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THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM LEE COUNTY
Court of Common Pleas

Maité Murphy, Circuit Court Judge

Case No.: 2014-CP-31-0227

Laura Toney..... Respondent,

vs.

Lee County School District..... Appellant.

RECORD ON APPEAL
VOLUME I of III

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STATE OF SOUTH CAROLINA COUNTY OF LEE In the matter of: Dr. Wanda Andrews, Petitioner, vs. Laura Toney, Respondent.	BEFORE THE BOARD OF TRUSTEES OF LEE COUNTY SCHOOL DISTRICT **DECISION**

BASIS FOR RECOMMENDATION OF DISMISSAL

By letter dated December 18, 2013, Dr. Wanda Andrews, Superintendent for Lee County School District (hereinafter the "District"), notified Ms. Laura Toney, a teacher at Lee Central High School, of Dr. Andrew's intent to recommend to the Lee County School District Board of Trustees (hereinafter "the Board") that Ms. Toney's employment with the District be terminated. The recommendation of termination was based on Ms. Toney's conduct with regard to discussing a faculty member's personal information with other employees and failure to adhere to the directives of an administrator. Dr. Andrews' recommendation was also based upon a review of Ms. Toney's personnel file, which revealed that Ms. Toney has engaged in other incidents of unprofessional conduct.

Pursuant to South Carolina Code Ann. § 59-25-430, a teacher may be dismissed at any time who shall fail, or who may be incompetent, to give instruction in accordance with the direction of the superintendent, or who shall otherwise manifest an evident unfitness for teaching; provided, however, that notice and an opportunity for a hearing shall be afforded prior to any dismissal. South Carolina Code Ann. § 59-25-440 provides that whenever a superior or

principal charged with the supervision of a teacher finds its necessary to admonish a teacher for a reason that could lead to the teacher's termination, the administrator must bring the matter, in writing, to the attention of the teacher, make a reasonable effort to assist the teacher to correct it, and allow reasonable time for improvement. However, such teacher may not be dismissed without a hearing held pursuant to South Carolina Code Ann. § 59-25-470.

HEARING

Ms. Toney waived the 15-day statutory period for holding the hearing with the understanding that waiving the time period for the hearing did not waive her right to a hearing. The hearing was held on April 28, 2014; June 7, 2014; July 1, 2014; July 8, 2014; and July 29, 2014, at the District Administrative Complex. The following Board members participated in the hearing and decision: (1) Ms. Sanya Moses, Board Chair; (2) Mr. Nathanial Brunson, Board Vice-Chair; (3) Mrs. Queenie Boyd; (4) Ms. Jessie Belvin; (5) Mr. Graham Drayton; and (6) Valarie Haywood. Ms. Toney was present and represented by W. Allen Nickles, Esq. and Susan Fittipaldi, Esq. of the Nickles Law Firm. Charles J. Boykin, Esq. and Deidre D. Laws, Esq., both of Boykin & Davis, L.L.C., represented the Administration. Ms. Francenia B. Heizer of McNair Law Firm, P.A., served as legal counsel for the Board.[1] The vote to uphold Dr. Andrew's recommendation for termination was 6-0. The Board rendered its decision on July 29, 2014, and directed the preparation of this Decision.

EVIDENCE PRESENTED

The purpose of the hearing was to determine whether good and just cause existed for the termination of Ms. Toney's employment under the provisions of S.C. Code Ann. §§ 59-25-430

[1] The Board originally retained Carlos Johnson, Esq., of Lyles, Darr & Clark, L.L.P., to advise on evidentiary matters. However, Ms. Toney submitted a Motion to Recuse the Board's Attorney, requesting that the Board hire different counsel because Ms. Toney believed that Mr. Johnson had a conflict of interest, as he represents Dr. Andrews in a separate action involving Dr. Andrews and her former employer, Spartanburg County School District 7. At the June 7, 2014 hearing, the Board denied the motion, but proceeded with alternate counsel, Ms. Heizer.

and 59-25-440. To determine whether good and just cause existed to terminate Ms. Toney's employment, the Board heard testimony on the following issues: (1) whether Ms. Toney engaged in unprofessional conduct during her employment with the District; (2) whether Ms. Toney received notice from the District that her conduct was inappropriate and/or unprofessional; and (3) whether Ms. Toney failed to follow the reasonable directive of her supervisors.

During the hearing, the District offered exhibits (which are attached to the hearing transcript and incorporated herein by reference) and the testimony of the following witnesses:

a. Mr. Ron Webb, Principal of Lee Central High School (hereinafter "LCHS");

b. Mr. Bernard McDaniel, Secondary Coordinator at LCHS;

c. Ms. Laura Toney, Respondent; and

d. Dr. Wanda Andrews, Superintendent.

Ms. Toney also offered exhibits and testimony of the following witnesses:[2]

a. Mr. Anthony Blair, former teacher at LCHS;

b. Shcneaka Ratliff, teacher at LCHS;

c. Virginia Rogers, LCHS secretary/bookkeeper;

d. Stacy Harrison, former media specialist at LCHS;

e. V.E. Moorman, grandparent of former student in Ms. Toney's class; and

f. Linda Weaver, friend and former chair of Social Studies department at LCHS.

FINDINGS OF FACT

1. Dr. Wanda Andrews, a veteran in the education field for approximately thirty-three (33) years, is the Superintendent of the District. Dr. Andrews has been at the District for one (1) year, and has held various administrative positions in other school districts for the past

[2] An additional witness, Mr. Span, was requested by Ms. Toney; however, he was not available during Ms. Toney's case-in-chief. Ms. Toney did not seek to continue the hearing; and thus, waived any objection to his unavailability.

sixteen (16) years. She has a Bachelor's degree, Master's degree, and a Doctorate degree in educational leadership.

2. Mr. Ron Webb was the Principal of LCHS for three (3) years, and has ten (10) years experience in administration. Mr. Webb has a Bachelor's degree and a Master's in education administration and leadership.

3. Mr. Bernard McDaniel, serves as the secondary coordinator at LCHS and has thirty-four (34) years of experience as an educator. Mr. McDaniel is certified as a secondary director and administrator.

4. Ms. Laura Toney (hereinafter "Toney") is a classroom teacher who holds a teaching credential for the State of South Carolina. Toney has taught in the District for approximately twenty-three (23) years. She has a Bachelor's degree and a Master's degree. All of Toney's continuing contracts with the District provided that "all personnel are responsible to their immediate supervisor."

5. Mr. Anthony Blair is a teacher who worked at the District for six (6) years, and was the social studies department chair during the 2013-2014 school year.

6. Sheneaka Ratliff is a teacher, and has worked at the District for five (5) years. She is the 2013-2014 District Teacher of the Year and High School Teacher of the Year.

7. Ms. V.E. Moorman had a grandchild in Toney's class two (2) years ago.

8. Ms. Stacy Harrison was the media specialist at LCHS for six (6) years.

9. Ms. Virginia Rogers has been the secretary/bookkeeper at LCHS for two (2) years, and worked with the District for a total of twenty-six (26) years.

10. Ms. Linda Weaver worked at LCHS for five (5) years, and was the social studies department chair for three (3) years, prior to the 2013-2014 school year.

11. On Friday, September 27, 2013, Toney was in a social studies departmental meeting, along with the following colleagues: Mr. Anthony Blair; Ms. Kara Fowler; Mr. Darryl Peyton; Mrs. Tonya Addison; and Mr. Michael Baldwin. During the meeting, on two (2) separate occasions, Toney made comments concerning personal information of Mr. Baldwin. Toney's comments led Mr. Baldwin to file a grievance against Toney on Monday, September 30, 2013.

12. When Mr. Webb received the grievance, he and Mr. McDaniel met with Toney to advise her that a grievance had been filed against her. However, because Mr. Webb was scheduled to be out of town for an educational conference, Mr. Webb, Mr. McDaniel, and Toney testified that Mr. Webb directed Toney to leave the matter alone until he returned.

13. Toney testified that two days later, she found a packet of information under her classroom door which contained two copies of material regarding the grievant, Mr. Baldwin. When she first tried to tell Mr. McDaniel about the information, he refused to discuss it, but later told Toney that if she had something to tell him, put it in writing. Toney provided one copy to Mr. McDaniel, kept the second copy, went home to make another copy, and then took the extra copy to Dr. Andrew's office. According to Toney, she provided a copy to Dr. Andrews because she "was concerned about the safety of the child."

14. Toney testified that the materials in question concerned the teacher who had filed a grievance against her. Mr. McDaniel testified that Toney approached him stating that Toney had something to tell him about what Mr. Baldwin is doing. Mr. McDaniel reminded Toney that she was told to leave it alone until Mr. Webb returned. Later, Mr. McDaniel told Toney that if she had something to say to put it in writing. Toney then handed McDaniel a packet of information. Mr. McDaniel testified that Toney did not follow Mr. Webb's directive.

15. Upon his return, Mr. Webb learned that the situation had escalated to the district level, as Toney gave a packet of information regarding the grievant to Dr. Andrews. Mr. Webb testified that Toney did not follow his directive.

16. Toney testified that she believed a child was "at risk" and/or "in danger," but she did not report the matter to DSS or the Sheriff's office in Lee County or Sumter County, even though she was trained and required by law to do so.

17. When Dr. Andrews found the packet of information Toney left, Dr. Andrews spoke with Mr. Webb and Mr. McDaniel and learned that Toney had not followed their directives. Thereafter, Dr. Andrews, a veteran educator having extensive experience in human resources, placed Toney on administrative leave, pending an investigation into Toney's conduct after having been told to leave the matter alone, and a review of Ms. Toney's personnel file and overall conduct as a District employee.

18. During the administrative leave, Toney was advised that she could not visit any District property, use school equipment to communicate (including computers and email), or contact other District employees. The administrative leave letter stated if Toney had questions to contact Ms. Nettie Vaughn, Assistant Superintendent for Personnel and Student Services; and both Dr. Andrews and Toney testified that she verbally stated to Toney, that if there was a question about anything, Toney could contact Dr. Andrews.

19. Toney again ignored administrative directives when she had a question about who had taken over teaching her class. Toney and Dr. Andrews acknowledged that Toney did not call Dr. Andrews to discuss the concern, but Toney contacted a board member.

20. During Dr. Andrews' review of Toney's employment, Dr. Andrews discovered, and Mr. Webb testified to, the following:

a. Ms. Fowler, a certified teacher on Mr. Webb's administrative team, conducted an observation of Toney's teaching on September 13, 2013, and provided feedback to Toney, as evidenced by email from Fowler to Toney dated September 16, 2013. Toney responded, accusing Ms. Fowler's feedback of being dishonest and libelous. Toney was not accepting of the feedback given by Ms. Fowler, and thus not supportive of the instructional process at the school. Mr. Webb believed Toney's response to Ms. Fowler was negative and defensive, which is not good for improving instructional quality, as evidenced by email from Toney to Fowler dated September 17, 2013;

b. Toney did not follow protocol when she failed to attend a mandatory faculty meeting; failed to inform the administration of her absences from school in a timely manner; failed to enter grades timely; and sent students to the office, specifically during class time, to request supplies on more than one occasion despite having been previously reminded to pick up supplies herself during her planning period. As evidenced by letters from District Administration to Toney dated September 16, 2013, May 7, 2013 and May 15, 2013;

c. On February 11, 2013, Mr. Webb had to remind Toney to conduct herself in a professional manner at all times after Toney became too irate to continue with a parent-teacher conference. Toney became so angry and irate with a parent that Mr. Webb asked her to leave the conference. At Toney's suggestion, and the parent's request, the student was transferred out of Toney's class; as evidenced by letter from District Administration dated February 11, 2013;

d. A former principal, Ms. Lenora Scott, previously advised Toney that her inappropriate behavior could lead to termination. In a letter placed in Toney's personnel file, Ms. Scott described an incident in which Toney questioned the assistant principal, became angry and was not receptive to the administrator's requests. While discussing the incident in a conference, Toney was argumentative and unprofessional. Further, Toney made unsubstantiated allegations against another co-worker, as evidenced by letter from Scott to Toney dated January 25, 2006.

21. After reviewing Toney's employment record, speaking further with Mr. Webb and getting Ms. Toney's responses to these issues, Dr. Andrews concluded that Toney's recent unprofessional conduct was not just an isolated incident. The Board finds that the January 25, 2006 letter is sufficient notice to Toney that she should behave professionally at all times, and continuous reminders from administration are unnecessary. Additionally, although Toney objected to admitting this letter into evidence, Toney's offering the entire personnel file for the Board's review, waived such objection. Dr. Andrews found a pattern of unprofessional conduct, which included insubordination and uncooperativeness, and such conduct justified the termination of her employment.

22. In Toney's defense, she offered the notion that she only asserted her rights or she "stood up for herself." In explaining the documents in her record, Toney testified:

a. Toney understood Ms. Fowler's role was to administer evaluations. When asked whether it was fair to say that Toney turned the observation from herself to focus on Ms. Fowler, Toney responded, "Well, I guess you could

say that." Toney also stated that it was appropriate to challenge an administrator in this tone, if something is not accurate;

b. Toney acknowledged that her voice elevated and she stood up during the parent conference;

c. Toney testified that she was late to work on the particular day in question because she had a flat tire. She addressed her failure to timely notify administration only after she received Mr. Webb's letter;

d. Toney admitted she did not contact Dr. Andrews concerning whether a certified teacher was teaching her class while Toney was on administrative leave;

e. Toney admitted that when it comes to child abuse, no one said not to do anything, and stated "I know the first thing to do was to maybe go to DSS or take it to the sheriff's department, but I did not want to do that;" and

f. Toney did not recall the letter from her former principal, Ms. Lenora Scott; however, she did remember a specific incident discussed in the letter.

CONCLUSIONS

1. The Board is the duly-elected body governing public education in Lee County.

2. Toney received this hearing pursuant to her request and in accordance with S.C. Code Ann. § 59-25-470.

3. The evidence reveals a pattern of unprofessional conduct. Toney offered repeated resistance to carrying out directives of supervisors and administrators, as evidenced by Toney's response to the observation; sending students to get supplies during class; bringing forward information about the grievant while Mr. Webb was away; contacting a board member while on

administrative leave, after having been directed to contact the Superintendent; and behavior documented in the personnel file.

4. The documented history of Toney's relationship with the District, and the nature of the packet of information about the grievant that Toney distributed are consistent with her tendency to engage in resistance and escalate matters with which she disagrees.

5. Toney's testimony regarding a child being in danger is not credible because Toney admitted that she should have gone to DSS or sheriff's department, but she did not want to do that. This admission contradicts the training Toney admittedly received and further indicates her resistance to follow established protocols.

6. Almost all of Toney's witnesses testified that they have never engaged in conduct similar to that of Toney, and several witnesses testified that they were not in a position to know about Toney's conduct or any conflicts.

DECISION

Based on the evidence presented at the hearing, held on June 7, 2014 and July 1, 8, and 29, 2014, as well as the personnel file, the Lee County School District Board of Trustees determined that there was good and sufficient cause to approve the termination recommendation by Dr. Andrews. Ms. Toney's employment contract with the District is hereby terminated as of July 29, 2014.

AND IT IS SO DECISIONED.

LEE COUNTY BOARD OF TRUSTEES

By: Nathaniel Brunson
Nathanial Brunson
Board Vice Chair

Date: 8-8-2014

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF LEE	**Case No.: 2014-CP-31-227**
Laura Toney,	
Appellant,	
v.	**ORDER**
Lee County School District,	
Respondent.	

Certified as a True Copy
James Davis
Clerk Court of Common Pleas and General Sessions, Lee County, South Carolina

James I. Davis
FILED
JAN. 15
Lee County, SC
C.C.C.P. & G.S.

PROCEDURAL BACKGROUND

By order dated August 8, 2014, the Lee County School District ("District") formally notified Laura Toney of its decision to terminate her employment as a continuing contract teacher. On August 27, 2014, Ms. Toney timely filed her Notice of Appeal with this Court. The District filed an Answer and Return dated September 26, 2014. Having considered the arguments presented and briefs filed by both parties, for the following reasons, the order on appeal is reversed and Ms. Toney is reinstated to employment with District.

STATEMENT OF THE CASE

Laura Toney is a veteran teacher employed by the District under continuing contracts since the 1998-1999 school year. On October 4, 2013, Ms. Toney received a letter placing her on administrative leave with pay. This letter alleged that Ms. Toney "violated district policy by creating a disruption to your assigned school by sharing personal information on another staff member to other staff and students at Lee County High School." By letter dated October 29, 2013, the District's Superintendent notified Ms. Toney that she was recommending that Ms. Toney be terminated from employment. This letter accused Ms. Toney of causing "unnecessary disruption in the workplace . . . discussing a faculty member's personal information with other

employees and students . . . using a student's cellular phone to access another employee's social media account . . . and instruct[ing] a student to refuse to cooperate with the administration's investigation." Ms. Toney submitted a timely request to be heard by the Board to challenge this recommendation.

Following the request for a hearing and the deposition of the Superintendent, on December 18, 2013, the District amended the grounds for termination alleging that Ms. Toney caused unnecessary disruption in the workplace by discussing a faculty member's personal information with other employees after being directed by an administrator to leave the matter alone and that her personnel file revealed other incidents of unprofessional conduct. The notice further indicated that Ms. Toney displayed "unacceptable behavior" and "lack of candor" during the investigation into her conduct.

The common thread in the notice of administrative leave and two termination notices issued to Ms. Toney is the allegation that she caused a disruption by "sharing" or "discussing" personal information about a fellow teacher with others. Ms. Toney vigorously denied this allegation, explaining that she merely repeated information that had been shared with her by the school's assistant principal (a friend of the teacher) that, like herself, the teacher had lost his "spouse." When the teacher filed a grievance complaining that Ms. Toney had commented that he had been married to another man, Ms. Toney expressed surprise and offered to apologize. Instead, she was instructed not to approach the teacher and to leave matters alone until the principal returned from a conference.

In addition to filing a grievance, the teacher had communicated with a number of colleagues, the assistant principal and others about Ms. Toney's alleged "outing." A couple of days after the grievance was filed, Ms. Toney found an unmarked envelope near the door of her

classroom containing copies of Facebook postings by the teacher. The contents of the envelope were proffered under seal at the Board hearing and inspected *in camera*.[1] The postings included vulgar comments about Ms. Toney (for example, referring to her as a "f***ing bitch,") and an exchange with someone identified as a "good student" at "SHS" (Sumter High School) containing sexual implications (indicating that the student would "lick [the teacher] to death" and receiving a response from the teacher of "sweet.") The postings also contained references to the teacher's sexual orientation and a photo of his deceased spouse.

Ms. Toney reported receipt of this package to the school administrator filling in for the absent principal, and provided a copy upon his request. She also left a sealed package containing the postings for the Superintendent with the written comment: "Please Read!! The last page seems that a child might be in danger." Ms. Toney did not give the postings or discuss the contents with anyone else, and no testimony was offered to support the accusation that she disrupted the school environment.

After delivering the package to the Superintendent, Ms. Toney was placed on paid leave and told not to communicate with District employees or visit District property. While on leave, Ms. Toney was informed that an uncertified substitute had been assigned to her classes and asked a Board member she considered a friend to look into the matter. Ms. Toney did not ask for any personal intervention by the Board member. This action was characterized as insubordinate and included as a ground for termination.

[1] The teacher objected to introduction of his postings and moved to quash a subpoena to testify at the hearing. After taking the matter under advisement, the Board decided not to consider the content of the postings or compel the teacher to testify. I have examined the postings and the teacher's deposition testimony filed under seal. This review supports Ms. Toney's objection to the Board's rulings on grounds that the postings and testimony do not invade the teacher's privacy and are relevant to provide context to Ms. Toney's delivery of the postings to the Superintendent. See generally, U.S. v Meregildo, 883 F. Supp. 2d. 523, 526, (S.D.N.Y. 2012) (posts on Facebook to "friends" are public in nature); Rule 401, SCRE (relevant evidence is evidence having a tendency to make the existence of any fact that is of consequence more or less probable than without the evidence)

The Board heard testimony and argument on June 7, July 1 and July 8, 2014. The Board reconvened for additional deliberations and announced its decision on July 29, 2014. The Board issued its written decision stating its reasons for Ms. Toney's termination on August 8, 2014.

STANDARD OF REVIEW

This appeal is governed by the Teacher Employment and Dismissal Act. ("TEDA"), S.C. Code Ann. § 59-25-410 et seq. In Sections 59-25-460 and 470, the Act requires that a continuing contract teacher be provided substantive and procedural due process by the school district's board. The hearing process established by the General Assembly in the TEDA compels school boards to provide teachers the opportunity to confront witnesses and to challenge the introduction of evidence offered to substantiate any charges presented.

Because school boards are delegated the responsibility to see and hear witnesses called to testify, review of the factual issues on appeal 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)

On appeal from termination of a continuing-contract to teach, the Court of Common Pleas has the authority and duty to correct errors of law. Lexington County School District One Board of Trustees v. Bost, 282 S.C. 32, 316 S.E.2d 677 (1984) Where, as here, the challenged

action arises from immediate termination[2], the record must contain evidence of unfitness to teach that is "undeniably and abundantly present." Kizer v. Dorchester County Vocational Educ. Bd. of Trustees, 287 S.C. 545, 550, 340 S.E.2d 144, 147 (1986) This Court may reverse or modify a decision if it is affected by an error of law or is arbitrary or capricious. S.C. Code Ann. § 1-23-380(5)(d), (f) (Supp. 2010) Additionally, this Court has the authority to reverse any decision "made upon unlawful procedure" or in excess of "statutory authority." S.C. Code Ann. § 1-23-380(6) (Supp. 1997), cited in Adamson v. Richland County School District One, 332 S.C. 121, 128, 503 S.E.2d 752, 755-56 (Ct. App. 1998)

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. Toney 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

[2] S.C. Code § 59-25-430 states: 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.

3. Substantive due process, including the right to cross-examine witnesses, offer evidence and witnesses, and present "any and all defenses to the charges." (§ 59-25-470)

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) 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)

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. 301 S.C. at 330, 391 S.E.2d at 868. 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. S.C. 389 at 53, 697 S.E.2d at 611 (emphasis added)

CONCLUSIONS OF LAW

I. Findings of insubordination based upon Ms. Toney's delivery of sealed Facebook postings to the Superintendent and school administrator cannot support termination.

As a matter of law, termination on the basis of insubordination requires "undeniably and abundantly present" evidence of willful misconduct. This misconduct must rise to the level of demonstrating "evident unfitness for teaching." Delivering the packet containing Facebook postings to a school administrator the Superintendent, even if inconsistent with the principal's directive to "leave the matter alone" in his absence, does not reflect on Ms. Toney's fitness to teach. First, the record reflects that the school administrator went to Ms. Toney's classroom and told her to provide him with what she had, saying, "if [you] have something in writing, to give it to me, put it in writing and I would give it to Mr. Webb [principal] and she presented me with a packet." Ms. Toney only provided the packet with her written note after being asked to do so by the school administrator. Second, the delivery of the packet to the Superintendent does not support termination. This very issue was addressed by the Court of Appeals in Hall v. Board of Trustees of Sumter County School Dist. No. 2., 330 S.C. 402, 409-410, 499 S.E.2d 216, 220 (Ct. App. 1998)

In Hall, a teacher "disobeyed" the superintendent's instructions not to discuss her situation with fellow employees. The Court of Appeals held that this act did not evidence unfitness to teach and could not be relied upon as a basis for the teacher's termination. As a result, the decision of Judge Howard King reinstating the teacher to employment was affirmed.

As in Hall, the record contains no evidence that Ms. Toney's delivery of sealed Facebook postings to the school administrator and Superintendent impaired her ability to teach. Ms. Toney's failure to comply with her principal's general directive to leave the matter alone until he returned falls short of the type of conduct justifying immediate termination pursuant to S.C. Code Ann. § 59-25-430. Accordingly, this ground for termination cannot stand and, like the teacher in Hall, Ms. Toney is entitled to reinstatement.

II. Findings of insubordination based upon Ms. Toney's communication with a Board member cannot support termination.

The Hall decision also establishes that Ms. Toney's communication with a Board member concerning assignment of an uncertified substitute to teach in her absence cannot be relied upon as a basis for her termination. In Hall, the Court of Appeals found that the teacher "disobeyed" a direct instruction from the Superintendent by communicating with district employees during an investigation of her conduct. Id. 330 S.C. at 409, 499 S.E.2d at 220.

In the letter placing Ms. Toney on leave, the District's Human Resources Director instructed her not to "visit any Lee County facility, utilize any school equipment to communicate (including access to computers or email) . . .[or] contact fellow employees of the Lee County School District." There is no evidence that Ms. Toney violated any of these directives. Instead, the only evidence is that she communicated with a Board member about the qualifications of her substitute teacher. Further, Ms. Toney testified that she would not have spoken with a Board member had the letter stated she was not to speak with one. Additionally, any directive prohibiting Ms. Toney from communicating with a Board member on a matter of public concern unrelated to her personal circumstances would violate freedoms protected by the state and federal constitutions. See generally, Pickering v. Board of Ed. of Tp. High School Dist. 205, 391

U.S. 563 (1968) (Teacher communications on matters of public concern are protected by the First and Fourteenth Amendments to the United States Constitution); see also, Hall v. Marion School District Number 2, 31 F.3d 183 (1994) (Teacher termination in violation of First Amendment rights) For these reasons, Ms. Toney's communication with a Board member about a matter unrelated to the reasons for her involuntary leave cannot provide a legitimate basis for her termination.

III. There is not sufficient evidence to support termination.

Substantial evidence is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the public body reached or must have reached in order to justify its action. Laws v. Richland County School District 1, 270 S.C. 492, 243 S.E.2d 192 (1978) Applying this standard, there is not substantial evidence to support Ms. Toney's termination. Specifically, the record does not support the Board's finding that Ms. Toney had a pattern of unprofessional conduct that would amount to evident unfitness to teach. Ms. Toney was never reprimanded by her current principal for being "unprofessional" in dealings with his administration. Additionally, like all prior administrators, the principal recommended that Ms. Toney receive a continuing contract each year without any condition. The principal testified that before she was removed from the school, he had no reason to recommend Ms. Toney's termination. He also conceded that no school documents, including the response to an administrative assistant's observation and e-mails about students picking up supplies relied upon by the Board, led him to conclude that Ms. Toney should be fired.

The controlling law of this State requires undeniable and abundant evidence of unfitness to teach where, as here, a teacher is dismissed during the course of a continuing contract of

employment. The definition of "unfitness" requires conduct that "substantially interfere[s] with the performance of [a teacher's] duty and constitute[s] unprofessional conduct." Hall, *supra.*, 330 S.C. at 409, 499 S.E.2d at 220. Even applying the less rigorous substantial evidence standard, however, the record as a whole does not support Ms. Toney's termination on any ground identified in the Board's decision.

In reaching this conclusion, I have examined the Board's reliance upon alleged acts of defiance or objection to supervision on the part of Ms. Toney over the course of her employment with the District and find that the record cannot support termination based upon failure to improve following written notice under S.C. Code Ann. § 59-25-440. Ms. Toney's personnel file is contained in the record. Contrary to the Board's conclusion, neither this record nor the isolated incidents identified by the Board reveal "a pattern of unprofessional conduct" sufficient to support termination. Indeed, our Supreme Court has held that piecing together conduct alleged to have occurred years before the events prompting a recommendation to terminate does not establish a "pattern" of misconduct warranting termination. See, Curtis Shell v. Richland County School Dist. One, 362 S.C. 408, 411, 608 S.E.2d 428, 429 (2005) (Isolated acts separated by twelve years do not support a pattern of unfitness) For all of these reasons, a fair reading of the record requires a finding that the reasons identified by the Board cannot sustain Ms. Toney's termination on any ground identified in its decision.[3]

[3] In addition to the grounds for reversal set forth in the order, Ms. Toney has argued that the Board's decision to quash the teacher's subpoena and not to consider the content of the teacher's Facebook postings violate TEDA and due process. Ms. Toney also raises objection to the introduction of hearsay in documents presented by the District. Having found the record inadequate to support termination, a ruling on these grounds is not required.

ORDER

For each of the reasons stated above, the order of termination issued by Lee County School Board dated August 8, 2014 is hereby reversed. This reversal is required because the record does not establish substantial evidence of Ms. Toney's unfitness to teach or failure to improve performance to a satisfactory level following written notice, assistance and reasonable opportunity. Accordingly, Ms. Toney is hereby reinstated to employment under a continuing contract and shall be entitled to back pay with benefits, less appropriate mitigation, from the date of her discharge though the date of reinstatement.

IT IS SO ORDERED.

Maité Murphy
Circuit Court Judge

January 12, 2015
Bishopville, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-31-227

Laura Toney

PLAINTIFF(S)

Lee County School District

DEFENDANT(S)

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

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Respondent's Motion for Reconsideration or in the Alternative, Motion to Alter or Amend Judgment dated January 26, 2015 is hereby denied.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case.
Additional Information for the Clerk:

FEB 2015
JAMES I. DAVIS
FILED
Lee County, S.C.
C.C.P. & G.S.

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Nate Kluge
Circuit Court Judge

2166
Judge Code

2/13/15
Date

ROA_00022

For Clerk of Court Office Use Only

This judgment was entered on the 16 day of Jan, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 16 day of Jan, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Allen Nicholas

ATTORNEY(S) FOR THE PLAINTIFF(S)

Deidre Lewis

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA	)	**BEFORE THE BOARD OF TRUSTEES OF LEE COUNTY SCHOOL DISTRICT**
COUNTY OF LEE	)	
In the matter of:	)	
Dr. Wanda Andrews	)	
Petitioner,	)	**PETITION FOR RECONSIDERATION**
v.	)	
Laura Toney,	)	
Respondent.	)	

Respondent hereby requests that the Lee County Board of Trustees reconsider and withdraw the Decision in the above matter, signed by the Board Vice-Chair dated August 8, 2014. Grounds for this request are as follows:

1. The Decision does not identify the grounds for Respondent's termination. Specifically, the conclusions of law do not contain any reference to statutory grounds for the termination of a continuing contract to teach.

2. The Decision ignores all evidence presented on behalf of Respondent and mischaracterizes Respondent's record of employment with the District. Specifically, the Decision does not address inconsistencies in the testimony presented by Petitioner or Petitioner's proven misstatements concerning Respondent's employment record and relationship with prior supervisors.

3. The Decision mischaracterizes Respondent's submission of her personnel record for review by the Board. This submission was not endorsing the truth of matters contained therein or a waiver of objections to hearsay contained in that record. Instead, the submission was

presented for the limited purpose of contesting Petitioner's statement that "all" of Respondent's supervisors had problems with her performance.

4. The Decision does not address the Board's refusal to honor Respondent's subpoena for testimony by Michael Baldwin. Additionally, the Decision does not address the Board's exclusion of the content of materials delivered by Respondent to Mr. Bernard McDaniel and Petitioner. Despite this failing, the Decision makes reference to the delivery of material and makes a finding that Respondent would have been obligated to communicate with law enforcement officers had she a genuine concern for child safety based upon the content of the material.

5. The Decision relies upon alleged failures to cooperate with Principal Ron Webb even though Mr. Webb testified that these incidents did not support termination, were not unique to Respondent and that Respondent had offered acceptable explanations for her conduct.

6. The Decision repeatedly makes reference to and relies upon alleged conduct occurring during preceding continuing contracts that were not deemed sufficient to initiate formal warnings, non-renewal or termination proceedings.

7. The Decision does not conform to the burden of proof required in termination of teachers under S.C. Code Ann. § 59-25-430. Specifically, the Decision does not address the distinctions between Code Sections 59-25-430 and 440. Further, the Decision does not identify deficiencies in Respondent's teaching or "undeniably and abundantly present" evidence of unfitness as required by Hall v. Board of Trustees of Sumter County School District No. 2, 330 S.C. 402, 499 S.E.2d 216 (Ct. App. 1998)

8. The Decision does not address the failure to provide Respondent written notice of alleged unfitness based upon insubordination.

ROA_00025

9. Upon information and belief, the Decision was prepared by Petitioner or Petitioner's representatives without consulting Respondent or providing Respondent an opportunity to examine any proposed findings or conclusions. In this context, the Decision represents an *ex parte* communication between Petitioner and the Board. See, S.C. Code Ann. § 1-23-360.

CONCLUSION

For the reasons stated above, the Decision as issued is arbitrary, capricious and affected by legal error. Accordingly, Respondent requests that the Decision be withdrawn and that she be afforded an opportunity to be heard on this Petition.

