

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Dorothy Fields-Lary,)
)
Appellant,)
)
v.)
)
Charleston County School District,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS

Case No.: 2014-CP-10-1480

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ORDER

SC Court of Appeals

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JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

PROCEDURAL BACKGROUND

By order dated February 5, 2014, the Charleston County School District Board of Trustees ("the Board") formally notified Appellant Dorothy Fields-Lary of its decision to not renew her employment as a continuing-contract teacher with the Charleston County School District ("CCSD" or "District"). On March 5, 2014, Ms. Fields-Lary timely filed her Notice of Appeal with this court; Respondent CCSD filed an Answer and Return dated March 24, 2014. The parties each filed memoranda and appeared for oral argument on September 15, 2014. Having considered the positions advanced by the parties, for the following reasons, the decision not to renew Ms. Fields-Lary's continuing contract of employment is reversed.


STATEMENT OF THE CASE

Dorothy Fields-Lary was employed as a seventh grade resource teacher at Burke Middle High School during the 2012-2013 school year under a continuing-contract. She has taught for 29 years in CCSD. By letter dated April 3, 2012, the District's Associate Superintendent of Secondary Schools advised Ms. Fields-Lary that her principal had recommended non-renewal for the 2012-2013 school year due to "deficiencies in your performance." The letter indicated that if employment continued, she would be on formal evaluation during 2012-2013. This letter did not

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identify any specific performance concerns. In August of 2012, Ms. Fields-Lary was offered a contract for the 2012-2013 school year. She was placed on formal evaluation under an experimental process that was being "beta tested" in certain schools. This experiment, called "TOPS," was used by CCSD for the 2012-2013 school year only. Following that year, the evaluation was changed based on data from schools that participated in the "beta test." For 2013-2014, the experimental model became "enhanced ADEPT" and was piloted in more schools across the state.

During 2012-2013, Ms. Fields-Lary's three-person evaluation team conducted two observations in each semester. Under the experimental TOPS instrument, she was judged on 17 total "key indicators" APS 1A-D, APS 2A-C, APS 3A-C, APS 4A-C and APS 5A-D. For each of these indicators, Ms. Fields-Lary could be found unsatisfactory (0 points), needs improvement (1 point), proficient (2 points) or exemplary (3 points). The scores from indicators were added to determine "Met" or "Not Met."



Ms. Fields-Lary received a Professional Growth and Development Plan ("PGDP") on October 9, 2012, identifying four indicators as needing improvement: APS 2B, 3B, 3C and 5C. This is the first written notice identifying areas perceived to be deficient. On January 8, 2013, she met with an evaluation team member to discuss the team's preliminary findings. During this meeting, she learned that the team found her "Not Met" in APS 1-5 and "unsatisfactory" in all 17 subsections. As a result, she was expected to improve in 13 areas not previously identified. The only meeting held to develop an improvement plan occurred on January 23, 2013.


On March 25, 2013, Ms. Fields-Lary received an overall evaluation judgment of "Not Met." By letter dated April 11, 2013, the District's Associate Superintendent informed Ms.

Fields-Lary that her contract would not be renewed for 2013-2014 because she “did not complete the requirements of [the formal evaluation] to a satisfactory level.”

On April 25, 2013, Ms. Fields-Lary timely appealed the recommendation of non-renewal. By statute, this entitled Ms. Fields-Lary to a hearing not later than May 13, 2013. She did not grant an extension of time to hold the hearing. Nevertheless, the Board convened Ms. Field-Lary’s hearing on February 3, 2014, more than eight months after the statutory hearing deadline.

At the outset and conclusion of the hearing, counsel for Ms. Fields-Lary asserted that the Board had not provided the timely hearing required by statute. Counsel also argued that the evaluation identified as the only basis for non-renewal was inherently flawed. At the conclusion of the hearing, the Board accepted the recommendation of non-renewal by a vote of 4-1. The Board issued a written decision on February 5, 2014.

