

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
Shana Washington-Middleton, )  
 )  
Appellant, )  
 )  
v. )  
 )  
Charleston County School District, )  
 )  
Respondent. )

IN THE COURT OF COMMON P

**RECEIVED**

Case No.: 2013-CP-10-7094


NOV 06 2014

**SC Court of Appeals**

**REVISED ORDER**

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2014 OCT 22 PM 2:32  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_


**PROCEDURAL BACKGROUND**

 By order dated November 8, 2013, the Charleston County School District Board of Trustees ("Board") formally notified Shana Washington-Middleton of its decision to not renew her employment as a continuing-contract teacher with the Charleston County School District ("CCSD" or "District"). On December 5, 2013, Ms. Washington-Middleton timely filed her Notice of Appeal with this court. CCSD filed an Answer and Return dated December 31, 2013. The parties appeared for oral argument on July 15, 2014. Having considered the arguments presented and briefs filed by both parties, on August 13, 2014, this Court issued an order reversing the Board's decision. In response to this Order, on August 28, 2014 the District filed a Motion to Alter or Amend. On September 15, 2014, this Court heard argument on the District's motion. For the following reasons, the order issued on August 13, 2014 and filed on August 24, 2014 is hereby withdrawn and this revised order entered.

**STATEMENT OF THE CASE**

Ms. Washington-Middleton was employed as a second grade teacher during the 2012-2013 school year under a continuing contract with CCSD. She was assigned to Minnie Hughes Elementary School for 13 years prior to the 2012-2013 school year, teaching kindergarten


through third grade over the course of her career. On April 5, 2012, Ms. Washington-Middleton received a letter from her principal placing her on formal evaluation for the upcoming 2012-2013 school year. The principal's letter identified three specific areas of performance concern: APS 8- Maintaining an Environment that Promotes Learning; APS 9 – Managing the Classroom; APS 10 – Fulfilling Professional Responsibilities. The principal stated that “[y]our failure to address **these concerns** could jeopardize your continued employment with Charleston County School District.” (emphasis added) Ms. Washington-Middleton was formally evaluated during the 2012-2013 school year under “SAFE-T” by a three-person team. Under the SAFE-T instrument, teachers are judged “Met” or “Not Met” in 10 areas (APS 1-APS 10).



On September 18, 2012, Ms. Washington-Middleton was given a professional growth and development plan indicating that she needed to address APS 8, 9 and 10 consistent with the evaluation notice from April 2012. New APS areas 4 and 5 were added without prior notice. During the fall 2012 preliminary period, the evaluation team judged Ms. Washington-Middleton as “Met” for APS 8, APS 9, and APS 10, the only areas identified as reasons for placing her on formal evaluation. However, the evaluation team scored her as “Not Met” in other APS areas resulting in an overall “Not Met” for the preliminary evaluation period. On January 9, 2013, the principal provided Ms. Washington-Middleton a new professional growth and development plan containing two more new areas: APS 6 and APS 7.

On March 20, 2013, the evaluation team issued an overall judgment of “Not Met” for the final review period. By letter dated April 15, 2013, the District's associate superintendent informed Ms. Washington-Middleton that her contract would not be renewed because she “did not complete the requirements of [the formal evaluation] process to a satisfactory level and subsequently failed the evaluation.”

By letter dated April 29, 2013, Ms. Washington-Middleton's attorney timely requested an appeal of the non-renewal recommendation, demanding a hearing under S.C. Code Ann. §59-25-470. This statute requires a hearing to be held not later than fifteen days after the request is served. By letter dated April 30, 2013, general counsel for CCSD acknowledged receipt of the hearing demand and requested that Ms. Washington-Middleton waive her right to a hearing within the required 15 days. Counsel for Ms. Washington-Middleton agreed to continue the hearing deadline to a date **not later than June 15, 2013**, unless by further agreement. Despite this deadline and without any extension, the Board convened Ms. Washington-Middleton's hearing on October 30, 2013.

 At the outset and conclusion of the hearing, counsel for Ms. Washington-Middleton 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 could not support separation of employment. At the conclusion of the hearing, the Board accepted the recommendation of non-renewal by a vote of 3-2. The Board issued a written order on November 8, 2013.

#### **STANDARD OF REVIEW**

On appeal from termination of a continuing-contract to teach, this 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) A decision affected by an error of law, arbitrary or capricious is subject to reversal. S.C. Code Ann. § 1-23-380(5)(d), (f). Additionally, a decision "made upon unlawful procedure" or in excess of "statutory authority" may be reversed. See, 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. In sections 59-25-460 and 470, the Act requires that a continuing contract teacher be provided substantive and procedural due process within specifically delineated time frames. On appeal, the court has 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 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. The Constitution also 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 section further provides that no person shall be deprived of liberty or property “unless by a mode of procedure prescribed by the General Assembly.” Id.