NICKLES LAW FIRM, LLC

By: _____

W. Allen Nickles, III
Susan M. Fittipaldi
1122 Lady Street, Suite 610
Columbia, SC 29201
(803) 779-8080

Attorneys for Respondent

August 18, 2014
Columbia, South Carolina

ROA_00026

CERTIFICATE OF SERVICE

I, Paula Bregovi, the undersigned employee of Nickles Law Firm, LLC, attorneys for Respondent hereby certify that I have served the foregoing Petition for Reconsideration by depositing a copy of same in the United States Mail, postage prepaid and addressed as follows:

Francenia B. Heizer, Esquire
McNair Law Firm, P.A.
Post Office Box 11390
West Columbia, South Carolina 29211

Charles Boykin, Esquire
Deidre D. Laws, Esquire
Boykin & Davis
Post Office Box 11844
Columbia, South Carolina 29211

This 18th day of August, 2014.

Paula Bregovi

Columbia, South Carolina

NICKLES LAW FIRM, LLC
- ATTORNEYS AT LAW -
1122 Lady Street, Suite 610
Columbia, South Carolina 29201

W. Allen Nickles, III

Telephone: (803) 779-8080
Facsimile: (803) 256-1816
Email: wanickles@nickleslaw.com

August 12, 2014

Via Email and U.S. Mail
Charles Boykin, Esquire
Deidre D. Laws, Esquire
Boykin & Davis
Post Office Box 11844
Columbia, South Carolina 29211

RE: Andrews v. Toney

Dear Charles and Deidre:

I have received the decision issued by the Lee County Board of Trustees dated August 8, 2014. Apart from my obvious disagreement with the findings, I am concerned that the decision appears to have been prepared by your firm without providing my office an opportunity for review before submission to the Board. Please let me know if this is the case so that I can communicate my objection to Frannie.

I look forward to hearing from you.

Sincerely,

W. Allen Nickles, III

WAN/pfb
File #13-167

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF LEE	)	**Case No.: 2014-CP-31-_____**
	)	
Laura Toney,	)	
	)	
Appellant,	)	
	)	**NOTICE OF APPEAL**
v.	)	
	)	
Lee County School District,	)	
	)	
Respondent.	)	

Pursuant to South Carolina Code of Laws § 59-25-480, the Appellant, Laura Toney, hereby appeals the decision of the Lee County School Board ("the Board") of August 8, 2014, to terminate her employment contract with the Lee County School District. A copy of this Decision is provided as Attachment A. Ms. Toney provides the following grounds for her appeal, each ground independently requiring reversal of the Board's action.

1. The Decision does not identify the grounds for Appellant's termination. Specifically, the conclusions of law do not contain any reference to statutory grounds for the termination of a continuing contract to teach.

2. The Decision ignores all evidence presented on behalf of Appellant and mischaracterizes Appellant's record of employment with the District. Specifically, the Decision does not address inconsistencies in the testimony presented by Respondent or Respondent's proven misstatements concerning Appellant's employment record and relationship with prior supervisors.

3. The Decision mischaracterizes Appellant's submission of her personnel record for review by the Board. This submission was not endorsing the truth of matters contained therein or a waiver of objections to hearsay contained in that record. Instead, the submission was

presented for the limited purpose of contesting Respondent's statement that "all" of Appellant's supervisors had problems with her performance.

4. The Decision does not address the Board's refusal to honor Appellant's subpoena for testimony by Michael Baldwin. Additionally, the Decision does not address the Board's exclusion of the content of materials delivered by Appellant to Mr. Bernard McDaniel and Dr. Wanda Andrews. Despite this failing, the Decision makes reference to the delivery of material and makes a finding that Appellant would have been obligated to communicate with law enforcement officers had she a genuine concern for child safety based upon the content of the material.

5. The Decision relies upon alleged failures to cooperate with Principal Ron Webb even though Mr. Webb testified that these incidents did not support termination, were not unique to Appellant and that Appellant had offered acceptable explanations for her conduct.

6. The Decision repeatedly makes reference to and relies upon alleged conduct occurring during preceding continuing contracts that were not deemed sufficient to initiate formal warnings, non-renewal or termination proceedings.

7. The Decision does not conform to the burden of proof required in termination of teachers under S.C. Code Ann. § 59-25-430. Specifically, the Decision does not address the distinctions between Code Sections 59-25-430 and 440. Further, the Decision does not identify deficiencies in Appellant's teaching or "undeniably and abundantly present" evidence of unfitness as required by Hall v. Board of Trustees of Sumter County School District No. 2, 330 S.C. 402, 499 S.E.2d 216 (Ct. App. 1998)

8. The Decision is not confined to the notice of termination as required by law and constitution.

9. The Decision does not identify and the record does not contain substantial or sufficient evidence to support termination of Appellant's employment.

10. The Decision violates Appellant's right to confront and cross-examine individuals providing information in support of her termination as required by law and constitution.

11. The Decision represents arbitrary and capricious conduct on the part of the decision-makers.

12. The Decision is affected by errors of law, including reliance upon hearsay and other inadmissible evidence.

13. The Decision was prepared by Respondent's representatives without consulting Appellant or providing Appellant an opportunity to examine any proposed findings or conclusions. Appellant presented a timely Petition for Reconsideration based upon this error, identifying numerous grounds in support. Appellant was informed that the Board voted to deny her petition. Accordingly, the Decision represents an *ex parte* communication between Appellant and the Board. See, S.C. Code Ann. § 1-23-360.

CONCLUSION

Each of the grounds identified herein, separately and in combination, establish that the Decision on appeal was reached in violation of constitutional and statutory provisions, in excess of statutory authority, made upon unlawful procedure, affected by error of law, clearly erroneous in view of substantial evidence, and/or arbitrary, capricious and characterized by abuse of discretion. For these reasons, the decision must be reversed pursuant to S.C. Code Ann. § 1-23-380(5) and Appellant is entitled to reinstatement of her continuing contract, with back pay and benefits.

*****SIGNATURE PAGE FOLLOWS*****

NICKLES LAW FIRM, LLC

By:

W. Allen Nickles, III
Susan M. Fittipaldi
1122 Lady Street, Suite 610
Columbia, SC 29201
(803) 779-8080

Attorneys for Appellant

August 27, 2014
Columbia, South Carolina

ATTACHMENT A

STATE OF SOUTH CAROLINA COUNTY OF LEE In the matter of: Dr. Wanda Andrews, Petitioner, vs. Laura Toney, Respondent.	BEFORE THE BOARD OF TRUSTEES OF LEE COUNTY SCHOOL DISTRICT **DECISION**

BASIS FOR RECOMMENDATION OF DISMISSAL

By letter dated December 18, 2013, Dr. Wanda Andrews, Superintendent for Lee County School District (hereinafter the "District"), notified Ms. Laura Toney, a teacher at Lee Central High School, of Dr. Andrew's intent to recommend to the Lee County School District Board of Trustees (hereinafter "the Board") that Ms. Toney's employment with the District be terminated. The recommendation of termination was based on Ms. Toney's conduct with regard to discussing a faculty member's personal information with other employees and failure to adhere to the directives of an administrator. Dr. Andrews' recommendation was also based upon a review of Ms. Toney's personnel file, which revealed that Ms. Toney has engaged in other incidents of unprofessional conduct.

Pursuant to South Carolina Code Ann. § 59-25-430, a teacher may be dismissed at any time who shall fail, or who may be incompetent, to give instruction in accordance with the direction of the superintendent, or who shall otherwise manifest an evident unfitness for teaching; provided, however, that notice and an opportunity for a hearing shall be afforded prior to any dismissal. South Carolina Code Ann. § 59-25-440 provides that whenever a superior or

principal charged with the supervision of a teacher finds its necessary to admonish a teacher for a reason that could lead to the teacher's termination, the administrator must bring the matter, in writing, to the attention of the teacher, make a reasonable effort to assist the teacher to correct it, and allow reasonable time for improvement. However, such teacher may not be dismissed without a hearing held pursuant to South Carolina Code Ann. § 59-25-470.

HEARING

Ms. Toney waived the 15-day statutory period for holding the hearing with the understanding that waiving the time period for the hearing did not waive her right to a hearing. The hearing was held on April 28, 2014; June 7, 2014; July 1, 2014; July 8, 2014; and July 29, 2014, at the District Administrative Complex. The following Board members participated in the hearing and decision: (1) Ms. Sanya Moses, Board Chair; (2) Mr. Nathanial Brunson, Board Vice-Chair; (3) Mrs. Queenie Boyd; (4) Ms. Jessie Belvin; (5) Mr. Graham Drayton; and (6) Valarie Haywood. Ms. Toney was present and represented by W. Allen Nickles, Esq. and Susan Fittipaldi, Esq. of the Nickles Law Firm. Charles J. Boykin, Esq. and Deidre D. Laws, Esq., both of Boykin & Davis, L.L.C., represented the Administration. Ms. Francenia B. Heizer of McNair Law Firm, P.A., served as legal counsel for the Board.[1] The vote to uphold Dr. Andrew's recommendation for termination was 6-0. The Board rendered its decision on July 29, 2014, and directed the preparation of this Decision.

EVIDENCE PRESENTED

The purpose of the hearing was to determine whether good and just cause existed for the termination of Ms. Toney's employment under the provisions of S.C. Code Ann. §§ 59-25-430

[1] The Board originally retained Carlos Johnson, Esq., of Lyles, Darr & Clark, L.L.P., to advise on evidentiary matters. However, Ms. Toney submitted a Motion to Recuse the Board's Attorney, requesting that the Board hire different counsel because Ms. Toney believed that Mr. Johnson had a conflict of interest, as he represents Dr. Andrews in a separate action involving Dr. Andrews and her former employer, Spartanburg County School District 7. At the June 7, 2014 hearing, the Board denied the motion, but proceeded with alternate counsel, Ms. Heizer.

and 59-25-440. To determine whether good and just cause existed to terminate Ms. Toney's employment, the Board heard testimony on the following issues: (1) whether Ms. Toney engaged in unprofessional conduct during her employment with the District; (2) whether Ms. Toney received notice from the District that her conduct was inappropriate and/or unprofessional; and (3) whether Ms. Toney failed to follow the reasonable directive of her supervisors.

During the hearing, the District offered exhibits (which are attached to the hearing transcript and incorporated herein by reference) and the testimony of the following witnesses:

a. Mr. Ron Webb, Principal of Lee Central High School (hereinafter "LCHS");

b. Mr. Bernard McDaniel, Secondary Coordinator at LCHS;

c. Ms. Laura Toney, Respondent; and

d. Dr. Wanda Andrews, Superintendent.

Ms. Toney also offered exhibits and testimony of the following witnesses:[2]

a. Mr. Anthony Blair, former teacher at LCHS;

b. Sheneaka Ratliff, teacher at LCHS;

c. Virginia Rogers, LCHS secretary/bookkeeper;

d. Stacy Harrison, former media specialist at LCHS;

e. V.E. Moorman, grandparent of former student in Ms. Toney's class; and

f. Linda Weaver, friend and former chair of Social Studies department at LCHS.

FINDINGS OF FACT

1. Dr. Wanda Andrews, a veteran in the education field for approximately thirty-three (33) years, is the Superintendent of the District. Dr. Andrews has been at the District for one (1) year, and has held various administrative positions in other school districts for the past

[2] An additional witness, Mr. Span, was requested by Ms. Toney; however, he was not available during Ms. Toney's case-in-chief. Ms. Toney did not seek to continue the hearing; and thus, waived any objection to his unavailability.

sixteen (16) years. She has a Bachelor's degree, Master's degree, and a Doctorate degree in educational leadership.

2. Mr. Ron Webb was the Principal of LCHS for three (3) years, and has ten (10) years experience in administration. Mr. Webb has a Bachelor's degree and a Master's in education administration and leadership.

3. Mr. Bernard McDaniel, serves as the secondary coordinator at LCHS and has thirty-four (34) years of experience as an educator. Mr. McDaniel is certified as a secondary director and administrator.

4. Ms. Laura Toney (hereinafter "Toney") is a classroom teacher who holds a teaching credential for the State of South Carolina. Toney has taught in the District for approximately twenty-three (23) years. She has a Bachelor's degree and a Master's degree. All of Toney's continuing contracts with the District provided that "all personnel are responsible to their immediate supervisor."

5. Mr. Anthony Blair is a teacher who worked at the District for six (6) years, and was the social studies department chair during the 2013-2014 school year.

6. Sheneaka Ratliff is a teacher, and has worked at the District for five (5) years. She is the 2013-2014 District Teacher of the Year and High School Teacher of the Year.

7. Ms. V.E. Moorman had a grandchild in Toney's class two (2) years ago.

8. Ms. Stacy Harrison was the media specialist at LCHS for six (6) years.

9. Ms. Virginia Rogers has been the secretary/bookkeeper at LCHS for two (2) years, and worked with the District for a total of twenty-six (26) years.

10. Ms. Linda Weaver worked at LCHS for five (5) years, and was the social studies department chair for three (3) years, prior to the 2013-2014 school year.

11. On Friday, September 27, 2013, Toney was in a social studies departmental meeting, along with the following colleagues: Mr. Anthony Blair; Ms. Kara Fowler; Mr. Darryl Peyton; Mrs. Tonya Addison; and Mr. Michael Baldwin. During the meeting, on two (2) separate occasions, Toney made comments concerning personal information of Mr. Baldwin. Toney's comments led Mr. Baldwin to file a grievance against Toney on Monday, September 30, 2013.

12. When Mr. Webb received the grievance, he and Mr. McDaniel met with Toney to advise her that a grievance had been filed against her. However, because Mr. Webb was scheduled to be out of town for an educational conference, Mr. Webb, Mr. McDaniel, and Toney testified that Mr. Webb directed Toney to leave the matter alone until he returned.

13. Toney testified that two days later, she found a packet of information under her classroom door which contained two copies of material regarding the grievant, Mr. Baldwin. When she first tried to tell Mr. McDaniel about the information, he refused to discuss it, but later told Toney that if she had something to tell him, put it in writing. Toney provided one copy to Mr. McDaniel, kept the second copy, went home to make another copy, and then took the extra copy to Dr. Andrew's office. According to Toney, she provided a copy to Dr. Andrews because she "was concerned about the safety of the child."

14. Toney testified that the materials in question concerned the teacher who had filed a grievance against her. Mr. McDaniel testified that Toney approached him stating that Toney had something to tell him about what Mr. Baldwin is doing. Mr. McDaniel reminded Toney that she was told to leave it alone until Mr. Webb returned. Later, Mr. McDaniel told Toney that if she had something to say to put it in writing. Toney then handed McDaniel a packet of information. Mr. McDaniel testified that Toney did not follow Mr. Webb's directive.

15. Upon his return, Mr. Webb learned that the situation had escalated to the district level, as Toney gave a packet of information regarding the grievant to Dr. Andrews. Mr. Webb testified that Toney did not follow his directive.

16. Toney testified that she believed a child was "at risk" and/or "in danger," but she did not report the matter to DSS or the Sheriff's office in Lee County or Sumter County, even though she was trained and required by law to do so.

17. When Dr. Andrews found the packet of information Toney left, Dr. Andrews spoke with Mr. Webb and Mr. McDaniel and learned that Toney had not followed their directives. Thereafter, Dr. Andrews, a veteran educator having extensive experience in human resources, placed Toney on administrative leave, pending an investigation into Toney's conduct after having been told to leave the matter alone, and a review of Ms. Toney's personnel file and overall conduct as a District employee.

18. During the administrative leave, Toney was advised that she could not visit any District property, use school equipment to communicate (including computers and email), or contact other District employees. The administrative leave letter stated if Toney had questions to contact Ms. Nettie Vaughn, Assistant Superintendent for Personnel and Student Services; and both Dr. Andrews and Toney testified that she verbally stated to Toney, that if there was a question about anything, Toney could contact Dr. Andrews.

19. Toney again ignored administrative directives when she had a question about who had taken over teaching her class. Toney and Dr. Andrews acknowledged that Toney did not call Dr. Andrews to discuss the concern, but Toney contacted a board member.

20. During Dr. Andrews' review of Toney's employment, Dr. Andrews discovered, and Mr. Webb testified to, the following:

a. Ms. Fowler, a certified teacher on Mr. Webb's administrative team, conducted an observation of Toney's teaching on September 13, 2013, and provided feedback to Toney, as evidenced by email from Fowler to Toney dated September 16, 2013. Toney responded, accusing Ms. Fowler's feedback of being dishonest and libelous. Toney was not accepting of the feedback given by Ms. Fowler, and thus not supportive of the instructional process at the school. Mr. Webb believed Toney's response to Ms. Fowler was negative and defensive, which is not good for improving instructional quality, as evidenced by email from Toney to Fowler dated September 17, 2013;

b. Toney did not follow protocol when she failed to attend a mandatory faculty meeting; failed to inform the administration of her absences from school in a timely manner; failed to enter grades timely; and sent students to the office, specifically during class time, to request supplies on more than one occasion despite having been previously reminded to pick up supplies herself during her planning period. As evidenced by letters from District Administration to Toney dated September 16, 2013, May 7, 2013 and May 15, 2013;

c. On February 11, 2013, Mr. Webb had to remind Toney to conduct herself in a professional manner at all times after Toney became too irate to continue with a parent-teacher conference. Toney became so angry and irate with a parent that Mr. Webb asked her to leave the conference. At Toney's suggestion, and the parent's request, the student was transferred out of Toney's class; as evidenced by letter from District Administration dated February 11, 2013;

d. A former principal, Ms. Lenora Scott, previously advised Toney that her inappropriate behavior could lead to termination. In a letter placed in Toney's personnel file, Ms. Scott described an incident in which Toney questioned the assistant principal, became angry and was not receptive to the administrator's requests. While discussing the incident in a conference, Toney was argumentative and unprofessional. Further, Toney made unsubstantiated allegations against another co-worker, as evidenced by letter from Scott to Toney dated January 25, 2006.

21. After reviewing Toney's employment record, speaking further with Mr. Webb and getting Ms. Toney's responses to these issues, Dr. Andrews concluded that Toney's recent unprofessional conduct was not just an isolated incident. The Board finds that the January 25, 2006 letter is sufficient notice to Toney that she should behave professionally at all times, and continuous reminders from administration are unnecessary. Additionally, although Toney objected to admitting this letter into evidence, Toney's offering the entire personnel file for the Board's review, waived such objection. Dr. Andrews found a pattern of unprofessional conduct, which included insubordination and uncooperativeness, and such conduct justified the termination of her employment.

22. In Toney's defense, she offered the notion that she only asserted her rights or she "stood up for herself." In explaining the documents in her record, Toney testified:

a. Toney understood Ms. Fowler's role was to administer evaluations. When asked whether it was fair to say that Toney turned the observation from herself to focus on Ms. Fowler, Toney responded, "Well, I guess you could

say that." Toney also stated that it was appropriate to challenge an administrator in this tone, if something is not accurate;

b. Toney acknowledged that her voice elevated and she stood up during the parent conference;

c. Toney testified that she was late to work on the particular day in question because she had a flat tire. She addressed her failure to timely notify administration only after she received Mr. Webb's letter;

d. Toney admitted she did not contact Dr. Andrews concerning whether a certified teacher was teaching her class while Toney was on administrative leave;

e. Toney admitted that when it comes to child abuse, no one said not to do anything, and stated "I know the first thing to do was to maybe go to DSS or take it to the sheriff's department, but I did not want to do that;" and

f. Toney did not recall the letter from her former principal, Ms. Lenora Scott; however, she did remember a specific incident discussed in the letter.

CONCLUSIONS

1. The Board is the duly-elected body governing public education in Lee County.

2. Toney received this hearing pursuant to her request and in accordance with S.C. Code Ann. § 59-25-470.

3. The evidence reveals a pattern of unprofessional conduct. Toney offered repeated resistance to carrying out directives of supervisors and administrators, as evidenced by Toney's response to the observation; sending students to get supplies during class; bringing forward information about the grievant while Mr. Webb was away; contacting a board member while on

administrative leave, after having been directed to contact the Superintendent; and behavior documented in the personnel file.

4. The documented history of Toney's relationship with the District, and the nature of the packet of information about the grievant that Toney distributed are consistent with her tendency to engage in resistance and escalate matters with which she disagrees.

5. Toney's testimony regarding a child being in danger is not credible because Toney admitted that she should have gone to DSS or sheriff's department, but she did not want to do that. This admission contradicts the training Toney admittedly received and further indicates her resistance to follow established protocols.

6. Almost all of Toney's witnesses testified that they have never engaged in conduct similar to that of Toney, and several witnesses testified that they were not in a position to know about Toney's conduct or any conflicts.

DECISION

Based on the evidence presented at the hearing, held on June 7, 2014 and July 1, 8, and 29, 2014, as well as the personnel file, the Lee County School District Board of Trustees determined that there was good and sufficient cause to approve the termination recommendation by Dr. Andrews. Ms. Toney's employment contract with the District is hereby terminated as of July 29, 2014.

AND IT IS SO DECISIONED.

LEE COUNTY BOARD OF TRUSTEES

By Nathaniel Brunson
Nathanial Brunson
Board Vice Chair

Date: 8-8-2014

CERTIFICATE OF SERVICE

I, Paula Bregovi, the undersigned employee of Nickles Law Firm, LLC, attorneys for Appellant, hereby certify that I have served the foregoing Notice of Appeal by depositing a copy of same in the United States Mail, postage prepaid and addressed as follows:

Charles Boykin, Esquire
Deidre D. Laws, Esquire
Boykin & Davis
Post Office Box 11844
Columbia, South Carolina 29211

This 27th day of August, 2014.

Paula Bregovi

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF LEE

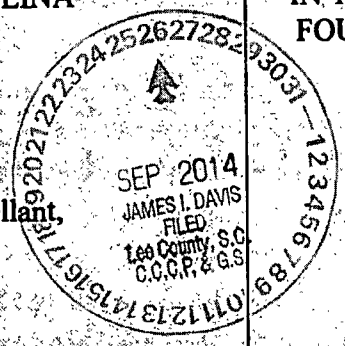
Laura Toney,

Appellant,

vs.

Lee County School District,

Respondent.



IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C.A. No.: 2014-CP-31-00227

ANSWER AND RETURN TO NOTICE OF APPEAL

Respondent, Lee County School District (hereinafter the "District") hereby responds to the Notice of Appeal of Appellant, Laura Toney (hereinafter "Appellant"), and will respectfully show unto this Court:

1. The District denies each and every allegation set forth in the appeal of the Appellant;

2. The Decision by the District's Board of Trustees is supported by substantial evidence in the record.

3. Appellant fails to meet the standard for reversal or modification of the District's Decision, as provided in S.C. Code Ann. § 1-23-380(5).

WHEREFORE, having fully answered the Appeal of the Appellant, the Board prays that its decision be affirmed and judgment entered in its favor against Appellant, dismissing the Appeal and awarding costs and any reasonable attorney's fees, as permitted by law.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

BOYKIN & DAVIS, LLC

By: _____

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Deidre D. Laws, Esq.
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Attorneys for Respondent Lee County School District

September 26, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF LEE

Laura Toney,

Appellant,

vs.

Lee County School District,

Respondent.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

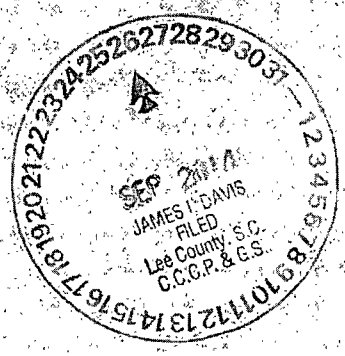
C.A. No.: 2014-CP-31-00227

CERTIFICATE OF SERVICE

The undersigned of Boykin & Davis, LLC., hereby certifies that she has served the following counsel of record with the foregoing **ANSWER AND RETURN NOTICE OF APPEAL,** by mailing a copy of same, postage prepaid and return address clearly indicated, to the following on this 26th day of September 2014:

W. Allen Nickles, III
Nickles Law Firm, LLC
1122 Lady Street
Suite 610
Columbia, SC 29201

Patricia M. Thompson, Paralegal
Boykin & Davis, LLC
P.O. Box 11844
Columbia, SC 29211



STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF LEE	)	**Case No.: 2014-CP-31-227**
	)	
Laura Toney,	)	
	)	
Appellant,	)	
	)	**APPELLANT'S MEMORANDUM OF LAW**
v.	)	
	)	
Lee County School District,	)	
	)	
Respondent.	)	

PROCEDURAL BACKGROUND

Effective October 4, 2013, Appellant Laura Toney ("Ms. Toney") was placed on administrative leave with pay for allegedly "creating a disruption to your assigned school by sharing personal information on another staff member to other staff and students at Lee County High School." (Attachment 1) By letter dated October 29, 2013, Dr. Wanda Andrews, Superintendent of the Lee County School District ("District"), notified Ms. Toney of her recommendation to terminate Ms. Toney's employment as a continuing-contract teacher. (Attachment 2) Ms. Toney timely requested a hearing before the Lee County School Board ("Board"). Following Ms. Toney's hearing request, Dr. Andrews issued a second letter of termination dated December 18, 2013. (Attachment 3) A hearing was held on April 28, June 7, July 1, July 8 and July 29, 2014. On July 29, 2014, the Board voted to uphold the recommendation to terminate Ms. Toney's employment. On August 8, 2014 the Board issued its written Decision. (Attachment 4) On August 27, 2014, Ms. Toney filed a Notice of Appeal with this court. The District filed an Answer and Return dated September 26, 2014.

STATEMENT OF THE CASE

Laura Toney is a veteran teacher employed by the District under continuing-contracts since the 1998-1999 school year. On October 4, 2013, Ms. Toney received a letter placing her on administrative leave with pay. This letter alleged that Ms. Toney "violated district policy by creating a disruption to your assigned school by **sharing personal information on another staff member to other staff and students at Lee County High School.**" By letter dated October 29, 2013, the District's Superintendent notified Ms. Toney that she was recommending that Ms. Toney be terminated from employment. This letter accused Ms. Toney of causing "unnecessary disruption in the workplace . . . **discussing a faculty member's personal information with other employees and students** . . . using a student's cellular phone to access another employee's social media account . . . and instruct[ing] a student to refuse to cooperate with the administration's investigation." Ms. Toney submitted a timely request to be heard by the Board to challenge this recommendation.

Following the request for a hearing and the deposition of the Superintendent, on December 18, 2013, the District changed the grounds for termination alleging that Ms. Toney caused unnecessary disruption in the workplace by **discussing a faculty member's personal information with other employees** after being directed by an administrator to leave the matter alone and that her personnel file revealed other incidents of unprofessional conduct. The notice further indicated that Ms. Toney displayed "unacceptable behavior" and "lack of candor" during the investigation into her conduct.

The common thread in the notice of administrative leave and two termination notices issued to Ms. Toney is the allegation that she caused a disruption by "sharing" or "discussing" personal information about a fellow teacher with others. Ms. Toney vigorously denied this

allegation, explaining that she merely repeated information that had been shared with her by the school's assistant principal (a friend of the teacher) that, like herself, the teacher had lost his "spouse." (T. p. 232, line 12-p. 233, line 16) When the teacher filed a grievance complaining that Ms. Toney had commented that he had been married to another man, Ms. Toney expressed surprise and offered to apologize. (T. p. 152, lines 14-15) Instead, she was instructed not to approach the teacher and to leave matters alone until the principal returned from a conference. (T. p. 153, lines 10-13)

Unknown to Ms. Toney, in addition to filing a grievance, the teacher had communicated with a number of colleagues, the assistant principal and others about Ms. Toney's alleged "outing." (See, Respondent's Exhibit 4, Grievance and attached statements) A couple of days after the grievance was filed, however, Ms, Toney found an unmarked envelope near the door of her classroom containing copies of Facebook postings by the teacher. (T. p. 153, lines 18-25; p. 241, line 23-p. 242, line 7) The postings included vulgar comments about Ms. Toney (for example, referring to her as a "f***ing bitch,") and an exchange with someone identified as a "good student" at "SHS" (Sumter High School) containing sexual implications (indicating that the student would "lick [the teacher] to death" and receiving a response from the teacher of "sweet.") The postings also contained references to the teacher's sexual orientation and a photo of his deceased spouse. Ms. Toney reported receipt of this package to the school administrator filling in for the absent principal, and provided a copy upon his request. (T. p. 242, lines 11-22) She also left a sealed package containing the postings for the Superintendent with the written comment: "Please Read!! The last page seems that a child might be in danger." (Attachment 5) Ms. Toney did not give the postings or discuss the contents with anyone else, and no testimony was offered to support the accusation that she disrupted the school environment.

After delivering the package to the Superintendent, Ms. Toney was placed on paid leave and told not to communicate with District employees or visit District property. As time went by, Ms. Toney was informed that an uncertified substitute had been assigned to her classes. Concerned for her students, Ms. Toney asked a Board member she considered a friend to look into the matter. Ms. Toney did not ask for any personal intervention by the Board member. (T. p. 249, line 14-p. 250, line 18) Nevertheless, this action was characterized as insubordinate and included as a ground for termination. (Board Decision, Conclusion 3)

Prior to the hearing, Ms. Toney submitted a motion requesting that the attorney selected by the Board to assist in the hearing be recused on the basis that the attorney was representing the Superintendent in pending litigation. The Board heard this motion on April 28, 2014. Following a recess, the Board reconvened on June 7, 2014 and denied the motion, but announced that alternative legal representation had been obtained.

The Board heard testimony and argument on June 7, July 1 and July 8, 2014. The Board reconvened for additional deliberations and announced its decision on July 29, 2014. The Board issued a written decision stating its reasons for Ms. Toney's termination on August 8, 2014.

STANDARD OF REVIEW

On appeal from termination of a continuing-contract to teach, the Court of Common Pleas has the authority and duty to correct errors of law. Lexington County School District one Board of Trustees v. Bost, 282 S.C. 32, 316 S.E. 2d 677 (1984) Where, as here, the challenged action arises from immediate termination, the record must contain evidence of unfitness to teach that is "undeniably and abundantly present." Kizer v. Dorchester County Vocational Educ. Bd. of Trustees, 287 S.C. 545, 550, 340 S.E.2d 144, 147 (1986) This court may reverse or modify a decision if it is affected by an error of law or is arbitrary or capricious. S.C. Code Ann. § 1-23-

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

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

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. Toney 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. Substantive due process, including the right to cross-examine witnesses, offer evidence and witnesses, and present "any and all defenses to the charges" (§ 59-25-470).

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. Toney 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. 301 S.C. at 330, 391 S.E.2d at 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. S.C. 389 at 53, 697 S.E.2d at 611 (emphasis added) Only two years ago, our Supreme Court reversed a board decision for violating teacher hearing rights provided in TEDA. Young v. Charleston County School District, 397 S.C. 303, 725 S.E.2d 107 (2012)

LEGAL ARGUMENT

I. The Board failed to provide due process to Ms. Toney as required by the South Carolina Constitution and S.C. Code Ann. § 59-25-470 by excluding testimony by Ms. Toney's accuser.

Prior to the hearing, an attorney for the teacher who filed a grievance accusing Ms. Toney of invading his privacy filed a motion to exclude Facebook printouts along with other documents produced in the teacher's deposition and to excuse the teacher from testifying.[1] Ms. Toney objected to this motion, asserting that the teacher's testimony and Facebook postings refuted the allegation that she invaded the teacher's privacy. Ms. Toney also asserted that the content of the Facebook postings justified her delivery of the material to the Superintendent. The Board heard argument on the teacher's motion and, without explanation, quashed Ms. Toney's subpoena compelling the teacher to appear and testify. Also without explanation, the Board ruled that the teacher's Facebook postings and exhibits could not be introduced.

