

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

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SEP 23 2014

S.C. Supreme Court

Opinion No. 2014-UP-279 (S.C. Ct. App. Filed June 30, 2014)

Horry County Schools Respondent,

v.

Jacqueline Smith, Petitioner.

APPENDIX

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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Jacqueline Smith, Appellant,

v.

Horry County Schools, Respondent.

Appellate Case No. 2012-213509

Appeal From Horry County
Benjamin H. Culbertson, Circuit Court Judge

Unpublished Opinion No. 2014-UP-279
Heard March 6, 2014 – Filed June 30, 2014

AFFIRMED

W. Allen Nickles, III and Susan Marie Fittipaldi, both of
Nickles Law Firm, of Columbia, for Appellant.

Vernie L. Williams, John Marshall Reagle, and Kathryn
Long Mahoney, all of Childs & Halligan, P.A., of
Columbia, for Respondent.

PER CURIAM: Jacqueline Smith appeals the circuit court's order affirming the Horry County School Board of Education's (the Board) decision to terminate her employment with the Horry County School District. Smith argues the circuit court

erred in affirming the Board's decision because (1) the decision was rendered in violation of due process; (2) the decision violated the Teacher Employment and Dismissal Act¹; (3) substantial evidence did not support the decision; and (4) the circuit court did not identify supporting facts and legal conclusions in reaching its decision. We affirm.

1. We find the Board's decision did not violate Smith's due process rights. *See* S.C. Code Ann. § 59-25-470 (Supp. 2013) ("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. The board shall order the appearance of any witness requested by the teacher."); *Brown v. S.C. State Bd. of Educ.*, 301 S.C. 326, 328, 391 S.E.2d 866, 867 (1990) ("The [F]ourteenth [A]mendment Due Process Clause requires procedural due process be afforded an individual deprived of a property or liberty interest by the State."); *id.* at 329, 391 S.E.2d at 867 ("The right to hold specific employment and the right to follow a chosen profession free from unreasonable governmental interference come within the liberty and property interests protected by the Due Process Clause."); *id.* ("Procedural due process often requires confrontation and cross-examination of one whose word deprives a person of his or her livelihood."); *Brown v. James*, 389 S.C. 41, 53, 697 S.E.2d 604, 610-11 (Ct. App. 2010) ("The observance of the procedural requirements of the [Teacher] Employment and Dismissal Act is mandatory and not a matter of discretion."). We find hearsay evidence, including statements from students and parents detailing specific complaints about Smith, was improperly admitted. However, we find the improper admission of this evidence was harmless because the statements were merely cumulative to the testimony presented at the hearing of the three principals of the schools that employed Smith; the Horry County Superintendent of Education; and two parents. *See Jackson v. Speed*, 326 S.C. 289, 305, 486 S.E.2d 750, 758 (1997) ("The improper admission of hearsay is reversible error only when the admission causes prejudice[; however, w]here the hearsay is merely cumulative to other evidence, its admission is harmless.").

2. We find the Board's decision did not violate the Teacher Employment and Dismissal Act because Smith was given notice the superintendent had recommended her employment be terminated and Smith was afforded an opportunity to be heard prior to her dismissal. *See* S.C. Code Ann. § 59-25-430

¹ *See* S.C. Code Ann. §§ 59-25-410 to -530 (Supp. 2013).

(2004) ("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."). Additionally, we find the proper procedures were followed because the matter was brought to Smith's attention in writing and Smith was given a reasonable time for improvement within the statute. *See* S.C. Code Ann. § 59-25-440 (Supp. 2013) ("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 § 59-25-450, allow reasonable time for improvement.").

3. We find the Board's decision to terminate Smith's employment with the Horry County School District was supported by testimony from the following parties: the three principals of the schools that employed Smith; the Horry County Superintendent of Education; and two parents. Accordingly, we find substantial evidence supported the Board's decision. *See Laws v. Richland Cnty. Sch. Dist. No. 1*, 270 S.C. 492, 495-96, 243 S.E.2d 192, 193 (1978) ("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.").

