought them home. And, of course, when you say such things, a parent immediately becomes defensive...She was very defensive of any action that they might have accused, and it was challenging to get through a parent conference.

(R. p. 116.) Another deficiency in Appellant's performance Ms. Green-Graham sought to address was that parents had difficulties scheduling conferences with Appellant. If parents had conferences with Appellant, the parents were not pleased with the outcome. Parents did not feel like Appellant heard what they had to say, and they did not feel like any changes were made as a result of what they had to say. (R. pp. 119-122.)

Appellant responded to Ms. Green-Graham's ongoing discussions with her in a memo in February 2007, in which she summarized her perspective of her own performance. Appellant concluded her memo by stating, "[a]n administrator does not

come up to you and state that there will be a meeting at a given time without asking me. Appointments could be scheduled elsewhere. Thank you for a reply. I know administrator have the power." (R. p. 304 (Compl. Ex. 25, p. 2).)

Additionally, Appellant repeatedly said, "[w]ell, nobody ever told me, nobody ever told me,..." Consequently, Ms. Green-Graham took every opportunity she could to sit down and tell her who said what about what. (R. p. 125.) However, when Ms. Green-Graham brought additional concerns about parent complaints to Appellant's attention in January 2008, Appellant responded in an e-mail by stating that she wanted to meet with all of the dissatisfied parents with Dr. Bobby Nalley present, who was the Interim Superintendent for the District at the time. (R. p. 305 (Compl. Ex. 25, p. 3).)

The District administration attempted to meet with Appellant in February 2008. The District's Executive Director of Human Resources, Ed Curlee, had been in touch with Ms. Green-Graham throughout the 2007-08 school year to assist her in dealing with concerns with Appellant's performance. Mr. Curlee met with Appellant in February 2008 to advise her of the importance of meeting with Ms. Green-Graham. At that point, Appellant was so hostile towards her supervisor, Ms. Green-Graham, that she was placed on administrative leave, with pay. (R. p. 249; App. R. pp. 449-454; Compl. Exh. 11).) Following the conference, Appellant was reassigned to another position for the remainder of the 2007-08 school year at Carolina Forest Elementary School ("CFES"). (App. R. pp. 450-457.) Mr. Curlee summarized the concerns with Appellant's performance as of that date in a letter dated February 26, 2008. (R. pp. 246-248 (Compl. Exh. 10).)

In addition to the problems in the classroom that dealt with parental and student concerns, other concerns dealt with the way Appellant did her work. These concerns dealt with her not turning things in when she was supposed to turn them in, as

well as her not following through with District and school-wide initiatives. (R. pp. 117-118.)

B. Assignment at Ocean Bay Middle School.

Appellant was assigned to Ocean Bay Middle School ("OBMS") for the 2008-09 school year for several reasons. The principal at OBMS was Connie Huddle. OBMS was experiencing tremendous growth and had several teacher vacancies. Appellant had also requested to be transferred to a middle school. (App. R. pp. 457-458.) While at OBMS, Appellant taught sixth grade as an English Language Arts ("ELA") teacher. She was assigned three regular ELA classes and one honors ELA class. (R. p. 326 (Huddle Dep. p. 6).) Ms. Huddle's testimony at the Board hearing was presented via her video deposition.

During the 2008-09 school year, there were again concerns and issues with Appellant's job performance that were brought to the administration from parents of students in Appellant's classes. After the first couple of weeks of the 2008-09 school year, Ms. Huddle contacted Mr. Curlee to report that she was receiving numerous complaints from parents about Appellant. Ms. Huddle reported to Mr. Curlee that the complaints involved the fact that students were not understanding assignments, the parents did not understand the grades, and a lot of grades were not being placed properly or not being reported. (App. R. pp. 459-460.) These concerns with Appellant's teaching were brought to the administration from the first part of the school year to the end of the school year. (R. pp. 326-327 (Huddle Dep. pp. 6-7).)

During the 2008-09 school year, Ms. Huddle moved approximately 28 students from Appellant's class at parent request. By the end of the school year, Appellant had only a total of approximately 63 remaining students assigned to her four classes; this is in comparison to the other ELA teachers, who by the end of the year had

approximately 90 or more students each. (R. pp. 327-328 (Huddle Dep. pp. 7-8).) The nature of the concerns brought by parents was that their children felt uncomfortable in the classroom, they were confused on assignments, and the classroom atmosphere was harsh. (R. p. 328 (Huddle Dep. p. 8).) Indeed, there were a number of claims that work was misplaced and students were not given credit for what they claimed to have handed in and completed. On one occasion, a child brought a paper that had been graded by Appellant that had comments on it, and there had been a zero in the grade book for that paper. (R. p. 330 (Huddle Dep. p. 10).) Further, students are not automatically removed from a class upon parental request, but the first usual contact is through guidance. If guidance receives a call from a parent requesting a change, guidance sets up a conference with the parent to discuss the matter. (R. pp. 330-331 (Huddle Dep. pp. 10-11).)

Ms. Huddle summarized in writing her concerns and efforts working with Appellant. (R. p. 300 (Compl. Ex. 22, Ex. 10).) At the conclusion of the 2008-09 school year, Ms. Huddle re-assigned Appellant to teach in the District's new language program, which was a highly structured and scripted program. Ms. Huddle advised Appellant of the re-assignment, and Appellant objected to the assignment. At the same time, student enrollment at OBMS had declined from the beginning of the 2008-09 school year. For these reasons, the decision was made to reassign Appellant to Conway Middle School ("CMS") for the 2009-10 school year, where there was an ELA teacher vacancy. (App. R. pp. 461-462.)

C. Assignment at Conway Middle School.

Appellant was assigned to CMS for the 2009-10 school and 2010-11 school years. Margaret Sordian was named principal at CMS at the beginning of the 2010-11 school year. Appellant was assigned as a seventh grade ELA teacher where she had one accelerated class, one honors class, and two regular education classes. (R. p.

158.) Ms. Sordian testified that when she receives complaints from parents about teachers, the first thing she does is she asks the parent to speak with the teacher. Parents generally bring their concerns to Ms. Sordian only after they are unable to get the problem solved directly with the teacher. (R. pp. 158-159.) Ms. Sordian received complaints regarding Appellant as early as September of the 2010-11 school year. (R. p. 159.) Ms. Sordian testified to the types of complaints she received about Appellant as follows:

I had concerns from parents that students were having trouble getting clarity on assignments, knowing what was expected of them, what work they had to do and how they had to do it to know that their work was good enough. There was concern of grades that were missing for students where the parents said their children had turned in the work and not received credit for it. I had concerns about map testing being timed; other assessments given during map testing; children being told that they would have to stay after school if they didn't finish their map testing; and children concerns as well.

(R. p. 160.) Ms. Sordian attempted to meet with Appellant to discuss the concerns she had received as of September 10, 2010. Ms. Sordian testified that the administration had received concerns from children and their parents in all Appellant's classes from Appellant's accelerated, honors, and regular education classes. (R. pp. 161-162.) On September 16, 2010, Ms. Sordian attended a meeting with Appellant along with a parent and another administrator regarding concerns raised by the student's parent. In her testimony, Ms. Sordian described Appellant's conduct during the parent conferences as follows:

A: In the conferences that Appellant attended, for the most part she seemed to fumble around with papers, didn't look directly at the parents and often did not answer the question that the parent was posing.