The Board's action in excluding the teacher's testimony and exhibits deprived Ms. Toney the opportunity to refute allegations presented in support of her termination. Specifically:

[1] For purposes of this argument, the individual will be identified only as "the teacher." The teacher's deposition testimony, Facebook postings and exhibits have been filed under seal and are available for review by the Court *in camera.*

1. The October 4, 2013 letter placing Ms. Toney on leave accused her of creating a disruption by sharing personal information about the teacher to other staff and students. (Attachment 1)

2. The October 29, 2013 letter recommending Ms. Toney's termination accused her of discussing the teacher's personal information with other employees and students after being directed to leave the matter alone. (Attachment 2)

3. The October 29, 2013 letter recommending Ms. Toney's termination accused her of using a student's cellular phone to access the teacher's social media account. (Attachment 2)

4. The December 18, 2013 letter recommending Ms. Toney's termination accused her of discussing the teacher's personal information with other employees after being directed to leave the matter alone. (Attachment 3)

Ms. Toney attempted to address the above allegations through the testimony of the teacher and his public Facebook postings. As stated above, the postings included an exchange between the teacher and the individual identified as a "student" having sexual implications. Ms. Toney did not know the age of the "student" involved in this exchange. Accordingly, she provided the information to the Superintendent with the comment that a child could be in danger.[2]

The testimony excluded by the Board includes the teacher's admissions that the "personal information" allegedly disclosed by Ms. Toney had been publicly posted on Facebook by the

[2] The Board's decision finds that Ms. Toney's testimony regarding child endangerment is "not credible" because she did not report the matter to the South Carolina Department of Social Services as she was "trained." (Decision, Conclusion 5) This finding is contrary to the District's own policy that encourages teachers to inform the administration of any suspected abuse or neglect. Under the District's policy, Ms. Toney did not have the required name, address or age of the "student" or the name and address of the parent or caretaker. (Policy JLF provided as Attachment 6) Delivery of the package to the Superintendent was logical and appropriate in view of the Superintendent's ability to communicate with the administration of the "student's" district (Sumter).

teacher. In fact, the teacher knew on October 2, 2013 that his postings were not private, contrary to the accusations in his grievance against Ms. Toney. The teacher also confessed that the children of a colleague had accessed his Facebook postings through their own accounts.

In opposing his subpoena and introduction of Facebook postings, the teacher asserted that he did not intend his postings to go beyond selected Facebook "friends." As revealed in his deposition testimony and exhibits, however, these Facebook "friends" included co-workers and at least one school administrator. Accordingly, the teacher had no recognizable right of personal privacy in his postings. See, U.S. v. Meregildo, 883 F.Supp.2d 523, 526 (S.D.N.Y. 2012) (posts on Facebook to "friends" are public in nature and are admissible)

"Relevant evidence" is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Rule 401, SCRE. Clearly, the teacher's Facebook posts and proffered testimony meet this standard. Under TEDA, Ms. Toney is entitled to defend her conduct through all relevant evidence. Exclusion of the teacher's testimony and Facebook postings deprived her of this right and requires reversal.

The teacher also argued that his postings were "unfairly prejudicial" and should be excluded under Rule 403, SCRE because their probative value is outweighed by unfair prejudice. The teacher was offered as a witness and was not a party to the proceeding below. While the challenged evidence may not have placed the teacher in a favorable light, the evidence was not "unfairly prejudicial" to a party opponent. See, United States v. Mohr, 318 F.3d 613, 619-20 (4th Cir. 2003) ("Rule 403 only requires suppression of evidence that results in unfair prejudice – prejudice that damages **an opponent** for reasons other than its probative value, for instance, an appeal to emotion . . ." (Emphasis added) Furthermore, the teacher's comments regarding Ms.

Toney, as evidenced by his written complaints to the District's administration and his Facebook posts, were critical to her defense. Exclusion of the teacher's testimony and exhibits deprived Ms. Toney the opportunity to confront the allegations presented in support of her termination. This violates fundamental due process, the cross-examination guarantee and the right to present "any and all defenses" provided in TEDA.

II. The Board failed to provide due process to Ms. Toney as required by the South Carolina Constitution and S.C. Code Ann. § 59-25-470 by excluding documents relating to accusations against Ms. Toney.

The Board's Decision contains "Conclusions" offered as justification for Ms. Toney's termination. Two of the "Conclusions" specifically reference the packet of information containing the teacher's Facebook postings. The Board found, without admitting or considering the packet itself, that Ms. Toney "distributed" the packet in an unprofessional fashion and that the information in the packet could not support her concern about child endangerment. (Board Decision, Conclusions 4 and 5)

Exclusion of the Facebook postings compromised Ms. Toney's opportunity to support her defense that the packet provided to the Superintendent and school administrator contained public information and that one identified posting could reveal an improper relationship with a minor. An *in camera* examination of the excluded evidence will establish that Ms. Toney responded appropriately upon receipt of the Facebook postings. For these reasons, the Board's Decision terminating Ms. Toney's employment based upon providing the teacher's Facebook postings to a school administrator and the Superintendent cannot be sustained.

III. Findings of insubordination based upon Ms. Toney's delivery of sealed Facebook postings to the Superintendent and school administrator cannot support termination.

As a matter of law, termination on the basis of insubordination requires "undeniably and abundantly present" evidence of willful misconduct. This misconduct must rise to the level of demonstrating "evident unfitness for teaching." Delivering the packet containing Facebook postings to the Superintendent and school administrator, even if inconsistent with the principal's directive to "leave the matter alone" in his absence, does not reflect on Ms. Toney's fitness to teach. This very issue was addressed by the Court of Appeals in Hall v. Board of Trustees of Sumter County School Dist. No. 2., 330 S.C. 402, 409-410, 499 S.E.2d 216, 220 (Ct. App. 1998)

In Hall, a teacher "disobeyed" the superintendent's instructions not to discuss her situation with fellow employees. The Court of Appeals held that this act did not evidence unfitness to teach and could not be relied upon as a basis for the teacher's termination. As a result, the decision of Judge Howard King reinstating the teacher to employment was affirmed. As in Hall, the record before this Court contains no evidence that Ms. Toney's delivery of sealed Facebook postings to the Superintendent and school administrator impaired her ability to teach. Accordingly, this ground for termination cannot stand and, like the teacher in Hall, Ms. Toney is entitled to reinstatement.

IV. Findings on insubordination based upon Ms. Toney's communication with a Board member cannot support termination.

The Hall decision also establishes that Ms. Toney's communication with a Board member concerning the use of an uncertified substitute to teach in her absence cannot be relied upon as a basis for her termination. In Hall, the Court of Appeals found that the teacher

"disobeyed" a direct instruction from the Superintendent by communicating with district employees during an investigation of her conduct. Id. 330 S.C. at 409, 499 S.E.2d at 220.

In the letter placing Ms. Toney on leave, the District's Human Resources Director instructed her not to "visit any Lee County facility, utilize any school equipment to communicate (including access to computers or email) . . .[or] contact fellow employees of the Lee County School District." (Attachment 1) There is no evidence that Ms. Toney violated any of these directives. Instead, the only evidence is that she communicated with a Board member about the qualifications of her substitute. This record falls far short of the disobedience found in Hall. Additionally, any directive prohibiting Ms. Toney from communicating with a Board member on a matter of public concern unrelated to her personal circumstances would violate freedoms protected by the state and federal constitutions. See generally, Pickering v. Board of Ed. of Tp. High School Dist. 205, 391 U.S. 563 (1968) (Teacher communications on matters of public concern are protected by the First and Fourteenth Amendments to the United States Constitution); see also, Hall v. Marion School District Number 2, 31 F.3d 183 (1994) (Teacher termination in violation of First Amendment rights) For these reasons, Ms. Toney's communication with a Board member cannot provide a legitimate basis for her termination and the Board's Decision must be reversed.

V. The Board failed to provide due process to Ms. Toney as required by the South Carolina Constitution and S.C. Code Ann. § 59-25-470 by accepting hearsay evidence.

The South Carolina Constitution guarantees all citizens the right to due process of law. S.C. Const. art. I, § 3. Additionally, the Constitution states that no person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency except on due process and an

opportunity to be heard. S.C. Const. art. I, § 22. This same section provides that no person shall be deprived of liberty or property "unless by a mode of procedure prescribed by the General Assembly." Id. Proceedings under TEDA are governed by the Administrative Procedures Act ("APA"). Brown v. James, 389 S.C. 41, 49-50, 697 S.E.2d 604, 609 (Ct. App. 2010) The APA requires agencies other than the Workers' Compensation Commission to apply the rules of evidence in contested proceedings. S.C. Code Ann. § 1-23-330(1)

At the hearing in this matter, the District presented evidence, over Ms. Toney's objection, consisting of hearsay statements of former students and administrators, to support the recommendation to terminate. (District Exh. 6; Tr. p. 25, line 4-p. 28, line 10; Tr. p. 197, line 11-p. 198, line 2) The individuals who made these statements were not present to testify, thus, Ms. Toney was not provided the opportunity for cross-examination. Despite the clear language of the State Constitution and the TEDA, the Board did not honor Ms. Toney's right to cross-examine the witnesses whose statements were used against her.[3]

In other jurisdictions, even where a statute did not specifically provide for cross-examination, courts have recognized the due process right of public employees to confront and cross-examine witnesses who provide evidence used against them in termination proceedings. For example, Case v. Shelby Civil Service Merit Board, 98 S.W.3d 167 (Tenn. App. 2002), holds that due process requires an opportunity to confront and cross-examine adverse witnesses where facts giving rise to the public employee's termination are in dispute. As noted in Case, other jurisdictions have reached the same conclusion. See, Bartlett v. Krause, 209 Conn. 352,

[3] The Board held that Ms. Toney waived any objection to this document by submitting her entire personnel file in challenge to the Superintendent's statement that it demonstrated unprofessional conduct toward "all" of her prior supervisors. (Decision, Finding of Fact 21) This finding is not supported by the record. The challenged document was admitted by the Board on June 7, 2014. (T. p. 197, line 9-p. 198, line 2) Ms. Toney presented her entire personnel file for review by the Board in response to the Superintendent's testimony, and subject to her prior objections, on July 8, 2014. (T. p. 500, line 18-p. 501, line 18) The document had been admitted over objection and its presence in the personnel file did not waive that objection.

551 A.2d 710 (1988); Ohio Assoc. of Pub. Sch. Emp. v. Lockwood City Sch. Dist. Bd. of Educ., 68 Ohio St.3d 175, 624 N.E.2d 1043 (1994). See also, Winegar v. Des Moines Indep. Comm. Sch. Dist., 20 F.3d 895 (8th Cir.), cert. denied, 115 S. Ct. 426 (1994)(public school teacher was denied due process because he was not given the opportunity to confront and cross-examine witnesses against him); Garraghy v. Comm. of Va. Dept. of Corrections, 52 F.3d 1274, 1282-83 (4th Cir. 1995)(public employee who was fired based on allegations that he engaged in sexual harassment was denied due process because the employer failed to afford him the opportunity to confront and cross-examine the witnesses against him); Casada v. Booneville School Dist. No. 65, 686 F.Supp. 730 (W.D. Ark., 1988)(failure to allow teacher to cross-examine witnesses against him was a denial of due process and violated the state teacher dismissal act)

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

As in McClure, Ms.Toney's due process right to confront and cross-examine adverse witnesses at her termination hearing was violated. For example, the Superintendent testified over objection that Ms. Toney had displayed unprofessional conduct toward "every administrator." In support of this statement, the District offered a letter purportedly sent to Ms. Toney by a former

principal on January 26, 2006. This letter made reference to alleged incidents not witnessed by the principal, statements attributed to unnamed students, and opinions concerning Ms. Toney's "possible" conduct. (District exhibit 6)

The District may argue that hearsay and improperly admitted documents were "cumulative" and "harmless." This argument, however, ignores the mandatory nature of the TEDA acknowledged by the Supreme Court in Johnson v. Spartanburg Co. School Dist. No. 7, 314 S.C. 340, 444 S.E.2d 501 (1994) and the Court of Appeals in Brown. Because the process below was infected by the admission of anonymous and hearsay statements, the Board's Decision terminating Ms. Toney's employment invalid *per se*.

VI. There is not substantial evidence to support termination.

Substantial evidence is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the public body reached or must have reached in order to justify its action. Laws v. Richland County School District 1, 270 S.C. 492, 243 S.E.2d 192 (1978) In this case, the Board's decision to exclude testimony and exhibits offered by Ms. Toney to refute allegations that she invaded the privacy of a fellow teacher and "distributed" private information without justification reflects a "blind" approach to the evidence. Additionally, the grounds offered for termination characterize documents and testimony in a manner not supported by the record. For example, the Board Decision states that the "evidence reveals a pattern of unprofessional conduct" based on Ms. Toney's "repeated resistance to carrying out directives of supervisors and administrators." (Decision, Conclusion 3) In support of this conclusion, the Board offers five factual findings. None of these findings is supported by the record nor establish a pattern:

- The Board criticizes Ms. Toney's response to an observation by an administrative assistant who did not testify at the hearing. Ms. Toney's e-mail response to the observation, which she felt was inaccurate, was not sent to the principal (T. p. 260, lines 8-23) Ms. Toney met with the assistant and they resolved all issues. No administrator informed Ms. Toney that her response was insubordinate or unprofessional. (T. p. 111, line 21-p. 112, line 10; T. p. 261, line 8- p. 262, line 1)
- The Board objects that Ms. Toney sent students to get supplies during class. There is no evidence that Ms. Toney ignored or violated any directive not to send students to get supplies. In an e-mail that referenced this issue, Ms. Toney asked when she could pick up the supplies. (T. p. 123, lines 5-19)
- The Board accused Ms. Toney of bringing forward information about the grievant while the principal was away. As referenced above, Ms. Toney simply told another school administrator already involved with the grievance that she had received information about the grievant saying inappropriate things. The administrator initially told Ms. Toney to leave it alone, but later went to her classroom and told her to give him what she had. (T. p. 72, line 21-p. 73, line 15) The administrator testified that he then informed the Superintendent that he had received a packet of information, and provided the packet to her. (T. p. 73, line 25-p. 74, line 8; p. 76, lines 5-7) The packet Ms. Toney delivered to the Superintendent's office later that day contained the same information requested by and provided to the administrator.
- The Board complains that while on administrative leave Ms. Toney contacted a member in violation of the Superintendent's directive. The letter placing Ms.

Toney on leave, however, did not prohibit her from discussing school-related matters with Board members. Ms. Toney expressed concern that an uncertified teacher was substituting in her class. She did not discuss her employment or request personal assistance. (T. p. 249, line 14-p. 250, line 18) This communication did not violate any directive of the Superintendent. Later, when the Superintendent directed her not to speak with Board members, Ms. Toney complied. (T. p. 250, line 22-p. 252, line 12)

- The Board found evidence of conflict with Ms. Toney's principal to be "behavior documented in the personnel file." Conversly, the principal testified that none of his communications to Ms. Toney were placed in her personnel file. (T. p. 112, lines 13-20) The principal further testified that two of the documents cited by the Board were generated prior to speaking to Ms. Toney and that he accepted explanations that she was ill during the faculty meeting and that she had a flat tire which caused her to be late, not absent, one day. (T. p. 112, line 21-p. 114, line 18; p. 120, lines 7-23) The principal did not consider her behavior intentional on either occasion. Additionally, the principal admitted that he never recommended Ms. Toney's termination and that he was not consulted by the Superintendent. (T. p. 134, line 15-p. 135, line 4)
- The Superintendent mischaracterized Ms. Toney's personnel file in stating that she "had a problem with every principal she worked for with documents being in writing." (T. p. 320, lines 20-21). There were no "documents in writing" admitted to support this broad and meritless statement and no prior principals testified. Instead, Ms. Toney offered the only prior administrator witness. The parties

stipulated that this administrator was with the District from 1990 through 2001 and had no problems with Ms. Toney's teaching or conduct towards administration. (T. p. 52, lines 9-16)

In summary, the record as a whole does not support the Board's conclusion that Ms. Toney had a pattern of unprofessional conduct. Ms. Toney was never reprimanded by her last principal for being "unprofessional" in dealings with his administration. This same principal, like all prior administrators, recommended that Ms. Toney receive a continuing contract each year without any condition. Notably, the principal testified that before she was removed from the school, he had no reason to recommend Ms. Toney's termination. The principal also conceded that no school documents, including the response to the administrative assistant's observation and e-mails about students picking up supplies relied upon by the Board, led him to conclude that Ms. Toney should be fired. (T. p. 108, line 24-p. 109, line 9)

The controlling law of this State requires undeniable and abundant evidence of unfitness to teach where, as here, a teacher is dismissed during the course of a continuing contract of employment. The definition of "unfitness" requires conduct that "substantially interfere[s] with the performance of [a teacher's] duty and constitute[s] unprofessional conduct." Hall, *supra.*, 330 S.C. at 409, 499 S.E.2d at 220. The record before this Court falls far short of this standard. Moreover, the Board's attempt to piece together isolated alleged conduct over a period of more than **fifteen years of continuous employment** cannot establish a "pattern" sufficient to support termination. See, Curtis Shell v. Richland County School Dist. One, 362 S.C. 408, 411, 608 S.E.2d 428, 429 (2005) (Isolated acts separated by twelve years are insufficient to support a pattern of unfitness) For all of these reasons, any fair reading of the record requires a finding

that the reasons identified by the Board are not factually supported and there is insufficient evidence to sustain Ms. Toney's termination.

VII. The Board Decision violates mandatory provisions of the South Carolina Administrative Procedures Act.

As stated above, in performing duties under TEDA public school boards are held to the standards of an "agency" as defined in the APA. See, Brown v. James, 389 S.C. 41, 49-50, 697 S.E.2d 604, 609 (Ct. App. 2010) Decisions made "in violation of constitutional provisions," "in excess of statutory authority," "upon unlawful procedure," or "affected by other error of law" are subject to reversal. S.C. Code Ann. § 1-23-380(a-d)

The Decision issued by the Board was prepared by the attorneys who represented the District in seeking Ms. Toney's termination. Ms. Toney brought this matter to the Board's attention in a petition for reconsideration. (Attachment 7) On September 29, 2014, this petition was denied by the Board without hearing argument. (Attachment 8)

The APA prohibits *ex parte* communication, directly or indirectly, in connection with any issue of fact or law "with any party or his representative, except upon notice and opportunity to all parties to participate." S.C. Code Ann. § 1-23-360. In this instance, the Board did not obtain permission from Ms. Toney to communicate with the District's representatives on an *ex parte* basis. The unsupported findings and conclusions in the Board's Decision reflect the *ex parte* nature of its preparation. For these reasons, the Decision is in violation of the APA and must be reversed.

CONCLUSION

Reduced to its basics, the Board did not provide Ms. Toney the fair hearing to which she was entitled. Only the intervention of this Court can remedy the statutory and constitutional rights that have been violated. For these reasons, Ms. Toney respectfully requests that this Court reverse the Board's Decision and order her reinstatement.

NICKLES LAW FIRM, LLC

By: _____

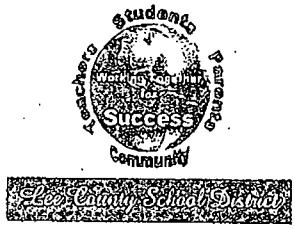
W. Allen Nickles, III
Susan M. Fittipaldi
1122 Lady Street, Suite 610
Columbia, South Carolina 29201
(803) 779-8080

Attorneys for Appellant

October 29 2014
Columbia, South Carolina

ROA_00067

ATTACHMENT 1



October 4, 2013

Phone Call & U.S. Mail

Ms. Laura Toney

[redacted]

Dear Ms. Toney:

This purpose of this correspondence is to officially inform you that you have been placed on administrative leave (with pay) effective October 4, 2013, until further notice. We are currently investigating an incident in which you violated district policy by creating a disruption to your assigned school by sharing personal information on another staff member to other staff and students at Lee County High School.

While you are on administrative leave you will not visit any Lee County facility, utilize any school equipment to communicate (including access to computers or e-mail), nor are you to contact fellow employees of the Lee County School District.

During the time of the administrative leave, you are expected to be available for conferences during normal school operating hours.

Should you have any questions or concerns about this process, please contact me at 803-484-5327.

Sincerely,

Nettie L. Vaughn

Nettie L. Vaughn, Ed.D.
Assistant Superintendent for Personnel and Student Services

cc: Mr. Ron Webb, Principal
Dr. Wanda Andrews, Superintendent for Lee County Schools
Personnel file

ATTACHMENT 2

LEE COUNTY SCHOOL DISTRICT

POST OFFICE BOX 507
BISHOPVILLE, SOUTH CAROLINA 29010

Wanda L. Andrews, Ed.D.
Superintendent

803-484-5327
FAX 803-484-9107

October 29, 2013

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Ms. Laura Toney

[redacted]

Dear Ms. Toney:

This letter is to advise you of my intent to recommend to the Lee County School District Board of Trustees, at the November 18, 2013 board meeting, that your employment with the District be terminated, effective immediately.

My recommendation is based on you engaging in behavior and conduct which caused unnecessary disruption in the workplace, as evidenced by your discussing a faculty member's personal information with other employees and students, even after being directed by an administrator to leave the matter alone. You further involved students by using a student's cellular phone to access another employee's social media account, and instructed a student to refuse to cooperate with the administration's investigation. Additionally, a review of your personnel file reveals that, you have been involved in other incidents of unprofessional conduct. Given the urgent need of the District to improve the academic performance of our students, there is simply no tolerance for persons who put their personal agenda above the need to work in a cooperative fashion with the administration for the good of all students. The adverse effect of your poor judgment and unacceptable behavior is exacerbated by your lack of candor during our investigation into your conduct. Your judgment and behavior with respect to this incident and generally towards the administration are unacceptable and justify the immediate termination of your employment under S.C. Code Ann. §§ 59-25-430 and 59-25-440.

As provided by S.C. Code Ann. § 59-25-470, you have a right to a hearing on this matter before the Board, provided your request is made in writing and received within fifteen (15) days of your receipt of this notice. You may serve upon the Board Chair or me, a written request for a hearing before the Board on the merits of this matter. If a request for a hearing is not received within fifteen (15) days of your receipt of this notice, I will ask the Board to enter an order terminating your employment.

Lee County School District does not discriminate on the basis of race, gender, disability, age, religion, immigrant status, or national origin in its educational programs and employment practices. Questions pertaining to Section 504 inquiries, may be directed to the Section 504 Coordinator, Anita Brown, Director of Special Programs. Questions pertaining to Title IX may be directed to the Title IX Coordinator, Dr. Nettie Vaughn, Director of Personnel and Student Services P.O. Box 507, Bishopville, South Carolina 29010, (803) 484-5327.

Should you have any questions, please feel free to contact me directly.

Sincerely,

Wanda L. Andrews, Ed.D.
Superintendent

cc: Ms. Sanya Moses, Board Chair
Dr. Nettie Vaughn, Director of Human Resources & Communications
Personnel File
Mr. Ron Webb, Principal

Lee County School District does not discriminate on the basis of race, gender, disability, age, religion, immigrant status, or national origin in its educational programs and employment practices. Questions pertaining to Section 504 inquiries, may be directed to the Section 504 Coordinator, Anita Brown, Director of Special Programs. Questions pertaining to Title IX may be directed to the Title IX Coordinator, Dr. Nettie Vaughn, Director of Personnel and Student Services P.O. Box 507, Bishopville, South Carolina 29010, (803) 484-5327.

ATTACHMENT 3

LEE COUNTY SCHOOL DISTRICT

POST OFFICE BOX 507
BISHOPVILLE, SOUTH CAROLINA 29010

Wanda L. Andrews, Ed.D.
Superintendent

803-484-5327
FAX 803-484-9107

December 18, 2013

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Ms. Laura Toney

Dear Ms. Toney:

This letter is to follow-up on my letter to you, dated October, 29, 2013, in which I advised you of my decision to recommend the immediate termination of your employment with the Lee County School District. By this letter, I am hereby amending the grounds for my recommendation.

My recommendation is based on you engaging in behavior and conduct which caused unnecessary disruption in the workplace, as evidenced by your discussing a faculty member's personal information with other employees, even after being directed by an administrator to leave the matter alone. Additionally, a review of your personnel file reveals that, you have been involved in other incidents of unprofessional conduct. Given the urgent need of the District to improve the academic performance of our students, there is simply no tolerance for persons who put their personal agenda above the need to work in a cooperative fashion with the administration for the good of all students. The adverse effect of your poor judgment and unacceptable behavior is exacerbated by your lack of candor during our investigation into your conduct. Your judgment and behavior with respect to this incident and generally towards the administration are unacceptable and justify the immediate termination of your employment under S.C. Code Ann. §§ 59-25-430 and 59-25-440.

As provided by S.C. Code Ann. § 59-25-470, you have a right to a hearing on this matter before the Board, provided your request is made in writing and received within fifteen (15) days of your receipt of this notice. You may serve upon the Board Chair or me, a written request for a hearing before the Board on the merits of this matter. If a request for a hearing is not received within fifteen (15) days of your receipt of this notice, I will ask the Board to enter an order terminating your employment.

Should you have any questions, please feel free to contact me directly.

Sincerely,

Dr. Wanda Andrews
Superintendent

Lee County School District does not discriminate on the basis of race, gender, disability, age, religion, or national origin in its educational programs and employment practice and provides equal access to the Boy Scouts and other designated youth groups. Questions pertaining to Section 504 inquiries, may be directed to the Section 504 Coordinator, Anita Brown, Director of Special Programs. Questions pertaining to Title IX may be directed to the Title IX Coordinator, Dr. Nettie Vaughn, Director of Personnel and Student Services P.O. Box 507, Bishopville, South Carolina 29010. (803) 484-5327.

cc: Ms. Sanya Moses, Board Chair
Dr. Nettie Vaughn, Director of Human Resources & Communications

Personnel File

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ATTACHMENT 4

STATE OF SOUTH CAROLINA COUNTY OF LEE In the matter of: Dr. Wanda Andrews, Petitioner, vs. Laura Toney, Respondent.	BEFORE THE BOARD OF TRUSTEES OF LEE COUNTY SCHOOL DISTRICT **DECISION**

BASIS FOR RECOMMENDATION OF DISMISSAL

By letter dated December 18, 2013, Dr. Wanda Andrews, Superintendent for Lee County School District (hereinafter the "District"), notified Ms. Laura Toney, a teacher at Lee Central High School, of Dr. Andrew's intent to recommend to the Lee County School District Board of Trustees (hereinafter "the Board") that Ms. Toney's employment with the District be terminated. The recommendation of termination was based on Ms. Toney's conduct with regard to discussing a faculty member's personal information with other employees and failure to adhere to the directives of an administrator. Dr. Andrews' recommendation was also based upon a review of Ms. Toney's personnel file, which revealed that Ms. Toney has engaged in other incidents of unprofessional conduct.

Pursuant to South Carolina Code Ann. § 59-25-430, a teacher may be dismissed at any time who shall fail, or who may be incompetent, to give instruction in accordance with the direction of the superintendent, or who shall otherwise manifest an evident unfitness for teaching; provided, however, that notice and an opportunity for a hearing shall be afforded prior to any dismissal. South Carolina Code Ann. § 59-25-440 provides that whenever a superior or

principal charged with the supervision of a teacher finds its necessary to admonish a teacher for a reason that could lead to the teacher's termination, the administrator must bring the matter, in writing, to the attention of the teacher, make a reasonable effort to assist the teacher to correct it, and allow reasonable time for improvement. However, such teacher may not be dismissed without a hearing held pursuant to South Carolina Code Ann. § 59-25-470.

HEARING

Ms. Toney waived the 15-day statutory period for holding the hearing with the understanding that waiving the time period for the hearing did not waive her right to a hearing. The hearing was held on April 28, 2014; June 7, 2014; July 1, 2014; July 8, 2014; and July 29, 2014, at the District Administrative Complex. The following Board members participated in the hearing and decision: (1) Ms. Sanya Moses, Board Chair; (2) Mr. Nathanial Brunson, Board Vice-Chair; (3) Mrs. Queenie Boyd; (4) Ms. Jessie Belvin; (5) Mr. Graham Drayton; and (6) Valarie Haywood. Ms. Toney was present and represented by W. Allen Nickles, Esq. and Susan Fittipaldi, Esq. of the Nickles Law Firm. Charles J. Boykin, Esq. and Deidre D. Laws, Esq., both of Boykin & Davis, L.L.C., represented the Administration. Ms. Francenia B. Heizer of McNair Law Firm, P.A., served as legal counsel for the Board.[1] The vote to uphold Dr. Andrew's recommendation for termination was 6-0. The Board rendered its decision on July 29, 2014, and directed the preparation of this Decision.

EVIDENCE PRESENTED

The purpose of the hearing was to determine whether good and just cause existed for the termination of Ms. Toney's employment under the provisions of S.C. Code Ann. §§ 59-25-430

[1] The Board originally retained Carlos Johnson, Esq., of Lyles, Darr & Clark, L.L.P., to advise on evidentiary matters. However, Ms. Toney submitted a Motion to Recuse the Board's Attorney, requesting that the Board hire different counsel because Ms. Toney believed that Mr. Johnson had a conflict of interest, as he represents Dr. Andrews in a separate action involving Dr. Andrews and her former employer, Spartanburg County School District 7. At the June 7, 2014 hearing, the Board denied the motion, but proceeded with alternate counsel, Ms. Heizer.

and 59-25-440. To determine whether good and just cause existed to terminate Ms. Toney's employment, the Board heard testimony on the following issues: (1) whether Ms. Toney engaged in unprofessional conduct during her employment with the District; (2) whether Ms. Toney received notice from the District that her conduct was inappropriate and/or unprofessional; and (3) whether Ms. Toney failed to follow the reasonable directive of her supervisors.

During the hearing, the District offered exhibits (which are attached to the hearing transcript and incorporated herein by reference) and the testimony of the following witnesses:

a. Mr. Ron Webb, Principal of Lee Central High School (hereinafter "LCHS");

b. Mr. Bernard McDaniel, Secondary Coordinator at LCHS;

c. Ms. Laura Toney, Respondent; and

d. Dr. Wanda Andrews, Superintendent.

Ms. Toney also offered exhibits and testimony of the following witnesses:[2]

a. Mr. Anthony Blair, former teacher at LCHS;

b. Sheneaka Ratliff, teacher at LCHS;

c. Virginia Rogers, LCHS secretary/bookkeeper;

d. Stacy Harrison, former media specialist at LCHS;

e. V.E. Moorman, grandparent of former student in Ms. Toney's class; and

f. Linda Weaver, friend and former chair of Social Studies department at LCHS.

FINDINGS OF FACT

1. Dr. Wanda Andrews, a veteran in the education field for approximately thirty-three (33) years, is the Superintendent of the District. Dr. Andrews has been at the District for one (1) year, and has held various administrative positions in other school districts for the past

[2] An additional witness, Mr. Span, was requested by Ms. Toney; however, he was not available during Ms. Toney's case-in-chief. Ms. Toney did not seek to continue the hearing; and thus, waived any objection to his unavailability.

sixteen (16) years. She has a Bachelor's degree, Master's degree, and a Doctorate degree in educational leadership.

2. Mr. Ron Webb was the Principal of LCHS for three (3) years, and has ten (10) years experience in administration. Mr. Webb has a Bachelor's degree and a Master's in education administration and leadership.

3. Mr. Bernard McDaniel, serves as the secondary coordinator at LCHS and has thirty-four (34) years of experience as an educator. Mr. McDaniel is certified as a secondary director and administrator.

4. Ms. Laura Toney (hereinafter "Toney") is a classroom teacher who holds a teaching credential for the State of South Carolina. Toney has taught in the District for approximately twenty-three (23) years. She has a Bachelor's degree and a Master's degree. All of Toney's continuing contracts with the District provided that "all personnel are responsible to their immediate supervisor."

5. Mr. Anthony Blair is a teacher who worked at the District for six (6) years, and was the social studies department chair during the 2013-2014 school year.

6. Sheneaka Ratliff is a teacher, and has worked at the District for five (5) years. She is the 2013-2014 District Teacher of the Year and High School Teacher of the Year.

7. Ms. V.E. Moorman had a grandchild in Toney's class two (2) years ago.

8. Ms. Stacy Harrison was the media specialist at LCHS for six (6) years.

9. Ms. Virginia Rogers has been the secretary/bookkeeper at LCHS for two (2) years, and worked with the District for a total of twenty-six (26) years.

10. Ms. Linda Weaver worked at LCHS for five (5) years, and was the social studies department chair for three (3) years, prior to the 2013-2014 school year.

11. On Friday, September 27, 2013, Toney was in a social studies departmental meeting, along with the following colleagues: Mr. Anthony Blair; Ms. Kara Fowler; Mr. Darryl Peyton; Mrs. Tonya Addison; and Mr. Michael Baldwin. During the meeting, on two (2) separate occasions, Toney made comments concerning personal information of Mr. Baldwin. Toney's comments led Mr. Baldwin to file a grievance against Toney on Monday, September 30, 2013.

12. When Mr. Webb received the grievance, he and Mr. McDaniel met with Toney to advise her that a grievance had been filed against her. However, because Mr. Webb was scheduled to be out of town for an educational conference, Mr. Webb, Mr. McDaniel, and Toney testified that Mr. Webb directed Toney to leave the matter alone until he returned.

13. Toney testified that two days later, she found a packet of information under her classroom door which contained two copies of material regarding the grievant, Mr. Baldwin. When she first tried to tell Mr. McDaniel about the information, he refused to discuss it, but later told Toney that if she had something to tell him, put it in writing. Toney provided one copy to Mr. McDaniel, kept the second copy, went home to make another copy, and then took the extra copy to Dr. Andrew's office. According to Toney, she provided a copy to Dr. Andrews because she "was concerned about the safety of the child."