4. Based upon our review of the record, we find the circuit court and the Board properly identified supporting facts and legal conclusions in upholding the superintendent's recommendation to terminate Smith's employment. *See Porter v. S.C. Pub. Serv. Comm'n*, 333 S.C. 12, 21, 507 S.E.2d 328, 332 (1998) ("An administrative body must make findings which are sufficiently detailed 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." (quoting *Hamm v. S.C. Pub. Serv. Comm'n*, 309 S.C. 295, 300, 422 S.E.2d 118, 121 (1992))).

AFFIRMED.

WILLIAMS, KONDUROS, and GEATHERS, JJ., concur.

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.

APPELLANT'S PETITION FOR REHEARING

Appellant hereby petitions this Court for rehearing of its opinion filed June 30, 2014. This Petition is submitted pursuant to Rule 221(a), SCACR. For the reasons set forth in the memorandum in support filed herewith, it is respectfully submitted that the opinion issued by this Court overlooks and misapprehends controlling authority and misapplies the law of this State.

Respectfully submitted,

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July 14, 2014

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
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APPEAL FROM HORRY COUNTY
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Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2012-213509

Jacqueline Smith.....Appellant.

v.

Horry County Schools.....Respondent.

APPELLANT'S MEMORANDUM IN SUPPORT OF
PETITION FOR REHEARING

PROCEDURAL POSTURE

In an unpublished, *per curiam* opinion filed June 30, 2014, this Court affirmed the decision of the Honorable Benjamin H. Culbertson, Circuit Court Judge, upholding the Horry County School Board of Education's decision to terminate Appellant's employment. For the following reasons, the unpublished opinion reflects a misapprehension of the law and a misapplication of controlling legal principles and precedent.

FACTUAL BACKGROUND

Jacqueline Smith is a veteran teacher employed during the 2010-2011 school year under a continuing-contract with the Horry County School District ("District"). Ms.

Smith began teaching in the District in 1999. In 2003, she received the Teacher of the Year award for North Myrtle Beach Elementary School.

On October 28, 2010, Ms. Smith received a letter placing her on administrative leave with pay.(R. p. 239) By letter dated January 5, 2011, the District's superintendent notified Ms. Smith that she was recommending termination of employment. The termination letter identified alleged complaints by 86 students and 25 parents concerning Ms. Smith's conduct as a teacher. (R. pp. 231-234). The letter accused Ms. Smith of yelling at students, embarrassing students, making inappropriate comments to students, humiliating students in class, and being "described by students" as mean, harsh, hateful and setting them up to fail. (R. p. 232)

Ms. Smith requested a hearing before the Board to challenge the superintendent's recommendation. At the outset of the hearing, the District submitted numerous proposed exhibits to the Board. These exhibits included documents containing hearsay information attributed to parents and students who did not testify at the hearing. (See, for example R. pp. 267-269, 274-278, 300)

Ms. Smith objected to the admission of any exhibits or testimony that contained hearsay statements or information offered by persons unavailable for cross-examination. The Board did not rule on the objection at that time, but allowed hearsay to be offered. At the conclusion of the hearing, the Board voted to consider all of the exhibits and testimony presented, including challenged the hearsay information. (R. pp. 224- 227) Relying upon the entire record, the Board then voted 6 to 1 to uphold the superintendent's recommendation to terminate Ms. Smith's employment. (R. p. 228-229)

LEGAL ARGUMENT

1. The opinion under review overlooks and misapplies controlling precedent in holding that Ms. Smith's due process rights were not violated.