Q: Did you have any concerns with the way Appellant conducted herself in those meetings?

A: Yes, sir, I did.

Q: Did you express those concerns to Appellant?

A: At one point during two of the meetings, I had to remind everyone in the room that we needed to stay calm.

(R. p. 163.)

Ms. Sordian also described concerns with the grades Appellant gave to her students. She testified as follows:

Well, from looking at her grades, we were very concerned that two of her regular classes that as many as 45 percent of the children in one class were receiving unsatisfactory grades of D's and F's and in another class as many as 47 percent. In the accelerated class, we have 11 percent that were failing and that's very unusual for an accelerated group of students.

(R. p. 164.)

On October 11, 2010, Ms. Sordian sent a letter to Appellant in follow up to a conference with her summarizing their meetings. (R. p. 245 (Compl. Ex. 8).) Notes were taken summarizing conferences held with parents, Appellant, and members of the administration. (R. pp. 251-266 (Compl. Ex. 14).) Ms. Sordian summarized the parent concerns and told Appellant she would like to implement an individualized teacher assistance plan to assist her in improving her performance. Appellant, like before at NMBIS, was adamantly opposed; she refused, and she did not agree to an assistance plan. (R. pp. 165-166.) Ms. Sordian testified, "In all my years in education, I've never had a teacher refuse to accept assistance." (R. p. 166.)

Ms. Sordian described Appellant's relationships with students as follows:

I felt like a good number of Appellant's students were afraid of her, fearful of asking questions in her class for fear of embarrassment or humiliation, and many, many times very unclear of what to do with their assignments. There was no clear example or clarity of assignments and many were confused as to what they should do.

(R. p. 170.)

Several more letters were written to Appellant in October 2010 in an effort to address the concerns raised by parents and to try to meet with her. (R. pp. 243-244 (Compl. Exs. 6, 7).) Several attempts were made to reschedule the meeting with Appellant. Mr. Curlee had to become involved in scheduling the meeting. The meeting was finally scheduled for October 28, 2010. (R. pp. 240-242 (Compl. Exs. 4, 5).) Appellant refused to come to the meeting and did not show up for it. (R. pp. 167-169.)

Ms. Sordian summarized her concerns about Appellant's performance as follows:

In all my years as an educator, I've been in a lot of situations where there have been students that are confused or parents that were confused and we know that usually we can come to a resolve in any situation. And teachers are there to teach our children and affect our future. There was no building of relationships that I could see. I had children that did not feel comfortable in a classroom. And in all of my years, I've never had a teacher refuse assistance for help. And as an instructional leader responsible for what goes on in your building, I'm baffled as to how I can possibly help an educator who refuses to accept assistance.

(R. p. 171.)

Yvonne Williams, the department chair for ELA at CMS during the 2009-10 school year, testified and expressed concerns about Appellant to Ms. Sordian. (R. pp. 270-273 (Compl. Ex. 18).) Ms. Williams testified regarding occasions in which she

observed Appellant act harshly towards students. Ms. Williams was attempting to assist the students on her Step team with their class work. A student had asked for her assistance on an assignment from Appellant, and Ms. Williams was not clear herself what the assignment required. Ms. Williams then approached Appellant in the school cafeteria to get clarification on the assignment. (R. pp. 150-155.) Ms. Williams testified about her conversation with Appellant as follows:

A: And I said, Appellant, these ladies, they have questions about homework. I was going to help them, but I wasn't sure, you know, what needed to be done and so I was asking her, and she said they know what to do, they know what to do, and so she proceeded past me. She went to the table and she said, y'all, you know what to do. It's not like this is something new. Open up the book, it's the same thing. And so I didn't say anything else and one of the girls was left literally in tears and it was frustrating for me because I still didn't really have an answer to be able to help them.

Q: So did Appellant ever respond to you and provide the information that you had asked so you could help the girls?

A: Not at all.

Q: Okay. And how would you describe the reaction of the girls once Appellant had that exchange with them?

A: Some were angry. Some were angry, but some were -- I wouldn't say scared, but totally intimidated where, like I said, to tears. It was one specifically and I just -- I don't know, it was very awkward.

(R. pp. 154-155.) Additionally, based on her personal observation and interactions with Appellant, Ms. Williams described Appellant as: "...rough around the edges. I mean, if I, as a student, I probably too would be a little hesitant to ask a question." (R. p. 156.)

Finally, when Ms. Williams was asked at the hearing whether she would want her children to be in Appellant's class, she testified, "I would not be comfortable at all with that, no." (R. p. 157.)

In addition to Ms. Williams, the parents of two students who were in Appellant's class, testified at the hearing regarding their concerns with Appellant. The parent of a sixth grade, female student in Appellant's class during the 2010-11 school year described her daughter, who had enjoyed ELA as her favorite class in prior years and wanted to be an English teacher, as a student who now had severe anxieties with Appellant's ELA class. The parent testified:

After about the first week of school we noticed that she had some anxieties that we'd never noticed in the past....There were tears at night, do I have to go to school tomorrow. There were tears in the morning, do I have to go to school today.

(R. p. 127.) She stated her daughter had a panic attack on the way to school one morning and her husband had to pull her daughter out of the car. She stated that, after her daughter had the panic attack, she discovered that her daughter was extremely anxious over Appellant's class. (R. pp. 126-133.) The parent further testified her daughter was concerned that more attention might be brought to her by Appellant, since her parents had spoken with Appellant. (R. pp. 134-135.) The parent described a phone call she received from her daughter at school who was frantic because she had forgotten to get a stems test signed and if she didn't have it returned, she would receive a referral. (R. p. 136.) The parent described her observations of her daughter as follows: "There were tears every night. Tears, fear for the next day, what she would walk into in her first period class [Appellant's class]." (R. pp. 137-138.) Her daughter was concerned she may be singled out and embarrassed or humiliated in front of her peers. (R. p. 138.) The parent

communicated her concerns to the school administration. (R. pp. 279-280 (Compl. Ex. 20).)

Likewise, the parent of a male student also testified at the School Board hearing. The parent testified regarding concerns with Appellant's non-responsiveness to missing grades. The father of the student notified Appellant of his concerns in an e-mail, and he did not receive a timely response. He then attended a meeting with Appellant, Ms. Sordian, and Dr. Sherilynn Duquette, assistant principal. He testified Appellant came to the conference with a laptop, and she spent a lot of time dealing with the computer and not really paying attention to what they were trying to discuss. The parent did not believe Appellant's demeanor was appropriate for what they were doing and that she seemed distracted, both by the computer, and overall from what was going on in front of her. (R. pp. 141-145.) The parent wanted to communicate with Appellant, but he did not believe he had an effective relationship with her as the teacher of his son. (R. pp. 147-148.) The parent communicated his concerns to the school administration. (R. pp. 281-288 (Compl. Ex. 21).)

