

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas**

**Marvin H. Dukes III, Master In Equity
And Special Circuit Court Judge**

C.A. No.: 2013-CP-07-03048

Appellate Case No. 2015-000407

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SC Court of Appeals

Phillip C. Shaw,Respondent,

v.

Jeffrey C. Moss, Ed.D.,Appellant.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- 1) Did the Circuit Court err by improperly applying the “substantial evidence” standard of review in such a manner that it issued an Order improperly reversing the decision of the Beaufort County School District Board of Education terminating the employment of Phillip Shaw?
- 2) Did the Circuit Court err in concluding that the Beaufort County School District Board of Education’s decision terminating the employment of Phillip Shaw was not supported by substantial evidence in the record?
- 3) Did the Circuit Court err by reversing the Beaufort County School District Board of Education’s decision to terminate the employment of Mr. Shaw and, in effect, substitute the Court’s judgment for that of the Board in a matter statutorily entrusted to the Board?
- 4) Did the Circuit Court err by issuing an Order containing multiple, serious factual and legal errors, demonstrating that the Circuit Court overlooked key evidence and did not properly apply the “substantial evidence” standard of review?
- 5) Did the Circuit Court err in denying Appellant’s motion for reconsideration when, based on the facts and the law, as well as the record evidence, substantial evidence existed in the record to support the decision to terminate Mr. Shaw’s employment and, moreover, the Circuit Court’s original Order contained significant errors needing to be corrected?

STATEMENT OF THE CASE

This is an employment case under the South Carolina Teacher Employment and Dismissal Act, S.C. Code Ann. §§ 59-25-410 through 59-25-530. Appellant, Jeffrey C. Moss, Ed.D., is the Superintendent of the Beaufort County School District (“District”).

Dr. Moss commenced this proceeding by recommending to the Beaufort County School District Board of Education ("Board") that the employment of Respondent, Phillip C. Shaw, be terminated. Dr. Moss set forth the grounds for his recommendation in a letter dated July 18, 2013, addressed to Mr. Shaw. (Complainant's Exh. 45 at R. pp. ____.)

Pursuant to the Teacher Employment and Dismissal Act, the Board convened an evidentiary hearing on Dr. Moss' recommendation on November 1, 2013, and continuing on November 4, 2013. At the hearing, all parties were represented by legal counsel. Dr. Moss was represented by Shirley M. Fawley and Vernie L. Williams with Childs & Halligan, P.A. Mr. Shaw was represented by Clifford Bush, III and Fatima Zeidan with The Law Office of Clifford Bush III, LLC. Finally, the Board was advised by its own independent legal counsel, David T. Duff. (Transcript pp. 1-4 at R. pp. ____.)

The evidentiary hearing lasted more than 12 hours. The hearing began with the administration presenting evidence in support of the recommendation of dismissal. The administration presented the testimony of 7 witnesses and 46 exhibits. Once the administration completed the presentation of its case, Mr. Shaw offered the testimony of 3 witnesses, plus 32 exhibits. (Transcript pp. 1-4 at R. pp. ____.) Interestingly, Mr. Shaw chose not to testify during the proceeding.

Following the hearing, the Board voted to uphold the recommendation of Dr. Moss and terminate Mr. Shaw's employment. (Transcript p. 455 at R. p. __.) Mr. Shaw was notified of the Board's decision, and the Board later issued a written Order on November 20, 2013. (Board Order at R. pp. ____.)

Thereafter, on December 4, 2013, Mr. Shaw appealed the decision of the Board to the Circuit Court. (Notice of Civil Appeal at R. pp. ____.) Subsequently, by an Order

entered on November 17, 2014, The Honorable Marvin H. Dukes, III, reversed the decision of the Board. (Order at R. pp. ____.) Dr. Moss filed a timely motion for reconsideration on December 3, 2014. (Motion for Reconsideration at R. p. ____.) On February 10, 2015, Judge Dukes denied Dr. Moss' motion for reconsideration. (Order at R. p. ____.) Dr. Moss timely filed a notice of appeal on February 25, 2015. For the reasons explained below, the Circuit Court erred by disregarding the "substantial evidence" in the record, by reversing the decision of the Board, by issuing an Order containing serious erroneous facts and conclusions, and by failing to grant Dr. Moss' motion for reconsideration.

FACTS

A. Initial Concerns Prior To 2012-13 School Year

The District employed Mr. Shaw as the principal of H.E. McCracken Middle School ("McCracken") from July 26, 2006 until his termination on November 5, 2013. During the 2012-13 school year, a series of events occurred that eventually led to Dr. Moss recommending Mr. Shaw's termination. Prior to those events in 2012-13, Dr. Valerie Truesdale served as the District Superintendent, and Dr. Jacqueline Rosswurm served as the Chief Administrative and Human Resources Services Officer. In addition, Alice Walton worked as the Director of Certified Personnel and Teacher Quality. All three of these individuals are experienced, well-respected school administrators who served South Carolina school districts for many years. Each of these individuals was aware of concerns with Mr. Shaw's performance. (Transcript p. 22, lines 18-25 at R. pp. ____, lines 18-25; p. 110, line 1 - p. 111, line 11 at R. p. ____, line 1 - p. ____, line 11.)

On more than one occasion before the 2012-13 school year began, Dr. Truesdale and Dr. Rosswurm met with Mr. Shaw to discuss those concerns. (Transcript p. 110, line 1 – p. 111, line 11 at R. p. __, line 1 – p. __, line 11.) By letter dated August 17, 2012, addressed to Mr. Shaw, Dr. Truesdale confirmed in writing a summary of those issues, setting out the following expectations:

- Mr. Shaw was to have a full staff meeting to set the vision for the coming school year and then was to share with Dr. Rosswurm the structure that was used and the outcomes of the meeting;
- Mr. Shaw was to ensure the structure and the responsibilities of his administrative and support personnel team were established to best meet the needs of the school and was to share with Dr. Rosswurm how that structure and workload had been established;
- Mr. Shaw was to be extremely visible in his school, visiting classrooms daily to ensure staff had what they needed to do their jobs;
- Mr. Shaw was to set expectations that teachers would stand at their doors, monitor hall behavior between classes, and, if needed, he would obtain assistance to provide training on discipline strategies;
- Mr. Shaw was to align the leadership team with a schedule of classroom observations and share that schedule with Dr. Rosswurm;
- Mr. Shaw was to keep a log of classroom visits and submit the log monthly to Dr. Rosswurm, beginning with a log of September visits due on October 1, 2012;
- Mr. Shaw was to assume responsibility for his own e-mails and correspondence immediately and to begin personally communicating decisions about school matters to District office leaders;
- Mr. Shaw was to build community by sharing with department leaders and the full staff an Academic Assessment and School Improvement Plan in a systematic, collegial manner;
- Mr. Shaw was to schedule School Improvement Council (“SIC”) meetings for the entire year and publish the dates in the next newsletter sent to families and, in addition, would not cancel SIC meetings once scheduled; and

- Mr. Shaw was to establish regular school office hours for parents and families who wished to come into the school for schedule changes, etc., and also publish those hours in weekly newsletters, on the website, on voice mail, etc.

(Complainant's Exh. 44 at R. pp. ____.)

As Dr. Rosswurm explained in Mr. Shaw's evidentiary hearing, she attended meetings with Dr. Truesdale and Mr. Shaw to discuss issues with his performance.