STANDARD OF REVIEW



On appeal from a termination of a continuing-contract to teach, the circuit court 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) 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). Additionally, the circuit court has the authority to reverse an agency decision “made upon unlawful procedure” or in excess of “statutory authority.” S.C. Code Ann. § 1-23-380(6), cited in Adamson v. Richland County School District One, 332 S.C. 121, 128, 503 S.E. 2d 752, 755-56 (Ct. App. 1998)

The relevant statute in this case is the Teacher Employment and Dismissal Act (“TEDA”), S.C. Code Ann. § 59-25-410 et seq. Sections 59-25-460 and 470 of the Act require that a continuing contract teacher be provided substantive and procedural due process within the

specifically delineated time frames. On appeal, the court 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 governed by the substantial evidence doctrine. 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); Lark v. Bi-Lo, 276 S.C. 130, 276 S.E.2d

304 (1981)

GOVERNING LAW

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 through 59-25-860. These statutes provide continuing contract teachers certain specific rights, including:

1. Written notice of reasons for dismissal from the School Board (§ 59-25-460);
2. The right to a hearing. (§ 59-25-460); and
3. Procedural due process, including the right to be heard within 15 days (§ 59-25-470).

Despite the clear language of the State Constitution and TEDA, the Board did not honor Ms. Fields-Lary's right to a timely hearing. Additionally, the Board failed to recognize the invalidity of her evaluation.

Because this appeal is governed by 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. Brown-Venning 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 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, 611 (emphasis added) Only two years ago, our Supreme Court reversed a decision of the CCSD Board for violating teacher hearing rights provided in TEDA. Young v. Charleston County School District, 397 S.C. 303, 725 S.E.2d 107 (2012)

CONCLUSIONS OF LAW

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

Ms. Fields-Lary had the statutory right to a hearing within 15 days of her request. The General Assembly recognized the importance of a quick hearing and included this 15-day requirement so that teachers not offered a contract for the next year have ample time to secure employment prior to the commencement of a new school year. The significance of this time frame for giving teachers notice of non-renewal is reflected in § 59-25-410 which requires school boards to notify teachers on or before April 15th of each year concerning their employment for the upcoming school year. Significantly, this statute provides that if a board fails

to notify a teacher of his or her employment status for the ensuing school year, the teacher “shall be deemed to be reemployed.”

Ms. Fields-Lary never extended the 15-day time for the hearing. Nevertheless, her hearing was convened on February 3, 2014, eight months after the deadline. This significantly prejudiced Ms. Fields-Lary because teaching jobs are ordinarily filled in July or August prior to the beginning of the school year. By the time Ms. Fields-Lary received the Board’s decision in February, the 2013-2014 school year was more than half complete. The Board’s failure to provide a timely hearing severely compromised her ability to obtain employment in another school district or educational setting for the 2013-2014 school year.

The District has argued that the lateness of the hearing was “harmless.” To suggest that Ms. Field-Lary was required to seek and accept other employment due to the Board’s delay would lead to the absurd result of rewarding districts for violating statutory rights. Additionally, this argument 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 the Court of Appeals in Brown. The Board’s failure to meet the statutory requirements renders its decision *per se* invalid. Young, supra.

The South Carolina Supreme Court and Court of Appeals have both ruled that failure to comply with mandatory hearing deadlines deprives an agency of jurisdiction. South Carolina Dep’t. of Highways and Pub. Transp. v. Dickinson, 288 S.C. 189, 341 S.E.2d 134 (1986) and Starnes v. South Carolina Dep’t of Pub. Safety, 242 S.C. 216, 535 S.E.2d 665 (Ct. App. 2000) (holding failure to conduct a timely hearing deprived the DOT of jurisdiction). These decisions, in addition to the Brown holding that provisions of TEDA are mandatory, establish that when a statute uses mandatory language to impose a hearing deadline, failure to conduct the hearing

within the period provided renders any adverse action invalid. Dickinson at 191, 135; Starnes at 221, 667. These decisions also reject arguments raised by the District that deadlines are “directory” rather than mandatory. The plain language of Section 59-25-470 stating that “[t]he hearing shall be held by the board not less than 10 nor more than 15 days after the request is served” is mandatory, and the failure to provide Ms. Fileds-Lary a timely hearing requires her reinstatement. Shell v. Richland County School District One, 362 S.C. 408, 608 S.E.2d 428 (2005) (reversal of termination for failure to comply with TEDA requirements entitles the teacher to return to employment with back pay and reinstatement of benefits)