Additionally, Appellant called Anita Chestnut, a teacher at CMS and the parent of a student in Appellant's class, as a witness at the Board hearing. However, Ms. Chestnut testified that she herself had an issue with a grade or a score that her son was given by Appellant, and the issue was never resolved. (R. pp. 186-187.) Ms. Chestnut also testified that she had personal knowledge of students complaining of Appellant, since they were on the same teaching team and taught all the same students. She testified that when students came to her room, they would talk and complain to her about Appellant, but she would tell them they were not going to talk about Appellant. Ms. Chestnut testified this happened just about every day in every class. (R. pp. 187-188.) In describing how many of her students complained about Appellant, she stated that one or

two would start and then another one would want to say something, but they were all very much in agreement. (R. pp. 189-190.)

Mr. Curlee was involved in dealing with concerns with Appellant's performance over a period of several school years during which she was assigned to teach at four different schools with several principals. As a result of his ongoing concerns and involvement with Appellant's performance, Mr. Curlee recommended to Dr. Elsberry that Appellant's employment with the District be terminated. In his testimony, Mr. Curlee summarized the basis for his recommendation as follows:

...we've actually placed Appellant in several different locations under different principals with different leadership styles. Students have some similarities but in different parts of the District but yet we were still seeing some of the initial problems that we had at North Myrtle Beach Intermediate School in all of the other locations as well. ... And during that time, we had various forms of assistance that had been given or offered to Appellant to try to assist her in certainly becoming more effective to address some of the concerns that we were getting from parents and complaints. But from my perspective in my dealings with Appellant, Appellant would never acknowledge that there were any issues. When I met with her, she consistently said that she was unaware of any problems, that if there were problems with parents, the parents should be sent to her and she would deal with it. But basically she was aware that there were problems and if you'd look at the emails that were going back and forth between Appellant and the administration, you'd know that she was aware that there were complaints coming in on a regular basis. ... So for these reasons and the patterns that I mentioned earlier, and the fact that we had tried in this case four different schools and we were still having these problems, I think you can see what our problems were as far as continuing with her employment.

(App. R. pp. 463-464.)

D. Dr. Elsberry's Termination Recommendation.

After receiving the termination recommendation from Mr. Curlee, Dr. Elsberry met personally with Appellant on December 1, 2010, to provide her with an opportunity to respond to the concerns prior to her making a decision. Dr. Elsberry testified:

I just felt the offenses rose to the level that we could no longer tolerate. The reports from the parents were just reprehensible and something that I didn't want to allow in our schools. So I needed to hear from Appellant. I needed to hear – you've heard a lot about improvement plans and assistance. I needed to know if there was a chance that we could offer something else that might provide – would allow Appellant to be successful.

(R. pp. 179-180.)

Dr. Elsberry described Appellant's comments during her December 1 conference with her as follows:

...I asked her about the parent concerns and she said that she wasn't aware of parent concerns except for the eight conferences that she had had since the beginning of the school year. And I asked her what she would have done – what she could do differently, what she could change to address the concerns that the parents were expressing in the eight conferences that she was aware of and she said she didn't know of anything. That she was not aware of anything she could have done that would have changed the concerns that the parents had. And I asked her after the conferences, after she heard what they had shared, did she do anything differently, did she change her behavior, did she change her communication style and she said no, she did not change anything. And I was taken aback by that. ... I was very concerned about almost half of her students making D's or F's and her comment was I don't know why you consider that failing. A D is not a failing grade and I didn't feel like I was able to communicate with her that that is

not acceptable. That when a teacher's students, when more than almost half of them make a D or an F, that is not acceptable. And I didn't - I didn't get any perception that Appellant saw that that was a concern or an issue that she needed to address as a teacher and that was just unacceptable to me.

(R. p. 180; App. R. pp. 465-466.)

Dr. Elsberry asked Appellant during their conference on December 1, 2010, if there was anyone else she wanted Dr. Elsberry to speak with regarding the District's investigation. Dr. Elsberry stated that Appellant gave her no names during the conference, and she never gave her any additional names to speak with as of the date of the Board hearing. (App. R. pp. 466-467.) Additionally, Appellant acknowledged during the conference with Dr. Elsberry that she had made a call to a mental health counselor regarding a student during class time, with other students present, in order to discuss concerns she was having with a student in the class not doing his work. Appellant stated that she turned her back to the class and she spoke quietly. (App. R. pp. 467-468.) This incident was another issue of concern with Appellant's judgment noted in Dr. Elsberry's letter recommending her termination. (R. pp. 231-234.)

Finally, when Dr. Elsberry asked Appellant during the conference why she wrote on the bottom of the assistance plan that Ms. Sordian had prepared for her that no assistance was needed, Appellant replied that she did not need any help. Dr. Elsberry testified that Appellant stated that, because there were no issues, there was nothing that needed to be provided to her. (App. R. pp. 468-469.) Specifically, at the bottom of a letter that Ms. Sordian sent to Appellant dated October 11, 2010, in which she advised her an assistance plan may become necessary, Appellant wrote, "Not in agreement with individualized assistance plan." (R. p. 245 (Compl. Ex. 8).)

For all of the above-referenced reasons, Dr. Elsberry advised Appellant by letter dated January 5, 2011, that she was recommending to the Board that Appellant's employment with the District be terminated. Dr. Elsberry stated in her January 5 letter that much of the conduct described in the letter Appellant received on February 26, 2008, regarding her performance at NMBIS was reoccurring in her treatment of parents, students and members of the administration at CMS. She also referred to concerns at OBMS. (R. pp. 231-234 (Compl. Ex. 1).) Dr. Elsberry testified at the hearing that concerns with Appellant's job performance at all of the schools formed the basis for her termination recommendation. (App. R. p. 470.)

Following the hearing before the Board and arguments by legal counsel, the Board deliberated in executive session, and thereafter voted to approve Dr. Elsberry's recommendation of termination. (R. pp. 228-230.)

IV. LEGAL ARGUMENT

A. Standard Of Review

The Act governs the employment and dismissal of all teachers in the traditional public schools of South Carolina. S.C. Code Ann. § 59-25-410 et seq. Additionally, Section 59-19-90(2) of the South Carolina Code of Laws vests in the school board of trustees the power and duty to employ and discharge teachers. Specifically, the board of trustees shall "[e]mploy teachers and discharge them when good and sufficient reasons for so doing present themselves...." § 59-19-90(2). In enacting the Act, the General Assembly did not intend to limit the power of the board of trustees, but to prevent its abuse. *Adams v. Clarendon County Sch. Dist. No. 2*, 270 S.C. 266, 272, 241 S.E.2d 897, 900 (1978).

In considering appeals from decisions of school district boards of trustees under the Act, the scope of judicial review is limited to an examination of the record to

determine whether there is substantial evidence supporting the decision of the board of trustees.

Consistency with relevant precedent requires that the scope of judicial review [in the Teachers Employment Dismissal Act appeals] be a limited one. In view of the powers, functions, and discretion which must necessarily be vested in educational authorities if they are to execute the duties imposed upon them, this court cannot substitute its judgment for that of these authorities.