(Transcript p. 110, line 1 – p. 111, line 11 at R. p. __, line 1 – p. __, line 11.) In addition to the items enumerated above, they discussed Mr. Shaw often being behind closed doors with his secretary, Denise Gibbo, and that he had relocated Ms. Gibbo's office into his own office, so that they were sharing the same space. (Transcript p. 111, lines 6-9 at R. p. __, lines 6-9.) Dr. Truesdale also expressed concern about the extent of authority delegated to Ms. Gibbo and the apparent unfettered access granted to her with regard to Mr. Shaw's e-mail accounts. (Transcript p. 111, lines 9-11 at R. p. __, lines 9-11; Complainant's Exh. 44 at R. p. __.) They instructed Mr. Shaw to move Ms. Gibbo out of his office and into her own office, and also to stop giving her complete access to his e-mail accounts. (Complainant's Exh. 44 at R. p. __; Transcript p. 111, lines 6-11 at R. p. __, lines 6-11.) Another concern involved Mr. Shaw not being visible in the school and being off school campus excessively during regular school hours. (Complainant's Exh. 44 at R. p. __.)

Thus, as the 2012-13 school year began, the District had established clear expectations for Mr. Shaw's performance as the principal of H.E. McCracken Middle School, and had communicated those expectations to him.

B. November 2012 Developments

Things began to unravel for Mr. Shaw on November 6, 2012. On that date, Ms. Walton went to McCracken to speak with a teacher about some type of an issue the teacher had raised. (Transcript p. 20, line 22 – p. 21, line 6 at R. p. __, line 22 – p. __, line 6.) The teacher explained that she had been waiting to hear something from District administration, and it had been approximately two or three months, because Mr. Shaw had told the teacher that he was awaiting a response from District administration. (Transcript p. 21, lines 6-13 at R. p. __, lines 6-13.) According to Ms. Walton, Mr. Shaw had not turned the matter over to District administration, and she believed he inaccurately made it appear that the administration had “dropped the ball” on the matter. (Transcript p. 22, lines 2-11 at R. p. __, lines 2-11.) Because she was concerned, Ms. Walton went to discuss the situation with Mr. Shaw. Upon arriving at Mr. Shaw’s office, she found Ms. Gibbo present in his office with him. (Transcript p. 23, lines 1-7 at R. p. __, lines 1-7.) Suspecting that Mr. Shaw may not have addressed the concerns communicated to him previously, Ms. Walton reported the matter to Dr. Rosswurm, who had become the Acting Superintendent of the District on October 1, 2012. (Transcript p. 23, lines 8-16 at R. p. __, lines 8-16; p. 111, line 15 – p. 112, line 4 at R. p. __, line 15 – p. __, line 4.)

A leadership meeting was already on the calendar for the next morning, November 7, 2012, at the District Office. (Transcript p. 23, lines 19-20 at R. p. __, lines 19-20; p. 112, lines 4-7 at R. p. __, lines 4-7.) Dr. Rosswurm and Ms. Walton agreed that they would meet with Mr. Shaw to discuss these matters after the leadership meeting, which normally concluded around 11:00 or 11:30 a.m. (Transcript p. 24, lines 1-7 at R. p. __, lines 1-7.) They spoke with Mr. Shaw early that morning and advised him that

they wished to meet with him after the leadership meeting. (Transcript p. 24, lines 1-4 at R. p. __, lines 1-4; p. 112, lines 4-19 at R. p. __, lines 4-19.)

Once the leadership meeting concluded, Mr. Shaw met briefly with Ms. Walton, while Dr. Rosswurm attended to another matter. (Transcript p. 24, lines 8-25 at R. p. __, lines 8-25.) Because it was unclear how long Dr. Rosswurm would be, Ms. Walton told Mr. Shaw he could leave the District Office. (Transcript p. 24, line 21 – p. 25, line 3 at R. p. __, line 21 – p. __, line 3.) Within a couple of minutes, Dr. Rosswurm appeared for the meeting. (Transcript p. 25, lines 5-6 at R. p. __, lines 5-6.) They instructed Angie Lopatka, Personnel Specialist, to attempt to call Mr. Shaw on his cell phone to have him return to the District Office. She did so, and both Ms. Walton and Dr. Rosswurm overheard Ms. Lopatka speaking with Mr. Shaw. As they testified during the evidentiary hearing, Ms. Lopatka stated, “Mr. Shaw, this is Angie Lopatka. Alice and Jackie are ready to meet with you.” (Transcript p. 25, line 9 – p. 27, line 22 at R. p. __, line 9 – p. __, line 22; p. 112, line 23 – p. 113, line 8 at R. p. __, line 23 – p. __, line 8.) After Ms. Lopatka was off the phone, she stated that Mr. Shaw was still on Mink Point Boulevard, which is the road where the District Office is located, so he was going to turn around and come back to meet with them. (Transcript p. 27, line 23 – p. 28, line 3 at R. p. __, line 23 – p. __, line 3.) Dr. Rosswurm and Ms. Walton awaited his arrival, but he never showed up for the meeting. After waiting a reasonable amount of time, they asked Ms. Lopatka to call him again. On that call, the phone went directly into Mr. Shaw’s voice mail, and Ms. Lopatka left him a message stating that they were still waiting to meet with him. Nevertheless, he never showed up for the meeting. (Transcript p. 28, lines 4-10 at R. p. __, lines 4-10; p. 113, lines 9-21 at R. p. __, lines 9-21.)

Apparently Mr. Shaw did not immediately return to McCracken either. Some type of an incident occurred involving a student who needed to be transported by EMS, and Mr. Shaw was not present on campus when that occurred. (Complainant's Exh. 1 at R. p. __; Transcript p. 29, lines 20-25 at R. p. __, lines 20-25.)

Because they were unable to meet with Mr. Shaw on November 7, Dr. Rosswurm and Ms. Walton agreed to meet at McCracken at 7:45 a.m. the next morning, November 8, to discuss their concerns with Mr. Shaw, including his whereabouts on the prior afternoon and the issue of Ms. Gibbo working from his office. (Transcript p. 28, lines 15-23 at R. p. __, lines 15-23.) The next morning they met at the school and spoke with Mr. Shaw. (Transcript p. 113, line 22 – p. 114, line 5 at R. p. __, line 22 – p. __, line 5.) He stated that he had returned to the District Office the previous afternoon after receiving the phone call from Ms. Lopatka, but that he did not know who was asking him to return to the District Office. He claimed that it may have been another individual who was not present so he left. He eventually indicated that he went to get lunch, stopped to get gas, and went home to pick up some materials before returning to McCracken later that afternoon after school had been dismissed. (Transcript p. 28, line 18 – p. 33, line 16 at R. p. __, line 18 – p. __, line 16; p. 114, line 3 – p. 115, line 24 at R. p. __, line 3 – p. __, line 24; Complainant's Exh. 1 at R. pp. __.)

Dr. Rosswurm felt like they were not making progress during the conversation and that Mr. Shaw was being evasive. (Transcript p. 115, lines 8-24 at R. p. __, lines 8-24.) Because it appeared that the same concerns were continuing to occur, Dr. Rosswurm placed Mr. Shaw on administrative leave, with pay and benefits, to further investigate the matter. (Transcript p. 115, lines 22-24 at R. p. __, lines 22-24.) She contemplated that

the administrative leave would last no longer than a couple of days and that, after they had looked into those issues further, Mr. Shaw would be able to return to work.

(Transcript p. 115, line 25 – p. 116, line 8 at R. p. __, line 25 – p. __, line 8.)

Unbeknownst to Dr. Rosswurm, however, additional serious problems soon would be discovered.

By letter dated November 12, 2012, Ms. Walton confirmed with Mr. Shaw in writing that he had been placed on administrative leave while the issues involving his performance were investigated. (Complainant's Exh. 2 at R. p. __.) She also instructed him that he was not to return to McCracken for any reason or attend any school-related functions without prior permission, and that he should remain available by telephone during normal school/work hours to respond to questions related to the investigation. (Complainant's Exh. 2 at R. p. __.) She also strongly advised him not to have direct or indirect contact with any of his faculty or staff members, students, or parents while on administrative leave. (Complainant's Exh. 2 at R. p. __.)