It is a well-established legal principle that where the terms of a statute are clear, courts 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) The plain language of Section 470 states that “[t]he hearing [of a teacher appeal] shall be held by the board not less than ten nor more than fifteen days after the request is served.” (Emphasis added). Regardless of the wisdom or folly of this mandate, this Court is barred from imposing another meaning to this provision. Hodges v. Rainey, 341 S.C. 79, 85, 454 S.E.2d 578, 582 (2000) This conclusion also conforms to controlling law affirming the mandatory nature of the requirements of TEDA. For example, in 2010, the Court of Appeals held that the language of TEDA is unambiguous and “the observance of the **procedural requirements** of the Employment and Dismissal Act is **mandatory** and not a matter of discretion.” Brown v. James, 389 S.C. 14, 697 S.E.2d 604, 611 (Ct. App. 2010) (Emphasis added) Because there is controlling precedent affirming the mandatory nature of TEDA provisions, this Court is compelled to reverse the order terminating Ms. Field-Lary’s employment and to order reinstatement of her continuing contract with the District.

II. Ms. Fields-Lary's non-renewal was unlawful because the District violated the requirements of S.C. Code Ann. §59-25-440.

S.C. Code Ann. § 59-25-440 mandates that whenever a supervisor finds it necessary to admonish a teacher for a reason that could be cited as a reason for dismissal, the supervisor must: "(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) ... allow reasonable time for improvement." Additionally, 2 S.C. Reg. 43-205.1(V)(B) requires that continuing contract teachers who are recommended for formal evaluation for the upcoming school year be "notified in writing on or **before the date the school district issues the written offer of employment.** The written notification must include the reason(s) that a formal evaluation is recommended, as well as a description of the formal evaluation process." (Emphasis added)

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Instead of notifying her of the evaluation model and description of the reason(s) for that evaluation, the District merely informed Ms. Fields-Lary that her principal had identified "deficiencies in your performance" supporting non-renewal. The letter further states that if her employment is continued, she will be on "formal evaluation for the 2012-2013 school year." This letter does not indicate that the evaluation model will be an untested experiment. Additionally, Ms. Fields-Lary received no timely notice of the areas in which she was perceived to have deficiencies. The first indication of areas to be addressed was provided on October 9, 2012. The evaluation team later indicated that she did not meet any of the 17 APS areas. This was presented during a conference on January 23, 2013.

During the January 2013 conference, Ms. Fields-Lary first learned that the evaluation team found that her deficient in the **4 APS areas identified in the PGDP** (issued in October

2012, six months after the April 2012 required notice) and added **13 new areas for improvement**. Evaluation plans must be approved by the Department of Education. The District's plan required teachers to be provided a written summary of preliminary evaluation results before the winter break. This deadline expired on December 14, 2012. Ms. Fields-Lary's conference was held on January 23, 2013.


School districts must provide continuing contract teachers written notice not later than the statutory contract date of April 15th if they are to be formally evaluated in the upcoming school year. The written notification must include the reason(s) that a formal evaluation is recommended. S.C. Reg. 43-205.1(V)(B) This provision gives the teacher months to prepare and receive assistance on designated items before an assessment is performed on those matters. Fundamental fairness requires sufficient opportunity to address any additional or newly identified concerns for the final period of review. Because the District did not provide Ms. Fields-Lary sufficient notice of her deficiencies or a "reasonable time for improvement" as required by law, her non-renewal cannot be sustained under § 59-25-440.