TEDA establishes the mode of procedure to be used in the dismissal of public school teachers. For example, TEDA statutes guarantee continuing contract teachers such as Ms. Washington-Middleton specific hearing 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).


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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. Washington-Middleton was denied 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 (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.” *Id.* at 330, 868.

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. Washington-Middleton due process as required by the South Carolina Constitution and S.C. Code Ann. § 59-25-470.**

Ms. Washington-Middleton had the statutory right to a hearing within 15 days of her request. The significance of this time frame for giving teachers a hearing is reflected in §59-25-410 that requires school boards to notify teachers on or before April 15<sup>th</sup> of each year concerning their employment for the upcoming school year. 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” for the ensuing school year.

Ms. Washington-Middleton agreed to waive the 15 day time for the hearing on the express condition that the hearing be conducted no later than June 15, 2013. She provided no further extension. Nevertheless, her hearing was held on October 30, 2013, more than four months after the deadline. By the time Ms. Washington-Middleton received the Board’s decision in November, the 2013-2014 school year was well underway.

The District has argued that the lateness of the hearing was “harmless.” This argument ignores the reality of Ms. Washington-Middleton’s status as a teacher in limbo, awaiting exercise of her statutory right to be heard prior to termination. To suggest that Ms. Washington-Middleton 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 v. Charleston County School District, 397 S.C. 303, 725 S.E.2d 107 (2012) (statutory violations alone support reversal of a teacher termination)



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 not more than fifteen days after the request is served.” (Emphasis added). Regardless of the wisdom or folly of this mandate, the 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) The Court’s conclusion 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 decision terminating Ms. Washington-Middleton's employment and order reinstatement of her continuing contract with the District.

**II. Ms. Washington-Middleton'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 for 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, 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)

Ms. Washington-Middleton's principal provided the required written notice of perceived deficiencies in a letter dated April 5, 2012. The principal's letter identified only performance areas APS 8- Maintaining an Environment that Promotes Learning; APS 9- Managing the Classroom; and APS 10- Fulfilling Professional Responsibilities. The letter states that evaluators "will monitor your performance to determine whether necessary improvements are made during the process. You failure to address **these concerns** could jeopardize your continued employment..." (Emphasis added) During the fall 2012 preliminary review period the evaluation team concluded that Ms. Washington-Middleton "Met" the requirements for APS 8, APS 9 and APS 10. The team's conclusions were presented to Ms. Washington-Middleton at a conference

in December. This is the first time she was given any feedback from the evaluators regarding her teaching performance. There is no factual dispute that Ms. Washington-Middleton **met performance standards** in the areas that the principal identified in the required written notice of April 5, 2012.

Although Ms. Washington-Middleton successfully addressed the areas of concern identified in the principal's notice letter, the evaluation team found that she did not meet APS 4 and APS 5 (added by the principal in September 2012, five months after the required notice) and added two more new areas – APS 6 and 7. These new areas for improvement were identified for the first time at the December 18, 2012, preliminary evaluation conference, immediately before the Christmas break. A professional growth and development plan was issued on January 9, 2013, to be satisfied not later than the March 18, 2013, final evaluation conference.

The time provided for Ms. Washington-Middleton to address areas identified **after** the contract date deadline established by regulation was not reasonable. For example, her formal observations were conducted on January 14, 23 and 31; February 5, 13 and 26; and March 7, 2013. The first observation was only five days after issuance of the improvement plan. The majority were conducted within thirty days. This short period cannot rise to the level of "reasonable time for improvement."

The State Board of Education requires all school districts to provide teachers written notice not later than the statutory contract date of April 15<sup>th</sup> if they are to be formally evaluated in the upcoming school year. This provision gives the teacher months to prepare and receive assistance on designated items before an assessment is performed on those matters. S.C. Reg. 43-205.1(V)(B) Ms. Washington -Middleton had months to prepare and receive assistance in the areas noted for concern – APS 8, 9, and 10 - and was successful on each. Fundamental fairness

required at least a similar opportunity to address any additional or newly identified concerns. Because the District did not provide Ms. Washington-Middleton a “reasonable time for improvement” as required by law her non-renewal cannot be sustained under § 59-25-440.