As part of the investigation, Dr. Rosswurm wanted to secure Mr. Shaw's office to ensure that nothing was changed prior to the completion of the investigation. (Transcript p. 116, line 19 – p. 117, line 24 at R. p. __, line 19 – p. __, line 24.) On November 8, 2012, after placing Mr. Shaw on administrative leave, she asked an Assistant Principal, Joe Warfield, to fill in for Mr. Shaw for a few days while he was on leave, and also asked him to obtain all of the keys to Mr. Shaw's office. (Transcript p. 116, line 19 – p. 117, line 24 at R. p. __, line 19 – p. __, line 24.) Apparently Ms. Gibbo had already left for the day with her keys, so Dr. Rosswurm instructed the District maintenance department

to change the locks on Mr. Shaw's office and secure it, which was done. (Transcript p. 116, line 19 – p. 117, line 24 at R. p. __, line 19 – p. __, line 24.)

Later that evening on November 8, Dr. Rosswurm received multiple telephone calls regarding this matter. Phyllis White, Chief Operational Services Officer, called her stating that the maintenance department had reported that Ms. Gibbo was trying to get into Mr. Shaw's office. (Transcript p, 118, lines 2-9 at R. p. __, lines 2-9.) At approximately 9:30 p.m., Ms. Gibbo called Dr. Rosswurm stating that she wanted to get into Mr. Shaw's office. (Transcript p, 118, lines 10-25 at R. p. __, lines 10-25.) Ms. Gibbo indicated that her keys were in his office, which contradicted what Dr. Rosswurm had been told previously, and Ms. Gibbo also indicated medications were in Mr. Shaw's office. (Transcript p, 118, lines 10-25 at R. p. __, lines 10-25.) Dr. Rosswurm stated that she would be at the school the next morning and that she would allow Ms. Gibbo to access the office then. (Transcript p, 118, lines 10-25 at R. p. __, lines 10-25.) Ms. Gibbo stated that she would not be at the school because the whole situation was making her sick. (Transcript p, 118, lines 10-25 at R. p. __, lines 10-25.)

The next morning, November 9, 2012, Dr. Rosswurm and Ms. Walton again met at the school. After verifying that Mr. Shaw's office was secure and that the school appeared to be operating smoothly, they prepared to leave. Before departing, they were approached by a school data specialist, who asked to speak with them privately. She indicated that she would prefer to speak with them outside of the school building. They stepped outside, and the data specialist explained to them that she had received a strange telephone call the prior night from Ms. Gibbo, after 10:00 p.m. Ms. Gibbo apparently had asked the data specialist to try to get Mr. Warfield's keys when he was not looking

and unlock one of Mr. Shaw's office doors, leaving it open over the weekend so that she could get in to retrieve some things. One of the items Ms. Gibbo apparently wanted to retrieve was a lockbox. (Transcript p. 35, line 24 – p. 37, line 13 at R. p. __, line 24 – p. __, line 13; p. 119, line 1 – p. 122, line 7 at R. p. __, line 1 – p. __, line 7.)

Upon hearing this, Dr. Rosswurm and Ms. Walton returned to Mr. Shaw's office. They found a lockbox under Mr. Shaw's desk. It was locked and could not be opened. They found a key to the lockbox in Mr. Shaw's desk drawer. They opened the lockbox and saw papers and cash in the box. They closed it and summoned Chris Barrow, Coordinator of Protective Services. They turned the lockbox over to Mr. Barrow so that he could secure it and prepare an inventory of its contents. The lockbox contained approximately \$600 in cash and documents belonging to Mr. Shaw. (Transcript p. 37, line 12 – p. 38, line 21 at R. p. __, line 12 – p. __, line 21; p. 119, line 1 – p. 122, line 7 at R. p. __, line 1 – p. __, line 7.)

Thereafter, Ms. Walton received an e-mail from Barbara Williams, the McCracken bookkeeper, indicating that they had "money issues" at McCracken. (Transcript p. 40, lines 1-7 at R. p. __, lines 1-7.) Ms. Walton called Ms. Williams to discuss the matter. (Transcript p. 40, lines 8-14 at R. p. __, lines 8-14.) Ms. Williams indicated that the school had been conducting many fundraisers and that the money being raised was not given to her to be deposited in the bank as required by District policy. (Transcript p. 40, lines 8-14 at R. p. __, lines 8-14.) Ms. Walton notified Dr. Rosswurm of this concern as well. (Transcript p. 30, lines 16-17 at R. p. __, lines 16-17.) Ms. Walton interviewed McCracken personnel regarding the handling of school funds, which substantiated serious violations of District financial policies and protocols, and

reported the information to Dr. Rosswurm. (Transcript p. 41, lines 4 – p. 44, line 14 at R. p. __, line 4 – p. __, lines 14; Complainant’s Exh. 3 at R. pp. ____.) Based on the allegations of possible financial irregularities, Dr. Rosswurm instructed Ms. White to begin investigating the financial practices at the school. (Transcript p. 133, lines 4-8 at R. p. __, lines 4-8.)

C. Serious Violations Of Financial Protocols And Safeguards

Ms. White serves as the District’s Chief Operational Services Officer. She began working with the District in 2000 as the Accounting Manager, and was later promoted to Executive Director of Finance, then the Chief Financial Officer, and in 2007 she assumed the duties of Chief Operational Services Officer. She holds a Bachelor of Science degree in accounting and business administration, and is a South Carolina Certified Public Accountant. Her duties, among other things, include supervision of District finances. (Transcript p. 285, line 9 – p. 286, line 12 at R. p. __, line 9 – p. __, line 12.)

As directed, Ms. White investigated the financial practices at McCracken. By a Report dated December 21, 2012, Ms. White set forth the findings of her investigation. (Complainant’s Exh. 42 at R. pp. __.) As she explained, and as was substantiated by the testimony of other school personnel, multiple policy violations occurred at McCracken, including the following:

1. Cash receipts were being accepted and not receipted through the bookkeeper. Middle and High school teachers are not permitted to collect monies from students. All Middle/High school students must be receipted by the school bookkeeper.
2. Reimbursements for expenses were made from undeposited cash receipts. Under no circumstances should purchases be made or invoices paid from undeposited cash receipts.
3. Cash in excess of \$600 was kept in the school overnight. Under no circumstances shall funds totaling over \$25.00 be left in the school overnight.

4. Internal controls relating to cash receipts were violated.
5. Disbursements were made outside of the Concentration Account and Imprest Accounts.
6. Payments for goods and services were made in cash.
7. Documentation and authorization for reimbursements were non-existent.
8. Use of an unauthorized checking account for Student Activity purposes.
9. Fundraising by a school club was not recorded in compliance with Manual. All school-wide fundraising should be recorded in the proper account.
10. Gifts to teachers were provided using Student Activity Funds. The school, as a component of the Beaufort County School District, cannot give [gifts] to employees.

(Complainant's Exh. 42 at R. pp. __.)

Thus, Ms. White's investigation concluded that the District's established safeguards for handling funds had been disregarded in multiple ways. The investigation also confirmed that Mr. Shaw had been aware of, had participated in, and had actually directed those improper actions be taken. (Complainant's Exh. 42 at R. pp. __.) As noted in Ms. White's report, Mr. Shaw and his secretary, Ms. Gibbo, had instructed student council sponsors to by-pass the bookkeeper with regard to student council funds.

(Complainant's Exh. 42 at R. pp. __.)