Laws v. Richland County Sch. Dist. No. 1, 270 S.C. 492, 495, 243 S.E.2d 192, 193 (1978). See also, *Kizer v. Dorchester County Vocational Educ. Bd. of Trs.*, 287 S.C. 545, 548, 340 S.E.2d 144, 146 (1986); *Hendrickson v. Spartanburg County Sch. Dist. No. Five*, 307 S.C. 108, 112, 413 S.E.2d 871, 874 (Ct. App. 1992). Accordingly, the appropriate standard of review for this appeal is "whether the grounds given for termination of the [appellant's] employment are supported by 'substantial evidence'." *Laws*, 270 S.C. at 495, 243 S.E.2d at 193. Substantial evidence is that, which "considering the record as a whole would allow reasonable minds to reach the conclusion the administrative agency must have reached in order to justify its action." *Hendrickson*, 307 S.C. at 110-11, 413 S.E.2d at 873. If substantial evidence exists, a court may not substitute its judgment for that of the School Board, and the decision must be upheld. *Id.*

As discussed below, there is substantial evidence in the record supporting the School Board's decision to terminate Appellant's employment with the District, and, therefore, the decision must be affirmed.

B. Appellant's Termination Hearing Satisfied the Requirements of Due Process.

Section 59-25-470 of the Act requires that a teacher who has been recommended for termination of employment is entitled to a hearing before the school board, to be represented by legal counsel, depose witnesses before the hearing, subpoena witnesses to the hearing, examine and cross-examine witnesses, offer other evidence, and to present any and all defenses to the recommended termination of employment, among other due process rights. Appellant was given an adversarial due process hearing before the School Board, including all of these rights, on March 24, 2011. The hearing lasted approximately 16 hours. Prior to the hearing, Appellant deposed witnesses, and at the hearing on March 24, 2011, Appellant exercised her rights to be represented by legal counsel, to present witnesses and other evidence on her behalf, and to cross-examine adverse witnesses.

Following the hearing on March 24, 2011, the School Board issued its decision affirming the Superintendent's notice of suspension and recommendation of dismissal. Appellant was notified in writing of the Board's decision on March 29, 2011.

Appellant now contends that the School Board's hearing violated her right to due process because hearsay or incompetent evidence was presented against her, thereby denying her the opportunity to effectively cross-examine and confront witnesses adverse to her¹. Contrary to Appellant's position, competent evidence supports the School Board's decision.

School Board hearings under the Act are quasi-judicial, administrative hearings. *See, e.g., Laws v. Richland County Sch. Dist. No. 1*, 270 S.C. 492, 243 S.E.2d 192 (1978). Unless otherwise specifically provided by statute, the rules of evidence do not strictly apply to quasi-judicial, administrative hearings. *Richards v. City of*

¹ This issue, though raised by Appellant before the Circuit Court below was not ruled on by the Circuit Court, and therefore is not appropriate for review on appeal to this Court. *Kiawah Resort Assocs. v. S. C. Tax Comm'n*, 318 S.C. 502, 458 S.E.2d 542 (1995); *Food Mart v. S. C. Dep't of*

Columbia, 227 S.C. 538, 552, 88 S.E.2d 683, 689-90 (1955) ("even without the aid of statute it is held that an administrative or quasi-judicial body is not governed by the ordinary legal rules of evidence"); *Jacoby v. S.C. State Bd. of Naturopathic Exam'rs.*, 219 S.C. 66, 90, 64 S.E.2d 138, 149 (1951) ("[a]n administrative or quasijudicial body is allowed a wide latitude of procedure and not restricted to the strict rule of evidence adhered to in a judicial court.").

Here, Appellant chiefly complains of alleged hearsay statements of students and/or their parents critical of her job performance. Even assuming arguendo that hearsay evidence was admitted into evidence, it would not warrant reversal of the School Board's decision. The issue of the admissibility of hearsay in teacher termination hearings, particularly with regard to student statements, was discussed in *Hinkle v. Garrett-Keyser-Butler Sch. Dist.*, 567 N.E.2d 1173 (Ind. Ct. App. 1991). The *Hinkle* court explained the general rules with respect to both the right to confront witnesses and hearsay evidence of students in the context of a teacher termination hearing.

First, the court made clear that, under circumstances like Appellant's, the right to confront and examine witnesses was not denied.

If a teacher wishes to confront and cross-examine a particular witness, that teacher must request that the particular witness appear at the hearing. As the trial court correctly noted, [teacher] could have performed the typical cross-examination of his accusers, who would have been properly classified as hostile witnesses. [Teacher] made no request for his accusers to appear at the hearing, although they were known to him at the time. Moreover, [teacher] does not contend that he was denied the opportunity to confront and cross-examine the witnesses who testified. There was no deprivation of [teacher's] right to confront and cross-examine his accusers in this case.

Health & Envtl. Control, 322 S.C. 232, 471 S.E.2d 688 (1996).

Id., 567 N.E.2d at 1177.

Likewise, with respect to hearsay, the *Hinkle* court noted the formalities of school board hearings need not comply with the state's administrative procedures act, and that:

Moreover, the interest to be protected, that of avoiding the likelihood that students would have to testify on such matters in the presence of their peers or teachers, is more compelling than in the typical administrative adjudication.

Id., 567 N.E.2d at 1178. In affirming the teacher's termination despite finding some hearsay evidence had been admitted, the *Hinkle* court reiterated the general rule applicable to teacher termination hearings that, although the admission of hearsay in a school board administrative hearing is not without limitation, as long as the school board's decision is not based solely on hearsay evidence it will be affirmed. *Id.* See also *Giles v. Schuyler-Chemung-Tioga v. Bd. of Coop. Educ. Servs.*, 199 A.D.2d 613, 614 (N. Y. Sup. Ct., 1993) ("...it has long been held that hearsay is admissible in administrative hearings and may be used to support a finding of substantial evidence as long as it is 'believable, relevant, and probative'." (citation omitted)); *Merchant v. Bd. of Trs. of the Pearl Mun. Separate Sch. Dist.*, 492 So.2d 959, 964 (Miss. Sup. Ct. 1986) ("When hearing teacher dismissal matters, school boards proceed informally and are not bound by the Mississippi Rules of Evidence. School boards are not 'courts'.").

Here, the evidence apparently objected to by Appellant is either not hearsay at all, or subject to an evidentiary exception under Rules 803(2), (3), (4), (6) and (8), SCRE.

For example, the South Carolina Supreme Court has directly addressed the issue of whether out of court statements regarding poor job performance are hearsay in *Baber v. Greenville County*, 327 S.C. 31, 488 S.E.2d 314 (1997). The Court held that

testimony offered to show an employee had notice of poor job performance was not hearsay. "Testimony to show notice of a fact and not the fact itself is not hearsay." *Id.*, 327 S.C. at 41, 488 S.E.2d at 319. Appellant's notice of her performance deficiencies is of course relevant to her termination under the Act, § 59-25-440, though not necessarily relevant to her dismissal under § 59-25-430. However, assuming arguendo it is hearsay, in viewing the record as a whole, as the Court must do under the substantial evidence standard of review, it is plain that the School Board's decision is not based solely on inadmissible hearsay and that sufficient competent evidence supports the School Board's ruling affirming the Superintendent's recommendation of Appellant's dismissal. Indeed, Appellant's insubordinate refusal to accept an improvement plan, alone, justifies her termination. *See, e.g., Cole v. Illinois*, 562 F.3d 812, 815-16 (7th Cir. 2009). Moreover, at least three parents, two teachers, and three school principals all testified based on their personal and direct observations and dealings with Appellant to facts showing both her unfitness to teach and job deficiencies, which she failed to rectify over a six-year period.