Finding 1 of the challenged opinion holds that the Board's decision did not violate Ms. Smith's due process rights even though hearsay evidence, including information from parents and students who allegedly complained about her, was **improperly admitted** at the hearing. The opinion states that the admission of this hearsay evidence was "merely cumulative" in light of testimony from school principals. (*citing Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997))

The Court's reliance on Jackson is misplaced. In Jackson, the challenged hearsay was "cumulative" because: (a) statements by the witness had already been admitted without objection, (b) the objected to testimony had been previously established, (c) testimony of other witnesses provided the same evidence, and (d) the statements were admissible as admissions of a party opponent. 326 S.C. at 305, 486 S.E. 2d at 758. None of these grounds apply to information from non-testifying parents and students relied upon by the superintendent in the notice of termination, presented over objection in testimony and challenged exhibits, and considered by the Board and circuit court. To the contrary, Ms. Smith gave notice of her objection at the beginning of the hearing, the information was available from no admissible source, including school principals, was clearly offered for the truth of the matter, was intended to be and was prejudicial.

Holding that the improperly admitted hearsay was cumulative and harmless also ignores the mandatory nature of the TEDA acknowledged by our Supreme Court in Johnson v. Spartanburg Co. School Dist. No. 7, 314 S.C. 340, 444 S.E.2d 501 (1994) and

this Court in Brown v. James, 389 S.C. 41, 697 S.E.2d 604 (Ct. App. 2010). Because the process below was infected by the admission of anonymous and hearsay statements, and because the Board violated Ms. Smith's statutory and constitutional right to cross-examination, its decision is *per se* invalid.

2. The opinion under review misapplies the law in finding that Ms. Smith received proper notice of the grounds for her termination.

Finding 2 of the challenged opinion holds that Ms. Smith was given reasonable notice and opportunity to improve her performance as required Section 59-25-440. The opinion offers no facts in support of the finding. Conversely, the record establishes that Ms. Smith was given no "opportunity to improve." For example, she was removed from the classroom on October 28, 2010 and not allowed to return or have communication with staff, students or parents thereafter. (R. p. 239) The record further establishes that the Ms. Smith's supervisors considered, but elected not to impose an improvement plan. (R. pp. 218-219; 395) Accordingly, the finding that Ms. Smith was afforded written advance notice, reasonable assistance and adequate time to improve perceived deficiencies cannot be sustained.

The notice provided to Ms. Smith was also deficient. As stated above, the superintendent's recommendation to terminate relied upon alleged complaints by parents and students who were not called as witnesses. In this context, Ms. Smith was not afforded an opportunity to be heard on the reasons presented to the Board in support of termination. This defect violated Ms. Smith's fundamental due process rights by giving false or unsubstantiated "reasons" for the recommended termination.

3. The opinion under review misapplies the standard of review in finding substantial evidence to support Ms. Smith's termination.

Finding 3 of the challenged opinion holds that the testimony of the superintendent, three principals and two parents offer substantial evidence to support Ms. Smith's termination. In reaching this decision, the Court improperly substituted its judgment for the Board and circuit court.

The record establishes that the Board relied upon "all evidence" including improperly admitted hearsay in affirming the superintendent's recommendation to terminate Ms. Smith's employment. Neither the motion passed by the Board nor its letter confirming Ms. Smith's termination identify the testimony of specific witnesses. Instead, immediately before affirming the recommendation to terminate, the Board overruled all evidentiary objections. (R. pp. 224-229). Following the hearing, the Board had the opportunity to explain the basis for its decision. Rather than identify admissible testimony or documents, the Board's letter of March 25, 2011 made reference to the 14 hours of hearing and concluded that "all" rather than specific evidence justified termination. (R. p. 2) On appeal, the circuit court expressly affirmed the decision contained in the Board's letter. (R. p. 1)

Shell v. Richland School District One, 362 S.C. 408, 608 S.E. 2d 428 (2005) holds that appellate review of a teacher's termination is governed by the grounds stated in the order terminating employment. 362 S.C. at 411, 608 S.E. 2d at 429. For this reason, "scouring the record and making ... independent evidentiary findings to support the termination" is reversible error. *Id.* Because an appellate court may not cherry-pick a record to support the termination of a teacher, isolation of testimony otherwise

considered with and influenced by inadmissible, prejudicial offerings is impermissible and requires reversal of the challenged opinion.