14. Toney testified that the materials in question concerned the teacher who had filed a grievance against her. Mr. McDaniel testified that Toney approached him stating that Toney had something to tell him about what Mr. Baldwin is doing. Mr. McDaniel reminded Toney that she was told to leave it alone until Mr. Webb returned. Later, Mr. McDaniel told Toney that if she had something to say to put it in writing. Toney then handed McDaniel a packet of information. Mr. McDaniel testified that Toney did not follow Mr. Webb's directive.

15. Upon his return, Mr. Webb learned that the situation had escalated to the district level, as Toney gave a packet of information regarding the grievant to Dr. Andrews. Mr. Webb testified that Toney did not follow his directive.

16. Toney testified that she believed a child was "at risk" and/or "in danger," but she did not report the matter to DSS or the Sheriff's office in Lee County or Sumter County, even though she was trained and required by law to do so.

17. When Dr. Andrews found the packet of information Toney left, Dr. Andrews spoke with Mr. Webb and Mr. McDaniel and learned that Toney had not followed their directives. Thereafter, Dr. Andrews, a veteran educator having extensive experience in human resources, placed Toney on administrative leave, pending an investigation into Toney's conduct after having been told to leave the matter alone, and a review of Ms. Toney's personnel file and overall conduct as a District employee.

18. During the administrative leave, Toney was advised that she could not visit any District property, use school equipment to communicate (including computers and email), or contact other District employees. The administrative leave letter stated if Toney had questions to contact Ms. Nettie Vaughn, Assistant Superintendent for Personnel and Student Services; and both Dr. Andrews and Toney testified that she verbally stated to Toney, that if there was a question about anything, Toney could contact Dr. Andrews.

19. Toney again ignored administrative directives when she had a question about who had taken over teaching her class. Toney and Dr. Andrews acknowledged that Toney did not call Dr. Andrews to discuss the concern, but Toney contacted a board member.

20. During Dr. Andrews' review of Toney's employment, Dr. Andrews discovered, and Mr. Webb testified to, the following:

a. Ms. Fowler, a certified teacher on Mr. Webb's administrative team, conducted an observation of Toney's teaching on September 13, 2013, and provided feedback to Toney, as evidenced by email from Fowler to Toney dated September 16, 2013. Toney responded, accusing Ms. Fowler's feedback of being dishonest and libelous. Toney was not accepting of the feedback given by Ms. Fowler, and thus not supportive of the instructional process at the school. Mr. Webb believed Toney's response to Ms. Fowler was negative and defensive, which is not good for improving instructional quality, as evidenced by email from Toney to Fowler dated September 17, 2013;

b. Toney did not follow protocol when she failed to attend a mandatory faculty meeting; failed to inform the administration of her absences from school in a timely manner; failed to enter grades timely; and sent students to the office, specifically during class time, to request supplies on more than one occasion despite having been previously reminded to pick up supplies herself during her planning period. As evidenced by letters from District Administration to Toney dated September 16, 2013, May 7, 2013 and May 15, 2013;

c. On February 11, 2013, Mr. Webb had to remind Toney to conduct herself in a professional manner at all times after Toney became too irate to continue with a parent-teacher conference. Toney became so angry and irate with a parent that Mr. Webb asked her to leave the conference. At Toney's suggestion, and the parent's request, the student was transferred out of Toney's class; as evidenced by letter from District Administration dated February 11, 2013;

d. A former principal, Ms. Lenora Scott, previously advised Toney that her inappropriate behavior could lead to termination. In a letter placed in Toney's personnel file, Ms. Scott described an incident in which Toney questioned the assistant principal, became angry and was not receptive to the administrator's requests. While discussing the incident in a conference, Toney was argumentative and unprofessional. Further, Toney made unsubstantiated allegations against another co-worker, as evidenced by letter from Scott to Toney dated January 25, 2006.

21. After reviewing Toney's employment record, speaking further with Mr. Webb and getting Ms. Toney's responses to these issues, Dr. Andrews concluded that Toney's recent unprofessional conduct was not just an isolated incident. The Board finds that the January 25, 2006 letter is sufficient notice to Toney that she should behave professionally at all times, and continuous reminders from administration are unnecessary. Additionally, although Toney objected to admitting this letter into evidence, Toney's offering the entire personnel file for the Board's review, waived such objection. Dr. Andrews found a pattern of unprofessional conduct, which included insubordination and uncooperativeness, and such conduct justified the termination of her employment.

22. In Toney's defense, she offered the notion that she only asserted her rights or she "stood up for herself." In explaining the documents in her record, Toney testified:

a. Toney understood Ms. Fowler's role was to administer evaluations. When asked whether it was fair to say that Toney turned the observation from herself to focus on Ms. Fowler, Toney responded, "Well, I guess you could

say that." Toney also stated that it was appropriate to challenge an administrator in this tone, if something is not accurate;

b. Toney acknowledged that her voice elevated and she stood up during the parent conference;

c. Toney testified that she was late to work on the particular day in question because she had a flat tire. She addressed her failure to timely notify administration only after she received Mr. Webb's letter;

d. Toney admitted she did not contact Dr. Andrews concerning whether a certified teacher was teaching her class while Toney was on administrative leave;

e. Toney admitted that when it comes to child abuse, no one said not to do anything, and stated "I know the first thing to do was to maybe go to DSS or take it to the sheriff's department, but I did not want to do that;" and

f. Toney did not recall the letter from her former principal, Ms. Lenora Scott; however, she did remember a specific incident discussed in the letter.

CONCLUSIONS

1. The Board is the duly-elected body governing public education in Lee County.

2. Toney received this hearing pursuant to her request and in accordance with S.C. Code Ann. § 59-25-470.

3. The evidence reveals a pattern of unprofessional conduct. Toney offered repeated resistance to carrying out directives of supervisors and administrators, as evidenced by Toney's response to the observation; sending students to get supplies during class; bringing forward information about the grievant while Mr. Webb was away; contacting a board member while on

administrative leave, after having been directed to contact the Superintendent; and behavior documented in the personnel file.

4. The documented history of Toney's relationship with the District, and the nature of the packet of information about the grievant that Toney distributed are consistent with her tendency to engage in resistance and escalate matters with which she disagrees.

5. Toney's testimony regarding a child being in danger is not credible because Toney admitted that she should have gone to DSS or sheriff's department, but she did not want to do that. This admission contradicts the training Toney admittedly received and further indicates her resistance to follow established protocols.

6. Almost all of Toney's witnesses testified that they have never engaged in conduct similar to that of Toney, and several witnesses testified that they were not in a position to know about Toney's conduct or any conflicts.

DECISION

Based on the evidence presented at the hearing, held on June 7, 2014 and July 1, 8, and 29, 2014, as well as the personnel file, the Lee County School District Board of Trustees determined that there was good and sufficient cause to approve the termination recommendation by Dr. Andrews. Ms. Toney's employment contract with the District is hereby terminated as of July 29, 2014.

AND IT IS SO DECISIONED.

LEE COUNTY BOARD OF TRUSTEES

By: Nathaniel Brunson
Nathanial Brunson
Board Vice Chair

Date: 8-8-2014

ATTACHMENT 5

ATTACHMENT 6

Policy JLF Reporting Child Abuse/Child Protection

Issued 6/96

Purpose: To establish the basic structure for the reporting of child abuse.

The schools of this district will cooperate vigorously to expose the problems of child abuse and neglect.

Any school teacher, nurse or counselor who has reason to believe that the physical or mental health or welfare of a child under the age of 18 has been or may be adversely affected by abuse or neglect must report such a situation. The teacher, nurse or counselor may make the report to a law enforcement agency in the county where the child resides or to the county department of social services.

Other school employees who have reason to believe that a child under the age of 18 has been subjected to, or who may be subjected to, physical abuse or neglect, may also report or cause a report to be made as stated above.

The State of South Carolina provides both civil and criminal immunity to those reporting suspected child abuse or neglect. Anyone required to report who knowingly fails to do so may be guilty of a misdemeanor.

Reporting procedures

School personnel who suspect child abuse or neglect may make a report in good faith. It is not the responsibility of school personnel to prove that the child has been abused or neglected, or to make a determination of whether the child is in need of protection. Any involvement of school personnel in investigation or treatment should be in conjunction with the local child protection unit of the department of social services.

The teacher or other school employee first suspecting the abuse must make an oral report by telephoning or otherwise which includes the following information.

- name, address and age of student
- name and address of parent or caretaker
- nature and extent of injuries or description of neglect
- any other information that might help to establish the cause of the injuries or condition

The person making the report should tell the principal of the school of any oral or written report submitted in a case of child abuse or neglect.

School employees who make child abuse or neglect reports must maintain the confidentiality of the information contained in the report. Employees will release this information only to the department of social services or, in the alternative, the county law enforcement agency.

Adopted 6/6/96

Legal references:

S.C. Code, 1976, as amended:

Section 63-1-10 - et seq. - South Carolina Children's Code.

ROA_00090

Section 63-7-20 - Definitions.

Section 36-7-310 through 350 - Persons required to report.

LEE COUNTY SCHOOLS

ATTACHMENT 7

STATE OF SOUTH CAROLINA	)	BEFORE THE BOARD OF TRUSTEES OF LEE COUNTY SCHOOL DISTRICT
COUNTY OF LEE	)	
In the matter of:	)	
Dr. Wanda Andrews	)	
Petitioner,	)	
v.	)	PETITION FOR RECONSIDERATION
Laura Toney,	)	
Respondent.	)	

Respondent hereby requests that the Lee County Board of Trustees reconsider and withdraw the Decision in the above matter, signed by the Board Vice-Chair dated August 8, 2014. Grounds for this request are as follows:

1. The Decision does not identify the grounds for Respondent's termination. Specifically, the conclusions of law do not contain any reference to statutory grounds for the termination of a continuing contract to teach.

2. The Decision ignores all evidence presented on behalf of Respondent and mischaracterizes Respondent's record of employment with the District. Specifically, the Decision does not address inconsistencies in the testimony presented by Petitioner or Petitioner's proven misstatements concerning Respondent's employment record and relationship with prior supervisors.

3. The Decision mischaracterizes Respondent's submission of her personnel record for review by the Board. This submission was not endorsing the truth of matters contained therein or a waiver of objections to hearsay contained in that record. Instead, the submission was

presented for the limited purpose of contesting Petitioner's statement that "all" of Respondent's supervisors had problems with her performance.

4. The Decision does not address the Board's refusal to honor Respondent's subpoena for testimony by Michael Baldwin. Additionally, the Decision does not address the Board's exclusion of the content of materials delivered by Respondent to Mr. Bernard McDaniel and Petitioner. Despite this failing, the Decision makes reference to the delivery of material and makes a finding that Respondent would have been obligated to communicate with law enforcement officers had she a genuine concern for child safety based upon the content of the material.

5. The Decision relies upon alleged failures to cooperate with Principal Ron Webb even though Mr. Webb testified that these incidents did not support termination, were not unique to Respondent and that Respondent had offered acceptable explanations for her conduct.

6. The Decision repeatedly makes reference to and relies upon alleged conduct occurring during preceding continuing contracts that were not deemed sufficient to initiate formal warnings, non-renewal or termination proceedings.

7. The Decision does not conform to the burden of proof required in termination of teachers under S.C. Code Ann. § 59-25-430. Specifically, the Decision does not address the distinctions between Code Sections 59-25-430 and 440. Further, the Decision does not identify deficiencies in Respondent's teaching or "undeniably and abundantly present" evidence of unfitness as required by Hall v. Board of Trustees of Sumter County School District No. 2, 330 S.C. 402, 499 S.E.2d 216 (Ct. App. 1998)

8. The Decision does not address the failure to provide Respondent written notice of alleged unfitness based upon insubordination.

9. Upon information and belief, the Decision was prepared by Petitioner or Petitioner's representatives without consulting Respondent or providing Respondent an opportunity to examine any proposed findings or conclusions. In this context, the Decision represents an *ex parte* communication between Petitioner and the Board. See, S.C. Code Ann. § 1-23-360.

CONCLUSION

For the reasons stated above, the Decision as issued is arbitrary, capricious and affected by legal error. Accordingly, Respondent requests that the Decision be withdrawn and that she be afforded an opportunity to be heard on this Petition.

NICKLES LAW FIRM, LLC

By: _____

W. Allen Nickles, III
Susan M. Fittipaldi
1122 Lady Street, Suite 610
Columbia, SC 29201
(803) 779-8080

Attorneys for Respondent

August 18, 2014
Columbia, South Carolina

ROA_00095

CERTIFICATE OF SERVICE

I, Paula Bregovi, the undersigned employee of Nickles Law Firm, LLC, attorneys for Respondent hereby certify that I have served the foregoing Petition for Reconsideration by depositing a copy of same in the United States Mail, postage prepaid and addressed as follows:

Francenia B. Heizer, Esquire
McNair Law Firm, P.A.
Post Office Box 11390
West Columbia, South Carolina 29211

Charles Boykin, Esquire
Deidre D. Laws, Esquire
Boykin & Davis
Post Office Box 11844
Columbia, South Carolina 29211

This 18th day of August, 2014.

Paula Bregovi

Columbia, South Carolina

ATTACHMENT 8

LEE COUNTY SCHOOL DISTRICT

A LEARNING COMMUNITY
WHERE STUDENTS COME FIRST

Lee County Board of Trustees

Regular Board Meeting
Lee County School District
310 Roland Street
Bishopville, SC 29010
August 18, 2014

Meeting Minutes

Meeting Called to Order By:	Vice Chairperson Nathaniel Brunson
Board Members Present:	Vice Chairperson Nathaniel Brunson, Secretary Queenie Boyd, Graham Drayton, Valerie Hayward, and Jessie Belvin
Board Members Absent:	Chairperson Sanya Moses
Public Speakers:	
Board Members Arriving Late:	Jessie Belvin
Media Present:	

In accordance with the SC Code of Laws of 1976, Section 4-30-80c, as amended, the media had been notified of the date, place, and agenda.

ESTABLISHMENT OF QUORUM

Vice Chairperson Brunson called the meeting to order at 6:35 p.m.

Vice Chairperson Brunson stated that a Quorum was established, the media had been properly notified of the meeting. Vice Chairperson Brunson asked everyone to share in a moment of silence.

APPROVAL OF THE AGENDA

Vice Chairperson Brunson stated that without objection the agenda would stand as approved.

APPROVAL OF THE MINUTES

Vice Chairperson Brunson stated that without objection the minutes for July 21, 2014 and July 29, 2014 would stand as approved.

OFFICE OF THE SUPERINTENDENT

A. Good News

1. Dr. Andrews stated the District Opening was a big success.

2. Dr. Andrews introduced the new staff to the district. When she got to Mrs. Lowery she asked her to share with the group what she had said to the principals earlier. Mrs. Lowery stated that the first day went well, the students were excited and it was a smooth opening day.

B. Superintendent's Report

1. Dr. Knapp asked to be taken off of the agenda for August 18, 2014 and has asked to be rescheduled for the September meeting
2. First day of school we had 1,982 students to attend, which was 135 students short of where we were last year.
3. Dr. Andrews asked Dr. Hallums to talk about the Project Lead Summer Camps. Dr, Hallums stated that there were 40 different camps with 425 to 450 students attending each day. Dr. Hallums presented a video showing the students involved in the summer camps. Recover courses were offered with 92 students involved.
4. August 9, 2014 was the Back to School Bash, with 157 parents and 250 students attending.
5. August 13, 2014 was the opening In-service. A continental breakfast was served and different trainings were held.
6. Dr. Hallums presented a video on the Stem Program.
7. Dr. Andrews asked Mrs. McMillan for an update on finance. Mrs. McMillan stated that all supply checks had been given out to the teachers on time.
8. Dr. Andrews told Vice Chairperson Brunson that was the end of her report unless there were questions. The Board said they had no question, but wanted to thank everyone for a job well done.

EXECUTIVE SESSION

Vice Chairperson Brunson requested a motion on entering into Executive Session to discuss Personnel Matters, Student Matters, Property Matters, and Financial Matters.

Motion:	A motion was made by Secretary Boyd and properly seconded by Mr. Bowen to enter into Executive Session to discuss Personnel Matters, Student Matters, Property Matters, and Financial Matters. The Board voted unanimously in favor of the motion.
Action Taken	Three (3) resignations, two (2) recommendations, fifteen (15) student releases, and sixteen (16) ACT 155 diploma request were approved.
Motion:	A motion was made by Secretary Boyd and seconded by Mrs. Belvin for the approval of the actions taken.
Action Taken	A reconsideration was made to uphold the recommendation that employee A be terminated. This decision was upheld. Also the record needs to show that Dr. Wanda Andrews was not present in executive session when this decision was made.
Motion:	A motion was made by Ms. Haywood and second by Mr. Graham Drayton for the approval of the action taken.

Action Taken The Board voted on the Adoption of the Resolution of the sale of Bonds. Signed copy of the Resolution will be made available at a later date. The chairman of the board will need to sign the paperwork.

Motion: A motion was made by Mr. Bowen and was seconded by Mrs. Haywood.

ADJOURNMENT

Motion: Vice Chairperson Brunson requested a motion that the meeting be adjourned. Mrs. Haywood made a motion that the meeting be adjourned and was properly seconded by Mr. Drayton.

Vice Chairperson Brunson stated the meeting was adjourned.

The meeting adjourned at 8:55 p.m.

Respectfully submitted,

Chairperson _____ Date: 09/29/2014

Secretary Beverly Caldwell Date: 09/29/2014

STATE OF SOUTH CAROLINA COUNTY OF LEE Laura Toney, Appellant, vs. Lee County School District, Respondent.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT C.A. No.: 2014-CP-31-00227 **RESPONDENT'S MEMORANDUM OF LAW IN OPPOSITION TO APPELLANT'S APPEAL**

Appellant, Laura Toney (hereinafter "Toney"), filed this appeal from the decision of the Lee County School District Board of Trustees (hereinafter the "Board"), which approved the Superintendent's recommendation to terminate Toney's employment with the Lee County School District (hereinafter the "District"), in accordance with S.C. Code Ann. §§ 59-25-430 and 59-25-440.

Pursuant to the South Carolina Teacher Employment and Dismissal Act, S.C. Code Ann. § 59-25-410, et seq., Toney received an evidentiary hearing before the Board. The hearing took place on April 28, 2014; June7, 2014; July 1, 2014; July 8, 2014; and July 29, 2014. At the hearing, Toney was represented by counsel and had the opportunity to call witnesses on her behalf, present documents, and cross-examine witnesses called by the District Administration. The District offered several exhibits and the testimony of four (4) witnesses, including Toney's supervisors, the Superintendent of the District, and Toney herself. Toney offered multiple exhibits and the testimony of seven (7) witnesses.[1] (Board Order, p. 3).

[1] Ms. Toney subpoenaed Mr. Michael Baldwin. Mr. Baldwin filed a Motion to Exclude seeking to exclude Facebook printouts allegedly from Mr. Baldwin's account, documents produced in his deposition, and any testimony regarding Mr. Baldwin's private life. The Board granted the Motion to Exclude, thus barring Mr. Baldwin's testimony and certain documents. (R. pp. 8-24, 395-97). Additionally, Toney requested another witness, Mr. Span; however, he was not present during Toney's case-in-chief when he was sought to be called. Toney did not request a continuance, or a subpoena, and proceeded with closing arguments. (R. pp. 474-75).

On July 29, 2014, the Board determined that good and just cause existed for the termination of Toney's employment contract and voted, unanimously, to uphold the Superintendent's recommendation for termination. On August 8, 2014, the Board issued an Order setting forth the reasons for its decision. Thereafter, Toney filed this appeal against Dr. Wanda Andrews (hereinafter "Dr. Andrews"), District Superintendent, pursuant to S.C. Code Ann. § 59-25-480. Dr. Andrews' Answer & Return was filed on September 26, 2014.

STATEMENT OF THE FACTS

Toney holds a teaching certificate for the State of South Carolina, and has taught in the District for approximately twenty-three (23) years. (R. p. 141). All of Toney's continuing contracts with the District provided that "all personnel are responsible to their immediate supervisor." (Attachment 1: Contracts). Michael Baldwin (hereinafter "Baldwin"), a co-worker, and Toney are both teachers within the social studies department at Lee Central High School.

On Friday, September 27, 2013, Toney was in a social studies departmental meeting with the following colleagues: Mr. Anthony Blair; Ms. Kara Fowler; Mr. Darryl Peyton; Mrs. Tonya Addison; and Baldwin. On two separate occasions during the meeting, Toney made reference to personal information concerning Baldwin, which led Baldwin to subsequently file a grievance against Toney on Monday, September 30, 2013. (Board Order, p. 5); (R. pp. 57, 152). Upon receipt of the grievance, the Principal, Mr. Ron Webb, and the high school's consultant, Mr. Bernard McDaniel, met with Toney to advise her of the grievance. (R. pp. 57, 152-53). Webb informed Toney that he would deal with the grievance upon his return from a conference, and directed Toney to leave it alone until his return. (R. pp. 57, 58, 87, 152-53, 189, 191, 212, 317).

A couple days later, while Webb was still out, Toney approached Mr. McDaniel and said she needed to share something with him regarding Baldwin making inappropriate comments on

Facebook. (R. pp. 58-59, 277). Mr. McDaniel reminded Toney of the directive to leave it alone until Webb returned, and ended the conversation. (R. pp. 59, 73). Later that day, Mr. McDaniel said if Toney had something to share, she should put it in writing and he would give it to Mr. Webb. (R. pp. 59, 76, 80). In response, Toney handed Mr. McDaniel a packet of information. (R. pp. 59, 73, 81, 158). Unbeknownst to Mr. Webb or Mr. McDaniel, Toney also took a copy of the same information to Dr. Andrews' office, in an envelope that read: "Please read the last page. Seems that a child might be in danger." (R. pp. 158-59, 244, 277).

When Webb returned from his conference, he learned that Toney had delivered a packet of information to Dr. Andrews, causing the situation to escalate from the building level to the district level. (R. p. 88). After receiving the information, Dr. Andrews went to the high school to speak with Mr. Webb, Mr. McDaniel, and Toney. (R. p. 297). Toney was not cooperative during the meeting, and Dr. Andrews subsequently placed Toney on administrative leave. (R. pp. 297, 299-300).

Dr. Andrews explained to Toney that she was not to discuss the matter with anyone and that if Toney had any questions, she is to contact Dr. Andrews. (R. pp. 183, 301-02). Dr. Andrews followed up with a written notice of administrative leave, which also provided additional parameters for the administrative leave. (Attachment 2: Letter dated 10/4/13; R. p. 302). However, Dr. Andrews later learned that Toney violated her directive, by contacting a school board member to discuss concerns regarding who was teaching Toney's class. (R. p. 302, 183).

During her investigation, Dr. Andrews spoke with Mr. Webb, learned that Toney failed to follow Mr. Webb's directive, and reviewed Toney's personnel file to review her history with the District. (R. p. 300, 303). Toney's file revealed other instances of unprofessional conduct,

including but not limited to, challenging administrators, becoming irate with parents, insubordination, and other unprofessional conduct. (Attachment 3: Personnel File; R. pp. 320-21). Based on the information learned during the investigation, Dr. Andrews determined that it was best if Toney and the District "part company." (R. p. 322)

STANDARD OF REVIEW

Among the duties vested in local school boards is the authority to discharge teachers upon good and sufficient or just cause. See S.C. Code Ann. §§ 59-19-90(2), 59-25-470. In considering an appeal of a school board's decision to terminate a teacher's employment, the scope of judicial review is limited to an examination of the record to determine whether there is substantial evidence to support the board's decision. Laws v. Richland County Sch. Dist. No. 1, 270 S.C. 492, 243 S.E.2d 192, 193 (1978); see also Barrett v. Charleston County Sch. Dist., 384 S.C. 426, 559 S.E.2d 365, 368 (2002).

Substantial evidence is that which "considering the record as a whole, would allow reasonable minds to reach the conclusion the [school board] must have reached in order to justify the action." Henderson v. Spartanburg County Sch. Dist. Five, 307 S.C. 108, 413 S.E.2d 871, 873 (1992). If substantial evidence exists, a court may not substitute its judgment for that of the school board. Laws, 243 S.E.2d at 193. "In view of the powers, functions and discretion which must necessarily be vested in educational authorities if they are to execute the duties imposed on them, this Court cannot substitute its judgment for that of those authorities." Id.

ARGUMENT

I. The Board's Decision To Terminate Toney's Employment Was In Compliance With The South Carolina Teacher Employment And Dismissal Act, And Is Supported By Substantial Evidence In The Record.

The South Carolina Teacher Employment and Dismissal Act provides that a local board of trustees may terminate the employment of a teacher either immediately, or after the teacher has been notified of a deficiency, and the District has provided the teacher time for improvement. South Carolina Code section 59-25-430 provides, in pertinent part:

> 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; . . . 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. (emphasis added).

Furthermore, South Carolina Code section 59-25-440 provides, in pertinent part:

> Whenever a superior, principal, where applicable, or supervisor charged with the supervision of a teacher finds it necessary to admonish a teacher for a reason he believes may lead to, or be cited as a reason for, dismissal or cause the teacher not to be reemployed he shall: (1) bring the matter in writing to the attention of the teacher involved and make a reasonable effort to assist the teacher to correct whatever appears to be the cause of potential dismissal or failure to be reemployed and, (2) except as provided in § 59-25-450, allow reasonable time for improvement.

(Board Order, pp. 1-2).

To determine whether good and just cause existed to terminate Toney's employment, the Board heard testimony on the following issues: (1) whether Toney engaged in unprofessional conduct during her employment with the District; (2) whether Toney received notice that her conduct was inappropriate and/or unprofessional; and (3) whether Toney complied with the reasonable directives of her supervisor. (Board Order, p. 3). Additionally, the Board heard arguments and made rulings upon the following issues: (1) whether to admit a letter, dated January 25, 2006, regarding prior notice to Toney; (2) the exclusion of testimony from Baldwin; and (3) the exclusion of documents relating to Baldwin's Facebook account and/or personal life.

The underlying basis for the recommendation for termination included discussing a faculty member's personal information with other employees, even after being directed by an administrator to leave the matter alone, and a review of the personnel file, which showed a pattern of unprofessional conduct. (Attachment 4: Letter dated 12/18/13; R. pp. 178-79, 311). The evidence in the record indicates that the Board appropriately decided, within the confines of the notice of termination, to terminate Toney's employment.

A. Toney failed to follow the reasonable directives of her supervisor.

Mr. Webb, Mr. McDaniel, and Toney all testified that Mr. Webb directed Toney to leave the matter alone until Mr. Webb returned from a conference. (R. pp. 57, 87, 152-53, 191, 210, 212). However, Toney subsequently went to Mr. McDaniel with a packet of information regarding Baldwin, claiming that some inappropriate or racial comments were made. (R. p. 59). Toney also delivered a copy of the packet of information to Dr. Andrews, thus escalating the situation from the building level to the District level. (R. pp. 88,). Based on Toney's actions, Dr. Andrews, Mr. Webb and Mr. McDaniel testified that Toney had failed to follow the directive issued to her. (R. pp. 59, 87-88, 108, 317).

While Toney asserted that she delivered the two packets because she believed a child was in danger, the record and the law does not support her position. Mr. McDaniel testified that when he received the packet from Toney, she indicated that Baldwin was making inappropriate or racial comments. (R. p. 59). Toney never told Mr. McDaniel that she believed a child was in danger. (R. pp. 59, 189-90). Further, state law provides that if a teacher suspects abuse or neglect of a child, it should be reported to the Department of Social Services or law enforcement. S.C. Code Ann. § 63-7-310 (2008); see also (R. pp. 56, 318-320). Toney admitted several times that she was aware of the law and that the District trained her regarding the requirements of the

law. (R. pp. 159-60, 189, 192). Specifically, Toney stated, "I know the first thing to do was to maybe go to DSS or take it to the sheriff's department, but I did not want to do that." (R. p. 192). As such, the Board did not find Toney's testimony to be credible, and believed it also provided yet another example of Toney's resistance to follow established protocols. (Board Order, p. 10).

B. Because Toney had previously received written notification of her inappropriate and unprofessional behavior in the workplace, the Board appropriately determined that Toney offered repeated resistance to carrying out the directives of supervisors and administrators.

Not only did Toney fail to follow the directives of Mr. Webb in September 2013, but the Board appropriately determined that her record revealed a pattern of unprofessional conduct. (Board Order, p. 9). As an initial matter, Toney signed contracts "For Professional Services," which provided that she is "responsible to [her] immediate supervisor." (Attachment 1; R. pp. 325-26, 417). As indicated in Toney's personnel file, which was admitted into evidence, a former principal Ms. Lenora Scott previously advised Toney on January 25, 2006, that her inappropriate behavior could lead to termination. (Board Order, p. 8). Toney asserts that the letter is too far removed; however, as explained more fully below, that assertion is without merit.

There is nothing in the S.C. Teacher Employment and Dismissal Act that suggests that a teacher must receive continuous notices regarding their conduct. See S.C. Code Ann. § 59-25-410 et seq. Moreover, the profession of teaching lends itself to requiring professional behavior at all times. This is evidenced by the potential to have one's certificate suspended or revoked by the S.C. Department of Education for unprofessional conduct. See S.C. Code Ann. §§ 59-25-160, 59-25-530. Further, the date of the letter cannot be considered too remote when Toney submitted witness testimony dating back to 1990-2001, referenced other documents in her personnel file dating back to 2000, and then voluntarily placed her personnel file into the record.

(Attachment 3; R. pp. 50, 53, 165-66, 212, 224, 411, 502-03). Thus, the Board appropriately admitted the January 25, 2006, letter and was within its discretion in determining that continuous reminders regarding professionalism are unnecessary. (R. p. 197-98, 425-26); (Board Order, p. 8).

Toney's assertion that the January 25, 2006, letter is hearsay is also without merit. The letter is a business record, maintained in the ordinary course of the District's business of employing teachers. (R. pp. 288-89). Additionally, the notice of termination to Toney includes a reference to Dr. Andrews' review of Toney's personnel file, which the Board was encouraged to review on two occasions during the hearing. (R. pp. 411, 502-03).

In addition to being reminded of the need to remain professional in 2006, the following subsequent incidents evidenced, to the Board, Toney's lack of professionalism and/or failure to follow directives:

(a) In March 2012, a former assistant principal reminded Toney that instructional materials should be picked up during Toney's planning period. Toney, however, sent students to pick up materials, and Mr. Webb testified that he addressed this concern with Toney. (Attachment 5: Email dated 3/30/12; R. p. 104).

(b) In a February 11, 2013 letter, Mr. Webb wrote to Toney, "[y]ou are receiving this letter as a reminder to make sure you always conduct yourself in a professional manner." (Attachment 6: Letter dated 2/11/13). Mr. Webb testified that the letter was sent because during a parent conference, Toney allowed her anger to get the best of her, Toney and the parent began going back and forth during the meeting, Toney was not acting as a professional. (R. pp. 103-04). Toney admitted that her voice was elevated during the parent conference. (R. p. 151).

(c) On May 7, 2013, Mr. Webb wrote Toney regarding her failure to enter fourth quarter grades. (Attachment 7: Letter dated 5/7/13). Mr. Webb testified that not entering fourth quarter grades timely could hold up the whole grading process. (R. pp. 100-01). While Toney claims "theses were interim progress reports," Mr. Webb testified, and the evidence reflects, that they were "fourth quarter grades," and this Court can take judicial notice of the District's 2012-2013 calendar, which evidences that May was the end of the District's fourth quarter.

(d) Despite the prior instructions to Toney regarding when to pick up instructional materials, on September 4, 2013, the school administration had to address Toney again about sending students to the office during class time to request supplies. (Attachment 8: Email dated 9/4/13; R. p. 123). Mr. Webb testified that keeping students in class during class time is important for instructional purposes. (R. p. 100).

(e) On September 16, 2013, Ms. Kara Fowler, a member of the school's administrative team, conducted a classroom observation of Toney and provided her with feedback regarding ways to improve her instruction. (Attachment 9: Email dated 9/16/13; R. p. 92). Mr. Webb testified that Toney did not accept the standard feedback provided after the observation. According to Mr. Webb, Toney's reaction was negative, defensive, and not supportive of the instructional process. (R. pp. 94-96). Toney admitted that she turned the focus of the observation from her to Ms. Fowler. (R. pp. 145, 169). Ironically, the same day, Toney failed to attend a mandatory staff meeting, without prior notice. (Attachment 10: Letter dated 9/4/13; R. pp. 97, 113, 449).