Having served as the principal of McCracken since 2006, Mr. Shaw was fully aware of the District's financial policies regarding the required handling of school funds. He had attended periodic training sessions for administrators that covered financial policies. (Transcript p. 286, line 13 – p. 287, line 21 at R. p. __, line 13 – p. __, line 21; Complainant's Exhs. 37, 41 at R. pp. __.) He had been provided copies of District financial protocols. (Transcript p. 286, line 13 – p. 287, line 21 at R. p. __, line 13 – p. __, line 21; Complainant's Exhs. 37, 41 at R. pp. __.) Information regarding the

financial policies was on the District's website. (Transcript p. 288, lines 12-13 at R. p. ___, lines 12-13.) Moreover, at the beginning of each school year, until 2010-11, Ms. Williams, the McCracken bookkeeper, had instructed the teachers during the annual back-to-school orientation on the required financial protocols. (Transcript p. 195, line 14 – p. 197, line 8 at R. p. ___, line 14 – p. ___, line 8.) She also provided the teachers written information, stating that anything dealing with money had to go through her. (Complainant's Exh. 37 at R. pp. ___.) Mr. Shaw, however, beginning in 2010-11, directed Ms. Williams to stop participating in the annual teacher orientation meetings, indicating that he would handle the financial portion of the session himself. (Transcript p. 196, lines 1-4 at R. p. ___, lines 1-4.)

Ms. Williams also personally reported to Mr. Shaw on many occasions that the school was violating established District policies. (Transcript p. 198, line 3 – p. 200, line 22 at R. p. ___, line 3 – p. ___, line 22; p. 202, line 9 – p. 204, line 2 at R. p. ___, line 9 – p. ___, line 2; p. 205, lines 8-25 at R. p. ___, lines 8-25.) Notwithstanding all of this information, Mr. Shaw intentionally chose to continue the school's practice of violating the District's established financial protocols. (Transcript p. 198, line 3 – p. 200, line 22 at R. p. ___, line 3 – p. ___, line 22; p. 202, line 9 – p. 204, line 2 at R. p. ___, line 9 – p. ___, line 2; p. 205, lines 8-25 at R. p. ___, lines 8-25.) Based on the seriousness of these violations, Ms. White recommended the termination of Mr. Shaw's employment to Dr. Rosswurm. (Transcript p. 297, lines 7-14 at R. p. ___, lines 7-14.)

Dr. Rosswurm, after carefully reviewing the evidence, chose to reassign Mr. Shaw to another administrative position. (Transcript p. 136, lines 4-17 at R. p. ___, lines 4-17.) By letter dated December 21, 2012, Dr. Rosswurm communicated with Mr. Shaw

regarding the results of the investigation and advised him of his new assignment as Director of Right Choices, effective January 2, 2013. (Complainant's Exh. 33 at R. pp. __.) She notified him that he should report to the District Office at 9:00 a.m. on January 2, 2013. (Complainant's Exh. 33 at R. pp. __.)

D. Continued Demonstration Of Poor Professional Judgment

Unfortunately, Mr. Shaw did not report for work on January 2, 2013 for his new position. (Complainant's Exh. 34 at R. p. __.) He also did not telephone or otherwise contact the District to advise the administration that he would not be reporting. (Complainant's Exh. 34 at R. p. __.) The District communicated with Mr. Shaw again regarding his failure to report for work. (Complainant's Exh. 34 at R. p. __.) He eventually submitted a request for medical leave. (Complainant's Exh. 12 at R. p. __.) The District granted his request for medical leave, and Mr. Shaw never reported for work during the next academic semester.

Throughout the remainder of the 2012-13 school year, Mr. Shaw continued to demonstrate a cavalier attitude toward District expectations. Examples of his poor judgment and misconduct included:

- Failed and refused to report for meetings with District administrators on multiple occasions or otherwise to respond to communications from the District. (Complainant's Exh. 33 at R. pp. __.)
- Failed to provide a doctor's statement as required by District policy to substantiate his need for medical leave (instead of the note he gave from a social worker) for a period of months, requiring the District to make multiple requests for the statement until it was finally provided. (Complainant's Exhs. 22, 23, 25, 27 at R. pp. __.)
- Unilaterally demanding that other people be allowed to sit in on his meetings with District administrators as part of the investigation. (Complainant's Exhs. 8, 9, and 10 at R. pp. __.)

- Communicating with other District personnel while on administrative leave after being advised not to do so by letter dated November 12, 2012. (Complainant's Exhs. 8, 9, and 10 at R. pp. __.)
- Failing to report for work on January 2, 2013, for his new assignment without notifying anyone he would not be there. (Complainant's Exh. 34 at R. p. __.)
- Participating in an interview with a local newspaper, during which he discussed personnel information regarding another school employee in violation of District policy and creating a risk of a defamation lawsuit against the District. (Complainant's Exh. 5 at R. pp. __.)

E. Recommendation of Termination

After the conclusion of the 2012-13 school year, Dr. Moss became the new Superintendent of the District, effective July 1, 2013. (Transcript p. 345, lines 8-14 at R. p. __, lines 8-14.) Dr. Moss had worked more than 30 years in education, beginning as a classroom teacher and progressing through a number of administrative positions before becoming a superintendent. Dr. Moss' first year as the Beaufort Superintendent was the fourteenth year he had served as a superintendent of school systems. (Transcript p. 345, lines 15-21 at R. p. __, lines 15-21.) Once he assumed the superintendency in Beaufort, he began working on a variety of issues, including the situation involving Mr. Shaw.

In assessing the Shaw situation, Dr. Moss reviewed the District's personnel file and other available materials related to Mr. Shaw. (Transcript p. 346, lines 8-18 at R. p. __, lines 8-18.) Dr. Moss also reviewed the newspaper article containing quotes attributed to Mr. Shaw. (Transcript p. 346, lines 8-18 at R. p. __, lines 8-18.) He examined the contents of the lockbox found under Mr. Shaw's desk. (Transcript p. 346, lines 19-21 at R. p. __, lines 19-21.) As Dr. Moss testified, the lockbox contained principal evaluations and other types of documents a principal would typically have, such as files on employees. (Transcript p. 355, line 12 – p. 356, line 25 at R. p. __, line 12 –

p. __, line 25.) The lockbox also contained approximately \$600 in cash, a tape recorder with Mr. Shaw's voice on it, and bank statements from Mr. Shaw's personal bank account. (Transcript p. 355, line 12 – p. 356, line 25 at R. p. __, line 12 – p. __, line 25.)

After reviewing the available information, Dr. Moss met with Mr. Shaw on July 16, 2013. The purpose of the meeting was to review all of the information with Mr. Shaw so that Dr. Moss could evaluate whether Mr. Shaw had the qualities to be a school principal under his administration as Superintendent. According to Dr. Moss, Mr. Shaw changed his story frequently during the meeting and appeared to be dishonest about various things. After reflecting on the available information and his interactions with Mr. Shaw during their initial meeting, Dr. Moss concluded that Mr. Shaw did not exhibit the characteristics of someone who could serve as a principal under his administration. As a result, Dr. Moss decided to recommend the termination of Mr. Shaw as an employee of the District. (Transcript p. 357, line 2 – p. 364, line 24 at R. p. __, line 2 – p. __, line 24.)

Dr. Moss met with Mr. Shaw again on July 18, 2013, to advise him of his decision. (Transcript p. 358, lines 21-25 at R. p. __, lines 21-25.) He also provided Mr. Shaw a letter dated July 18, 2013, confirming in writing his recommendation and the rationale for his decision. (Complainant's Exh. 45 at R. pp. __.)

As noted previously, Mr. Shaw requested an evidentiary hearing before the Board as provided by statute. The Board conducted the hearing and issued a written order upholding the dismissal of Mr. Shaw. (Board Order at R. pp. __.) Mr. Shaw appealed the Board's decision to the Circuit Court, which reversed the decision of the Board. Dr. Moss has now filed this appeal of the Circuit Court's decisions. For the reasons

explained below, the Circuit Court's decisions were in error and should be reversed, and the original decision of the Board of Education should be reinstated.