4. The opinion under review misapplies the law in failing to address the absence of any factual findings and legal conclusion both by the Board and the circuit court.

Finding 4 of the challenged opinion states, “[b]ased upon our review of the record, we find the circuit court and the Board properly identified supporting facts and legal conclusions in upholding the superintendent’s recommendation to termination Smith’s employment.” (emphasis added). This is a misstatement the record. Neither the circuit court nor the Board issued a decision that identified any specific findings of fact or conclusions of law. As addressed above, the Board voted in open session and subsequently issued a letter without reference to any factual findings whatsoever. Likewise the circuit court’s order upholding the Board’s decision contains no reviewable factual findings or conclusions of law.

Shell established that it is improper and an error of law for an appellate court to conduct an “independent evidentiary” review of the record and to make independent factual findings. Instead, 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 21-23, 507 S.E. 2d at 332 (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.

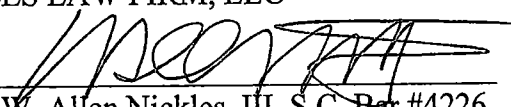
The finding that the Board and circuit court “identified supporting facts and legal conclusions” is inconsistent with the holding that the superintendent’s recommendation and information relied upon by the Board included inadmissible information. (Finding 1). This finding is also inconsistent with the identification for the first time on appeal specific testimony perceived to support termination. (Finding 3). In summary, the only “supporting facts” identified by the Board and the circuit court confirm that inadmissible evidence was relied upon in terminating Ms. Smith’s employment. This cannot stand as a basis for affirming their decisions.

CONCLUSION

For the reasons stated above, Appellant Jacqueline Smith requests that this Court reconsider its opinion filed June 30, 2014.

NICKLES LAW FIRM, LLC

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July 14, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM HORRY COUNTY
Court of Common Pleas

SC Court of Appeals

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2012-213509

Jacqueline Smith.....Appellant.

v.

Horry County School District.....Respondent.


CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served Respondent's Petition for Rehearing and Memorandum in Support of Petition for Rehearing by depositing a copy of same in the United States Mail, postage prepaid and addressed as follows:

Kenneth L. Childs, Esquire
Kathryn Long Mahoney, Esquire
Vernie L. Williams, Esquire
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This 14th day of July, 2014.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

JACQUELINE SMITH.....Appellant

v.

HORRY COUNTY SCHOOLS.....Respondent

Appellate Case No.: 2012-213509
Unpublished Opinion No. 2014-UP-279

Appeal from Horry County
Court of Common Pleas
Benjamin H. Culbertson, Circuit Court Judge

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SC Court of Appeals

RESPONDENT'S MEMORANDUM IN RESPONSE TO PETITION FOR
REHEARING

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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

RESPONDENT'S MEMORANDUM IN RESPONSE TO PETITION FOR
REHEARING

I. PROCEDURAL POSTURE

The Respondent, Horry County Schools, respectfully submits this memorandum in response to Appellant Jacqueline Smith's (Smith) petition for rehearing. A petition for rehearing should be based on "points supposed to have been overlooked or misapprehended by the court." Rule 221, SCACR. Smith's petition, however, addresses no such issues or points, but rather re-hashes her prior arguments. For the reasons stated in its decision, the Respondent respectfully asks the Court to deny Smith's petition for rehearing.

II. FACTUAL BACKGROUND

Due to the breadth of Smith's petition for rehearing, which challenges

every aspect of the Court's opinion filed June 30, 2014, the Respondent respectfully refers the Court for relevant factual background to the Statement of Facts set forth in the Final Brief of the Respondent filed July 10, 2013.