(f) Even after being placed on administrative leave, Toney did not follow the directives given by Superintendent. Dr. Andrews testified, and Toney admitted, that Dr. Andrews told Toney not to discuss the situation with anyone, and if Toney had questions she should contact Dr. Andrews. (R. pp. 183, 300-02). However, when Toney had a question regarding the certification of the substitute in her classroom, Toney admitted that she did not follow the directive of Dr. Andrews and Toney called a board member instead. (R. pp. 183).

All of the above-referenced instances, and others, were discovered by Dr. Andrews upon a review of Toney's personnel file and the file maintained at the building level. Thus, Toney's failure to follow Mr. Webb's directive regarding the grievance was not simply an isolated incident. Dr. Andrews' recommendation specifically stated

> Given the urgent need of the District to improve the academic performance of our students, there is simply no tolerance for persons who put their personal agenda above the need to work in a cooperative fashion with the administration for the good of all students.

(Attachment 4; R. pp. 179, 315-16, 326-24). Even Toney's witnesses After reviewing the evidence and considering all the testimony, the Board found that almost all of Toney's witnesses testified that they have never engaged in conduct similar to that of Toney. (Board Order, p. 10). The Board appropriately determined that there was a pattern of unprofessional conduct, which included insubordination and uncooperativeness. (Board Order, p. 8).

II. The Board Did Not Abuse Its Discretion By Excluding The Testimony of Mr. Baldwin And Excluding The Content Of Materials Delivered To Mr. McDaniel And Dr. Andrews.

At the start of Toney's hearing, the Board heard preliminary motions, which included Mr. Baldwin's motion to exclude certain documents, referred to as "Baldwin Facebook postings," and any testimony regarding Baldwin's private life. (R. pp. 8-24). Initially, the Board held the

motion in abeyance until after the administration's case was presented, to ascertain whether such documents and/or testimony from Baldwin would be relevant based upon the evidence the administration relied upon to support the recommendation for termination. (R. pp. 22, 35). At the conclusion of the administration's case, the Board voted to grant Mr. Baldwin's motion to exclude. (R. p. 395).

The decision to exclude Baldwin's testimony and Facebook postings is supported by the evidence in the record, and was not an abuse of discretion by the Board. The hearing was held after Toney received a notice of termination, which included the reasons for the termination. (Attachment 4). Baldwin's Facebook posts were not the basis for Dr. Andrews' recommendation, nor were they stated as a basis in the notice of termination. (Attachment 4; R. pp. 311-12). The issue before the Board was not about any other employee but Toney, and how she responds to administrative directives. (Board Order, p. 1). However, Toney believes that an alleged "sexual conversation with Baldwin and a student on Facebook" was the issue before the Board. (R. p. 181).

Baldwin filed a grievance against Toney for comments made during a departmental meeting, and that is where the relevance or reference to Baldwin ends. To address that relevance, Toney offered the actual grievance into evidence and she, as well as Anthony Blair, testified regarding the department meeting. (R. pp. 62, 127, 232). The actions and recommendations of the administration came after, and as a result of, Toney's failure to comply with Mr. Webb's directive. Thus, there was no relevance to the materials allegedly from Baldwin's Facebook, and discussing matters relating to Baldwin's personal life were not appropriately before the Board. The Board did not abuse its discretion, because it appropriately

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listened to all the evidence by the administration prior to making a ruling regarding Baldwin, to ensure that the evidence did not lend itself to requiring such testimony and/or documents.

III. The Board Did Not Engage In Ex Parte Communications, And Even If This Court Finds That It Has, Such Alleged Communication Does Not Warrant Reversal Of The Board's Decision, As There Is No Prejudice To Toney.

Toney contends that she did not have the opportunity to examine any proposed findings or conclusions, and thus the Board is in violation of South Carolina Code Ann. § 1-23-360. This argument it without merit, as the Board itself did not communicate with any party, and Toney cannot establish any prejudice resulting from the alleged ex parte contact.

South Carolina Code Ann. § 1-23-360 provides, in pertinent part:

> Unless required for the disposition of *ex parte* matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate.

In this instance, no member of the Board communicated with Dr. Andrews or the Boykin & Davis, L.L.C. law firm.

At the conclusion of the hearing, the Board Chair directed counsel for Dr. Andrews to prepare a written Decision. Upon completing the proposed Decision, counsel submitted it to Board's counsel, as requested. South Carolina Code § 1-23-350 provides that "[p]arties shall be notified either personally or by mail of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record."

Undersigned counsel only drafted a proposed decision and forwarded it to counsel upon instruction to do so. It was not until the proposed decision was adopted, and executed by, the Board that it became the Final Decision of the Board. Further, once it became the Final

Decision, a copy of the Decision was forwarded to both parties and their counsel, as provided by §1-23-350. Toney and her counsel were notified. The undersigned counsel did not engage any member of the Board in any discussions, and the Board was free to adopt the proposed decision or make any changes it deemed necessary.

Moreover, Toney had an opportunity to present her concern regarding the Decision and her disagreement with the process used to prepare the Decision, by filing a Petition for Reconsideration. Toney's objections were presented to the Board, and the Board voted to deny the Petition for Reconsideration. Nonetheless, because counsel for the Board is not in a position to vote on the ultimate issues before the Board, at the hearing or when considering the Petition for Reconsideration, Toney cannot establish any prejudice that resulted from the alleged ex parte contact; and, thus, any error was harmless. See Ross v. Medical Univ. of S.C., 328 S.C. 51, 73, 492 S.E.2d 62, 74 (S.C. 1997).

CONCLUSION

For the above reasons, the Board's decision is supported by substantial evidence in the record. Accordingly, the Board respectfully requests that this Court affirm the Board's decision to terminate the employment of Toney and dismiss this appeal.

Respectfully submitted:
BOYKIN & DAVIS, L.L.C.

By: _____

Charles J. Boykin
Deidre D. Laws
P.O. Box 11844
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Telephone: 803-254-0707
Facsimile: 803-254-5609

Attorneys for Lee County School District Board of Trustees and Dr. Wanda Andrews

October 30, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF LEE

Laura Toney,

Appellant,

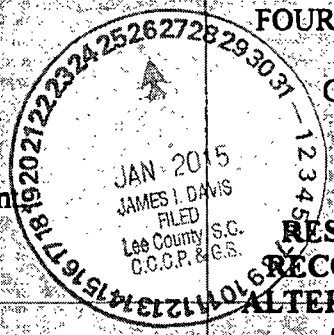
vs.

Lee County School District,

Respondent.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C.A. No.: 2014-CP-31-00227



RESPONDENT'S MOTION FOR RECONSIDERATION, OR IN THE ALTERNATIVE MOTION TO ALTER OR AMEND JUDGMENT

TO: W. ALLEN NICKLES, III, ESQ. AND SUSAN FITTIPALDI, ESQ., ATTORNEYS FOR APPELLANT

YOU WILL PLEASE TAKE NOTICE that, pursuant to Rule 59(e), SCRCP, Respondent, by and through its undersigned counsel, hereby move this Court for reconsideration of the Court's Order, which was filed on January 14, 2015, and received on January 16, 2015, reversing the decision of the Lee County School District (hereinafter the "District") to terminate Laura Toney's employment with the District and awarding back pay with benefits. The grounds for this Motion are as follows:

(1) The Court may not substitute its judgment for that of the District's local school board, when the local board's decision was supported by substantial evidence in the record, including but not limited to: the Appellant admitted challenging an instructional observation; became irate with a parent and was asked to leave a parent-teacher conference; missed mandatory meetings, reporting times, and deadlines for school; and where Appellant had been warned about her professionalism in the workplace.

(2) The Court's Order included information that was not relied upon by Superintendent in making the recommendation for termination; was excluded

from the hearing; was not relied upon by the school board; and was not included in the school board's decision. Further, such information was also not relied upon by this Court in making its decision; thus, the references should be stricken from the Order.

The District respectfully moves this Court for reconsideration of, or to alter or amend, it's Order and requests a hearing in the above-captioned matter. This Motion is based upon the pleadings, papers, records, and files in this action, together with applicable statutory and case law.

Respectfully submitted,

BOYKIN & DAVIS, L.L.C.

By: _____

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Attorneys for Lee County School District

January 26, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF LEE

Laura Toney,

Appellant,

vs.

Lee County School District,

Respondent.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C.A. No.: 2014-CP-31-00227

CERTIFICATE OF SERVICE

The undersigned of Boykin & Davis, LLC., hereby certifies that she has served the following counsel of record with the foregoing **Respondent's Motion for Reconsideration, or in the alternative Motion to Alter or Amend Judgment,** by mailing a copy of same, postage prepaid and return address clearly indicated, to the following on this 26th day of January, 2015:

W. Allen Nickles, III, Esq.
Susan Fittipaldi, Esq.
Nickles Law Firm, LLC
1122 Lady Street
Suite 610
Columbia, SC 29201

Randi Myers-Borman

Randi Myers-Borman, Paralegal
Boykin & Davis, LLC
Post Office Box 11844
Columbia, SC 29211

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEE	)	Case No.: 2014-CP-31-227
	)	
Laura Toney,	)	
	)	
Appellant,	)	
	)	APPELLANT'S RESPONSE TO
v.	)	RESPONDENT'S MOTION FOR
	)	RECONSIDERATION OR IN THE
Lee County School District,	)	ALTERNATIVE, MOTION TO ALTER
	)	OR AMEND JUDGMENT
Respondent.	)	

Appellant responds to Respondent's Motion for Reconsideration or in the Alternative, Motion to Alter or Amend Judgment dated January 26, 2015. In seeking reconsideration, it is not sufficient for a moving party to simply state disagreement with the outcome of a proceeding. Instead, a motion must identify an oversight or error by the Court.

In this instance, Respondent asserts that the Court may not "substitute its judgment" for the decision of the Board to terminate Appellant's employment. This broad statement fails to take into account the reasoned judgment by the Court in keeping with the statutory standard of review under the South Carolina Administrative Procedures Act as applied in controlling precedent, including Kizer v. Dorchester County Vocational Educ. Bd. of Trustees, 287 S.C. 545, 340 S.E.2d 144 (1986) and Hall v. Board of Trustees of Sumter County School Dist. No. 2, 330 S.C. 402, 499 S.E.2d 216 (Ct. App. 1998).

As a second ground for seeking reconsideration, Respondent contends that the Court relied upon information not considered by the Board in reaching its decision. This ground apparently references the decision by the Board to consider but exclude the content of the "Facebook packet" delivered to Appellant and thereafter provided by Appellant to a school administrator and the District Superintendent. Objection was made to the Board's ruling on this

evidentiary issue and this Court acted within its discretion in considering whether or not the Board acted properly. The challenged evidence was not only presented to the Board and preserved on appeal, an examination of the Board's decision reveals that the packet in dispute and Appellant's use of that information is referenced in Board findings 13, 14, 15, 16 and 17. Finding 16 makes reference to Appellant's concern that the content of the packet led her to question whether a child was at risk. Board conclusions 4 and 5 refer to the packet and its "nature." Accordingly, the Court operated within its authority in considering whether the "whole record" supported the decision on appeal and whether the decision was "affected" by error of law. See generally, S.C. Code Ann. § 1-23-380(5)(d) and (e).

As this Court has properly determined, the evidence presented at the Board hearing does not support the termination of Appellant's employment. While Respondent may disagree with this decision, it is in keeping with controlling law and the authority of this Court to correct legal error. For these reasons, Respondent's motion is without merit and should be denied.

NICKLES LAW FIRM, LLC

By: _____

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Attorneys for Appellant

January 27 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Paula Bregovi, the undersigned employee of Nickles Law Firm, LLC, attorneys for Appellant, hereby certify that I have served the foregoing Appellant's Response to Respondent's Motion for Reconsideration or in the Alternative, Motion to Alter or Amend Judgment by depositing a copy of same in the United States Mail, postage prepaid and addressed as follows:

Charles Boykin, Esquire
Deidre D. Laws, Esquire
Boykin & Davis
Post Office Box 11844
Columbia, South Carolina 29211

This 27th day of January, 2015

Paula Bregovi

Paula Bregovi

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF LEE

BEFORE THE BOARD OF TRUSTEES
OF THE LEE COUNTY SCHOOL
DISTRICT

Dr. Wanda Andrews,

Petitioner,

vs.

Laura Toney,

Respondent.

CERTIFIED COPY

H E A R I N G

THE BOARD OF TRUSTEE OF THE LEE COUNTY SCHOOL DISTRICT

DATE: Monday, April 28, 2014

TIME: 5:00 p.m.

LOCATION: Lee County School District Office
310 Roland Street
Bishopville, South Carolina

REPORTED BY: LAURA CHAMBLEE
Registered Professional Reporter

COMPUSCRIPTS, INC.
A Full-Service Court Reporting Agency
Post Office Box 7172
Columbia, South Carolina 29202
803-988-0086
1-888-988-0086
www.compuscriptsinc.com

APPEARANCES:

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(INDEX AT REAR OF TRANSCRIPT)

6:03 p.m.

PROCEEDINGS:

CHAIRPERSON MOSES: Good evening. Welcome to the called meting of the Lee County School Board of Trustees. We have declared a quorum. The media has been properly notified and is present. This evening we have with us Ms. Gee Atkinson with the Lee County Observer. At this particular time I ask that you please join me in a moment of silence.

Thank you. Without objection, the agenda will stand as approved. We are now down to our personnel hearing and the teacher has requested a public hearing. So the Board will take executive session as needed.

Good evening to you again. Ladies and gentlemen, I call to order this special called meeting of the Lee County School Board of Trustees. You have the agenda before you which is posted in accordance with the Freedom of Information Act. I am Sanya Moses and I'm Chair of Lee County School Board of Trustees and we are here to consider the recommendation from the Superintendent to dismiss Laura Toney from her position as a social studies teacher at Lee Central High School. The date and time of this hearing were set in accordance with

state law. Through her counsel Ms. Toney has requested that this hearing be conducted in open session.

In addition to the members of the Board we have Mr. Carlos Johnson with us as special counsel to the Board of Trustees to advise us on any legal matters that may arise during this hearing. Also in attendance are: Dr. Wanda Andrews, Superintendent of Lee County Schools; Mr. Charles Boykin and Ms. Deidra Laws, counsel for the administration; Ms. Laura Toney, employee; and Mr. Allen Nickles, III, and Ms. Susan Fittipaldi, counsel for Ms. Toney.

Mr. Boykin, please identify all other counsel and/or administrators who are present for the Administration's case.

MR. BOYKIN: Madam Chair, we have Dr. Andrews. There are three or four other witnesses. However, they have been sequestered so they're not in this room.

CHAIRPERSON MOSES: Thank you, Mr. Boykin. Mr. Nickles, please identify all other counsel and/or persons present for the employee.

MR. NICKLES: Thank you, Madam Chairman. Ms. Susan Fittipaldi and I alone will be representing

Ms. Laura Toney. It is our privilege to do. We do have a number of witness that we've identified and shared that list with Mr. Boykin. We've requested that those witnesses be sequestered.

I would ask that anyone here who has been subpoenaed or called as a witness on behalf of Ms. Toney, please stand up and identify yourself and you need to leave the room at this time.

MR. BALDWIN: Michael Baldwin.

MS. HAZEL: And I'm Meg Hazel. I'm Mr. Baldwin's attorney.

MR. SPOON: Darien Spoon.

MS. MOORMAN: V. E. Moorman.

MS. WEAVER: Linda Weaver.

MR. NICKLES: Folks, there is a room for you. I understand, Mr. Boykin, it is just outside the Superintendent's office; is that correct?

MR. BOYKIN: It's the board executive session room which is just out, to your right, and then the last door on your left going out is where it is.

MR. NICKLES: If you folks would remove yourself to that location until called, we would appreciate it.

And we ask that your motion be heard first -- or second, I'm sorry. Another procedural

matter.

(Thereupon, the witnesses and Meg Hazel left the hearing room.)

CHAIRPERSON MOSES: Thank you. Are there any other persons present whose names were not announced? Our hearing will proceed as follows: Each counsel will give a brief opening statement. The administration will then present its case for the dismissal. The employee's counsel and Board members may examine all witnesses and documents presented by the Administration. While we do not expect many objections to documents or witnesses, I will rule on any such issues during the course of the hearing in consultation with our board counsel and subject to the majority vote of the entire board.

At the conclusion of the administration's case, the employee will present her case against dismissal and the administration's counsel and board members may examine all witnesses and documents presented by the employee.

At the conclusion of the employee's case, each counsel will have the opportunity to give a brief summation. The board will then deliberate in executive session at the close of the hearing. The

board will go into open session and announce its decision. Within ten days a written decision of the board will be issued consistent with the board's announced decision, the evidence presented, and the law.

We do not want to cut anybody off from presenting relevant information that is necessary or useful to our decision in this matter but we would like to keep the hearing to a reasonable length and would ask each side to limit their presentations to only those witnesses and documents that are relevant to the issues contained or referenced in the assistant superintendent's letter dated October 4, 2014 (sic) placing Ms. Toney on administrative leave and the superintendent's letter dated December 18 recommending dismissal. And excuse me, that was 2013, not '14.

We do not intend to take up everyone's time with evidence that is irrelevant or merely cumulative. Are there any questions or concerns from either side about anything that has been said or done so far?

MR. NICKLES: Madam Chairman, we have several motions that have been filed before the hearing. We think it would be expedient to have those

motions heard before any witnesses are called.

Specifically, on January 28, 2014 we filed on behalf of Ms. Toney a motion to recuse the board attorney. That motion has been pending since that date. We believe that Ms. Toney is entitled to be heard on that motion prior to any evidence being presented and have a decision by the board on that motion.

We also have received a motion to quash a subpoena that was issued by this board to Mr. Michael Baldwin. His personal attorney has requested an opportunity to be heard on that motion prior to the taking of testimony. We presented a memorandum in opposition to that motion, which has been presented to Mr. Johnson, Mr. Boykin, and Ms. Laws. We think that would be appropriate to be heard at an early stage of this process so that should the board rule we'll know how to proceed throughout the hearing.

So with those two things -- We also have a motion in limine relating to one of the exhibits presented by the district's administration. I think it's Mr. Boykin's suggestion that we address those arguments as the documents are presented. I have no particular objection to handling it that

way. We can do it now or we can do it as the documents are presented.

MR. BOYKIN: Madam Chair, I believe it would be most appropriate to make that evidentiary ruling at the time that we're seeking to introduce it. From a procedural standpoint, it will probably interfere a little bit with what the board will have opportunity to see. But I just think the board would be in a better position to make that decision at the time. So that's why I've asked that we not try to foretell, because if the motion were made, I would just ask the board to take it under advisement until such time as we sought to introduce that.

MR. NICKLES: So those are the preliminary issues, Madam Chairman. We suggest that -- We request that the board at a minimum hear our motion to recuse the board attorney and consider Mr. Baldwin's motion to quash or declare invalid his subpoena to be here before you this evening.

CHAIRPERSON MOSES: Board members, you've heard the request. I guess we need to begin with the first one since the topic is the board's counsel. So, Mr. Nickles, we'll listen to your motion regarding the board's counsel at this

particular time.

MR. NICKLES: Thank you. Ladies and gentlemen of the board, I come to you very reluctantly this evening to request that the board recuse Mr. Carlos Johnson as its attorney in this proceeding. I will preface my remarks by saying I have the utmost regard for Mr. Johnson and his integrity. This is a motion that's based, however, upon the rules of practice and the rules of ethics of this state.

It is clear that a school board hearing presents an opportunity for a teacher to be heard by a fair and impartial body uninfluenced by any outside connections or relationships. There is a decision by the South Carolina Court of Appeals in Brown versus James and that is 697 S.E. 2d 604. It was handed down in 2010. And in it, it quotes that the purpose of the procedure described in the Teacher Employment Dismissal Act, the law that brings us here this evening, is prescribed by that law to prevent arbitrary action by a board and to afford a teacher a fair hearing before any dismissal and provide a full, impartial, unbiased consideration by the board of testimony to be produced.

In this instance we know and we've

presented to the Board through our motion that Mr. Johnson and his firm are representing Dr. Wanda Andrews in litigation pending in federal court in the state of South Carolina. That means that they have a fiduciary relationship. They have a duty of loyalty to Dr. Andrews. We think it is inconsistent with that duty of loyalty for Mr. Johnson to serve as the impartial counsel to the board in this proceeding.

And we would cite to an ethics advisory opinion, it is Opinion Number 97-03. One of the questions asked in this ethics advisory opinion -- And this is the Bar regulating itself. This is lawyers telling other lawyers how they should act. The question is: May a lawyer serve as an intermediary in any dispute resolution in which the lawyer's firm represents one of the participants? And there is a long lawyerly answer but the summary is this: A lawyer may not serve as an intermediary in a matter in which the lawyer's firm appears as counsel for one of the participants. It does not matter whether intermediary is a partner or only an associate of the law firm, counsel cannot cure the conflict of interest when the intermediary's firm actually represents one of the parties to the

dispute.

Now in this action you've seen the caption. It is Dr. Wanda Andrews, the moving party, the petitioner, versus Laura Toney, the respondent, the defendant. And it is Dr. Andrews' recommendation to this board through several pieces of correspondence, which we'll see during the course of our hearing, that brings us here this evening.

We think that given Dr. Andrews' position as the Petitioner in this case and given the representation that Mr. Johnson and his firm have provided and are providing to Dr. Andrews personally in a federal lawsuit pending in the state of South Carolina, that there is an inherent conflict that would cast a shadow over this proceeding.

Now every teacher who comes before a board wants to be treated fairly. And we have the utmost respect for this board. But we also have an obligation not only to be fair but to appear to be fair, to assure the citizens of the state that we are operating with full disclosure and full fairness.

So members of the board, as I said, this

is not a personal assault on Mr. Johnson, his integrity, or his ability. But the law is the law, and we think that the inherent conflict posed here would compromise the integrity of this proceeding in a way that would be both tragic and avoidable. So we ask you to please consider our motion to have Mr. Johnson recused from serving in this instance alone as counsel for the board.

And I do have and I'll have marked a copy of our motion that was presented through Mr. Johnson for consideration by the board back in January. Are there any questions for me from the board?

CHAIRPERSON MOSES: No.

MR. NICKLES: Thank you. And I'll have this document and the Exhibits marked please as Petitioner's (sic) Number 1.

(THEREUPON, Respondent's Exhibit Number 1 was marked for identification and retained by Chairperson Moses.)

MR. BOYKIN: Madam Chair, if it would please the board, we have been aware of and involved in a few discussions, mainly listening. And we have expressed no real position on Mr. Johnson's involvement. We have no problem with Mr. Johnson

as a professional or as a person. We've worked with this board before and we recognize the integrity that this board actually presents when it conducts its affairs.

As a brother of the bar I understand Mr. Nickles' position. In protecting his client's interest, he by rule almost is required to bring this motion. As a practical matter from Dr. Andrews, we are having to consider what happens on appeal. We do know that there is one significant evidentiary matter that's important to Ms. Toney. It's also important to Dr. Andrews. And the board is going to be called to rule on that. Standing here, I don't know, I cannot tell you whether it's reversible error by itself. But to have a court to review this from the standpoint of whether or not a person was biased and then from the standpoint of whether or not the ruling was appropriate is something that is troubling.

Again, does it -- is it fatal to the case? I'm unable to say. But I believe that I have a legal obligation to say, and Mr. Nickles and I have gone through the exhibits, and I do know that there is an exhibit he put forward, a motion in limine, and I've asked that we postpone any

discussion on that until the time that we want to put that evidence before the board.

Not even thinking about anything else that might come up, that is one point that I know that we are prepared to disagree aggressively on. And that's going to require the board to make a ruling on one way or the other. Clearly I'm going to be arguing that the ruling falls in favor of Dr. Andrews. And whether Mr. Nickles is satisfied with that or not and seeks judicial review, you know, would be something to be considered. And whether or not that decision in our favor was somehow tainted by bias is something the court would weigh. That is the thing that I feel compelled to at least share with this board at this juncture.

We're not supporting or opposing but we just rise for the point of making -- of putting one fact before the board. Thank you for the opportunity to be heard and we allow this to rest properly in the sound discretion of the board.

CHAIRPERSON MOSES: Thank you, Mr. Boykin. Thank you, Mr. Nickles.

MR. JOHNSON: I appreciate the comments from both Mr. Nickles and Mr. Boykin regarding the

integrity of myself as well as my firm. A little bit more of a factual explanation of what Mr. Nickles' complaint is: My firm represents Spartanburg County School District 7 where Dr. Andrews was previously employed. Our firm has represented that School District for more than 50 years. There was a lawsuit that was filed against the school district that Mr. Nickles referenced where Dr. Andrews' was named as a party during her time employed there.

There's a South Carolina statute that says that a school district is to provide a defense of its employees when they're named in a lawsuit. So our law firm has complied with that statute and provided a defense of all the individual employees who were named as well as the school district along with Dr. Andrews having been one of those persons.

I do not personally handle that matter within our office. It is handled by our office but I am not the attorney who is lead counsel on that matter. I've had significant discussions with both Mr. Nickles and Mr. Boykin in hopes of resolving this matter before today.

My only question again is: As I read and understand the ethics opinion that Mr. Nickles

references, which I imagine is an exhibit to the motion that he has marked and will present for all to take back and review, it applies to a situation where it specifically says a lawyer serves as an arbitrator, mediator, or other intermediary in various forms of alternative dispute resolution. That's what that particular ethics opinion relates to. This is not a matter of -- this is not an alternative dispute resolution. This is not a mediation nor an arbitration. This is an administrative hearing. So it's not an alternative dispute resolution matter.

My role here is not active. My role here is passive. I do not speak for Dr. Andrews. I do not speak for or against Ms. Toney. My role here is passive. It is simply to answer questions if this board has any questions. It may be that this board does not turn to me for any assistance. I do not participate in your decision. I do not make recommendations as to what your decision should or should not be. I simply answer the questions for your clarity. So I think there's a little bit -- a significant distinction between the ethics opinion that Mr. Nickles is relying upon versus what the actual role and my actual participation would be.

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What South Carolina law does say about impropriety or bias is that there has to more than appearance. There has to be evidence of a bias. So I don't think that either of these parties have presented any evidence of bias. Mr. Nickles speaks to an appearance of bias. However, as I'm attempting to do in what my role would be, I'm simply just clarifying the facts for you. And the application of the ethics opinion to this proceeding, of course, this board is charged with making that determination. So that's a determination that I think all the parties will respect and adhere to. But I just wanted to make those distinctions for you all.

CHAIRPERSON MOSES: Thank you, Mr. Johnson, for stating your position on this particular matter. Board members, you've heard the request before you. I think it would be appropriate at this time if we took a recess to deliberate the motion that has been made, but we do need a motion to do that, to enter into an executive session so that we can discuss the motion that is brought before us.

MS. BOYD: Madam Chair, I would move to make a motion to enter into executive session to discuss

the matter brought before us.

MR. BRUNSON: Second it.

CHAIRPERSON MOSES: It has been moved by Ms. Boyd and seconded by Mr. Brunson that we enter into executive session to discuss the motion that has been presented regarding board counsel. Are we ready for questions? All in favor of said motion, please note that by saying aye.

BOARD MEMBERS: Aye.

CHAIRPERSON MOSES: Any opposes? Ayes have it. The Board will now excuse itself. We will go into executive session to discuss the motion.

(Whereupon, executive session began at 6:25 p.m. Open proceedings resumed at 6:50 p.m.)

CHAIRPERSON MOSES: Welcome back to open session. While we were in executive session we discussed the motion regarding board counsel's recusal. What is the pleasure of the board at this particular time?

MS. HEYWOOD: Madam Chair, I move that we suspend the current hearing until we have time to consult with independent counsel regarding ethics advisory opinion 97-03.

MR. BRUNSON: Second.

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CHAIRPERSON MOSES: It has been moved by Ms. Heywood and seconded by Mr. Brunson that we suspend the current hearing until the board has had time to seek independent counsel regarding ethics advisory opinion 97-03. Are we ready for questions? All in favor of said motion, please note that by stating aye.

BOARD MEMBERS: Aye.

CHAIRPERSON MOSES: Any opposes? Ayes have it. The hearing will be suspended until we can seek independent counsel regarding the motion that has been requested. We will be in contact with counsel for both sides as soon as we have that opinion and possible dates for rescheduling.

MR. NICKLES: Thank you, Madam Chairman.

MR. BOYKIN: Thank you, Madam Chair.

CHAIRPERSON MOSES: Board members, we are now down to our adjournment. And without objection this meeting be will stand as adjourned.

(Thereupon, the meeting adjourned at 6:52 p.m.)

CERTIFICATE OF REPORTER

I, Laura Chamblee, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the witnesses were duly sworn to testify to the truth; the whole truth and nothing but the truth; that the testimony of the witnesses and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing transcript as typed is a true, accurate and complete record of the said proceedings at the time of the proceedings to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 7th day of August 2014, at Hartsville, Darlington County, South Carolina.

Laura Chamblee

Laura Chamblee,
Registered Professional Reporter
Notary Public
State of South Carolina at Large
My Commission expires:
December 22, 2018

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1 I N D E X

2 EXH NO.:	DESCRIPTION	PAGE
3 Resp. 1	Motion to recuse counsel and other documents	13

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5

6 (Reporter's Note: Respondent's Exhibit 1

7 was retained by Chairperson Moses.)

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STATE OF SOUTH CAROLINA
COUNTY OF LEE

BEFORE THE BOARD OF TRUSTEES OF THE LEE COUNTY SCHOOL DISTRICT

Dr. Wanda Andrews,

Petitioner,

vs.

LAURA TONEY

Respondent.

ROUGH DRAFT ONLY

H E A R I N G

THE BOARD OF TRUSTEES OF THE LEE COUNTY SCHOOL DISTRICT

DATE: Saturday, June 7, 2014

TIME: 11:30 a.m.

LOCATION: Lee Central Middle School
Media Center
41 Charlene Lane
Bishopville, South Carolina

REPORTED BY: HEATHER M. CURLIN
Professional Court Reporter

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MS. MOSES: Good morning. Welcome to the Lee County Board of Trustees. We have declared a quorum. The media has been properly notified, and I see we have with us this morning Jessica with the Lee County Observer.

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At this particular time, I ask that you join me in a moment of silence.

(A moment of silence was observed.)

MS. MOSES: Thank you.

Without objection, the agenda will stand as approved.

Once again, good morning to you. I am Sanya Moses, chair of the Lee County School Board of Trustees. We are here to consider the recommendation from the superintendent to dismiss Ms. Laura Toney from her position as a social studies teacher at Lee Central High School. The date and time of this hearing were set in accordance with state law. Through her counsel, Ms. Toney has requested that this hearing be conducted in open session.

In addition to members of the board, we have Ms. Frannie Heizer of the McNair Law Firm with us as special counsel to the board of trustees to advise us on any legal matters that may arise during this hearing. Also in attendance are Dr. Wanda Andrews, superintendent;

Mr. Charles Boykin and Ms. Deidra Laws, counsel for the administration; Ms. Laura Toney, employee; and Mr. Allen Nickles, III, and Ms. Susan Fittipaldi, counsel for Ms. Toney; Mike Baldwin, potential witness; and Margaret Hazel, counsel for Mr. Baldwin.

Mr. Boykin, please identify all other counsel and/or administrators who are present for the administration's case.

MR. BOYKIN: Madam Chair, you've identified

the attorneys who are here. The administration's witnesses are already sequestered, that being Mr. Webb, Mr. McDaniel, Ms. Addison. Of course, the superintendent as a party has a right to be here. And that's what we have for right now.

MS. MOSES: Mr. Nickles, please identify all other counsel and/or persons present for the employee's case.

MR. NICKLES: Only Ms. Fittipaldi and I are here on behalf of Ms. Toney, who is also present. All witnesses we plan to call have been sequestered so that they will be called individually as appropriate.

MS. MOSES: Are there any other persons present whose names were not announced?

Thank you. At this particular time, the board of trustees extends a big thank you for everyone

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being so compliant with our request to meet on Saturday. We know we've had some difficulty with scheduling. So this was the only date available that the board of trustees had in an effort to expedite the hearing for Ms. Toney. So we appreciate everyone coming out today to participate.

Our hearing will proceed as follows: Motions and any other preliminary matters, motion to exclude on behalf of Michael Baldwin, respondent's motion to exclude, any other motions or preliminary matters. Excuse me. Each counsel will give a brief opening statement. The administration will then present its case for dismissal, and the employee's counsel and board

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members may examine all witnesses and documents presented by the administration.