ARGUMENT

A. Standard of Review

The Teacher Employment and Dismissal Act ("the Act") governs the employment and dismissal of continuing contract "teachers" in the public schools of South Carolina. "Teacher" is defined to include "any person who is employed ... to teach **or to supervise teaching.**" S.C. Code Ann. § 59-1-130 (emphasis added). *See also Barr v. Board of Trustees of Clarendon County School District No. 2*, 319 S.C. 522, 462 S.E.2d 316 (1995) (applying Employment and Dismissal Act to an assistant superintendent of instruction based on this statutory definition of teacher). Thus, the Act applies to Mr. Shaw's termination of employment.

S.C. Code Ann. § 59-19-90(2) vests in the board of trustees the power and duty to employ and discharge teachers, stating that the board shall "[e]mploy teachers ... and discharge them when good and sufficient reasons for so doing present themselves. ..."

As our court has observed:

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, 270 S.C. 266, 272, 241 S.E.2d 897, 900 (1978).

In considering an appeal from a decision of a school district board 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.

Consistency with relevant precedent requires that the scope of judicial review 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 School District No. 1, 270 S.C. 492, 495, 243 S.E.2d 192, 193 (1978); see also *Kizer v. Dorchester County Voc. Educ. Bd. of Trustees*, 287 S.C. 545, 340 S.E.2d 144 (1986); *Hendrickson v. Spartanburg County School District Five*, 307 S.C. 108, 413 S.E.2d 871 (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. *Laws*, 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] reached or must have reached in order to justify its action." *Id.* If substantial evidence exists, a court may not substitute its judgment for that of the board, and the decision must be upheld. *Id.* As discussed below, substantial evidence exists in the record supporting the Board's decision to terminate Mr. Shaw's employment, and, therefore, the Board's dismissal of Mr. Shaw should have been affirmed.

The applicable statute regarding Mr. Shaw's dismissal states, in pertinent part, as follows:

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.

S.C. Code Ann. § 59-25-430.

Thus, as stated, the District had the statutory authority to terminate Mr. Shaw's employment "at any time" if he failed "to give instruction in accordance with the directions of the superintendent" or if he demonstrated "an evident unfitness for teaching." Evident unfitness for teaching includes, but is not limited to, a persistent neglect of duty, a willful violation of rules and regulations of the district board of trustees, and dishonesty. The language of this statute intentionally is broad and grants public school districts the discretion and authority to address a myriad of employee performance issues.

By letter dated July 18, 2013, Dr. Moss confirmed in writing to Mr. Shaw that he would be recommending the termination of Mr. Shaw's employment. (Complainant's Exh. 45 at R. pp. __.) In his correspondence, Dr. Moss explained multiple reasons for his recommendation, identifying in detail numerous policy violations and other instances of Mr. Shaw's inappropriate conduct. If the administrative record contains substantial evidence to support even one of Dr. Moss' stated reasons, that evidence "will dictate that the school board's decision be sustained." *Laws*, 243 S.E.2d at 193. *See also McWhirter*

v. Cherokee County School District No. 1, 274 S.C. 66, 68, 261 S.E.2d 157, 158 (1979) (“if any of the charges against a teacher are supported by substantial evidence, the school board’s decision to dismiss must be sustained”); *Adams*, 241 S.E.2d at 901 (although principal identified three separate reasons for dismissal of classroom teacher, the appellate court only considered the first ground since substantial evidence in the record supported it and subjected the teacher to dismissal at any time).

**B. Substantial Evidence Exists In The Record Supporting
The Board’s Decision To Terminate Mr. Shaw’s
Employment.**

The District terminated Mr. Shaw’s employment for violations of policies and procedures regarding financial procedures, violation of the terms of his administrative leave, violation of confidentiality rights of an employee, insubordination, lack of honesty, and overall poor administrative judgment. In this case, two experienced Superintendents, Dr. Rosswurm and Dr. Moss, plus additional District and school personnel, testified without qualification that Mr. Shaw directed and was aware of improper handling of funds entrusted to the school in violation of District policy, failed to follow the directives of his superiors on multiple occasions, and demonstrated a cavalier, unresponsive disregard of legitimate requests of his superiors. Moreover, Mr. Shaw’s apparent dishonesty regarding (1) his whereabouts during normal business hours, (2) his knowledge of the contents of a lockbox, and (3) his communications with a newspaper reporter, plus his continued communications with Mr. Barrow and his secretary in violation of the terms of his administrative leave, constituted unacceptable and unprofessional conduct.

As described above, the record is replete with examples of Mr. Shaw's conduct manifesting an evident unfitness for teaching. For example, Mr. Shaw failed to report back to the District Office on November 7, 2012 for a requested meeting with Dr. Rosswurm and Ms. Walton. At the Board hearing, Dr. Rosswurm testified that Mr. Shaw was directed to meet with Dr. Rosswurm and Ms. Walton, but he failed to return to the District Office after stating that he would do so. (Transcript p. 28, lines 4-6 at R. p. __, lines 4-6.) After waiting a reasonable amount of time, Dr. Rosswurm had her secretary call Mr. Shaw again; however, he never showed up for their meeting. (Transcript p. 27, line 18 – p. 28, line 6 at R. p. __, line 18 – p. __, line 6.) Mr. Shaw was unable to give Dr. Rosswurm and Ms. Walton a satisfactory explanation as to why he failed to return for their meeting. (Transcript p. 115, lines 17-22 at R. p. __, lines 17-22.)

After Mr. Shaw was placed on leave, the administration discovered additional problems. Ms. Gibbo contacted a McCracken staff member and asked her to leave Mr. Shaw's office door open so she could come into the office over the weekend to remove something from Mr. Shaw's office, which she described as a "lockbox." Based on this unusual request, Dr. Rosswurm and Ms. Walton returned to Mr. Shaw's office, at which point they found the lockbox under Mr. Shaw's desk, which contained approximately \$600 in cash and other documents, some of which were obviously Mr. Shaw's personal documents. (Transcript p. 35, line 24 – p. 37, line 13 at R. p. __, line 24 – p. __, line 13; p. 119, line 1 – p. 122, line 7 at R. p. __, line 1 – p. __, line 7.)

The administration subsequently discovered that some school staff under Mr. Shaw's leadership routinely were violating the District's rules regarding the handling of money by, among other things, giving cash to Ms. Gibbo, instead of the bookkeeper, and

maintaining cash in the lockbox or a file cabinet in Mr. Shaw's office overnight.

(Complainant's Exhs. 3, 42, and 45 at R. pp. ____.) As a result of discovering the lockbox and having significant concerns about the manner in which monies were being handled at McCracken, Ms. White conducted a financial inquiry into the school's practices. She concluded that Mr. Shaw willfully violated District policy in a number of ways, which were all explained in her report and then in the letter Dr. Moss sent to Mr. Shaw stating the reasons for his termination recommendation. (Complainant's Exhs. 3, 42, and 45 at R. pp. ____.)