Accordingly, Appellant was afforded due process of law in her termination hearing, and she was neither denied the opportunity to confront witnesses against her, nor unduly prejudiced by the admission of hearsay evidence.

**C. The School Board's Termination of Appellant's
Employment Complied with Applicable Policies.**

The District complied with its policy concerning the termination of teachers with regard to Appellant's termination. Although it is true that in some circumstances a school district's failure to comply with its own policies in taking adverse employment action can amount to a violation of due process, this is only the case where the policy violated establishes a property right in the plaintiff or aggrieved party. *See, Henry-Davenport v. Sch. Dist. of Fairfield County*, 832 F. Supp. 2d 602 (D.S.C. 2011).

Importantly, the District did comply with its policies applicable to the termination of professional staff. The District Policy regarding Discipline, Suspension and Dismissal of Professional Staff provides in relevant part:

Therefore, it is the policy of the Superintendent to recommend to the Board the removal from employment of any teacher (or administrator) who shall fail, or who may be incompetent, to give instruction (or provide administration of a school or a program) in accordance with the directions of the Superintendent or who shall otherwise manifest an evident unfitness for teaching (or administration), as determined by the Superintendent.

Evident unfitness for teaching or administration is manifested by conduct including, but not limited to, the following: persistent neglect of duty; willful violation of the policies, rules, regulations, or procedures of the District....

(R. pp. 361-362.) By complying with the Act, the District and School Board complied with applicable policy. District policy permits the termination of teachers who manifest evident unfitness for teaching under the Act.

Appellant's employment was terminated both for "evident unfitness for teaching" under the Act, § 59-25-430, as well as for performance deficiencies and shortcomings other than "evident unfitness," after notice of such deficiencies and an opportunity to improve, under § 59-25-440. Accordingly, the Court only needs to find the procedures for either § 59-25-430 or § 59-25-440 were met to uphold the School Board's decision that Appellant's conduct justifies termination of her employment.

Appellant's argument that the School District failed to follow its policies relates only to the issue of her termination under the Act, § 59-25-440, i.e., that Appellant was not properly given notice of her performance deficiencies and an opportunity to improve.

**1. Appellant Was Repeatedly Provided Notice Of
Performance Deficiencies And Ample Opportunity
To Improve.**

At least as far back as the 2006-2007 school year, serious concerns with Appellant's teaching were noted and addressed with her by the Principal at NMBIS, Ms. Green-Graham. These serious concerns included the nature of Appellant's instructional interactions with both students and parents. Appellant was offered an assistance plan, but refused it. Ultimately, Appellant was placed on administrative leave during the 2007-2008 school year due to her hostility towards the administration, unsatisfactory teaching performance, and refusal to change her teaching methods.

Again, in the 2008-2009 school year, the Principal of OBMS, Ms. Connie Huddle, advised Appellant of deficiencies in her performance. These deficiencies included poor instructional performance and a hostile or harsh classroom atmosphere.

Yet, again, in the 2010-2011 school year, Appellant was notified by the Principal at CMS, Ms. Margaret Sordian, of performance deficiencies. And, again, these deficiencies included poor instructional performance and a hostile or harsh classroom environment, as well as poor communication with parents. Again, Appellant was offered an assistance plan, but she refused it.

In light of these consistent facts and concerns over a period of several years, schools, and administrators, it is clear that Appellant was fully and fairly notified of deficiencies in her performance. It is further undisputed that Appellant was at least twice offered assistance plans, and both times she refused them. Likewise, Appellant had ample opportunity to improve her performance over the years, but simply failed or refused to do so. Appellant was, therefore, afforded notice of her performance deficiencies and an opportunity to improve, including opportunities for assistance plans, but refused to avail herself of these opportunities. The District fully complied with any

obligations it had with respect to its policies and the Act, § 59-25-440, to provide Appellant notice and an opportunity to improve. The fact that Appellant failed to take advantage of her rights to improve under §59-25-440 or District policy in no way constitutes the District's failure to comply with either.

**2. The District's Student Grievance Policy Confers No
Rights On Appellant.**

Appellant contends the District failed to comply with its Student Grievance Policy regarding student complaints against her. (App. R. pp. 447-448.) However, the Student Grievance Policy is designed to protect student's rights, it is not a mandatory or exclusive procedure for addressing student concerns and creates no contractual or due process rights for teachers. Rather teacher's employment rights are protected by the Act. *See Henry-Davenport v. Sch. Dist. of Fairfield County*, 232 F. Supp. 2d 602 (D.S.C. 2011.) Moreover, student complaints were brought to Appellant's various supervisors and principals precisely because Appellant was not addressing parent or student concerns. Ultimately, however, Appellant was repeatedly made aware of student concerns and provided ample opportunity to address these concerns and improve her performance, which she failed to do. Consequently, the District complied with policies applicable to Appellant's dismissal.

**D. The School Board's Termination Of Appellant's
Employment Is Supported By Substantial Evidence.**

Appellant argues, as grounds for reversal of the School Board's decision, that the decision of the School Board is not supported by substantial evidence. The School Board's decision upholding the dismissal of Appellant is clearly supported by substantial evidence from which reasonable minds can conclude that her termination was appropriate and permissible under South Carolina law.

In *Adams v. Clarendon County Sch. Dist. No. 2*, 270 S.C. 266, 272-73, 241 S.E.2d 897, 900 (1978), the South Carolina Supreme Court stated that "the Act has clearly separated the circumstances for which a teacher may be discharged for cause into two categories. One of these categories is explicitly set out in § 59-25-430 and the other is implicit in § 59-25-440."

Section 59-25-430, which governs dismissals based on "evident unfitness for teaching," requires only that notice and an opportunity for a hearing be afforded the teacher prior to any dismissal. On the other hand, § 59-25-440, which governs dismissal based on deficiencies or shortcomings other than incompetence, failure to provide instruction in accordance with directions of the superintendent, and unfitness, requires that notice and an opportunity to improve be afforded the teacher prior to any dismissal. Significantly, this Court only needs to find that the procedures for one section of the Act were met in order to uphold the Board's decision. A review of the record on appeal demonstrates that there is substantial evidence to support the Board's determination that Appellant's conduct justifies termination of her employment pursuant to both §§ 59-25-430 and -440.

1. Appellant's Conduct Manifests An Evident Unfitness For Teaching

Section 59-25-430 provides that "any 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...." The statute goes on to cite examples of conduct evidencing an unfitness for teaching. The examples include persistent neglect of duty and willful violation of rules and regulations.

Here, substantial evidence in the record supports the finding of Appellant's evident unfitness to teach, insubordination, and persistent neglect of duty. As far back as

the 2006-07 school year, serious concerns with Appellant's teaching were noted and addressed with her by the administration at NMBIS, including concerns with her instructional interactions with both students and parents. Instead of agreeing with the administration to address these concerns, Appellant refused to agree with the school administration's assistance plan. (R. pp. 301-302 (Compl. Ex. 24).) Nevertheless, the school's principal, Ms. Green-Graham, continued to try and address with Appellant the ongoing concerns with her performance throughout the 2006-07 and 2007-08 school years. Following attempts to meet with Appellant in January and February 2008, which met with opposition from Appellant, Appellant was placed on administrative leave, with pay, based chiefly on the hostility she displayed towards Ms. Green-Graham, her unsatisfactory teaching performance, and her refusal to change her teaching methods.