While we do not expect many objections to documents or witnesses, I will rule on any such issues during the course of the hearing in consultation with our board counsel and subject to the majority vote of the entire board.

At the conclusion of the administration's case, the employee will present her case against dismissal and the administration's counsel and board members may examine all witnesses and documents presented by the employee. At the conclusion of the

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employee's case, each counsel will have the opportunity to give a brief summation. The board will then deliberate in executive session at the close of the hearing, and the board will vote in open session and announce its decision. Within ten days, a written decision of the board will be issued consistent with the board's announced decision, the evidence presented, and the law.

We do not want to cut anybody off from presenting relevant information that is necessary or useful to our decision in this matter, but we would like to keep the hearing to a reasonable length and would ask each side to limit the presentation to only those witnesses and documents that are relevant to the issues contained or referenced in the assistant superintendent's letter dated October 4, 2014 [sic] placing Ms. Toney on administrative leave and the

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superintendent's letter dated December 18th, 2013 -- excuse me -- recommending dismissal. We do not intend to take up everyone's time with evidence that is irrelevant or merely cumulative.

Are there any questions or concerns from either side about anything that has been said or done so far?

MR. BOYKIN: No questions from the administration, Your Honor.

MR. NICKLES: Only one observation, Madam Chair. There was an initial notice of termination that was sent to Ms. Toney that was copied to the board. We think that once that information has been presented we have the right to question folks on that initial document as well. So with that exception, we are in agreement with you.

MS. MOSES: Thank you, Mr. Nickles.

We will now take up the pending motions. When we last met, Mr. Nickles, you had a motion before the board regarding recusal of Mr. Carlos Toney, and at this time, the board is -- Carlos Johnson. I'm sorry. At that particular time, you requested recusal of Mr. Carlos Johnson, so at this particular time, the board is ready to make action or take action, I should say, on the request that you made before the board.

What is the pleasure of the board at this particular time?

MS. DUREN HAYWOOD: Madam Chair, I move that the motion made by Mr. Nickles to have the counsel for

the Lee County School Board, Carlos Johnson, recuse himself be denied; however, to maintain Lee County School District's resources, we've sought out and hired independent counsel, Frannie Heizer.

MR. BRUNSON: Second.

MS. MOSES: It has been moved by Ms. Haywood and second by Mr. Brunson that the board deny the motion to have Carlos Johnson recuse himself; however, in an effort to maintain district resources, the board has elected to seek independent counsel represented today by Ms. Frannie Heizer.

Board members, are we ready for questions?

All in favor of said motion, please note that by stating aye.

THE BOARD MEMBERS: (Affirmative responses.)

MS. MOSES: Any opposes?

Ayes have it. Motion is granted.

We will now take up the pending motions.

Ms. Hazel, we will hear from you on the witness motions to exclude.

MS. HAZEL: Good morning, Board Members.

THE BOARD MEMBERS: Good morning.

MS. HAZEL: My name is Meg Hazel, and I represent Dr. Michael Baldwin. He has been asked to testify in this hearing, and we move and ask the board to exclude Facebook pages that were -- excuse me -- Facebook page printouts that were allegedly from Dr. Baldwin's account, documents produced in his deposition, and any testimony regarding the private life

of Dr. Baldwin.

Dr. Baldwin was a teacher who filed a grievance. This is where his involvement ends. He filed it because Laura Toney disclosed personal information to a group in an inappropriate setting. However, Ms. Toney is attempting to deflect attention from herself and onto Mr. Baldwin. She mistakenly believes that because she was able to access Dr. Baldwin's Facebook page that the information she disclosed was not private, and so Dr. Baldwin had no grievance against her. She then makes the incredible leap to surmise that if Dr. Baldwin had not filed his grievance, she would not be terminated.

This reasoning is illogical. Anyone can file a grievance. It is the district who determines matters of employment and the board approves. Therefore, any evidence regarding the private life of Dr. Baldwin is simply not relevant.

Evidence which is not relevant is not admissible. This is Rule 402 from South Carolina Rules of Evidence. Whether or not the information regarding Dr. Baldwin's private life is true or whether or not other people knew of it has no bearing on whether Laura Toney deserves to be terminated.

According to Ms. Toney, she was placed on

administrative leave and given notice of termination because she discussed personal information with other

employees and students. Again, whether or not the information was true or false is not the issue. The issue was the manner and setting in which Ms. Toney chose to disclose.

Evidence is not relevant if it is of no consequence to the determination. To meet this standard, Mr. Baldwin's personal life would have made Ms. Toney's termination more probable. This is simply illogical. Even if evidence is relevant, it should be excluded if it results in an unfair prejudice, confusion of the issues, or is a waste of time.

Let me take these in order first. Unfair prejudice means tendencies to suggest a decision on an improper basis. According to South Carolina law, this unfair prejudice can include witnesses. The content of the Facebook printouts and testimony about them would be highly prejudicial to Dr. Baldwin. He has taken steps to keep his personal life private and separate from his teaching career. To expose his private life could possibly have a detrimental effect on Mr. Baldwin's career. In fact, because of Ms. Toney's actions, Dr. Baldwin has already been the recipient of harassing e-mails. To have one's private life exposed in an open

hearing may have unintended and serious consequences.

Why would this board punish Dr. Baldwin by asking him to share that information with the public?

Confusion of the issues. To expose his private information would only serve to inflame emotions and bring the focus of the hearing away from its

purpose, which is Laura Toney's termination.

Dr. Baldwin is not an administrator. He is not the human resources director. He did not cause Laura Toney's termination. He did not ask for Laura Toney's termination. However, Ms. Toney is attempting to confuse the issue by focusing on Dr. Baldwin's private life and his Facebook postings rather than on her termination, and this would be a waste of time.

This board has a copy of the grievance. It shows that a grievance was submitted. Dr. Baldwin had nothing to do with the district's action on that grievance; therefore, any testimony about Dr. Baldwin would be a waste of the board's time and should be excluded.

I do want to touch a moment about the invasion of privacy issue. Ms. Toney may be asking the board to participate in an illegal act through publicizing the private matters of Dr. Baldwin.

Ms. Toney mistakenly believes that if she is aware of personal information about a coworker, that it is acceptable to disclose this information to anyone at anytime; however, South Carolina courts have stated that an invasion of privacy occurs with the publicizing of one's private affairs with which the public has no legitimate concern. This is so even if the private information is true. Malice need not be shown to recover for the invasion of privacy.

Ms. Toney, through her attempts to bring

Dr. Baldwin's private affairs in front of this open forum, would publicize Mr. Baldwin's private matters. Since the grievance is already in the record, there seems to be no purpose to this disclosure other than to attempt to shame or humiliate Dr. Baldwin.

Ms. Toney has put this board in a bad position. If the board allows testimony about Dr. Baldwin's private life, they are participating in publicizing his private affairs, which he transmitted to the district under the assumption of some confidentiality. In fact, the board policy states that the district will keep grievances as confidential as may be appropriate at all levels of procedure.

One of the reasons Dr. Baldwin submitted the grievance was because he wanted to keep his private life

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private. The district presumably agreed with him, that Ms. Toney acted inappropriately by broadcasting his personal information. For this board to turn around and then force Dr. Baldwin to testify about his private life would make no sense, and it would set a dangerous precedent for the future. Teachers and students who have been mistreated would be afraid to come forward because their entire private life may become an issue.

If the board decides to admit the Facebook pages from Dr. Baldwin's deposition, we ask the board to submit the pages to SLED for investigation.

Shortly after submitting his grievance, Dr. Baldwin discovered that his Facebook settings had been changed to allow others to see it without his

permission. In fact, he had to call the Facebook Corporation directly to fix the problem.

The pages that Ms. Toney is attempting to produce have been manipulated. There is no Web address, no identifying information, and it is obvious efforts have been made to conceal the identity of the person who accessed the page. This screams of computer hacking. Therefore, Dr. Baldwin would ask that the board submit these pages so that SLED can determine if a crime has taken place.

In conclusion, any testimony or documents

that pertain to Dr. Baldwin's personal life, including hearsay testimony by Ms. Toney regarding the private life of Dr. Baldwin and the introduction of Facebook material, should be excluded. Introduction of this evidence would be unfairly prejudicial, cumulative, and would confuse the issues. It is irrelevant.

All testimony regarding Mr. Baldwin's private life should be excluded, and Ms. Toney should be given strict instructions to limit her testimony. In the alternative, we ask that the board first hear the district's case in chief regarding Ms. Toney's termination, prevent testimony regarding Dr. Baldwin's personal life, and then determine whether any evidence regarding Dr. Baldwin's private life is relevant.

Thank you.

MS. MOSES: Thank you, Ms. Hazel.

Mr. Nickles, do you have a response?

MR. NICKLES: I do. And I beg your

indulgence.

Mark this, please.

(Respondent's Exhibit No. 1 was marked.)

MR. NICKLES: Madam Chair, Members of the Board, I have provided to you our memorandum responding to the motion, which is a rather unusual motion, in this case for a witness to come to you and say he should not

be called. I'm also somewhat surprised and concerned about the characterization provided by counsel for Mr. Baldwin regarding his testimony and the documents that you have before you.

Now, I heard repeatedly, and I think you did as well, the term private, private, private. Well, if you look at the materials before you, you will see that the information to be presented to you regarding Mr. Baldwin is only in the public domain and only that material that he has intentionally provided by way of Facebook or by way of letter to his principal or by way of grievance. So these are all things that were produced or received by Mr. Baldwin in a public Facebook posting.

Now, I don't know how familiar you folks are with Facebook. I'm certainly not and neither is Ms. Toney. The assertion somehow that there's been illegal hacking in this case is, quite frankly, ludicrous. Mr. Baldwin's testimony, as you will see in the materials I provided to you, is that he did discover that although he thought he was sending information only to his so called "friends," it was going out to the

public at large, including children. So to characterize the information presented in the Facebook as private is inaccurate.

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There are cases that say that when you send information by way of Facebook -- and you know they call it posting, like you're posting a letter. You know what that goes back to? That goes back to -- it goes back to putting information on the fence post because you want people to know what you're saying. And these are all posts that are either sent to or received by Mr. Baldwin.

Now, I have no particular interest in Mr. Baldwin's private life, and I don't think that that is going to be an object or subject of discussion during his testimony; but he has said things publicly that are very demeaning, that are insulting, that are vulgar, that are directed to my client. He has said things in his Facebook account which led my client to believe that there could be some endangerment to a minor.

My client did not publicize this information. As you will see in the record before you and the testimony presented, she did two things when she was provided this information anonymously. She informed Mr. McDaniel, who was standing in for Mr. Webb, the principal. She informed him that I have received some information that's troubling to me. He said thank you very much, Ms. Toney, and then he came down to her room later and said may I have it and she said yes. She was

asked by her supervisor to provide the information to him, and she complied.

She did not post this. She did not give it to anyone outside of the chain of command. The only other person she provided it to in a sealed envelope was the superintendent, and she put on the front of the sealed envelope, please look at a particular page because I think there might be child endangerment.

And if you look at the material before you, I will tell you what that page is. Our Exhibit Number 7, and I'm not going to discuss this for purposes of the audience behind us, but you will see that there is a page 9 of our Exhibit Number 7 with a large picture of Oprah Winfrey on the top. If you would turn to that page, please.

And this is an exchange between Mr. Baldwin and someone who identifies himself as a student. And there is a reference in the exchange to SHS, Sumter High School. And in this, there is an exchange between the individual and Mr. Baldwin. If you will look at it and read down the page, you will see it's about the fifth and sixth entry on here referencing some type of activity -- it's page 9. At the bottom, you'll see the page number -- some type of activity between these two individuals. And that exchange between that person

identified as a student and Mr. Baldwin caused Ms. Toney to be concerned that there may be a student here who is

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in danger. And you will see the evidence, the documents being presented by the district. You will see that the envelope that she put this in directed to this page not the pages where Mr. Baldwin was intentionally insulting her, using vulgarity, saying sarcastic things about the educational system.

Now, I also want you to look at page 1 of Exhibit Number 7. And it's -- page 1 is at the bottom. And, once again, Mr. Baldwin in his deposition was very candid. I asked him, Are these individuals on this page your friends? That is, in Facebook parlance, whenever anything is posted by Mr. Baldwin, it automatically goes to his friends. Folks who weren't his friends could access it because he didn't protect it, but these folks automatically got them.

And who do these include? They include the assistant principal at the high school, the administrative assistant at the high school, other teachers at the high school, and a teacher at another district. So to suggest that the things that Mr. Baldwin posted are private is factually and legally inaccurate.

I, in fact, asked the superintendent if you

had seen the postings by Mr. Baldwin, would you have been concerned?

Yes.

Did you discuss those with him?

Yes.

Would you expect that an administrator who

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observed these postings to report that to you?

Yes.

But guess what? They didn't. They didn't.

Now, ladies and gentlemen, we don't take any pleasure in bringing any witness involuntarily before you, but this is a very serious matter. Ms. Toney is facing a career-ending recommendation, and we are entitled to bring to you any and all evidence that may give you a basis to understand the context of this case.

Now, I will also suggest to you that Mr. Baldwin has revealed himself to be an enemy of Ms. Toney and has revealed that there are others who are like minded. In our Exhibit Number 3 that you have before you, it is a letter written about two weeks before this incident that brings us here today. This is a letter that Mr. Baldwin has admitted that he wrote to the principal, Mr. Webb. Excuse me. And this letter reveals that he was mad at Ms. Toney. He was angry with her because what Ms. Toney did is she saw certain

teachers, including Mr. Baldwin and others, being what she perceived to be treated preferentially.

Ms. Toney went to Mr. Webb; nothing happened. She went to the superintendent and, guess what, the superintendent corrected it, and it really made Mr. Baldwin mad.

You'll see in this letter, as we address it through his testimony, that he says I'm considering about quitting I'm so mad. He accuses Ms. Toney of trying to destroy the good things in the district. This

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is a letter that he wrote before any grievance. This gives you a context of what's going on here.

There are other things connected to Mr. Baldwin's testimony through other witnesses that we'll bring to your attention, including his relationship with, his friendship with, and, we believe, his allegiance with the assistant principal of the school who made the allegation in this case that Ms. Toney made a comment that she should not have made. Ms. Toney denies that, vehemently denies that.

I will tell you, ladies and gentlemen, that it will not be a waste of your time to hear the brief testimony that we plan to present through Mr. Baldwin. But to deny Ms. Toney the opportunity to present that evidence to you will be devastating to her case and to

your ability to rule upon her case in an advised fashion.

Mr. Baldwin, in his testimony on deposition, admitted that all of his postings went to these friends that we've identified and at least to one student. At least to one student. Now, can he responsibly argue to you that those things he willingly tells other employees, administrators, and students and others is private? No. No.

So, ladies and gentlemen, I respectfully disagree with the characterization presented by Mr. Baldwin's attorney. This is not an attempt to confuse or deflect. It's an attempt to enlighten. And we believe that only through hearing the testimony,

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receiving the documents can you make a decision in this case.

So I would urge you to deny the request by Mr. Baldwin's attorney to exclude him from this process. He is a witness. He is a citizen. He is here under subpoena. It is his duty to testify truthfully. We have no plan to ask him any questions relating to his private affairs. We want to ask him about his conduct in this case, and that is relevant.

MS. MOSES: Thank you, Mr. Nickles.

Mr. Boykin, do you have a position or

response on the matter?

MR. BOYKIN: Madam Chair, Board Members, Ms. Heizer, I appreciate the opportunity.

With regard to the motion, it's not clear to us at this juncture that it needs to be ruled upon but could be held in abeyance until after we get further in the case to see what it's responsive to.

A couple of assertions that Mr. Nickles made, though, I think that is important that to be addressed. First, the notion that Ms. Toney believed that a child was at risk, that's a very serious allegation. And, in fact, in this school district, at the beginning of each school year, all teachers are taught that if children are at risk, it is the teacher's obligation, it is the educator's obligation to bring that to the attention of law enforcement. So there's a -- there's a problem to the extent that the -- that the position is a child was at risk and it was to be given to Mr. McDaniel and given

to Dr. Andrews in a school district that is separate and apart from where the child at risk was supposed to be. So that suggests that there's something amiss, you know, within that.

The second point was that Mr. Nickles said that Dr. Baldwin had made certain statements that were derogatory, profanity toward Ms. Toney. There is a

separate process in the civil courts to redress something that crossed the line. Within the confines of the hearing of this nature, I question its relevance if that -- if it is being brought in order to level the playing field between an exchange -- excuse me -- about an exchange between Ms. Toney and Dr. Baldwin, you know, from that standpoint. Our position is simple. Hold it in abeyance until we get further into the hearing and rule on it at that time, Madam Chair.

MS. MOSES: Thank you, Mr. Boykin.

Ms. Hazel, would you like to respond?

MS. HAZEL: Thank you. Just a few points in reply.

Once again, Mr. Nickles stated that it's the conduct of Dr. Baldwin that's at issue. No. It is the termination of Laura Toney that is the issue not the conduct of Dr. Baldwin. In fact, he never mentioned Ms. Toney's name on any posting. She was never mentioned. As a matter of fact, the letter that Mr. Nickles referred to, Exhibit Number 3, that was addressed to Mr. Webb, Dr. Baldwin was concerned about morale in the school, and he described a teacher who he

felt had some issues. They were constantly late, constantly complaining. The interesting thing is if you look at that letter closely, he never mentions

Ms. Toney's name, yet Dr. Webb knew who he was talking about.

Again, the issue is not whether the information is true or whether it was posted on a Facebook post. It was the manner and the setting in which Ms. Toney chose to disclose that personal information. He never mentioned Ms. Toney in a Facebook posting. He never communicated to a minor, except for one whose mother he was friends with on Facebook.

Regarding the student at SHS, that is not a student. That is a former student who Mr. Baldwin never taught. The postings made by others that describe an act, Dr. Baldwin did not make those postings. He cannot control what other people put on Facebook.

Again, Dr. Baldwin and his private life are not the issue. Facebook postings are not the issue. We would ask that all testimony regarding Dr. Baldwin, these Facebook pages, and information regarding his personal life be excluded; however, we also ask in the alternative that the board wait, hear the district's case in chief, and then decide whether the information about Dr. Baldwin's personal life is relevant to Ms. Toney's termination.

Thank you.

MS. MOSES: Thank you, Ms. Hazel.

We will now hear any other motions on preliminary matters.

MR. NICKLES: Thank you.

Madam Chair, Members of the Board, I've handed to the chair a proposed exhibit presented prior to the hearing by counsel for the administration. It is a letter dated January 26th, 2006 -- that's correct, 2006, some eight years ago -- reportedly from Lenora Scott, who I understand at that time was the principal at Mount Pleasant Middle School. In this letter which was presented to Ms. Toney at her deposition, Ms. Toney testified that she does not recall receiving this letter. And she contests much of the content of the letter.

Now, the reason we bring objection to this correspondence is that under South Carolina law, hearsay information is not admissible when it is presented to establish a fact. In this instance, you will see in the first paragraph, the last sentences, is an allegation that Ms. Toney addressed someone in a hallway and her behavior is characterized by the writer of this letter. In the last paragraph of the first page, you will see that there's reference to an investigation and to communications with students, none of whom are named, none of whom have been identified as witnesses in this

case, and the author of this letter has not been identified as a witness in this case.

So how do we deal with the content of

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something when we don't have the people who are responsible for that? We exclude it because it's not fair to the person it's being used against. That's the hearsay doctrine. Our forefathers, in their wisdom, determined that anybody accused of wrongdoing, misconduct is entitled to see and to hear from that accuser. That is a fundamental due process that our state has very jealously guarded.

Even though this is not a court of law, this is a judicial process. And under our state's Administrative Procedures Act, which governs these types of proceedings, the General Assembly has said that hearsay is not admissible, that the rules of evidence apply.

(Respondent's Exhibit No. 2 was marked.)

Now, I have provided to you a summary and some cases that address this issue. First is it's normal for an employer to say, well, this is simply a business record and we get it in because it's a business record. Well, that's a fallacious argument because Rule 803 Sub 6 requires information in business records to be transmitted by a person with knowledge. Well, the

person with knowledge here, if there was one, was the principal at the time some eight years ago who is not a witness. So it doesn't qualify under that.

There are opinions offered in this. It is my opinion that you are argumentative, unprofessional, unacceptable. Opinions offered in business records are not admissible unless the individual offering the

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opinion is presented. Otherwise, how do you know that opinion should be given any weight?

There's a case, Kershaw County Department of Social Services v. McCaskill that I provided to you, and it said specifically that school files that contain subjective opinions and judgments cannot be admitted where the defendant is denied the right to cross-examine the maker of the report. Well, the maker of the report here is someone who is not being brought to you.

So, finally, we would suggest to you that in addition to all of those reasons, all of which are very valid, this was 2006 in a different school in this district some eight years ago. I counted them. From January 2006 when this contract that she was working under there was issued, there was one, two, three, four, five, six, seven, eight -- eight continuing contracts issued to Ms. Toney. Eight. If this letter had been a reason to take any action with regard to Ms. Toney,

wouldn't it have been taken before now?

So we submit to you, ladies and gentlemen, the letter itself contains inadmissible hearsay, that it is obviously being presented merely to prejudice Ms. Toney, to put bad stuff in front of you that she can't defend because the person who said those things isn't being brought to you. We submit for those reasons that this document, the letter of January 26th, 2006, should not be considered by you in this proceeding.

Thank you.

MS. MOSES: Thank you, Mr. Nickles.

Mr. Boykin, do you have a response?

MR. BOYKIN: Yes, Madam Chair.

This is a business record that the law requires the school district to maintain. 59-25-440 requires the school district, with indulgence, "Whenever a superior, principal, where applicable, or supervisor charged with the supervision of a teacher finds it necessary to admonish a teacher for a reason that he believes may lead to, or be cited as a reason for, dismissal or cause a teacher not to be reemployed, he must bring the matter in writing to the attention of the teacher."

It didn't put a limit on it. It didn't say two years. It didn't say three years. It didn't say

six months. It says whenever. So if it's eight years, it's eight years. If it's ten years, it's ten years. So that doesn't render the evidence incompetent because of the age insofar as Mr. Nickles' argument is concerned.

Business record. "Record of an act, condition, or event shall be insofar as relevant, be competent evidence if the custodian or other qualified witness testifies as to its identity and the mode of its preparation, and if it is made in the regular course of business, and at or near the time of the act, condition, or event, and if, in the opinion of the court, the source of the information, method and time of preparation was such as to justify admission."

Moreover, this board can decide what weight, if any, to give to it.

Now, Ms. Toney, according to Mr. Nickles having read her transcript from her deposition, says she did not recall. She never said she didn't see it. She never denied that it was there. So why don't we take a minute and delve into her recollection on the day of her deposition because we talked to her -- you've heard much about Dr. Baldwin's testimony.

I asked her, "Why was it necessary to report Mr. Baldwin's Facebook page or whatever it's called?"

I asked that of Ms. Toney, and she answered,

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"I have a lot I want to say on that topic and prefer to wait for the hearing to present that to the board. I have a lot to say on that topic. I have a lot to say on topics. I have a lot to say. I'm not playing my A cards today, Mr. Boykin."

That was in a deposition where she had sworn that she was going to tell the truth, she was going to answer my questions truthfully and honestly that day. But she told me under oath, I'm not playing my A cards today. So to the extent that she's saying she has no recollection of it, that has to be analyzed within the context of her statement, I'm not playing my A cards today.

But her deposition didn't stop there. It went a little further:

"Ms. Toney, is there any other information about your relationship or contact with Dr. Baldwin or Mr. Baldwin that you want to share that you are going to share with the board?" That was a straight-up question

to her.

"I can't recall that now. Something just might come up tomorrow. I don't know.

"QUESTION: It's your testimony that you may have other information that you want to share but you can't remember it on the day of your deposition; is that

correct?"

Ms. Toney's answer: "Correct."

"Okay. You testified earlier you were going to save your information for the board meeting?" That was my question.

Her answer: "This is a deposition. This is not a hearing."

To accept Mr. Nickles' argument that's premised on Ms. Toney having no recollection requires you to give the benefit of the lack of recollection to Ms. Toney. I would suggest to you that the testimony and the manner in which she testified on the day of her deposition suggests that we cannot give her that deference for what she cannot recollect because she admitted under oath that she was intentionally -- and, well, okay, Boykin, you've gone too far, you say intentionally. She, as you say --

"I can't recall that now."

The relevant word is "now."

"Something might just come up tomorrow."

I interpret that to mean I can't remember right now, but, you know, tomorrow might be a different story. By the time of the hearing, might be a different

story. Most people that I know, their memory -- unfortunately, I'm at the age where I can testify to

that firsthand -- gets worse over time. But she's testifying under oath that her memory gets better.

MR. NICKLES: I'm going to object to the mischaracterization of the witness's testimony.

MR. BOYKIN: This is a --

MR. NICKLES: I thought we were arguing the admission of a document, and now my client is being attacked on credibility bases, which is far beyond the scope of what this motion . . .

MR. BOYKIN: My response to that, with all due respect, when he said she doesn't recall it, he put her credibility at issue as a part of this motion.

MS. MOSES: Mr. Boykin, thank you. You've made your point. Let's just continue.

MR. BOYKIN: So with regard to the document in hand, it's a part of the district's business record, clearly came up as a part -- Ms. Scott is not here, so there's no allegation that it was manufactured some eight years after. It was in her file. She admitted that it was in her file. She claimed that she only saw it there for the first time. It is a legitimate business record and, therefore, should be admitted.

Thank you, Madam Chair.

MS. MOSES: Okay. Mr. Nickles?

MR. NICKLES: Just very briefly.

I'm impressed by Mr. Boykin's ability to turn one argument into another, but I would like to bring us back to the issue at hand. And whether we like it or not, the courts have ruled that where you are using a record from a file in order to demonstrate something about that individual, whether it's their ability, their personality, their approach, here's what the courts say: "When a letter is introduced with the intent to use it as evidence of" -- in this case -- "a lack of skill, it is hearsay and can only be deemed admissible if presented properly with the individuals who have firsthand knowledge."

Makes sense, doesn't it? We don't want to take somebody's word who is not even here. We've had plenty of opportunity -- I think we've had more than enough opportunity to bring anyone here who could have an interest in this case.

And I will conclude my remarks there, but I would like to take the opportunity to say to all of you my sincere thanks for your willingness to have us here today. My family did have a medical emergency that I am very grateful to you-all for accommodating.

Thank you.

MS. MOSES: Thank you, Mr. Nickles.

The board may now go into executive session

to receive legal briefing on the motions. In executive session, no actions will be taken. Any actions will be taken back in open session.

ROA_00174

Does the board wish to go into executive session now?

MS. BOYD: Madam Chair, yes, the board should go into executive session take a briefing on -- advice on the briefing that was presented to us.

MR. BRUNSON: Second.

MS. MOSES: It has been moved by Ms. Boyd and second by Mr. Brunson that we enter into executive session to receive legal briefing on the motions.

Are we ready for questions?

All in favor of said motion, please note that by stating aye.

THE BOARD MEMEBERS: (Affirmative responses.)

MS. MOSES: Any opposes?

Ayes have it. We will now enter into executive session and we will wait for this. You-all can remain seated in here.

(The board entered into executive session.)

MS. MOSES: Welcome back to open session.

While we were in executive session, we took legal counsel -- or legal briefing on the motion requests that were made.

What is the pleasure of the board at this time regarding the motion to exclude information concerning Mr. Baldwin's private life and Facebook pages?

MS. DUREN HAYWOOD: Madam Chair, I move that we hold that motion in abeyance until after the administrative -- administration's case is presented.

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MS. MOSES: Okay. We have a motion on the board.

MR. BRUNSON: Second.

MS. MOSES: It has been moved by Ms. Haywood and second by Mr. Brunson that we hold the issue in abeyance until the end of the administration's case.

Are we ready for questions?

MS. BOYD: Yes.

MS. MOSES: All in favor of said motion, please note that by stating aye.

THE BOARD MEMBERS: (Affirmative responses.)

MS. MOSES: Any opposes?

Ayes have it. Motion is granted.

Board Members, concerning Motion Number 2 on the hearsay issue regarding the letter regarding Ms. Toney's employment during the year 2006, what is the pleasure of the board at this time?

MS. BOYD: Madam Chair, I move that this

letter not be admissible due to the age and relevance, but in the course of the hearing and we see that the information going back this far is relevant, then we will revisit it.

MS. DUREN HAYWOOD: Second.

MS. MOSES: It has been moved by Ms. Boyd and second by Ms. Haywood that we not admit the letter at this particular time due to its age and relevance; however, during the course of this hearing, if we see there is information going back to those years, we will visit -- revisit this issue again.

Are we ready for questioning?

MR. BRUNSON: Yes.

MS. MOSES: Okay. All in favor, please note that by stating aye.

THE BOARD MEMBERS: (Affirmative responses.)

MS. MOSES: Any opposes?

Ayes have it. Motion is granted.

MR. NICKLES: Madam Chair, we would ask that since Mr. Baldwin is at least a potential witness in this case, that he be sequestered and not hear the testimony of the other witnesses in this case as is the case with all of the witnesses.

MS. MOSES: Mr. Boykin?

MR. BOYKIN: We would have no objection to

that request.

MS. MOSES: Okay.

MR. NICKLES: Thank you.

MS. MOSES: Okay. We will now have our brief opening statements and, Mr. Boykin, we will begin with you.

MR. BOYKIN: Thank you, Madam Chair, Board Members, and Ms. Heizer.

First, let me thank you all for coming, and let me say that there are lots of places where you would like to be today. Today was the day many of your students started their lives after graduation and you wanted to be a part of that sendoff. And we certainly understand your desire to be there. We also understand that your recognition of the importance of this, not

just to Ms. Toney because she has a statutory right to this hearing, but to the importance of the Lee County School District. Your willingness to come, give up your Saturday to be here is commendable, and we thank you for that.

Now, you're here because the administration has recommended the termination of the employment of Ms. Toney, a continuing contract teacher. The law is pretty clear 59-25-440 requires the teacher -- excuse me, the district to make the teacher aware in advance of

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anything that could cause the teacher to be dismissed. 59-25-430 will also talk about a teacher can be dismissed at any time under certain conditions.

But what brings us here now and what I need you to do is listen carefully to the evidence. I need you to listen to how your employee conducted herself in the workplace, how she interacted with the administrators, how she interacted with other employees, and what was the logical consequence of those interactions in most cases.

Now, we're not asking you to sit here and think from the outset or at any time that Ms. Toney is a bad person. That's not our purpose. We don't have to prove that she's a bad person. Our purpose is to put forth evidence today to show you how she did her job and whether or not for you that was acceptable. Whether she acted professionally at all times, whether when she interacted with the administration -- the administrators, she complied with that.

I will admit, and Mr. Nickles will remind you, that we carry the burden in this proceeding. It is our obligation to bring forth evidence to show that Ms. Toney's conduct constitutes good and just cause to have her separate from employment with the school district.

You will get a chance to listen to the witnesses, and you will hear from the principal who interacted with her, who gave her directions. You will hear how she responded to the principal. You will hear from a consultant who works with the school district who interacted with her, and you will hear how she responded to that consultant. You will also hear how she interacted and responded to the superintendent and possibly other administrators as well.

What I want you to think during this proceeding is what happens if every employee of the school district interacted and responded to administrators in the manner that Ms. Toney did. I ask that you play close attention and listen very carefully. We look forward to talking with you and presenting the rest of our case.

Thank you.

MR. NICKLES: Madam Chair, Members of the Board, Ms. Heizer, it's my honor to be here today representing Laura Toney.

Mr. Boykin has correctly told you that I'm going to remind you that the burden is on the administration in this case. This is an unusual case.

Normally, when someone is recommended for termination, it is because they have done something of such an

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extraordinary and overpowering negative that it cannot be tolerated, for example, striking a child or a colleague. In this case, we don't have any of those elements.

And Mr. Boykin has said that there are statutes that govern your decision today, and he is correct in part. This is not a case where there has been a directive given to Ms. Toney, a notice and an opportunity to improve some perceived deficiency. Those are what we call performance-driven cases or cases that relate to the ability to teach.

You will hear the testimony of Mr. Webb today that as of September 27 of this year, Ms. Toney was a teacher in good standing at his school. He had no reason based upon his observations of her, her delivery of instruction in the classroom, her relationship with students or others to recommend that she be discharged.

So what happened to change that? And the evidence is going to show you today that on September 27th at an otherwise uneventful department meeting, Ms. Toney was asked by one of the participants, How are you doing, because she looked a little down, and she said, Not so good. I lost my husband and my mother in the month of September, and this is a sad time for me.