III. LEGAL ARGUMENT

A. The Court Properly Applied Controlling Precedent in Holding Smith's Due Process Rights Were Not Violated.

The Court's holding in this appeal that the Horry County Schools Board of Education's (Board) decision to terminate Smith's employment did not violate her due process rights relies on established precedent: "The improper admission of hearsay is reversible error only when the admission causes prejudice; [however, w]here the hearsay is merely cumulative to other evidence, its admission is harmless." *Jackson v. Speed*, 326 S.C. 289, 305, 486 S.E.2d 750, 758 (1997); citing: *State v. Craig*, 267 S.C. 262, 227 S.E.2d 306 (1976); *Marsh v. Plywood Corp. v. S.C. Highway Dept.*, 258 S.C. 119, 187 S.E.2d 515 (1972); *State v. Williams*, 285 S.C. 544, 331 S.E.2d 354 (Ct. App. 1985). Although Smith's petition for rehearing seeks to distinguish *Jackson v. Speed* on the facts, the underlying principle and facts of this case remain. At bottom, Smith suffered no prejudice from the admission of any improper hearsay, and any such hearsay evidence was merely cumulative of the direct testimony of three school principals who supervised Smith, as well as two parents and two co-teachers who worked with Smith. All of these witnesses testified at the hearing based on their personal and direct observations and dealings with Smith. Their testimony fully supports the facts outlined in the Superintendent's recommendation of dismissal showing both her unfitness to teach and job deficiencies, which Smith failed to rectify over a six-year period. (R. pp. 231-34.) Accordingly, Smith's right to due process was not violated by the admission of any hearsay evidence, and the Court properly applied the controlling legal precedent stated in *Jackson v. Speed*.

**B. The Court Properly Applied the Law in Finding Smith
Received Proper Notice of the Grounds For Her
Termination.**

Smith's employment was terminated both for "evident unfitness for teaching" under § 59-25-430 and for performance deficiencies other than "evident unfitness" under § 59-25-440. With regard to § 59-25-430, the statute requires notice of the recommendation of termination and an opportunity to be heard prior to dismissal. Here, the Superintendent's recommendation of dismissal set forth the grounds for dismissal. Smith had a full opportunity to conduct discovery regarding the grounds for dismissal, including document production and depositions.

Smith had clear notice of the grounds for her dismissal. If anything, Smith's argument in her petition for rehearing is that the notice of the grounds against her did not notify her of the identity of parents or students who had complained about her. However, this specific information was made available to her during the discovery period. (R. p. 86.)

With regard to § 59-25-440, the statute requires a teacher to be given notice of such deficiencies and an opportunity to improve. Three principals who supervised Smith over a period of six years testified at the hearing concerning the meetings and communications they held with Smith advising her of serious teaching and teaching-related deficiencies. At least as far back as the 2006-2007 school year, serious concerns with Smith's teaching were noted and addressed with her by her supervising principals. These serious concerns included the nature of Smith's instructional interactions with both students and parents, hostility towards the administration, unsatisfactory teaching quality, and harsh classroom atmosphere. Smith was twice offered an assistance plan, but both times refused them.

In light of these consistent facts and concerns over a period of several

years, schools, and administrators, it is clear that Smith was fully and fairly notified of deficiencies in her performance. Likewise, Smith had ample opportunity to improve her performance over the years, but simply failed or refused to do so. Smith was, therefore, afforded notice of her performance deficiencies and an opportunity to improve, including opportunities for assistance plans, but she did not take advantage of these opportunities. The District fully complied with any obligations it had with respect to § 59-25-440 to provide Smith notice and an opportunity to improve.

In short, 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 (R. pp. 246-48, 314-20 (Compl. Exs. 10, 26)); (2) created a hostile and threatening classroom environment that has caused students undue fear, embarrassment, and anxiety (R. pp. 251-66, 270-73, 274-78, 289-300, 314-20 (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. 267-69, 314-20 (Compl. Exs. 17, 26)). These performance concerns were all identified in the Superintendent's recommendation of termination and are well recognized grounds for termination.