**III. Ms. Washington-Middleton’s termination was unlawful because it was in violation of the District’s own policies.**

An administrative agency must follow its own rules. 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 district as well as its employees. As our Supreme Court stated 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. See, United States v. Heffner, 420 F.2d 809, 811-12 (4<sup>th</sup> 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 its own policy that provides a deadline for holding dismissal hearings. The District’s 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. The District may not violate or circumvent policy to the prejudice of its employees. Such a violation constitutes breach of contract and, in this case, a deprivation of due process.

**IV. There is not substantial evidence to support non-renewal.**

The only basis asserted for recommending non-renewal was the result of a formal evaluation. Because of deficiencies in providing timely notice and opportunity to improve outlined above, the decision to non-renew Ms. Washington-Middleton is not supported by substantial evidence.

At oral argument, the District asserted that Ms. Washington-Middleton's non-renewal was not caused by failure to remediate identified deficiencies required by S.C. Code Ann. § 59-25-440. Instead, the District argued that Ms. Washington-Middleton was discharged based upon the "evident unfitness" provisions of S.C. Code Ann. § 59-25-430. As observed by our Court of Appeals, while this statute contemplates evident unfitness to encompass a broad variety of deficiencies, the Act was also "intended to prevent abuse of a school board's power of termination." Hall v. Board of Trustees of Sumter School Dist. No. 2, 330 S.C. 402, 407, 499 S.E.2d 216, 219 (Ct. App. 1998). Here, as in Hall, there is insufficient evidence to justify Ms. Washington-Middleton's separation from employment based upon "evident unfitness."<sup>1</sup>

In addition to the evidentiary deficiency, the notice of non-renewal provided to Ms. Washington-Middleton makes no mention of "evident unfitness" or Section 59-25-430. Instead, the notice letter identifies failure to complete the 2012-2013 formal evaluation "to a satisfactory level." This letter does not offer notice of alleged evident unfitness as required by law. Similarly, the Board's order makes no reference to "evident unfitness" or the corresponding statute. For these reasons, this Court may not entertain the District's argument under Section 59-25-430. See, Curtis Shell v. Richland School District One, 362 S.C. 408, 411, 608 S.E.2d 428,

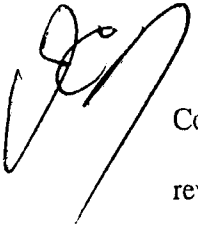
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<sup>1</sup> The Court notes that termination under § 59-25-430 may be upheld only when evidence of unfitness is "undeniably and abundantly present." Id. quoting Kizer v. Dorchester County Vocational Educ. Bd. of Trustees, 287 S.C. 545, 550, 340 S.E.2d 144, 147 (1986) The record here falls short of establishing unfitness to teach whether on a "substantial" or "undeniably and abundantly present" standard. To the contrary, the record establishes that Ms. Washington-Middleton improved her performance when afforded an adequate opportunity.

429 (2005) (a teacher's termination "must be confined to the grounds stated in the order terminating employment.")

Because the District failed to provide timely written notice of perceived deficiencies as required by law, and because the District failed to provide a reasonable time to address the perceived deficiencies once identified, there is not substantial evidence necessary to sustain the non-renewal of Ms. Washington-Middleton's employment with CCSD. This failure requires the reinstatement of Ms. Washington-Middleton's continuing contract of employment with CCSD.

**ORDER**

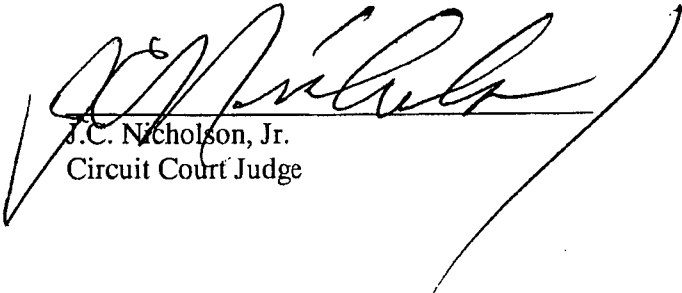


For all the reasons stated above, the order of non-renewal issued by the Charleston County School District Board of Trustees dated November 8, 2013 is hereby reversed. This reversal is required by violations of mandatory deadlines established in controlling law and regulation.<sup>2</sup> In addition to these violations, the District did not provide Ms. Washington-Middleton notice of "evident unfitness" under § 59-25-430 and the record does not establish unfitness to teach. Accordingly, Ms. Washington-Middleton 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.

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<sup>2</sup> 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.

IT IS SO ORDERED.



J.C. Nicholson, Jr.  
Circuit Court Judge

October 21, 2014  
Charleston, South Carolina