Now, Ms. Toney recalled that she had been

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informed by Mrs. Addison the previous year that Mr. Baldwin had also lost a spouse.

MS. HAZEL: Objection. All testimony regarding Mr. Baldwin is held in abeyance.

MR. NICKLES: No. Mr. Baldwin's testimony is not held in abeyance. Not anything relating to him.

MS. MOSES: You can continue Mr. Nickles.

MR. NICKLES: Thank you very much.

So she turns to Mr. Baldwin and says, Mr. Baldwin must know how I feel. He has lost a spouse.

Now, Mr. Baldwin took offense at that. Ms. Toney had no idea why. Now, she leaves the meeting and she is told by Ms. Addison something that surprised her about Mr. Baldwin and his loss. Something she did not know. She says --

MS. HEIZER: Would you hold one second? I'm sorry.

MR. NICKLES: Certainly.

MS. MOSES: All right. Thank you, Mr. Nickles, for pausing. I'd just like to remind the board that this is not evidence. This is just Mr. Nickles making his opening statements.

MR. NICKLES: I thought that's what I said when I stood up. So--

MS. MOSES: Okay. Excuse me, Mr. Nickles.

I'd like to remind our audience, although this is a public hearing, we will conduct this in a very formal manner, so we would ask you not to make any outbursts.

And, just for clarification, that was just

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clarifying because there was an objection, Mr. Nickles.

MR. NICKLES: Thank you very much. And, certainly, we respect this board and the burden on this board today to make the decision. This is a very solemn occasion, and we would join the board in asking the people to respect the solemnity of the occasion.

So, as I was saying, Ms. Toney is provided information after that meeting that she did not have beforehand.

Now, Mr. Baldwin, unknown to Ms. Toney, took great offense at what she had said to him and what was reported to him by Ms. Addison. And that's according to the record. He then initiates a grievance. Ms. Toney is brought before her principal, and she's informed she is not allowed to see the grievance. She's told Mr. Baldwin has brought a grievance against you. And she asked why. The principal tells her, and she said, Oh, my goodness, I want to apologize. That's her immediate reaction. And Mr. Webb and Mr. McDaniel will tell you that's her immediate reaction. Not good for him or I want to get him or anything like that. I want

to apologize was her immediate, instant reaction.

And what Mr. Webb and Mr. McDaniel say is wait a minute; let's not go there; we don't want you to do that; Mr. Webb is going out of town for a couple of days, let's let this rest. Ms. Toney was fine with that.

Little did she know that while Mr. Webb was out of town, she would be delivered a document, excerpts

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of which you have seen. It's our Exhibit Number 7 -- we looked at it earlier -- the Facebook postings delivered to her anonymously. And regardless of what may be characterized here, it alarmed her because she didn't know who these individuals were who were talking back and forth, but there was a reference to a high school and a reference to a student.

So what does she naturally do? She informs the administrator who was there that day. He comes, asks for it. And she delivers it to the superintendent because she doesn't know. She's not going to falsely accuse anyone of any criminal act. To suggest that would be absurd. So she provides it to her chain of command. That's what we're taught to do when we receive something that we don't know what to do with it. And she did. And guess what? That's why we're here.

There is not a shred of evidence, not any

testimony that you will hear that she broadcast this across the school, across the community. No. She did with it what any responsible teacher would do. She handed it to her supervisors.

Is that insubordination? No. That's responsible conduct.

Now, when she does that, she is given a letter, and that letter is Exhibit Number 9 of the materials in front of you. That letter is signed by Ms. Vaughn, the assistant superintendent for personnel. It says you violated district policy.

What policy? Where is it?

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MR. BOYKIN: Madam Chair -- have these been put into evidence yet?

MR. NICKLES: Yes. Presented. And I can -- I mean, I can -- I can project and attest to the evidence.

MR. BOYKIN: Not without having had a ruling on it. Go ahead, but I -- just for protocol reasons.

MR. NICKLES: May I continue? I mean, I'll describe it to you if you don't want to look at it.

MR. BOYKIN: That's fine. Describe it.

MR. NICKLES: She received the letter -- please -- please don't look at the letter in front of you. They've got a problem with that even though they

wrote it. Let me tell you what it says. It says that you violated policy by creating a disruption in your assigned school by sharing personal information on another staff member to other staff and students at Lee High. That's what she's told she did, she did not do. Then she's told don't visit the school, don't contact fellow employees of Lee County School District, which she did not do.

This administrative leave drags and drags. Ms. Toney will testify that she was approached by some of her students in the grocery store and she, without inviting them to say anything, she says, How you are doing? Just polite. Not, oh, I'm on administrative leave and can't talk to you. Just polite, How are you doing?

Not so good, Ms. Toney. We ain't learning

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anything. We hadn't got a certified teacher.

So what does Ms. Toney do? She's been told not to go to school, which she couldn't do; not to talk to any staff or employees, which she didn't do. She calls the person she considered to be a friend, a board member, and says would you please look into this. She did not ask that board member will you intervene on my behalf? Would you put me back to school? No. Will you look into this?

Is that violation of this letter? No. Or my description of the letter, excuse me.

So this thing drags on and on. Ms. Toney is called in to be interrogated by the administration. The administration makes a record of that interrogation. It is Exhibit Number 10, which I'll describe to you -- don't look at it, now. I'll describe to you. Because it's their document, they wrote it. And they tried to get her to resign. And the superintendent of this district says -- it's in the record --

MR. BOYKIN: I'm going to object.

MR. NICKLES: It says --

MR. BOYKIN: Objection. If I understood, you said brief opening statements. Now, we are getting into an extended, exhaustive description of the evidence here, and I'm wondering, you know, I -- if that was within the contemplation of the brief opening statement. That's my objection.

MS. MOSES: Mr. Nickles, we would ask you to continue and try to bring your opening statement to a

conclusion. We do not need a description of the evidence. We are going to presume that that will be presented in your case.

MR. NICKLES: With all due respect, the statement is a projection of testimony, but I will

respect the request for brevity.

MS. MOSES: Thank you.

MR. NICKLES: And what Ms. Toney is told in this meeting -- you will hear it from her testimony; you may see it in the record -- the SCEA won't help you. That's the superintendent talking to her. The SCEA won't help you. This is bigger than that. This has to do with your future employment.

Now, Madam Chair, the final -- there was another letter sent to Ms. Toney after that in October -- now, remember, she's been out since October 4th. The 29th, another letter is sent where she's accused of talking to students, using all kind of stuff, personal agendas, so forth and so on.

Well, that letter went to the chair, presumably to the board. Somebody sent it to the chair, it was supposed to go to the board. That letter is now no good and a third letter is being sent, still accusing her of using personal information with other employees after being directed by an administrator to leave it alone.

Now, Madam Chair and Members of the Board, as observed by Ms. Heizer correctly, what I tell you is not testimony. It is your job to listen and to read and to

determine whether or not this district has met its

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burden. And at the conclusion of testimony, we'll talk about how substantial that burden is. But I would ask you, please, the district presents its case first for a reason, it has the burden, but you cannot make your decision until you hear from everyone. So, please, I ask you to keep an open mind, listen to everyone, and make your decision accordingly.

Thank you.

MS. MOSES: Thank you, Mr. Nickles.

Okay. The administration may now present its case in support of the recommendation of dismissal of Ms. Toney.

Mr. Boykin.

MR. BOYKIN: Thank you. Point of reference.

MR. NICKLES: With Mr. Boykin's kind permission, we have a witness who has to leave very soon. She has a wedding she has to attend. And we would like to call her first out of order if that's the pleasure of the board. It will take about 15 minutes.

MS. MOSES: Board Members, a consensus on the request?

MR. BRUNSON: Okay.

MS. MOSES: Okay.

MR. NICKLES: Thank you.

MS. FITTIPALDI: I'm going to go get the

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witness. I'll be right back.

MR. NICKLES: Charles, thank you.

(There was a pause in the proceeding.)

MS. FITTIPALDI: Madam Chair, Members of the Board, my name is Susan Fittipaldi. I'm an attorney with the Nickles Law Firm. We represent Ms. Laura Toney.

Thank you, Mr. Boykin, for letting us introduce this witness. She does have somewhere to be, and I appreciate everyone's accommodation of that.

Ms. Stokes, you're going to be sworn in by the court reporter.

(Witness sworn.)

VIRGINIA STOKES, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. FITTIPALDI:

Q. Please state your name.

A. I'm Virginia Stokes.

Q. Okay. Ms. Stokes, were you formerly employed with the Lee County School District?

A. Yes.

Q. In what capacity?

A. I was a teacher here for many years, and then I became an assistant principal.

Q. And how long were you an assistant principal?

A. From 1990 to 2001. I retired in 2001.

Q. Okay. And where did you serve as an assistant principal?

A. For the most --

MR. BOYKIN: Madam Chair, I object to this testimony. 1990 to 2001. The document that I put forward was 2006. Mr. Nickles said it was stale. If the 2006 document was stale, Madam Chair, I would suggest that testimony going to 2001 is even more stale, if that's the concept, and I would object on that basis because she hasn't been in the district since 2001.

MR. NICKLES: And if I might respond, we're not here to present Ms. Stokes to offer any substantive testimony concerning Ms. Toney. There has been an allegation by the superintendent that every administrator that worked with Ms. Toney had a problem with her. She's presented for the limited purpose of so -- indicating if it's her testimony that she did not have a problem with Ms. Toney. That's the limited purpose of her testimony.

MS. MOSES: Okay. Ms. Fittipaldi, does your witness have any information relating to the incident that led to the dismissal of Ms. Laura Toney?

MS. FITTIPALDI: She does not.

If I may make one last point before you rule on this, that motion to exclude the 2006 letter was granted but with a reservation that if testimony is presented regarding her behavior and going back in time that that issue would be revisited. So I don't think it would be fair to Ms. Toney if that letter were to become admissible and Ms. Stokes' testimony be held inadmissible because of the timeliness of it.

MR. BOYKIN: On that point, all due respect, what they're saying is since it was 2001, then they're opening the door for the 2006 letter, if that's what they're saying, then let her testify.

MR. NICKLES: For purposes --

MS. HEIZER: I think the Chair has a question --

MR. NICKLES: Okay.

MS. HEIZER: -- to ask Mr. Boykin.

MS. MOSES: Okay. Mr. Boykin, would you stipulate that this witness was an administrator from 1990 to 2001 and that she had no issue or problem with Ms. Toney's teaching?

MR. BOYKIN: With all respect, Madam Chair, if they proffer that assessment and would stipulate to that and move on, we've offered that from the very beginning.

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MR. NICKLES: That's fine. That's the sole purpose of the testimony.

MS. HEIZER: All right. If I could just explain to the board what a stipulation is. If there's an issue that one side is trying to prove and make evidence, evidence you will consider and count in your decision, then it can either come from witness or they can agree that it is a fact. And so I think Mr. Boykin is prepared to stipulate, or agree, that it is a fact that y'all can consider that Ms. Stokes was an administrator with the school district from 1990 to 2001, that she was an administrator and that Ms. Toney

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taught under her or at the school where Ms. Stokes was an administrator and that Ms. Stokes had no problem with Ms. Toney's teaching or conduct towards the administration.

MR. NICKLES: That's correct.

MS. HEIZER: So by stipulating to this, it is a fact that y'all will be able to take into consideration and Ms. Sanders -- or Ms. Stokes does not have to testify.

MR. NICKLES: Okay.

MS. FITTIPALDI: And I'll just add for clarification that it was at Lee Central High School where she was an administrator.

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MR. BOYKIN: And I would note, for the record, that that stipulation does put her conduct at issue factually settled prior to 2006 so that as we move toward the rest of the hearing.

MS. HEIZER: Okay. That's noted. Thank y'all.

MS. FITTIPALDI: Thank you, Ms. Stokes. You're excused.

Thank you.

MS. MOSES: Mr. Boykin, thank you for yielding to the other side, but at this particular time, you may present your case to the administration.

MR. BOYKIN: Bernard McDaniel.

(There was a pause in the proceeding.)

(Witness sworn.)

BERNARD MCDANIEL, SR., having been first duly

sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BOYKIN:

Q. Okay. Mr. McDaniel, what is your current position with the Lee County School District?

A. I'm an educational consultant, and I serve as the secondary coordinator.

Q. What is your educational background, please?

A. I have 34 years' experience as an educator

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and 24 of those as an administrator.

Q. Okay. Formal education -- just a minute.

MR. BOYKIN: Madam Chair, I am hearing comments from back here. And, I mean, I have no objection to people being present, but I'm trying to examine this witness and I believe Mr. Nickles would agree with me that we should be able to do that without comments coming from the audience.

MS. MOSES: Yes, Mr. Boykin.

And, again, we'd like to remind members of the public that this is a public hearing, however, we do not want any comments or outbursts, and if those will continue, unfortunately, we will stop the hearing because we will have an orderly hearing.

BY MR. BOYKIN:

Q. Mr. McDaniel, would you be so kind as to tell the board of your formal educational background starting with college, please.

A. I attended Ferrum Junior College in Virginia for two years, and then I transferred to The Citadel and

spent about three months there. Then later, consequently, subsequently transferred to Newberry College where I graduated in 1980. Upon graduating from Newberry College, I later attended The Citadel and received my master's in education from The Citadel and

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pursued additional studies through the University of South Carolina, South Carolina State, and Clemson.

Q. Okay. And you're currently an education consultant; is that correct?

A. That is correct.

Q. Okay. And how long have you been employed with the district in that capacity?

A. Since September.

Q. Since September?

A. Of 2013.

Q. Okay. And you mentioned it before, but I want to make sure I don't gloss over it. How many years' experience do you have as an educator?

A. 34. This is my 34th year.

Q. And how many of those were in administration?

A. About 24.

Q. Would you briefly tell the board about the areas in which you are certified to either instruct or lead instruction in South Carolina?

A. I'm certified as a physical education teacher, K through 12. I'm certified as a secondary and also the elementary director and administrator, principal, and am director at both of those levels. I am also certified as a superintendent in the state of

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25 South Carolina.

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1 Q. Have you ever been forced to resign or
2 terminated from employment as an educator?
3 A. No, sir.
4 Q. Have you ever conducted staff development for
5 teachers in your school?
6 A. Yes, I have.
7 Q. Are you familiar with an obligation placed
8 upon educators to report child abuse or suspected child
9 abuse or neglect if they believe a child to be in
10 danger?
11 A. Yes.
12 Q. And where is this report to be made?
13 A. The Department of Social Services.
14 Q. Okay. Is there any requirement that you're
15 familiar with that requires them to report this
16 information to the administration of the school where
17 the persons are stationed?
18 A. It is the responsibility of the individual to
19 report it to DSS.
20 Q. To DSS. Okay.
21 All right. Do you know Mrs. Laura Toney?
22 A. Yes, I do.
23 Q. Would you tell the board how you came to know
24 Ms. Toney?
25 A. When I came onboard in the district, I was

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1 stationed, I guess, for lack of a better word, at the

high school. Ms. Toney was a member of the high school staff there.

Q. Do you have any recollection of an incident which happened involving Ms. Toney on or around September 27, 2013?

A. Yes, I do. Mr. Webb, Brian Webb, the principal at the high school, had received a grievance from another staff member with regards to Ms. Toney. I was there. I sat in on the conference when he shared the grievance with Mrs. Toney. I sat in on that meeting.

Q. Okay. Did the administration, and that would be Mr. Webb and in your presence, reach any conclusion about the substance of that grievance during that meeting?

A. Actually, no. What was happening is, as I recall, Mr. Webb was involved in leadership training through the state Department of Education and he was scheduled to be in Greensboro, North Carolina, that particular day. And during that time, when he shared the information, he said to Ms. Toney to let's just leave it alone right now, we'll deal with it when I return, which was -- if I recall, this was like a Wednesday, I think, and he was scheduled to be back on

Friday. Ms. Toney asked could she speak to the teacher and we both asked her -- stated that let's just leave it alone until Mr. Webb returns.

Q. So she asked could she speak to the teacher?

A. Right. She wanted to -- she didn't -- what

she said was her comments were taken wrong, she wanted to apologize. And Mr. Webb and I both said just leave it alone until he returns and then he would -- if he needed to, he would get both of them together or follow up.

Q. Okay. As administrators, when you have an employee who has filed a grievance that's directed toward the conduct of another employee on the same campus, was it your judgment -- what was your judgment? I don't want to ask a leading . . .

A. I thought what Mr. Webb did was correct because he was committed to going to his leadership training and he did not want to pursue -- or didn't have time to pursue it then. He was going to follow up once he returned.

Q. Okay. Well, did Ms. Toney follow Mr. Webb's directive?

A. The next day or the day after, as I recall, Ms. Toney came by my office and said, I need to share something with you, that the teacher is putting stuff on

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Facebook and making some comments that are inappropriate. And I said, Ms. Toney, you remember we said just leave it alone until Mr. Webb returns. Then later, she -- I went down to her room and was going to tell her that if she had something in writing, to give it to me, put it in writing and I would give it to Mr. Webb, and she presented me with a packet.

Q. Okay. Did you believe that Mrs. Toney had complied with what Mr. Webb asked her to do?

A. In that regard, I would say no because he was asked to -- she was asked to leave it alone until he returned.

Q. Okay. When she spoke to you, did she tell you that it was her belief that children were in danger?

A. I didn't hear danger. I heard -- what she said was he was making some inappropriate comments about kids.

Q. But I'm asking you did she tell you she thought from what she had that children were in danger?

A. I don't recall that. There was some inappropriate comment, racial comments or something, I do recall.

MR. BOYKIN: Thank you. Would you listen carefully and answer any questions Mr. Nickles may have.

THE WITNESS: Okay.

CROSS-EXAMINATION

BY MR. NICKLES:

Q. Good afternoon, Mr. McDaniel.

A. Good afternoon.

Q. As I recall, you came first to this county on September 15th of 2013, right?

A. That would be correct.

Q. So you had only been here a few days when this episode occurred with regard to Ms. Toney and Mr. Baldwin, correct?

A. That would also be correct.

Q. I know that you have a great deal of experience and a wealth of knowledge. Did you ever

evaluate Ms. Toney's teaching?

A. No, I did not.

Q. Ever been in her classroom at all to observe her teaching?

A. Never.

Q. All right. You indicated that an incident occurred back around the 27th of September. Were you present at the departmental meeting on that day?

A. No, I was not.

Q. Do you have any firsthand knowledge as to what was said in that meeting?

A. No, I do not.

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Q. All right. Did Ms. Addison ever approach you and share with you any information that she had about that meeting?

A. No.

Q. Now, you were the school's designated leader in Mr. Webb's brief absence in early October, correct?

A. Excuse me? Clarify.

Q. When Mr. Webb went off to his training, you were in charge of the school?

A. No, not -- no. No. I'm -- my job was to be there to support Ms. Addison, who was the assistant principal. She acted as administrator in charge in his absence.

Q. Well, I want to understand the sequence of events. The 27th, if memory serves, was a Friday, I believe. Now, you said that you got this grievance, but that wasn't until the next Monday. Is that correct?

ROA_00198

A. We got the -- when I was invited into the meeting, Mr. Webb had a grievance -- information that he shared with Mrs. Toney, and it was the day that he was about to leave or depart to go to his training in Greensboro, as I recall it.

MR. NICKLES: I'm going to hand a package of information to the witness and direct his attention to certain of the items contained therein.

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BY MR. NICKLES:

Q. First, Mr. McDaniel, would you look with me at Exhibit Number 4. Just turn to the tab marked 4.

MR. NICKLES: And I have an extra if anyone would care to. And we have the marked exhibit as well. I'll give this one to the witness. This is contained in our Hearing Exhibit Number 1.

BY MR. NICKLES:

Q. Now, Tab Number 4, do you have it in front of you, Mr. McDaniel?

A. I do.

Q. All right. Is this document familiar to you?

A. I've never seen the document. Mr. Webb had that document in his possession, as I said, in the meeting.

Q. All right. Does the form seem -- the form used for a grievance in this district?

A. Yes.

Q. And this says that it is being presented on the 30th of September, the action occurring on Friday, September 27th. Do you see it?

ROA_00199

MR. BOYKIN: Madam Chair, I'm objecting. He said he had not seen this document. Mr. Nickles asked him in foundation if he'd seen the form. I understand that. But now he's asking questions about the substance

of the document, and he's asking him to testify to something he hasn't seen.

MR. NICKLES: I'm asking the witness if the dates on here would refresh your recollection as to when this came to your attention.

MR. BOYKIN: If that's the question, that should be the question, other than going into the form.

A. My response to that would be that the day that it was presented or -- to Ms. Toney by Mr. Webb was the date that he was scheduled to leave to go to a conference. In terms of the specific date, you know, I don't recall the specific date. I remember that incident and why he had to leave.

BY MR. NICKLES:

Q. Did you subsequently have a meeting with Mr. Baldwin in reference to this grievance?

A. I think we did.

Q. If you would turn to Exhibit Number 8 and see if that's something that you are familiar with.

A. Okay. That would be accurate.

Q. Can you identify the handwriting on this exhibit?

A. The handwriting is some scripted notes that I scripted.

Q. And looking through the various pages in this

ROA_00200

exhibit, do you recognize all of those to be in your hand?

(Sotto voce discussion between counsel.)

A. Yes.

BY MR. NICKLES:

Q. You do recognize it?

A. Yes.

Q. So is it the case, Mr. McDaniel, that on October 3rd, you attended a meeting in which Mr. Baldwin, according to these scripted notes, attempted to describe his concerns?

A. Right.

Q. That's correct?

A. That would be correct.

MS. HAZEL: Madam Chairman, I object to the admission of this document in evidence because it contains information about Mr. Baldwin's personal life and all of that discussion is held in abeyance until later in the hearing.

MR. NICKLES: With all due respect, Madam Chairman, it is the document that is -- that was provided to us by the school district. It is Mr. McDaniel's notes of the meeting that took place at the high school regarding a grievance. There is no privacy claim attached to this particular document.

MS. HAZEL: Madam Chair, and I have no

ROA_00201

objection to counsel asking questions about the meeting, but the document itself and any testimony regarding Dr. Baldwin's personal life should not be allowed.

MS. MOSES: Board Members, you've heard the objection made before you. We have made a motion to hold any testimony regarding Mr. Baldwin into abeyance. What is the pleasure of the board at this time?

MS. BOYD: Madam Chair, that we uphold the previous motion that was made that we hold Mr. Baldwin's personal information in abeyance at this time.

MS. HEIZER: So you're granting Ms. Hazel's objection?

MS. BOYD: Yes.

MS. HEIZER: Okay. I think someone should second.

MR. BRUNSON: Second.

MS. MOSES: Okay. It has been moved by Ms. Boyd and second by Mr. Brunson that we uphold the objection made by Ms. Hazel.

Are we ready for questioning?

MS. BOYD: Yes.

MS. MOSES: All in favor of said motion, please note that by stating aye.

THE BOARD MEMBERS: (Affirmative responses.)

MS. MOSES: Any opposes?

Ayes have it. Motion is granted.

MR. NICKLES: As I understand the rule, Madam Chair, I may examine this witness on his notes but make no reference to the personal life of Mr. Baldwin; is

ROA_00202

that correct?

MS. MOSES: That is correct.

MR. NICKLES: All right.

MS. HAZEL: And also that the document will not be introduced as evidence.

MS. MOSES: You haven't moved this into evidence yet.

MR. NICKLES: We're going to do that at the end of the hearing.

MS. MOSES: Okay.

MR. NICKLES: These are all presented to the individuals. These are for demonstrative purposes at this point. We will move into evidence those things appropriate at the conclusion of our case.

MS. HEIZER: And at that time, I think the board would rule on the admissibility of this document, but I think it's pretty clear at this time that the board is considering information about Mr. Baldwin's personal life to be -- to be held in abeyance. It's all held in abeyance with respect to Mr. Baldwin's personal

life.

BY MR. NICKLES:

Q. So if I might, Mr. McDaniel, to bring us back to the document. In this, there is a statement by Mr. Baldwin that in a meeting, in the department meeting on the 27th, a Ms. Fowler -- do you know who that is?

A. Yes, I do.

Q. Who is Ms. Fowler?

A. Her name is Kara Fowler. She's an

ROA_00203

administrative assistant at Lee Central High School.

Q. And according to this document, what Mr. Baldwin related to you is that Ms. Fowler said, "Good morning, Ms. Toney. How are you?" Correct? Look at --

A. Where are you?

Q. At the bottom quarter of the first note.

A. Okay. I see it.

Q. And Ms. Toney responded that September was depressing and that Mr. Baldwin should know. Correct?

A. That's what's written.

Q. Now, let's look at the third page in of this document. At the top of it, it says "I talked to Rusty Lee."

MS. HAZEL: Once again, I renew my objection. This is not about Mr. Baldwin's personal life and

personal affairs.

MR. NICKLES: You know, we can do without this interruption. I'm not -- until I ask a question about his personal life, I would like to be allowed to examine the witness.

MS. MOSES: You may continue.

MR. NICKLES: Thank you.

BY MR. NICKLES:

Q. At the top of the page, Mr. Baldwin says, "I talked to Rusty Lee." Correct?

A. That's correct.

Q. Who is Rusty Lee?

A. Mr. Lee is a math teacher here at the high

ROA_00204

school.

Q. All right. He is not a social studies teacher?

A. He's a math teacher.

Q. He would not have been in the social studies departmental meeting, would he?

A. Again, I wasn't there, so I don't know who was in attendance.

Q. Tracie Dury, who is that?

A. Tracie Dury is an English teacher at Lee Central High School.

Q. Okay. Do you know any reason why Ms. Dury

would be attending a social studies departmental meeting?

A. Again, I was not there so I do not know.

Q. But, anyway, according to what Mr. Baldwin told you, he shared information with those two individuals, correct? Talked to Rusty Lee?

A. Said he talked to -- yes, he said --

Q. And Tracie Dury as well?

A. Right.

Q. He says he went to Starbucks and Ms. Addison talked to him over the telephone at Starbucks, correct?

A. I think he said Ms. Addison called Ms. Dury.

Q. Okay.

A. That's what the note says.

Q. Okay. Doesn't he say that Ms. Addison also spoke with him? If you recall.

A. I don't recall that. I'm reading the notes

as they're written here.

Q. Okay. And that's, according to him, when he learned that Ms. Toney supposedly said something about his private life, correct? At the very bottom.

A. Right. That's correct.

Q. So it wasn't a departmental meeting. It wasn't at school. It was a telephone conversation at Starbucks.

A. I think the note says, "That's when I learned Ms. Toney continued to talk about the incident."

Q. According to Ms. Addison --

A. Addison. That's what's there.

Q. But you weren't there; you don't know what happened.

A. That's what I have written here.

Q. That's what was described to him, according to his testimony. Okay.

Now, you were -- let's turn over to the sixth page of this. At the top there it says "We have been." Do you see that?

A. Yes.

Q. Okay. And I believe you or Mr. Webb questioned Mr. Baldwin about his professional relationship with Ms. Toney?

A. I did not question anybody.

Q. All right. Well, it's written here that he made some complaints known about alleged voting irregularities and Ms. Toney made statements about Ms. Addison's buddies not having homeroom. Do you

recall that?

A. I see voting irregularities. I don't see --

Q. It's the third paragraph down from that.

A. Yes.

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Q. Okay. All right. And then if you look at the eighth page, the next-to-the-last page of this document, once again, you are writing down what Mr. Baldwin is telling you, correct?

A. I am trying to write down questions or whatever from the meeting.

Q. And the top of it says "Be careful, our e-mail." Do you see that?

A. Yes.

Q. And the third entry -- fourth entry says, "Ms. Addison was able to log into my account via her husband's account." Do you see that?

A. I see that.

Q. So he revealed in this meeting that individuals other than his friends logged into his account. Fair?

A. It says Ms. Addison did.

Q. Ms. Addison was able via her husband's --

MS. HAZEL: I renew my objection. Counsel is simply reading the notes. And this is involving Mr. Baldwin's personal Facebook page.

MR. NICKLES: This is tiresome.

MS. MOSES: Board Members, I would just like to -- for us to be careful with how we take testimony regarding Mr. Baldwin's personal life.

But at this particular point, you're just talking about Facebook settings, so we don't see where this is his personal life.

MR. NICKLES: Yeah, I concur. Thank you for your affirmation.

BY MR. NICKLES:

Q. Mr. McDaniel, you said that some time after Mr. Baldwin filed his grievance, there was a meeting that you attended with Ms. Toney and Mr. Webb?

A. That's correct.

Q. And isn't it true that when you informed -- or she was informed, whether you or Mr. Webb, about this grievance, her immediate reaction was I never intended to cause any embarrassment, I want to apologize?

A. That would be correct.

Q. All right. Did she seem to be sincere to you when she said that?

A. I suppose. I didn't know her that well to be able to determine if she was sincere or just making a statement.

Q. And when she came to you the following day or so and said that something had been delivered to her, she didn't bring it to you at that time, correct?

A. No. The comment or the statement was that I need to tell you something that Mr. Baldwin is doing,

and I said, I don't want to hear that, we said leave it alone, and she left. And then later I said -- I went

toward her class and I said, Ms. Toney, if you have something, you can put it in writing, and she gave me the packet at that time.

Q. So just so I'm understanding it, when you said leave it alone, she left, correct?

A. Yes.

Q. And --

A. I ended the conversation.

Q. You ended the conversation, but later you went to her --

A. Right.

Q. -- she didn't come back you?

A. Right.

Q. And that's when she provided you the packet?

A. When I went to her, I asked do you -- if you have something to say, you need to put it in writing, and then she gave me the packet of information.

Q. So rather than describe it, she just handed it to you?

A. I don't -- can't decide on her decision.

Q. All right. Now, did you look at it?

A. No, I did not.

Q. Did you inform anyone that you had received a

package?

A. Yes, I did.

Q. Who did you inform?

A. The superintendent, Dr. Wanda Andrews.

Q. And that's your supervisor?

A. Yes.

ROA_00209

Q. Okay. So you're following protocol?
A. I believe I was.
Q. Just as Ms. Toney was when she informed you that she had received something?
MR. BOYKIN: I object. I -- he's entitled to characterization, but Ms. Toney -- that's not protocol because he's established the protocol, you go straight to DSS. He's established that.
MR. NICKLES: Now, Mr. Boykin is entitled to make an objection, but he's not entitled to make an argument, disclose an argument to you. And I'd just like to -- we could move this thing along a lot quicker if we all obeyed the rules.
MR. BOYKIN: And I would agree with that.
MS. MOSES: And, Board Members, I would just caution that the characterization issue that Mr. Boykin is referring to, that that is something that Mr. Nickles is stating and not something the witness has testified to.

MR. NICKLES: Well, I'm entitled in cross-examination to ask questions of the witness in a rather direct way. And what I would like to do and -- Madam, I'm going to move on on this.
BY MR. NICKLES:
Q. I will ask you, however, Mr. McDaniel, if in this case -- of course, you're saying you didn't examine this document at any time; is that correct?
A. That's correct.
Q. So you don't know what's in it?

A. That's correct.
Q. Okay. You indicated that it could have waited. Is that what you wanted her to do, just to hold this document in her room until Mr. Webb came back?
A. I was referring to the original conversation that we had when Mr. Webb was present and she was asked to wait until he returned to follow up.
Q. But at that time, do you have any evidence that Ms. Toney went to Mr. Baldwin or went to anybody else and talked about this?
A. No, I do not.
Q. And that's what you told her not to do, right? Don't spread this around. Wait. Correct?
A. Basically, what was said was to leave it alone until Mr. Webb returned.

Q. Do you know whether Ms. Toney gave this document to anybody other than you and the superintendent?
A. I have no knowledge.
Q. Okay. And you were going to give it to the superintendent, correct?
A. I did.
Q. You did. Okay. So Ms. Toney gives it -- tells you about it and you asked her for it and she provides it?
A. No. That's incorrect. Ms. Toney attempted to discuss something that she had seen or Mr. Baldwin had done, and I said we agreed that you're to leave this alone. And then later I went to her and said if you

have something you need to tell me, you need to put it in writing.

Q. Tell me, you are located at the school? Were you at that time located at the school?

A. At that time, I was.

Q. Did any other teacher complain to you about Ms. Toney than Mr. Baldwin?

A. No.

Q. Did you talk to any students about Ms. Toney's conduct?

A. No.

Q. Did you talk to any other teachers about Ms. Toney's conduct?

A. No.

Q. Did you personally observe any disruption in the educational process occasioned by Ms. Toney delivering this document to you?