Appellant was reassigned to CFES for the remainder of the 2007-08 school year and to OBMS for the 2008-09 school year. OBMS Principal, Connie Huddle advised Appellant of complaints expressed to the administration by parents about her instruction and classroom management throughout the school year. Approximately twenty-eight students were moved from Appellant's classes based on parent complaints during the school year. The nature of the complaints by parents included that their children felt uncomfortable in Appellant's class, they were confused by her instructions, and the classroom atmosphere was harsh. (R. pp. 327-329 (Huddle Dep. pp. 7-9).)

Subsequently, Appellant was reassigned to CMS for the 2009-10 and 2010-11 school years. Ms. Margaret Sordian, CMS's principal beginning with the 2010-11 school year, received similar complaints from parents regarding Appellant as early as September 2010. These complaints included placing students in the hall during class; making inappropriate comments to students; yelling at students; embarrassing students; failing to communicate effectively with students and parents regarding work, testing, re-

testing, grades and assignments; humiliating students in front of others during class time; unprofessional behavior when conferencing with parents; breaking student confidentiality; and students being afraid of Appellant and having anxiety about attending class. As she had four years before, Appellant again refused an assistance plan proposed by the school administration. Most telling in regard to Appellant's unfitness as a teacher, however, is the fact that during the 2007-08 school year, 45% of her students had Ds or Fs (R. pp. 314-320 (Compl. Ex. 26)), and by the 2010-11 school year, over half of her regular education students, or twenty-five of her forty-one regular education students, had Ds or Fs. (R. pp. 267-269 (Compl. Ex. 17).) Even aside from her refusal to accept an assistance plan, the hostile and intimidating classroom environment, and her poor communications with parents, these poor instructional results make evident Appellant's unfitness to teach.

In short, Appellant has: (1) been insubordinate over a period of years, refusing to follow through with required changes to her classroom management, instruction, and communications, as well as refusing to accept assistance plans (R. pp. 246-248, 314-320 (Compl. Exs. 10, 26)); (2) created a hostile and threatening classroom environment that has caused students undue fear, embarrassment, and anxiety (R. pp. 251-266, 270-273, 274-278, 289-300, 314-320 (Compl. Exs. 14, 18, 19, 22, 26)); and (3) achieved poor instructional results with an excessive number of her students receiving Ds and Fs (R. pp. 267-269, 314-320 (Compl. Exs. 17, 26)).

These performance concerns with insubordination, classroom atmosphere, hostility, and instructional quality are well recognized grounds for termination. In *Green v. Clarendon County Sch. Dist. Three*, the Federal District Court for South Carolina found that a teacher's inappropriate actions revealed such serious concerns about her

judgment as to warrant the teacher's discharge. The explanation for the discharge follows:

The grounds upon which this action is based include your recent conduct toward your immediate supervisor, Mrs. Connie Dennis, whereby you made direct personal threats toward her in an apparent attempt to intimidate her into refraining from addressing her concerns about your performance as a teacher, and you later attempted to confront her again about the matter in the presence of another teacher. As I understand it, this is not the first occasion that you have expressed an unwillingness to accept direction from Mrs. Dennis as your supervisor. It is also not the first incident where you have acted inappropriately toward or around others, or attempted to threaten and intimidate others. Additionally, it has come to my attention that you recently made inappropriate comments to a member of the Board of Trustees. I have concluded that your conduct has been highly insubordinate and unprofessional and is, at best, indicative of a serious lack of judgment on your part, warranting the termination of your employment pursuant to S.C. Code Ann. §§ 59-25-430 and 440.

923 F.Supp. 829, 843 (D.S.C. 1996).

Likewise, in *Adams v. Clarendon County Sch. Dist. No. 2*, the Supreme Court upheld the dismissal of a teacher whose low level of both oral and written communication rendered him ineffective as a teacher. The Court noted that "[d]eficiency in such a basic skill is proof of 'evident unfitness for teaching'...." *Adams*, 270 S.C. at 274, 241 S.E.2d at 901. Here, too, Appellant's inability to effectively instruct her students, manage her classroom, communicate with parents, and accept direction from school administrators renders her ineffective as a teacher.

In *Laws v. Richland County Sch. Dist. No. 1*, the Supreme Court again upheld the dismissal of a teacher whose teaching methods were inappropriate and refused to reasonably respond to the school administration's recommendations made to him to

improve his method of instruction and classroom atmosphere. *Laws*, 270 S.C. at 497-498, 243 S.E.2d at 194. *See also Hendrickson v. Spartanburg County Sch. Dist. No. Five*, 307 S.C. 108, 112-13, 413 S.E.2d 871, 874 (Ct. App. 1992) (upholding termination based on teacher's "general inability to control her class and on the specific incident of slapping one of her handicapped students."); *Adamson v. Richland County School District One*, 332 S.C. 121, 129, 503 S.E.2d 752, 756 (Ct. App 1998) (noting inefficiency in teaching and classroom management as appropriate grounds for discharging a teacher).

Ultimately, like the situations in *Green*, *Adams* and *Hendrickson*, Appellant's insubordination, hostile acts towards students, parents, and administrators, inefficiency and incompetence, and lack of any meaningful or reasonable response to the District's efforts to help her improve her teaching, justify her dismissal under both §§ 59-24-430 and -440. Indeed, with respect to § 59-25-440, Appellant was provided years of notice of administrators', parents', and students' concerns. The administration repeatedly sought to provide her an assistance plan, but Appellant repeatedly refused to accept them. Accordingly, the record as a whole provides substantial evidence supporting the Board's decision to terminate Appellant's employment.

**E. The Form Of The School Board's Decision To Terminate
Appellant's Employment Is Proper.**

Appellant contends the School Board's written decision of March 29, 2011 (R. p. 2) does not comply with the standard for decisions of administrative bodies, inasmuch as it does not set out findings of facts and conclusions of law. *See, Lee County Sch. Dist. Bd. of Trs. v. MLD Charter Sch. Acad. Planning Comm.*, 371 S.C. 561, 567, 641 S.E.2d 24, 27-28 (2007); *Porter v. S.C. Pub. Serv. Comm'n.*, 333 S.C. 12, 507 S.E.2d 328 (1998). Here, however, the School Board's decision does comply with the express requirements of the Act, § 59-25-470, respecting the form of the School Board's decision to either affirm or withdraw the Superintendent's notice of suspension and

dismissal, and in doing so it is consistent with Act. Moreover, the Superintendent's notice of dismissal dated January 5, 2011, which was affirmed by the School Board's decision, sufficiently details and sets forth the relevant findings of fact and conclusions of law. (R. pp. 231-234.)

The Act sets forth the "mode of procedure" to be followed by school boards and administrators in teacher employment termination, including that:

Within ten days following the hearing, the board shall determine whether the evidence showed good and just cause for the notice of suspension or dismissal and shall render its decision accordingly, either affirming or withdrawing the notice of suspension or dismissal.