A review of our Court's decisions illustrates the broad authority granted to school districts under the Act, as seen below:

- *Laws v. Richland County School District No. 1*: (a music teacher's lack of response to a principal's suggestions of better methods of classroom management justified the school board's non-renewal decision)
- *Felder v. Charleston County School District*, 327 S.C. 21, 489 S.E.2d 191 (1997): (a high school teacher's actions during an unauthorized student protest, when she told students they had a right to protest and not to return to class, was substantial evidence of her unfitness to teach and unprofessional conduct, justifying the school board's termination of her employment; moreover, her denial of encouraging the student protest supported the school board's finding that she had made a false statement to her superior)
- *Barr v. Board of Trustees of Clarendon County School District No. 2*: (assistant superintendent of instruction, who was reassigned to position of school principal, refused to report to her new assignment on the advice of her legal counsel; the Court held that her refusal to report for work constituted substantial evidence to support the school board's decision to terminate her employment, noting that her conduct constituted a "persistent neglect of duty" or a "failure to supervise instruction in accordance with the directions of the superintendent")
- *McWhirter v. Cherokee County School District No. 1*: (school district dismissed high school math teacher who was unable to maintain order in his classroom without allowing the teacher reasonable time for improvement; the Court concluded that testimony indicating there had

been increased disciplinary referrals constituted substantial evidence justifying dismissal)

- *Adams v. Clarendon County School District No. 2*: (a high school teacher's alleged general incompetence, based on deficiency in language skills, was sufficient to bring him under the statute authorizing dismissal for evident unfitness for teaching)
- *Kizer v. Dorchester County Vocational Education Board of Trustees*: (a director of a career school was dismissed based on multiple acts of unprofessional conduct; the Court, in responding to procedural challenges by the former director, observed that "the officially enunciated public policy of this State is to provide for immediate removal of those whose conduct manifests evident unfitness")
- *Hendrickson v. Spartanburg County School District No. 5*: (substantial evidence supported school board's decision to dismiss a special education teacher based on her slapping a student and her inability to maintain control in her class)

In comparison to these reported decisions, Mr. Shaw's conduct as the principal of McCracken clearly constitutes a failure to supervise instruction in accordance with the direction of the superintendent, as well as an evident unfitness for teaching by a persistent neglect of duty, a willful violation of rules and regulations of the District Board of Trustees, and dishonesty. Accordingly, substantial evidence existed in the record supporting the Board's decision to terminate the employment of Mr. Shaw, and the Circuit Court erred by finding otherwise and reversing the Board's termination decision.

In contrast to the decisions cited above, the Circuit Court relied on two other decisions which are clearly distinguishable. First, in *Hall v. Board of Trustees of Sumter County School District No. 2*, 330 S.C. 402, 499 S.E.2d 216 (Ct. App. 1998), the Court concluded that a teacher's alleged failure to supervise students on a field trip to Disney World and insubordination did not constitute unfitness for teaching justifying her dismissal. In the *Hall* case, the teacher initially declined to serve as a chaperone. She subsequently agreed to do so based on an agreement with the trip's lead organizer that

she would only serve as a chaperone while traveling to and from Florida and during a trip to a shopping mall. At other times, she would be “off duty” and would not be required to serve as a chaperone. The trip’s lead organizer approved of this arrangement. The district did not have any policy regarding requirements for chaperones during off-campus events of trips. The district later discovered the arrangement and moved forward with an immediate dismissal of the teacher. In holding that the termination was improper, the Court relied on the existence of the agreement regarding the parameters of the trip, the absence of a written policy, and the fact that the teacher did exactly what she agreed to do, which was to supervise the students while traveling to and from Florida and during a trip to a shopping mall. Because the teacher’s behavior during the trip was agreed to or sanctioned in advance by the trip organizer, the Court held that she had not violated any directives or engaged in any persistent neglect of duty.

A second case on which the Circuit Court relied is *Shell v. Richland County School District One*, 362 S.C. 408, 608 S.E.2d 428 (2005). In that case, a school board dismissed a teacher who was terminated for being arrested twice for drug offenses during a 12-year period, even though neither arrest resulted in a conviction and the school district did not contend that the teacher had ever used, possessed, or sold illegal drugs. The Court concluded that the mere fact of two drug arrests, occurring 12 years apart, and which did not result in any conviction, was insufficient alone to support a finding of unfitness to teach.

In contrast to those two decisions, there is absolutely no evidence that the District sanctioned or approved of any arrangement by which Mr. Shaw would be allowed to violate the District’s financial policies or engage in the other types of misconduct he

exhibited. To the contrary, the District imposed very clear expectations on Mr. Shaw on multiple occasions, but he intentionally chose to disregard those expectations and pursue his own independent path. Unlike the teachers in *Hall* or *Shell*, Mr. Shaw actively participated in multiple acts of misconduct and brazenly disregarded the clear instructions of his supervisors. As a result, substantial evidence exists in the record to support the decision of the Board to dismiss his employment. Accordingly, the Circuit Court erred by reversing the decision of the Board, and Dr. Moss respectfully requests that this Court reverse the Circuit Court and reinstate the Board's decision.

**C. The Circuit Court's Order Dated November 17, 2014,
Contains Serious Errors Demonstrating That The Court
Overlooked Or Disregarded Significant Evidence And Did
Not Properly Apply The "Substantial Evidence" Standard
of Review.**

As explained below, the Circuit Court's Order of November 17, 2014, contains numerous errors. Many of the Court's incorrect conclusions directly contradict the clear record evidence. In addition, those erroneous conclusions, on which the Order is based, demonstrate that the lower court overlooked or disregarded significant evidence and did not properly apply the "substantial evidence" standard of review. Those errors led directly to the Circuit Court's incorrect decision that the record does not contain substantial evidence justifying the Board's termination of Mr. Shaw.

**1. The Court Mistakenly Concluded that the
Financial Policy Violations Involved an
Independent Parent-Teacher Organization
not Subject to Governance by School
Administrators**

The Order states, on p. 9, as follows:

The Board's findings were insufficient to support a finding of unfitness for several reasons. First, the Board upheld Moss' determination that there were ten separate violations

of policies and procedures relating to the handling of finances at McCracken. These violations stemmed from an agreement between Student Counsel sponsors and the Parent Teacher Organization. Counsel for Respondent admitted that the PTO is an independent organization not subject to governance by school administrators.

(Order p. 9 at R. p. __.)

This language shows that the Circuit Court misunderstood the nature of the financial policy violations. District administrators never claimed that the PTO or any PTO funds were involved in the transgressions. In fact, the testimony established that McCracken did not even have an active PTO at the time. (Transcript p. 203, lines 4-6 at R. p. __, lines 4-6; p. 312, line 3 at R. p. __, line 3; p. 313, lines 16-17 at R. p. __, lines 16-17.) The financial policy infractions involved school student activity funds, not PTO funds, and those funds were directly under the control and management of school personnel. Those funds should have been handled in accordance with established financial policies in the District, but at Mr. Shaw's direction and with his awareness, they were not. Regarding the funds, the Beaufort County School District Student Activities Policies and Procedures Manual provides that:

Purpose and Objective

This manual is a formal internal communication document of Beaufort County School District. It is designed to be a comprehensive document which will aid staff members in understanding the scope and purpose of the STUDENT ACTIVITIES FUND and provide uniform policies, procedures and standards to assist all members in performing their assigned duties.

Student activities monies defined

All monies raised with the approval of the Governing Board of a school district by the efforts

of students in pursuance of or in connection with all activities of student organizations, clubs, school plays or other student entertainment (hereafter referred to as CLUBS) are student activities monies. These monies must be accounted for separately from district operating funds.

(Complainant's Exh. 41 p. 6 at R. p. __.)

Moreover, as Ms. White testified on cross-examination during the hearing:

Q. Okay. It is important for student activities money - - in this case, for the purpose of this case, student activity monies must be accounted for separately from District operating funds; correct?

A. Correct.

Q. And so the financial procedures in question in this case were directly related to what were identified as the student council club; correct?

A: Correct.

Q. And the problem - - I think one of the problems you identified was that student council club was supposed to have deposited all of their money through the school bookkeeper; isn't that correct?

A. That's correct.

Q. And as it pertains to the disbursement, they should have been handled through the district-managed account; is that correct?

A. The - - all the deposits and checks should run through the district-managed account.

Q. Okay.

A. Through the bookkeeper.

(Transcript p. 300, line 23 – p. 301, line 18 at R. p. __, line 23 – p. __, line 18.)

Accordingly, the record is clear that the funds about which the District administration was concerned were student activity monies that were to be handled in the manner prescribed by District policy and procedure. Thus, the Court's mistaken conclusion that the financial policies involved an agreement with an independent organization, the PTO, is unsupported by the evidence and incorrect.