III. There is not substantial evidence to support non-renewal.

The only basis asserted by the District for recommending non-renewal was Ms. Fields-Lary's formal evaluation. As addressed above, that evaluation was affected by substantive deficiencies. First, Ms. Fields-Lary was not given the required written notice of the reasons for being placed on formal evaluation. Second, she was denied sufficient time for improvement. Third, the experimental evaluation model was not formally approved for use in employment decisions. Rather, it was the first phase, or "beta test," of a three year project testing new evaluation concepts. The Educator Evaluation and Support Guidelines issued by the Department of Education state that contract renewal decisions for experienced educators should be based on

multiple years of data and not data from only the most recent year. Fourth, the deadline to provide preliminary evaluation results and feedback to teachers was December 14, 2012. Ms. Fields-Lary's evaluation team first provided feedback on January 23, 2013. As a result, the final evaluation period did not provide adequate time to address identified deficiencies. Because the evaluation team did not observe deadlines required by the State Department of Education there is not substantial evidence to sustain the recommended non-renewal of Ms. Fields-Lary's employment.

IV. Ms. Fields-Lary's termination was unlawful because it was in violation of the District's own policies.

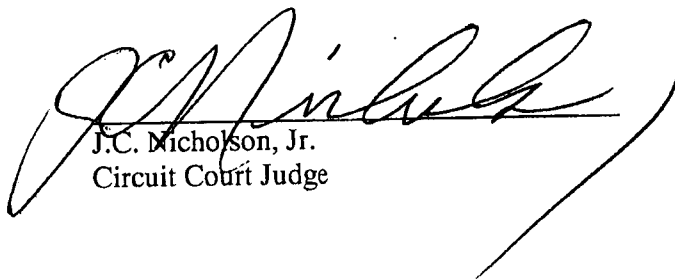
 An administrative agency must follow its own rules promulgated by it. Hogsed v. Lancaster Area Schools Board of Trustees, 283 S.C 42, 320 S.E.2d 724, 727 (S.C. App. 1984), holds that policies adopted by a school board are contractual and binding upon the school district as well as employees. As the South 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.

The District violated its own policies in recommending Ms. Fields-Lary's non-renewal. First, District policy GCQF requires compliance with TEDA and specifically cites that the hearing is available to the teacher within 15 calendar days of receipt of the notice of dismissal. Second, District policy GCOA "Teacher Evaluation" requires that personnel be evaluated "fairly." The failure to provide timely notice of perceived deficiencies or an adequate opportunity to address identified concerns renders the process provided to Ms. Fields-Lary "unfair" and in violation of District policy as well as the State's constitution, laws and regulations.

ORDER

For all the reasons stated above, the decision of non-renewal issued by the Charleston County School District Board of Trustees dated February 5, 2014 is hereby reversed. This reversal is required by violations of mandatory deadlines established in controlling law and regulation.¹ In addition to these violations, the District did not provide Ms. Fields-Lary notice of "evident unfitness" under § 59-25-430 and the record does not establish unfitness to teach. Accordingly, Ms. Fields-Lary is hereby reinstated to employment under a continuing contract and shall be entitled to back pay with benefits, less any appropriate mitigation, from the date of her discharge through the date of reinstatement.

IT IS SO ORDERED.


J.C. Nicholson, Jr.
Circuit Court Judge

October 21, 2014
Charleston, South Carolina

¹ The express language of TEDA and controlling authority make clear that the procedures contained in TEDA are mandatory and not merely directory. While the deadline for providing a hearing contained in Section 470 appears to be unnecessarily short and to create scheduling problems, this Court has no authority to rule on the "wisdom or folly" of this statutory provision. Nevertheless, this case and others presented to this Court strongly suggest that it may be appropriate for the General Assembly to reconsider the necessity of the fifteen day deadline for scheduling and holding teacher hearings.