§ 59-25-470. *See also Young v. Charleston County Sch. Dist.*, 397 S.C. 303, 307-08, 725 S.E.2d 107, 109 (2012). The School Board issued on March 29, 2011 its decision letter stating that it affirmed the recommendation of the Superintendent to terminate Appellant's employment. The School Board, therefore, affirmed the Superintendent's notice of suspension and dismissal, consistent with the Act. The Superintendent's January 5, 2011, notice of suspension and recommendation of dismissal sets out in four, single-spaced pages the factual basis for and the conclusions of law supporting the dismissal.

As noted in *Porter*, "[a]n administrative agency is not required to present its findings of fact and reasoning in any particular format, ..." *Porter*, 333 S.C. at 21, 507 S.E.2d at 332. The format of affirming the Superintendent's notice of suspension and recommendation for dismissal as set out in § 59-25-470, fully satisfies the purpose for a written order presenting findings of fact and reasoning. As discussed in *Porter*:

An administrative body must make findings which are sufficiently detailed to enable this Court to determine whether the findings are supported by the

evidence and whether the law has been applied properly to those findings.

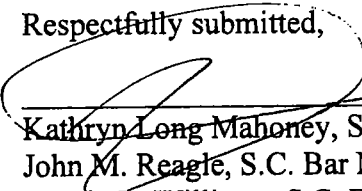
Id. The Superintendent's detailed notice of suspension and recommendation of dismissal serves this purpose of affording judicial review; it is sufficiently detailed to enable this Court to determine whether the findings are supported by the evidence presented at the hearing before the School Board, and whether the Act has been applied properly to those findings.

Finally, the issue of the sufficiency of the form of the School Board's decision was neither raised before nor relied upon by the Circuit Court, and accordingly, it should not now be addressed by this Court. *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 661 S.E.2d 791 (2008); *Kiawah Resort Assoc. v. South Carolina Tax Comm'n*, 318 S.C. 502, 458 S.E.2d 542 (1995); *Food Mart v. South Carolina Dep't of Health and Envtl. Control*, 232, 471 S.E.2d 688 (1996).

V. CONCLUSION

For the foregoing reasons, the Respondent respectfully asks the Court to affirm the judgment of the Circuit Court and the decision of the School Board terminating Appellant's employment.

Respectfully submitted,



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July 10, 2013
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COUNTY
Horry County Court of Common Pleas

Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2012-213509

JACQUELINE SMITH.....Appellant

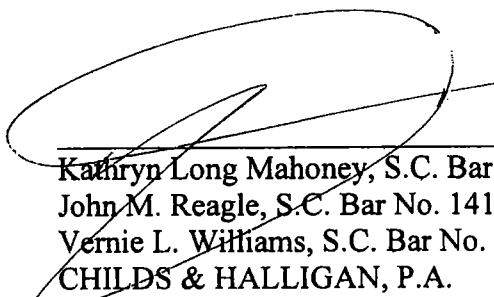
v.

HORRY COUNTY SCHOOLS.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b),
SCACR.

July 10, 2013


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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COUNTY
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v.

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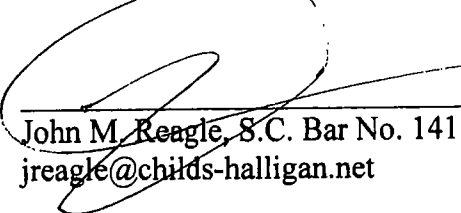
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APPEAL FROM HORRY COUNTY
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Jacqueline Smith.....Appellant

v.

Horry County Schools.....Respondent.

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PROCEDURAL HISTORY

This appeal is governed by the Teacher Employment and Dismissal Act ("TEDA" or "Act"), S.C. Code Ann. § 59-25-410 through § 59-25-530. Appellant Jacqueline Smith ("Ms. Smith") is a continuing contract teacher formerly employed with Respondent Horry County School District ("District"). By virtue of her continuing contract, Ms. Smith possessed a property interest in employment with the District, subject to termination only upon satisfaction of the substantive and procedural requirements set forth in TEDA.

By letter dated January 5, 2011, the District notified Ms. Smith of the intent to terminate her employment. (R. pp. 231-234) Ms. Smith preserved her right to a hearing and participated in the hearing process. The District's Board voted to uphold her termination, affirming the Superintendent's recommendation contained in the January 5, 2011 letter. Ms. Smith appealed this decision to the Horry County Circuit Court. Following a hearing on September 13, 2012, the Honorable Benjamin Culbertson issued a form judgment affirming the Board's decision. (R. p. 1) Ms. Smith filed and served a timely notice of appeal to this Court, specifically preserving objections presented to the District's Board and Circuit Court regarding the submission of hearsay statements in support of the Superintendent's recommendation. By law, the Circuit Court participated as an appellate tribunal only. Its action affirming Ms. Smith's termination necessarily encompassed rejection of her challenge to the admission of hearsay testimony and her argument that the Board violated due process rights established in TEDA and the South Carolina constitution.¹

¹ The District asserts that because the Circuit Court did not issue an order specifically rejecting Ms. Smith's hearsay and due process argument, the issue is not preserved for appeal. (Resp. Brief p. 19, fn. 1) This

LEGAL ARGUMENT ON REPLY

I. The District is bound by the mandatory provisions of TEDA.

In adopting TEDA, the General Assembly specified that in teacher termination proceedings “all testimony at any hearing shall be taken under oath.” S.C. Code Ann. § 59-25-460. The Act further states that the “teacher has the privilege of being present at the hearing with counsel and of cross-examining witnesses and may offer evidence and witnesses and present any and all defenses to the charges.” S.C. Code Ann. § 59-25-470. Accordingly, the plain language of TEDA requires that any charges against Ms. Smith be presented “under oath” and subject to cross-examination.

II. Hearsay was relied upon in terminating Ms. Smith’s employment.

Throughout its brief, the District makes reference to “concerns” about Ms. Smith expressed by parents and students. Examples are offered from as long ago as 2006 during which Ms. Smith’s former Principal stated that she “had received in excess of ten complaints.” (Resp. Brief pp. 3-4) The District argues that during 2008-2009, concerns were “brought to the administration from parents of students” and that Ms. Smith’s Principal told the Human Resources Director that she was “receiving numerous complaints from parents.” The District indicates that the “children felt uncomfortable in the classroom, they were confused on assignments and the classroom atmosphere was harsh.” (Resp. Brief p. 7) The District ignores 2009-2010, but describes the complaints received by Ms. Smith’s Principal in the early weeks of the 2010-2011 school year in

argument ignores the role of the Circuit Court in this proceeding. As addressed below, objection to hearsay was presented and ruled upon by the Board acting as the “trial court.” The District concedes that the Board “upheld” the Superintendent’s recommendation of termination and that the Circuit Court “affirmed” the Board’s decision. In this context, there can be no question that Ms. Smith’s objections to hearsay presented to and rejected by the Board and Circuit Court are preserved for review.

detail. (Resp. Brief pp. 10-12) The Principal testified at length about these “concerns” even though she had not personally witnessed improper classroom conduct by Ms. Smith. Without any supporting first-hand knowledge, the Principal testified that she “felt like a good number of Ms. Smith’s students were afraid of her, fearful of asking questions in her class for fear of embarrassment or humiliation and many, many times very unclear of what to do with their assignments.” (Resp. Brief p. 10)