**2. The Court Erroneously Concluded That
Mr. Shaw was not Involved in and was not
Notified of any of the Financial Violations**

Again on p. 9, the Order states:

None of the ten financial allegations described in the termination letter contend that Shaw ever used any money, possessed any money, arranged or was involved in any of the financial violations.

(Order p. 9 at R. p. __.)

In addition, on p. 11, the Order says:

The school bookkeeper also admitted to knowing the teachers were not compliance with District and school financial policies, however, there was no evidence presented that she reported such violations to Shaw.

(Order p. 11 at R. p. __.)

Both of these conclusions are patently incorrect. Initially, Ms. White, after conducting an investigation, which included reviewing documents and speaking with school personnel, issued a report containing the following finding:

Student council sponsors were directed by Mr. Shaw and Ms. Gibbo to by-pass the bookkeeper when it related to student council funds (testimony provided by staff).

(Complainant's Exh. 42 p. 2 at R. p. __.)

Significantly, the District presented the testimony of the bookkeeper, Barbara Williams, during the administrative hearing. Ms. Williams had served as the bookkeeper

at McCracken for many years. She testified unequivocally and clearly that she reported to Mr. Shaw on many occasions the existence of the policy violations, directly contradicting the Circuit Court's conclusion on p. 11 that there was no evidence presented of such a report. (Transcript p. 198, line 3 – p. 200, line 22 at R. p. ___, line 3 – p. ___, line 22; p. 202, line 9 – p. 204, line 2 at R. p. ___, line 9 – p. ___, line 2; p. 205, lines 8-25 at R. p. ___, lines 8-25.) Ms. Williams explained that she notified Mr. Shaw on many occasions that the violations were occurring. She indicated that Mr. Shaw stated to her that he would handle the matter, but that he never did. One example of Ms. Williams' testimony on this issue is as follows:

A: They asked me if I informed the Principal that money is being collected and is not being deposited into Student Activities, and I did answer and told them, 'Yes, I have informed the Principal many times' and even with them, every time we had a meeting, I would just let him know that it is still going on, and at one meeting, I did say that I received a check from a teacher, and that's not normal to receive a check of \$1,288 for a field trip from a teacher, and I let them know that a checking account that looks very much like my imprest checking account for the school, but the teachers have access to cash money as well as a checking account. I did let them know, and they said that if I had informed the Principal, which I did time and time again, that I had done the right thing by informing the Principal of my concern. (*emphasis added.*)

(Transcript p. 205, lines 8-22 at R. p. ___, lines 8-22.) This excerpt is only one portion of Ms. Williams' testimony, and other examples are in the record as well. There can be no question but that the District provided clear, un rebutted evidence indicating that Ms. Williams reported the violations to Mr. Shaw.

In addition to Ms. Williams, Sonia Merrick, a teacher at McCracken, testified that Mr. Shaw saw her give money to Ms. Gibbo, which would have been a violation of the financial policies. For example, in response to a question about whether Mr. Shaw was present when she gave money to Ms. Gibbo, Ms. Merrick responded as follows:

There were times that he was, and there's times that he wasn't. Sometimes when he was there, he would see that I had a package of money, and he would say, 'I have to go somewhere. I need to go to the bathroom. I have to leave.' One time, I asked him - I didn't realize that he didn't handle the money or take the money. I tried to give it to him, and he said, "I don't deal with that. You need to give that to Ms. Gibbo."

(Transcript p. 238, line 21 – p. 239, line 3 at R. p. __, line 21 – p. __, line 3.)

Thus, it is clear that the record contains testimony that Mr. Shaw was involved in and aware of the financial transactions at McCracken. According to Ms. Merrick, Mr. Shaw knew how student council funds were being handled, and he, at a minimum, was attempting to establish a “willful blindness” approach so that he could later claim to have no direct knowledge of the violations. Mr. Shaw never provided any testimony or evidence to rebut the testimony of District personnel. In light of the clear testimony in the record, Dr. Moss and the District cannot understand on what the Court’s decision was based on this point. This error obviously led to the Court coming to the incorrect conclusion and reversing the Board’s Order, because substantial evidence clearly established that the Board had sufficient grounds for terminating Mr. Shaw’s employment.

3. The Court Erroneously found that Mr. Shaw did not have Knowledge of and had not been Trained in District Finance Procedure

On p. 11, the Order provides:

There was also no evidence presented during the hearing that Shaw had knowledge of or had been formally trained in district finance procedure.

(Order p. 11 at R. p. __.)

Again, this conclusion is not correct. For example, Ms. White's testimony made it clear that Mr. Shaw, and the District's other principals, were provided training related to the handling of financial matters. In response to questioning by counsel for Mr. Shaw, Ms. White testified as follows:

Q: And the principals are only provided information on the financial policies and procedures; correct?

A: No sir, that's not what I had said. They received training in the summer at the senior - - at the leadership retreat, and I can recall one in particular at Pritchardville Elementary, where they are provided a notebook that contains the policies and we go through and highlight some of the policies. And they are also brought up during the regular leadership meetings throughout the year.

(Transcript p. 300, lines 15-22 at R. p. __, lines 15-22.) In addition, as explained above, in addition to attending regular training on District financial procedures, Mr. Shaw would have received written materials and had access to the policies via the District's website.

(Transcript p. 286, line 13 – p. 287, line 21 at R. p. __, line 13 – p. __, line 21;

Complainant's Exhs. 37, 41 at R. pp. __.) Moreover, he would have been present and heard presentations on the procedures by the school bookkeeper, Ms. Williams, at the

beginning of each school year until he directed her to discontinue her participation in the meetings. (Transcript p. 195, line 14 – p. 197, line 8 at R. p. ___, line 14 – p. ___ line 8.) He also was aware of the policy violations by hearing directly from Ms. Williams that they were occurring. Thus, the Court incorrectly held that there was no evidence that Mr. Shaw was aware of or had been trained on the District’s financial protocols. Again, this erroneous conclusion led to the Court’s incorrect decision to reverse the Board’s termination of Mr. Shaw.

4. The Circuit Court Incorrectly Found that District or School Policies Do Not Prohibit Leaving Cash in a School Overnight

The Order, on p. 11, states the following regarding this issue:

The financial handbook developed and distributed to all faculty and staff by the bookkeeper at McCracken and introduced into evidence at the hearing as complainant’s exhibit 37 contained no mention of any school or district policies which prohibited leaving any amount of cash in a school overnight.

(Order p. 11 at R. p. __.)

While Exhibit 37 may not contain any references to cash being left in a school overnight, another document, Complainant’s Exhibit 41, which was introduced during the testimony of Ms. White, contains more than one reference to the requirement that funds exceeding \$25.00 were not to be kept in schools overnight. Dr. Moss’ letter recommending Mr. Shaw’s termination referred to the specific student activities policies and procedures that were violated, including those which addressed money being kept in schools overnight. (Complainant’s Exh. 45 at R. p. __.) The Manual introduced as Complainant’s Exhibit 41 states in two separate places as follows:

UNDER NO CIRCUMSTANCES SHALL FUNDS TOTALING OVER \$25.00 BE LEFT IN THE SCHOOL OVERNIGHT School funds should never be taken home. Deposits should be verified and taken promptly to the bank, using the night depository. If you do not have a night drop bag, notify the Central Office.

(Complainant's Exhibit 41 p. 16 at R. p. __.) In addition, the Manual provides a few pages later as follows:

17. Under no circumstances should more than \$25.00 be held overnight.

(Complainant's Exhibit 41 p. 19 at R. p. __.)

Apparently the Court overlooked these very clear prohibitions stated in Exhibit 41 and referenced again in the Superintendent's letter to Mr. Shaw notifying him of his recommendation of termination.