Consequently, the Court properly applied the requirements of § 59-25-430 and § 59-25-440 in finding that Smith received proper notice of the grounds for her dismissal.

**C. The Court Properly Applied the Substantial Evidence
Standard of Review in Affirming Smith's Dismissal.**

As noted in *Shell v. Richland School District One*, 362 S.C. 408, 608 S.E. 2d 428 (2005), the Court's review of a teacher's dismissal is governed by the grounds stated in the order terminating employment. In this case, unlike *Shell*, the Court did not cherry-pick the record or uphold the Board's decision on grounds or evidence not cited in

the Superintendent's recommendation of dismissal that was affirmed by the Board's order. Rather, the Court properly reviewed the record as whole and correctly determined that it contained substantial admissible evidence to support the factual and legal findings as found by the Board and stated in detail in the Superintendent's recommendation of dismissal. The Court, therefore, properly applied the substantial evidence standard of review.

D. The Court Properly Applied the Law in Concluding the Board Identified Supporting Facts and Legal Conclusions in Its Order:

Smith essentially alleges the Board's written decision of March 29, 2011 (R. p. 2) does not comply with the standard for decisions of administrative bodies, because 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). However, the Board's decision does comply with the express requirements of the Teacher Employment and Dismissal Act, § 59-25-470, respecting the form of the Board's decision to either affirm or withdraw the Superintendent's notice of suspension and dismissal, and in doing so it is consistent with § 59-25-470. Moreover, the Superintendent's notice of dismissal dated January 5, 2011, affirmed by the Board's decision, sufficiently details and sets forth the relevant findings of fact and conclusions of law. (R. pp. 231-34.)

Section 59-25-470 sets forth the "mode of procedure" to be followed by school boards and administrators in teacher employment termination, including the following:

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, 307-308, 725 S.E.2d 107, 109 (2012). The Board issued on March 29, 2011 its decision letter stating that it affirmed the recommendation of the Superintendent to terminate Smith's employment. The Board, therefore, affirmed the Superintendent's notice of suspension and dismissal, consistent with the Teacher Employment and Dismissal 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 a reviewing court to determine whether the findings are supported by the evidence presented at the hearing before the Board, and whether the Teacher Employment and Dismissal Act has been applied properly to those findings. Here, the Court properly determined substantial evidence in the record supports the facts and findings affirmed by the Board and the Circuit Court.

IV. CONCLUSION

For the foregoing reasons, the Respondent respectfully asks the Court to deny Smith's petition for rehearing.

Respectfully submitted,

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July 24, 2014

Columbia, South Carolina

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APPEAL FROM COUNTY
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Honorable Benjamin H. Culbertson, Circuit Court Judge

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JACQUELINE SMITH.....Appellant(s)

v.

HORRY COUNTY SCHOOLS.....Respondent.


CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served Respondent's Memorandum in Response to Petition for Rehearing by depositing a copy of same in the United States mail, postage prepaid and addressed as follows:

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July 24, 2014

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The South Carolina Court of Appeals

Jacqueline Smith, Appellant,


v.


Horry County Schools, Respondent.

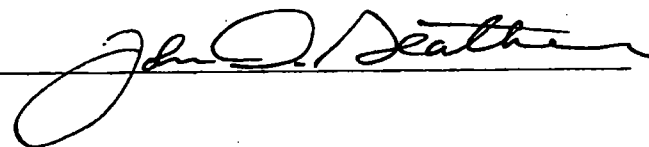
Appellate Case No. 2012-213509

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


_____ J.


_____ J.


_____ J.

Columbia, South Carolina

cc:

W. Allen Nickles, III, Esquire
Susan Marie Fittipaldi, Esquire
Vernie L. Williams, Esquire
Kathryn Long Mahoney, Esquire

John Marshall Reagle, Esquire

FILED

August 27, 2014