The Superintendent relied upon the second and third-hand reports in making her recommendation to terminate Ms. Smith’s employment. For example, the letter recommending termination states that during the 2010-2011 school year alone “out of the 86 students you taught, the parents of 25 students made 161 complaints about you to your principal.” The letter concludes by stating “the parental complaints raised against you are excessive in number, and cannot legitimately be blamed on the administration, since you received similar parental complaints at three different schools where you have been assigned.” (R. p. 234)

The Superintendent chose to accept the truthfulness of alleged parent and student complaints in making her recommendation to terminate Ms. Smith’s employment. Despite timely objections, the Board heard and considered the hearsay relied upon by the Superintendent. (R. pp. 65-103; pp. 224-227) To explain the absence of factual findings, the District represents that the Board’s vote “approved” and “affirmed” the Superintendent’s recommendation. (Resp. Brief pp.17, 29) On appeal to the Circuit Court, Ms. Smith preserved and argued the objections raised during the Board hearing. (R. p. 11, line 21-p. 27, line 13; p. 28, line 15-p. 29, line 21)

There can be no question that hearsay played a dominant role in Ms. Smith's termination. Unlike Barber v Greenville County, 327 S.C. 31, 448 S.E.2d 314 (1997) offered by the District, the issue on appeal is not "notice" of alleged deficiencies, but the truthfulness of the underlying allegations. (Resp. Brief p. 21) To support Ms. Smith's termination, the District was obligated to establish that the concerns derived from parents and students who did not testify were true and substantial. The District did not and cannot do this because it elected not to call any student and offered only two parents who had never visited Ms. Smith in her classroom.

III. Children's out of court statements cannot be accepted on faith alone.

The hearsay in the record before the Court is not only abundant, it is multi-layered. The Superintendent, who did not visit Ms. Smith in the classroom and who did not speak with any student, received her information from the Human Resources Director and the Principal. Neither the Human Resources Director nor the Principal had first-hand information concerning Ms. Smith's conduct in the classroom. The parents who spoke with the Principal likewise did not observe Ms. Smith's alleged conduct. Instead, the parents relied upon the unsworn statements of their middle school children. Accordingly, the recommendation made by the Superintendent, as affirmed by the Board and Circuit Court, is removed from testimony "under oath" by more than three generations.

In hearing Ms. Smith's appeal, the Circuit Court Judge asked whether it would be appropriate to call students to testify in such a proceeding. The answer is obviously yes. If the cause of the termination is alleged mistreatment of students, there can be no doubt that the Board is obligated to hear the testimony offered in support of this charge. (R. p. 15, line 22-p. 18, line 5) In this State, perhaps unlike others, the Supreme Court has

determined that when important issues of fact are at stake, first-hand information is required to be submitted. See, Brown v. S.C. Board of Education, 301 S.C. 326, 391 S.E.2d 866 (1990) Notably, the General Assembly has addressed the procedure for offering out-of-court statements by children in abuse and neglect cases. There, the child must be available to testify at the proceeding or by videotape, unless unavailable, incompetent, or a "substantial likelihood" of severe emotional trauma is shown. S.C. Code Ann. § 19-1-180.

The District was not obligated to rely upon student complaints. It had the option to install an adult observer in Ms. Smith's classroom. The District elected not to take this measure and cannot use this decision as a basis to rely upon hearsay complaints by students.

The District argues that Ms. Smith could have called the students as hostile witnesses. (Resp. Brief pp. 19-20, *citing Hinkle v. Garrett-Keyser-Butler Sch. Dist.*, 567 N.E.2d. 1173 (Ind. Ct. App. 1991)) This argument ignores several important points. First, apart from the two parents offered, the District did not disclose the names of the parents and students who allegedly complained. Second, Ms. Smith was limited by law to ten subpoenas. S.C. Code Ann. § 59-25-460. The Superintendent claimed that the parents of more than 25 students complained about her in the fall of 2010 alone, not to mention multiple parents in preceding years (R. p. 232) Finally, the Hinkle opinion notes that hearsay would have been inadmissible prior to the adoption of a law allowing its introduction. 567 N.E.2d. at 1177-1178. Unlike the Indiana legislature, our General Assembly has determined that testimony presented at teacher hearings must be "under oath" and there must be the opportunity for "cross-examining witnesses." S.C. Code Ann.

§ 59-25-460 and 470. The District's reliance upon Hinkle is obviously misplaced, as is its contention that general administrative procedures diminish rights provided by specific provisions of TEDA. Spectre, LLC v. South Carolina Dept. of Health and Environmental Control, 386 S.C. 357, 372, 688 S.E.2d 844, 852 (2010) (a more specific statute is considered an exception to or qualifier of a general statute and must be afforded its intended effect) See also, Mims v. Alston, 312 S.C. 311, 440 S.E.2d 357 (1994) (a specific statute prevails over a more general one)

IV. Controlling law requires reversal of Ms. Smith's termination.

This Court and the Supreme Court have determined that the provisions of TEDA are substantive and mandatory. (App. Brief p. 10) Controlling principles of statutory construction dictate that words employed by the General Assembly are to be afforded their common, plain meaning. Additionally, when the General Assembly imposes an obligation, it is presumed to know what it is doing. See, Spectre, 386 S.C. at 373, 688 S.E.2d at 852.

Unlike the cases relied upon by the District, this appeal presents squarely the question of due process. Hearsay is not a minor, cumulative or harmless aspect of the recommendation to terminate Ms. Smith's employment. Despite the District's best efforts to cherry pick the record, hearsay is front and center in the Superintendent's decision to recommend termination and necessary to the decisions by the Board and Circuit Court affirming that termination.

The District would invite this Court to join a minority of misguided jurisdictions that accept a watered down version of due process for the sake of expediency. This is not the law of our State and this is not justice. Reduced to its basics, the District's argument

will make all teachers beholden to their students, timid and uncertain of their futures when imposing discipline or awarding deservedly low grades. The “complaints” in this case may have been substantial. Because no first-hand testimony was offered, however, neither the Board nor the Circuit Court nor this Court can make that judgment.

Our courts have adhered to the principles of due process even in unpopular and controversial proceedings. See, for example, Shell v. Richland School Dist. One, 262 S.C. 408, 608 S.E.2d 428 (2005) (reinstating teacher following arrest for drug offense) A hearing to terminate a teacher’s employment cannot be reduced to a popularity contest. If the District truly had concerns about Ms. Smith dating more than five years from her suspension in the fall of 2011, it had the opportunity and the obligation to follow the procedures set forth in TEDA, including written notice, assistance and an opportunity to improve. Instead, the District chose to placate parents by removing their children from Ms. Smith’s classes and did not follow its obligations under law. In this context there can be only one result, reversal of Ms. Smith’s termination and remand for a hearing in keeping with law. See, Creola Young v. Charleston County School District, 397 S.C. 303, 725 S.E.2d 107 (2012)

CONCLUSION

For the reasons set forth herein and in Appellant’s brief, the controlling law of this State and the guarantees contained in our constitution require reversal of Ms. Smith’s termination from employment and remand for proceedings consistent with law as enacted by the General Assembly and interpreted by our Supreme Court.

*****SIGNATURE PAGE FOLLOWS*****

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