5. The Circuit Court Incorrectly Concluded that the District's Internal Investigation did not Identify any Conduct by Mr. Shaw Rising to the Level of Unfitness as a Teacher

Page 11 of the Order states as follows:

Even if the Board "questioned" Shaw's honesty regarding these matters, there was an internal investigation done and the results did not yield any conduct by Shaw which would rise to the level of unfitness as teacher.

(Order p. 11 at R. p. __.)

As with the other findings identified above, this holding simply is incorrect. Ms. White's investigation identified ten clear violations of the District's established financial procedures. (Complainant's Exh. 42 at R. pp. __.) Ms. White's investigation also concluded that Mr. Shaw was aware of and had participated in the decision to circumvent

the established procedures by directing student council sponsors to give cash directly to Ms. Gibbo, rather than the bookkeeper. (Complainant's Exh. 42 at R. pp. __.)

Additional testimony showed that Mr. Shaw also removed Ms. Williams, the bookkeeper, from the annual training sessions provided to teachers, indicating that he would advise teachers in the future how to handle money issues. (Transcript p. 196, lines 1-4 at R. p. __, lines 1-4.) Accordingly, the Circuit Court's finding that the investigative results did not reveal any conduct by Mr. Shaw rising to the level of unfitness as a teacher simply is untrue.

6. The Circuit Court Erroneously Found that Mr. Shaw had not been Advised of Concerns Regarding His Secretary and, Further, that Mr. Shaw had Complied with the Directive to Move Her Office to Another Location

On p. 12 of the Order, the Circuit Court states that:

During the hearing, there was testimony that Shaw worked closely with the designated principal's secretary of McCracken; however, there was no evidence provided by the district that this working relationship was out of the norm or uncharacteristic. Further, there was no evidence by the district that Shaw had been advised of any concerns regarding the role and tasks assigned to the secretary.

(Order p. 12 at R. p. __.)

The record evidence clearly establishes that this finding is inaccurate. First, by letter dated August 17, 2012, then-Superintendent Dr. Truesdale instructed Mr. Shaw, among other things, to do the following:

Assume responsibility for your own emails and correspondence immediately. Decisions to be communicated about school matters to District Office leaders should be done by you personally.

(Complainant's Exh. 44 at R. p. __.)

This expectation related directly to Mr. Shaw's inappropriate delegation of certain matters to Ms. Gibbo. In addition, Dr. Rosswurm and Ms. Walton testified during the Board hearing that the administration was concerned with Mr. Shaw allowing his secretary to have unfettered access to his email, with him being behind closed doors with her, and with his having her work directly from his office rather than her own office.

(Transcript p. 22, lines 18-25 at R. p. __, lines 8-25; p. 111, lines 3-11 at R. p. __, lines 3-11.) Thus, District administration provided proof that Mr. Shaw had been advised of concerns regarding the role and tasks assigned to his secretary both verbally and in writing, so the Court's conclusion to the contrary simply is unsupported.

In what appears to be a contradictory finding by the Court, p. 12 of the Order goes on to state as follows:

Testimony was provided by a staff member that a concern had been expressed to Shaw that the secretary needed to work from her own desk and that he had been instructed to move her office to another location. Testimony from witnesses at the hearing indicated Shaw complied with that demand.

(Order p. 12 at R. p. __.)

Again, this conclusion is incorrect and unsupported by the evidence. Testimony offered during the hearing indicated that Mr. Shaw in fact had not complied with this demand. In her testimony regarding the concerns the administration had discussed with Mr. Shaw at a conference with him on November 8, 2012, Ms. Walton explained:

Dr. Rosswurm first asked Mr. Shaw why he did not report back to the District Office on Wednesday. She also discussed some concerns that she had that she said she had spoken with Mr. Shaw – before, with Dr. Truesdale, and that was his accountability

during the school day, where he was, his visibility for staff members, as well as her concerns that he had not moved Denise Gibbo out of his office.

(Transcript p. 29, lines 13-19 at R. p. __, lines 13-19.)

In response to questions regarding the November 8 meeting, Dr. Rosswurm testified that she was aware of several conversations with Mr. Shaw regarding the location of his secretary's work space.

Now, this is the third time that I was aware that this discussion had taken place, and he hemmed and hawed and couldn't give us a straight answer and then finally said, "Well, I'll make sure that she gets moved."

We went back to talking about where he had been. We were not getting anywhere in this conversation, and at that point, I said to Mr. Shaw, "You've had the opportunity to move your office manager. We tried to meet with you yesterday. There's nothing clear about what happened yesterday. That's why I believe that it is important for us to place you on administrative leave so that we can understand how the management of this school is occurring."

(Transcript p. 115, lines 12-24 at R. p. __, lines 12-24.)

The testimony in the record does not support any finding that Mr. Shaw had complied with the administration's directive regarding Ms. Gibbo. To the contrary, the witnesses who were asked about Ms. Gibbo's office testified that she spent most of her time in Mr. Shaw's office. For example, in response to a specific question regarding Ms. Gibbo's office, Sonia Merrick provided the following testimony:

She had an office that she would never be in. She always sat at the edge of Mr. Shaw's desk with her laptop. We would always joke that she had a pretend office to the side of his office. It was interesting that there was an internal door that could connect the two of them together, but she would

never be in there. Maybe once or twice, I would see her in there on her cell phone, but for the most part, she was always, always, always in his office.

(Transcript p. 251 lines 11-18 at R. p. ___, lines 11-18.)

Another witness, Susan Dee, a teacher at McCracken, testified as follows as relates to Ms. Gibbo being in Mr. Shaw's office:

Q: Do you know if Mr. Shaw was ever alone with Ms. Gibbo in his office with the door closed?

A: Yes, it was a standard thing. The door was always closed, and people always talked about it. I know, because I would knock on the door, and she would open the door, and he was in the office.

Q: Did she have an official office at McCracken?

A: I believe it was set up right next to or adjoining Mr. Shaw's.

Q: Did you see her in that office?

A: I never saw her sitting in her office.

(Transcript p. 277, lines 11-21 at R. p. ___, lines 11-21.)

In short, no one testified that Mr. Shaw had complied with the administration's directive to move Mr. Gibbo out of his office and into her own office.

Contrary to the conclusion in the Order, the overwhelming evidence was that Mr. Shaw did not comply with the administration's directive to move Ms. Gibbo out of his office. Based on the above testimony, there clearly is substantial evidence in the record that Mr. Shaw had previously been advised by the administration of their concerns with his secretary maintaining an office in his office and he did not address those concerns.

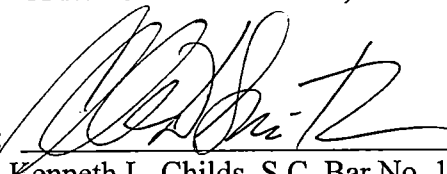
CONCLUSION

Based on the foregoing, Dr. Moss respectfully submits that the Circuit Court erred by concluding that the Board's decision to terminate Mr. Shaw was not supported by substantial evidence in the record and, further, erred by not granting his motion for reconsideration. Accordingly, Dr. Moss respectfully requests that this Court reverse the decisions of the Circuit Court and reinstate the Board's decision terminating Mr. Shaw's employment based on the substantial evidence in the record.

Respectfully submitted,

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May 27, 2015

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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas**

**Marvin H. Dukes III, Master In Equity
And Special Circuit Court Judge**

C.A. No.: 2013-CP-07-03048

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MAY 27 2015
SC Court of Appeals

Phillip C. Shaw,Respondent,

v.

Jeffrey C. Moss, Ed.D.,Appellant.

PROOF OF SERVICE

I certify that I have served the Appellant's Initial Brief and Designation of Matter to Be Included in the Record on Appeal on counsel for Respondent, by depositing a copy of it in the U.S. Mail, postage prepaid, on May 27, 2015, addressed to Fatima Alexia Zeidan, Esq., The Law Office of Clifford Bush III, LLC, P.O. Box 6194, Beaufort, SC 29903.



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