A. When she delivered it to me?

Q. Yes.

A. She walked from her --

Q. When you received it from her.

A. It was at her -- the door of her classroom.

Q. Okay. Did it disrupt the educational process?

A. No.

Q. Now, were you present at a meeting with Ms. Toney and Dr. Andrews and Nettie Vaughn around the 22nd of October?

A. Can you give me a reference point, when was the meeting?

Q. Yes. It's Exhibit Number 10.
A. Okay.
Q. Now --
MR. BOYKIN: Madam Chair, I object. These are Dr. Vaughn's notes. These are not his notes.
MR. NICKLES: I'm asking him if he recalls something. I'm not asking him legal areas in this.

MR. BOYKIN: Well, you're referring to it -- to an exhibit. Just ask the question.
MR. NICKLES: All right.
BY MR. NICKLES:
Q. Were you present when Dr. Andrews told Ms. Toney on October 22nd that the SCEA would not help her in this matter?
A. I don't recall that statement.
Q. You don't recall it now? Do you remember being deposed on December 18th --
A. I certainly do.
Q. -- 2013?
A. Certainly do.
Q. Okay. And I'm going to ask you to look at page 48 of your deposition. You were -- you were under oath on that day, the same as you are today, correct?
A. That is correct.
Q. And do you see at the top of page 48, there's a question, "You heard Dr. Andrews say SCEA wouldn't save her?"
A. Okay. Yes.
Q. What was your response at that time?

A. My response was "Something to that effect."
Q. Okay. Thank you.
Does that refresh your recollection slightly?

A. It does.
Q. Do you have any personal knowledge, Mr. McDaniel, of any disruption to the educational process caused by Ms. Toney's providing a packet of information to you regarding Facebook entries on Mr. Baldwin's account?
A. I just know the conversation with the teacher and --
Q. Mr. Baldwin?
A. Mr. Baldwin. And how upset he was and . . .
Q. Okay. Did he continue to work through the year?
A. Yes.
Q. Was he successful; do you think?
A. I would say.
Q. Okay. Have you ever had your feelings hurt?
A. Sure.
Q. Okay. Do you soldier on?
A. I'm sorry?
Q. Do you soldier on when that happens?
A. Soldier on?
Q. Yes, sir. Try to do your best?
A. Yes.
Q. Do you expect that of your teachers?
A. Yes.

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MR. NICKLES: No other questions at this time.

MS. MOSES: Mr. Boykin.

REDIRECT EXAMINATION

BY MR. BOYKIN:

Q. Mr. McDaniel, when Ms. Toney came to you and said -- your testimony was that she had something she wanted to tell you?

A. Exactly. Yes.

Q. Okay. And what did you understand that to mean?

A. I thought she wanted to provide some discussion with regard to the incident or with regard to the grievance that was filed.

Q. Is it unusual to have two employees in the workplace where one files a grievance against another?

A. That is -- well, I've seen that before, yes.

Q. Okay. As an administrator, what precautions do you take when you recognize that there's animosity brewing between two employees in the same building?

A. Well, as the administrator, you have to be careful that you do not show partiality either way. You try to deal with the facts as they are.

Q. What is about any possibility of escalation?

MR. NICKLES: I object to the leading.

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BY MR. BOYKIN:

Q. Has there ever been concern in this situation

with Ms. Toney that caused the directive to be issued that she not talk directly to the person who filed the grievance?

A. Yes, because the teacher was very emotional, very upset, and, of course, at this point in time, we were trying to minimize any disruption and trying to keep it within the realm of those who were involved and operate only on a need-to-know basis.

Q. When Mrs. Toney came to you and said she wanted to discuss something with you and you said no and you later came back and you said put it in writing, if you have it in writing, give it to me; is that your testimony?

A. That is correct.

Q. How long did it take her to reduce what she wanted to share with you to writing?

A. I went to her door and she came to her door when I had made the statement, Ms. Toney, if you have something you need to say to me, you need to put it in writing, because I wanted evidence to give to Mr. Webb. She said hold on. She went to her desk, and she came back with a brown folder and presented it to me.

Q. Okay. Did you see her preparing that?

A. No, I did not.

Q. Do you know when it was prepared?

A. No, I do not.

Q. Okay. So -- but she had that when you were on the campus?

A. Yes. This was at Lee Central High School.

ROA_00216

Q. It was during the workday?
A. Yes, it was.
Q. And she brought material or she had material directly within what she was told not to do on campus that day?
A. Yes. That's where I was given it.
Q. And she presented it to you?
A. Yes.
Q. Let's revisit this protocol under question about when you report suspected child abuse. Now, would you remind the board what the protocol is for a teacher, please, on that reporting?
A. The protocol for a teacher -- actually, any adult, if you have been made aware of child abuse that you report it immediately.
Q. And who is it reported to?
A. DSS.
Q. Okay. Is it reported to the administrator?
A. The administrator can be informed, but it's

the obligation to report it to DSS.
Q. Did you believe when Ms. Toney was giving you information about this situation that she was attempting to report what she believed was child abuse?
A. I have no idea. No, sir.
Q. Did she give you any indication that that's --
A. No, sir.
Q. -- what she --
A. No, sir.

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MR. BOYKIN: Beg the Court's -- the board's indulgence for a second.

Thank you, Madam Chair.

MS. MOSES: Board Members, if you have any questions, you do have an opportunity to do so at this time.

Okay. Thank you, Mr. McDaniel.

THE WITNESS: You're welcome.

MR. BOYKIN: Madam Chair, we're prepared to move on, but I don't know if the board needs a break and wants to take just a five-minute break, but we're ready to go forward and call our next witness.

MS. MOSES: You can call your next witness.

MR. NICKLES: And sometimes, Madam Chair, just -- the court reporter has to say everything

everybody says. Sometimes we ask to take a break for the court reporter's purposes only.

So if at any time, Madam Court Reporter, if you need to take a break, please let us know.

THE REPORTER: Will do.

MR. NICKLES: Thank you.

MR. BOYKIN: We're calling Dr. Webb -- Mr. Webb.

Allen, is there any reason to keep Mr. McDaniel? Do you want him to stay just in case?

MR. NICKLES: No.

MR. BOYKIN: Okay. So he can be excused?

MR. NICKLES: He can be excused.

MR. BOYKIN: Okay. Let me relate that to

him.

(There was a pause in the proceeding.)

(Witness sworn.)

RON WEBB, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BOYKIN:

Q. Mr. Webb, did you preside over graduation today?

A. Yes, I did.

Q. How many?

A. 113.

Q. Huh?

A. 113.

Q. 113. Okay. Any scholarship money in that class?

A. 2.6 million.

Q. Wow. Okay.

Would you briefly tell the board about your educational training, your academic background.

A. Oh. Undergrad from ^ VERIFY ^ College, BS in biology and education; South Carolina State University in training and guidance; University of South Carolina at Columbia, education administration.

Q. Okay. And what degrees do you hold?

A. Master's of education, education administration and leadership.

Q. Okay. And where are you currently employed?

A. Lee County Public Schools, principal at Lee

Central High School.

Q. Okay. As principal of Lee Central High School, what were your duties?

A. Oversee instructional programs at Lee Central High School.

Q. Okay. How long have you been an educator, Mr. Webb?

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A. Since 1994. First teaching job was Scott's Branch Rural High School, Clarendon County.^ VERIFY ^

Q. Okay. How long have you been an administrator?

A. Since 2005 -- '4. I've been an assistant principal in Richland One. I've been a therapy assistant at A.C. Flora High School since 2004/2005.

Q. How long have you been a principal?

A. Three years.

Q. Three years. Okay. Did you have any particular training that qualified you to become a principal?

A. Yes, of course.

Q. And what training did you have that you thought qualified you, sir?

A. My practicums, University of South Carolina, and all of my teaching experiences as well.

Q. Would you briefly explain to the board, describe to the board these areas of certification that you hold?

A. I'm certified in biology, I'm certified in gifted and talented, I'm certified in education

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leadership administration.

Q. As an educator, have you ever had your employment terminated or been forced to resign?

A. No.

Q. Do you know Ms. Laura Toney?

A. Yes, I do.

Q. Tell the board how you came to know Ms. Toney.

A. When I took the ranks of Lee Central High School in 2011.

Q. Okay. Could you describe your working relationship with Ms. Toney?

A. Well, overall, me and Ms. Toney, we have had a pretty good working relationship overall. Not too many negative interactions.

Q. Okay. Pretty good, not too many. Were there negative interactions?

A. Well, there's a few instances where, you know, I've had conversation with Ms. Toney about, you know, being on duty, being at work on time, and also the most recent, unfortunately, in August -- well, this year, at the beginning of the school year, there's an occurrence that took place and I asked her not to pursue until I got back from Greensboro.

Q. Okay. Was that involving an employee grievance?

A. Yes.

Q. Okay. Did Ms. Toney, in your judgment,

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follow what you asked her to do?

A. Not at that particular time.

Q. Okay. What did Ms. Toney do that you thought went beyond what you asked her to do?

A. Upon my return from Greensboro from the training, I found that some information was shared with the superintendent's office in reference to one of my employees.

Q. Okay. This -- so this situation, then, was at the building level?

A. It was at the building level.

Q. Okay. Had it escalated to the district level at that time?

A. Yes, sir.

Q. Okay. And what caused it to escalate to the district office level?

A. It was stated that Ms. Toney had a packet delivered to Dr. Andrews' office in reference to the employee.

Q. Okay. Now, within the system, she was your teacher?

A. Correct.

Q. Assigned to your school?

A. Correct.

Q. And under your supervision?

A. Correct.

Q. But what does she do with the situation?

A. The information, again, that was shared was

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delivered to Dr. Andrews' office.

Q. Who is Dr. Andrews in relation to you?

A. She is my supervisor.

Q. Okay. And --

MR. BOYKIN: The board's indulgence.

(Sotto voce discussion between counsel.)

MR. BOYKIN: Just a minute, Madam Chair. I'm sure it will speed things up.

(Sotto voce discussion between counsel.)

MR. BOYKIN: Any objections as exhibits not for admissibility -- for admissibility purposes?

(Sotto voce discussion between counsel.)

MR. BOYKIN: Complainant's 1. I'm just going to mark them all as one.

THE REPORTER: Okay. I had not marked his as Defendant's or anything.

MR. BOYKIN: He's the respondent. That's okay. What did you mark his as?

THE REPORTER: Just these general hearing exhibits.

MR. BOYKIN: Okay.

THE REPORTER: Is that okay?

MR. BOYKIN: That's fine.

THE REPORTER: So may I make this the next consecutive in order, or do you --

MR. BOYKIN: That's fine. Just tell me what it is. Just announce what it is.

THE REPORTER: This is Number 3. This will be Hearing Exhibit Number 3.

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MR. NICKLES: You're doing them all as -- sequentially?

THE REPORTER: I had started that way, but I am happy to do it in any way you-all would like.

MR. NICKLES: As long as the record is clear, it doesn't matter.

THE REPORTER: Very good, then.

(Complainant's Exhibit No. 3 was marked.)

BY MR. BOYKIN:

Q. Mr. Webb, I'm handing you Exhibit Number 3. Could you take a look at that, please. They'll be in sequential order. Could you tell me what that document -- first, could you identify that?

A. Yes. It's an e-mail from Ms. Toney to Tonya Addison, assistant principal with Lee CCL, I think.

Q. Okay. And what's the substance of this?

A. Academic enrichment.

Q. Okay. And exactly what happened here,

Mr. Webb?

A. With our academic enrichment program, that was part of our interventions to provide our students with extra help throughout the school day. But in this e-mail where it states like there was a concern over the number of students that were assigned.

Q. And, specifically, what is Ms. Toney asking?

A. It says, "As you know, you have assigned to me additional students for academic enrichment. I currently have 14 males and 6 females. There are some teachers with less students. I have also been assigned

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several males with behavior problems. I am requesting that some of these males are transferred to another teacher."

So, basically, it appears that an unfair act may have taken place from the reference of the e-mail.

Q. Sir, how was that resolved?

A. With that being said, I know I met with Dr. Andrews earlier regarding reassigning academic enrichments to make sure that everyone got a fair shot at getting the interventions and tutoring that they needed.

Q. Okay. That's good.

Go to the next document, please.

A. Yes.

Q. Can you recognize or identify this document?

A. Yes, sir.

Q. And what is this?

A. This is an e-mail from Ms. Toney to Ms. Kara Fowler, one of my administrative assistants on my team and cc'd to Ms. Tonya Addison, my assistant principal, regarding observation.

Q. Now, who is Kara Fowler?

A. Ms. Fowler is a member of my administrative team. She's responsible for helping oversee our instructional program as well as far as observations and our student services portion at Lee Central High School.

Q. Now, her title is administrative assistant. Does that mean that she has clerical duties?

A. Administrative assistant means that you have

administrative duties along with teaching duties as well.

Q. So she was a certified teacher?

A. She is.

Q. Okay. Does she have administrative responsibilities as well?

A. Correct.

Q. And what were those administrative responsibilities?

A. Observations and dealing with the student

services portion -- programs in our school.

Q. Did that include conducting observations in teacher's instructional settings?

A. Yes, sir.

Q. Okay. What is this document we have here, 9/17/13?

A. This is a document, again, from Ms. Toney to Ms. Kara Fowler in referencing an observation that was done.

Q. Tell the board a little bit about what's going on here.

A. Well, in the document, it states, "Good morning. I would like to respond to your observation analysis of my class. Number one, there were several essential questions posted on the white board. There are -- they were as follows: What were the major land acquisitions? How did Western expansion caused conflict? Who were the 'big three' Congressmen [sic]? What sectional conflicts occurred under President

Jackson?"

Q. Okay. You're reading this. I just want you to testify as to your --

A. Oh, I'm sorry. Basically, the observation that Ms. Fowler had done and gave Ms. Toney some feedback in reference to what she thought that may have

taken place in class at this time.

Q. Well, in this "good morning," who is writing?

A. It's from Ms. Toney to Ms. Fowler.

Q. Okay. Look at that paragraph that starts, "I find it very difficult."

A. Okay.

Q. What does that say? What is your understanding of that?

A. "I find it very difficult for you not to see" -- that was in reference to Ms. Fowler's observations. She was responding back to the observation.

Q. Okay. As the academic leader of the school, what is your reaction to that type -- that tone and tenor to someone who is conducting an observation?

A. It states in here that person at that time wasn't accepting the feedback that was given.

Q. When you say "that person wasn't accepting the feedback," who is that person?

A. Ms. Toney.

Q. Okay. Let's go to the Paragraph Number 3.

A. Okay.

Q. And as an academic leader, what is your

assessment of that type of response?

A. Again, during the observation, "Only one

student commented that we had gone over this before in order to exempt work. As a classroom teacher, you should know that students will say things that are not correct."

I guess emphasizing that some students will tell an untruth in reference to what's going on in class.

Q. Do you find this type of response to be supportive of the instructional process at your school?

A. No, it's not supportive of the instructional process.

Q. Okay. Tell me your reaction to this type of response that Ms. Toney gave to the observation.

A. A concern of not taking productive feedback to help the instructional program or improve instructional practices in class.

Q. Okay. Look at Paragraph 4 about a comment that Ms. Toney made. Read that and tell me your reaction to that particular comment.

A. Okay. "Yes, I made a comment about an administrative assistant doing an observation, but I was giving you a compliment for being in my class. I have never been observed by an administrative assistant, and I thought -- and I thought this was positive. I'm sorry you misinterpreted what I said."

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Q. Do you get -- in your assessment, do you see this as a compliment to Ms. Fowler?

A. Not with this particular piece.

Q. Okay. Did you look at Ms. Fowler's e-mail to Ms.Toney?

A. The lower portion?

Q. Yes, sir.

A. I was aware of it.

Q. Okay. Would you take a minute and look at that and tell me whether you find that to be constructive, according to Ms. Toney.

A. Okay.

No. That's a part of our feedback with our teachers. If we see anything that needs improvement, we need to be giving suggestions for improvement.

Q. So the purpose of that is to improve the instructional quality at the school?

A. Yes, sir.

Q. Tell the board how you saw Ms. Toney receiving this constructive feedback.

A. Well, in the e-mail -- I mean, the e-mail feedback seems a little negative in tone as far as receiving the feedback from the person's observation, Ms. Fowler's observation at that time. A little bit -- seems to be a little bit defensive.

Q. Is that good for improving instructional quality?

A. No, sir.

Q. Okay. Is that a helpful attitude in the workplace?

A. No, sir.

Q. Okay. Let's look at the next one, please. Can you identify this document?

A. This is a letter that I addressed to Ms. Toney on September 16th.

Q. And what's the purpose of that?

A. Being present at a faculty meeting that I held September 16.

Q. Was she present?

A. No, sir.

Q. Did she follow protocols?

A. No, sir.

Q. Okay. As an administrator, did that cause you concern?

A. Yes, sir.

Q. Okay. Let's go to the next document. I want to call your attention to the third paragraph in that. What is that asking for in that third paragraph?

A. "Please address these concerns and let me know your method of assessing student" -- basically

assessing student understanding of what's going on in class.

Q. Okay. Was that ever addressed? We can go back over to the e-mail where Ms. Toney responded. Was that ever addressed by Ms. Toney?

A. No, sir.

From the first one?

Q. Yes.
A. I'm sorry.
Q. Did she address --
A. "My methods of assessing students are written in my lesson plans. As you know, you only stayed about ten minutes."

She addressed at that part, but --

Q. Did she address -- she said, "Let me know your method of assessing student comprehension"; is that correct?
A. Correct.
Q. Okay. Did she address that in her response?
A. She did not address it in her response. Not specifically, no, sir.
Q. Okay. Let's go to the next one. What is this about, Mr. Webb?
A. This is an e-mail from Mrs. Addison to Ms. Toney. And it states, "Ms. Toney. This is the

second e-mail, but in the same day. The other teachers whom you spoke with received ink" --

It was about having ink, materials for the classroom.

Q. What do you find about the tone of this e-mail?
A. It seems that from -- this says, "Again, I am requesting an ink cartridge. In past school years, we received ink cartridges at the beginning of the school year. After communicating with some teachers, they have gotten them."

It seems as though that it's trying to point that Ms. Addison may have been overlooking her at the time as far as the ink cartridge.

Q. Okay. Let's go to the next one.

(Reporter interruption.)

BY MR. BOYKIN:

Q. Can you identify this document, Mr. Webb?

A. Again, this is from Mrs. Addison to Ms. Laura Toney. "Your ink cartridge has been delivered. However, for future references, please check with your department chair first or see me during your planning. Please do not send students to the office during class time to request supplies. Thank you for all that you do."

Q. Is there any concern about keeping students in class during class time?

A. We want to keep them in class for instructional purpose.

Q. And what's the next letter, the next document?

A. This comes from myself on May 15th. "Dear Laura Toney. I hope all is well. You're receiving this letter as notification for not informing administration of your absence from school in a timely manner. You are reminded absence from school should be reported before 7:00 a.m."

Q. Okay. Tell the board what happened there.

A. On this particular day, again, as we do our duty checks in the morning, Ms. Toney was not there.

Q. And why was that a concern to you, Mr. Webb?
A. For supervision purposes and making sure the students are safe and secure.
Q. The next letter, please. Do you recognize that document?
A. Yes, sir.
Q. Okay.
A. Came from me on May 7th. "Dear Ms. Laura Toney. I hope all is well. You're receiving this letter as notification for not entering your fourth

quarter grades as reported by the database specialist on May 6, 2013. Please make sure you do this as soon as possible. If you have any questions, please feel free to contact me."
Q. Okay. And what was the problem you were concerned with there?
A. We want to make sure that all grades are entered in a timely manner because that could hold up the whole process.
(Cell phone interruption.)
BY MR. BOYKIN:
Q. And what was your concern there, again, Mr. Webb?
A. Again, making sure grades are getting in in a timely manner so that they won't withhold the grading process and students get the grades they need.
Q. Okay. Now, you testified to Mr. Nickles that Ms. Toney was okay or acceptable performance given -- acceptable as far as the school district; is that

correct?

A. Early -- personally, I mean, one-on-one, we don't have too many negative interactions, but as far as job performance, there are some things that need -- I addressed with Ms. Toney.

Q. Okay. Let -- you said personally you have no

problem with her?

A. No, ma'am -- no, sir.

Q. Well, what -- well, as far as the job is concerned, you had to call things to her attention?

A. Yes, sir.

Q. Well, tell me -- tell the board about those things and what was your reaction to those things.

A. It's just, again, not being on duty and not completing tasks, some tasks that were assigned to her.

Q. Mr. Webb, why is that a problem?

A. It's not the structure of process of the educational process as far as instructionalwise at the school and overall functioning of the school organization.

Q. Let's go to the next one. Now, tell me what was going on here, Mr. Webb.

A. Okay. This February 11th, 2013, "Dear Ms. Toney. I hope all is well. You are receiving this letter as a reminder to make sure you always conduct yourself in a professional manner. During a parent conference on February 11, 2013, at around 10:40 a.m. in the conference room, you allowed yourself to become irate with the parent. I do understand at times certain

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situations can cause tempers to flare, but always remember to conduct yourself as a professional educator.

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The student has been transferred out of your class as well per parent request and a suggested by you. Respectfully."

Q. Describe Ms. Toney's behavior that caused you to believe that she was irate.

A. During this particular parent conference, Mrs. Toney allowed her anger at the time to get the best of her while having a conversation with a parent in reference to a student. And after the parent left, of course we had a conversation about that.

Q. Okay. I know you said she allowed herself to become irate. I want you to describe to the board what about her conduct caused you to believe that she was irate.

A. She and the parent began going back and forth in the meeting. Voices elevated, so I had to tone things down in the meeting.

Q. Did you believe that that was healthy for the student?

A. No, sir.

Q. Did you believe that Ms. Toney was acting in this student's best interest?

A. No, sir.

Q. Was Ms. Toney acting as a professional?

A. No, sir.

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Q. Did she represent Lee Central High School in a manner you wanted it represented?

A. No, sir.

MR. BOYKIN: I beg the board's indulgence.

BY MR. BOYKIN:

Q. Let's look at the next one, please. Tell me what's going on there.

A. This e-mail is from one of my former assistant principals, Ms. Howard, to Laura Toney, cc'd to me. "Per the previous e-mail, please pick them up during your planning period. Please do not send students to pick your materials up."

Ms. Toney sent Ms. Howard an e-mail. "I'm still waiting for the textbooks for High School 101. Please let me know when I can pick them up. Thanks."

Q. Did you have concern about students being sent from the instructional environment on errands?

A. Yes, sir.

Q. Okay. You addressed that with Ms. Toney?

A. Yes, sir.

Q. Okay. And this might have been an earlier time, but it was addressed later on; is that correct?

A. Yes, sir.

Q. Okay. Let's go to the next document. Can you identify this document?

A. This is from -- well, to myself; my former assistant principal, Ms. Howard; my current assistant principal, Ms. Addison; my current administrative assistant, Mr. Turner; from Laura Toney, M.Ed, reason,

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comprehensive health. It states that, "I am writing this letter in reference to comprehensive health that I was an instructed to teach here at Lee Central High.

"I have researched the South Carolina Code of Laws concerning implementation of this course in the classroom. I just wanted to make certain that we are adhering to the regulations regarding the course to avoid" --

Q. Mr. Webb, if you want to take a minute and read it --

A. Okay.

Q. -- we can do that. That will save the court reporter.

A. All right.

Q. Just take a second.

A. All right.

Q. Just get familiar with it.

A. (Witness reviews document.)

This letter was in response to comprehensive health, and Ms. Toney sent in information in reference to possible law violations and feeling that the

students' due process was violated as well as the parents were not given an option to decide whether or not they wanted their children to be taught that -- that course.

Q. Did you look into her concerns?

A. We looked into it, yes, sir.

Q. And did you find that there were violations of law?

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A. No, sir, I did not.
Q. Mr. Webb, who is the instructional leader at the school?
A. I am.
Q. Okay. And who is responsible for making those decisions?
A. I am.
Q. Does Ms. Toney receive feedback easily?
A. Yes.
Q. She does? Well, look back at Ms. Fowler's e-mail and -- and --
MR. NICKLES: Now, wait a minute. The question has been asked an answered.
MR. BOYKIN: The question has been asked and answered, and I'm asking another question. I'm asking him to look at Ms. Fowler's e-mail. Now, are you going to let me do direct?

MR. NICKLES: It sounds like cross to me.
MR. BOYKIN: Anything I ask will sound like cross to you, Al.
A. Well, going back to the e-mail -- I'm sorry -- no.
MR. BOYKIN: Okay.
MR. NICKLES: Okay. I --
MR. BOYKIN: Thanks, Al.
BY MR. BOYKIN:
Q. Okay. Mr. Webb --
A. Yes.
Q. -- as the instructional leader, are you

responsible at all for the program, the instructional program?

A. Yes.

Q. Okay. What role, other than a social studies teacher, does Ms. Toney have for the instructional program at the school?

A. Except to teach my kids, none.

Q. And she's to teach your kids in accordance with whose directives, Mr. Webb?

A. Mines and the policies and procedures set forth by Lee County.

Q. Now, when we -- let's convolve to this incident. You were meeting with Mr. McDaniel and you

were meeting with Ms. Toney; do you remember that?

A. Yes, sir.

Q. And you're about to leave?

A. Yes, sir.

Q. Did you give Ms. Toney a directive?

A. Yes, sir.

Q. Okay. Could you explain why you gave that directive?

A. Because of the nature of the situation and I wanted it to be dealt with at the building level, and I asked please do not get involved with this until I get back into the building and I have some more time to investigate.

Q. Okay. Did Ms. Toney follow your directive?

A. No, sir.

MR. BOYKIN: Would you listen carefully and

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respond to any questions that Mr. Nickles would have for you.

THE WITNESS: Yes, sir.

CROSS-EXAMINATION

BY MR. NICKLES:

Q. How are you today, Mr. Webb?

A. Very well.

Q. I've got a couple of questions for you. Just off the bat, isn't it true that before September 27th of

this year, you had -- did not have it in your mind to recommend the termination of Laura Toney? Isn't that true?

A. True.

Q. Sure. So if we look back at all these other things that Mr. Boykin has shown you, none of those caused you to think that she should be fired from this district; isn't that true?

A. I had not. Yes, sir.

Q. Okay. At the time. Because if you look at Exhibit Number 3, it says, "I'm requesting that some of these males be transferred to another teacher."

There is absolutely -- it's in front of you, Mr. Webb.

A. Oh. I'm sorry.

Q. The first one.

A. Right.

Q. There's absolutely nothing wrong with that request, is there? First page. Nothing wrong with that? It's a very courteous request, isn't it?

A. It can be seen as defensive.
Q. Well, defensive to you? She's not offending you by this, is she?
A. This is a member of my administrative team.
Q. Okay. You've sent people to me, I currently

have this number, I'm requesting that some of them be transferred. That's a request, isn't it?
A. (Witness nods head.)
Q. Have you ever had teachers request things of you before in your years as a principal?
A. Yes.
Q. People other than Laura Toney make requests of you?
A. Yes.
Q. Sometimes in e-mails?
A. Sometimes.
Q. Okay. So part of your job occasionally is to get a request from a schoolteacher, correct?
A. Sometimes.
Q. Okay. Not just Laura Toney. I mean, how many teachers do you have at the high school?
A. About 30.
Q. Okay. And would it be fair to say that teachers other than Laura Toney have communicated with you by e-mail?
A. True.
Q. And looking at these materials that Mr. Boykin provided to you, that's not all the e-mails that you send and receive during the course of three

25 years, is it?

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1 A. Not -- this is about Ms. Toney.
2 Q. I understand --
3 A. Yes, sir.
4 Q. -- but this -- I mean, haven't you sent
5 e-mails yourself to Ms. Toney congratulating her on
6 doing a good job?
7 A. Maybe in years past, yes, sir.
8 Q. Okay. Well, she didn't work very long this
9 year, did she?
10 A. (Witness shakes head.)
11 Q. Did she?
12 A. Not this year.
13 Q. And looking at the second document in here,
14 this September 17, that's -- you'll agree with me --
15 turn the page -- you'll agree with me that it was before
16 September the 27th, isn't it?
17 A. It is, datewise, yes, sir.
18 Q. And I see that this is not addressed to you,
19 is it?
20 A. No, sir. It's addressed to Ms. Fowler.
21 Q. And you didn't even talk to Ms. Toney about
22 this, did you?
23 A. I talked to my administrative assistant about
24 it.
25 Q. Listen to the question. Did you talk to

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Ms. Toney about this?

A. Not at the time.

Q. Okay. Well, not at any time, correct?

A. Not for this one, no, sir.

Q. Okay. So the answer is, no, you didn't talk to Ms. Toney at any time about this document?

A. About this one, no.

Q. All right. And I see this is not copied to anybody's personnel file, is it?

A. No.

Q. And neither is the first one, is it?

A. No.

Q. If you have something significant that you want to record and you want to impress upon the employee that this is meaningful, this could have an impact on you, you copy it to their personnel file, don't you?

A. You can.

Q. Okay. None of these e-mails were copied to her personnel file, were they?

A. No.

Q. Okay. And let's look at the one dated September 16th of 2013. Once again, that's before the 27th, isn't it?

A. It is.

Q. And it says for not being present at a

faculty meeting. You remember we discussed this at your deposition, don't you?

A. Yes.

Q. Okay. And didn't you say that she told you

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she was ill?

A. That was after the fact, after the letter, yes, sir.

Q. Okay. Have you ever sent this letter out to anybody other than Laura Toney? Any other teacher ever missed a faculty meeting?

A. If a teacher misses a faculty meeting, they all get a response. But, again, this is Ms. Toney.

Q. I understand this is Ms. Toney, but you said you have 30 other teachers.

A. Yes, sir.

Q. And occasionally some of them miss faculty meetings?

A. Not a lot.

Q. Occasionally, do some of them? This ain't a lot. This is one.

A. Sometimes.

Q. Okay. Sometimes. I mean, this is one. That falls into the "sometimes" category, does it not?

A. Yes, sir, but it was a mandatory faculty meeting.

Q. And do you want her to come even if she's sick on her stomach?

A. She received a -- I received notice of her being ill after the letter.

Q. Okay. But she'd explained it to you later, didn't she?

A. (Witness nods head.)

Q. Didn't she?

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A. Yes. After she received the letter, yes, sir.

Q. And you accepted her explanation, didn't you?

A. I said okay to her.

Q. All right. So this was presented to show Ms. Toney ain't doing stuff right, but she told you she was sick and you accepted her explanation at that time, correct?

A. Yes, at that time. After the fact, yes, sir.

Q. All right.

MR. DRAYTON: (Indicating.)

MR. NICKLES: Yes, sir.

MR. DRAYTON: Did Ms. Toney go to the doctor? Did she --

MR. NICKLES: That's something you can ask her.

MR. DRAYTON: Huh?

MR. NICKLES: You can ask her that. When she testifies --

MR. DRAYTON: Okay.

MR. NICKLES: -- you can ask her that.

MR. DRAYTON: Okay.

BY MR. NICKLES:

Q. By the way, Mr. Webb, have you ever been sick and not gone to the doctor?

A. Again, this is about Ms. Toney.

Q. I know. I'm asking you. Have you ever been sick and not gone to the doctor?

A. We all have, yes, sir.

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Q. Okay. Fine.

Now, you looked at this thing with Mr. Boykin about this observation on the 16th of September with Ms. Fowler. And Ms. Fowler sent an e-mail to Ms. Toney and copied you and Ms. Addison, correct?

A. Correct.

Q. And she made certain representations that Ms. Toney said were not accurate, correct?

A. Correct.

Q. Did you ever go into the classroom to see if, in fact, those essential questions were posted?

A. There were observations, yes, sir.

Q. Okay. When you have been in Ms. Toney's

classroom, have you seen essential questions posted?

A. There's times that I've seen it; there's times I have not seen it.

Q. Would that be true of any teacher?

A. Sometimes.

Q. Okay. Sometimes. Now, I see that there's a couple of e-mails about an ink cartridge. Now, if you are giving a test and you need to print out the test and you don't have ink, you've got a problem, right?

A. Could be.

Q. Okay.

A. That's a resource.

Q. And it's not inappropriate to ask for supplies, is it?

MR. BOYKIN: If there's a test, that's evidence. Let's go. But let's -- you know, you're

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allowed latitude, but to make up something.

MR. NICKLES: I didn't make up anything, Mr. Boykin. I'm -- I'm insulted by the insinuation.

MR. BOYKIN: I understand. But where's the test?

BY MR. NICKLES:

Q. Mr. Webb, is there anything inappropriate about asking for teaching supplies?

A. You have the right to ask for supplies.

Q. You have the right to ask for supplies. Okay.

Now, I guess they put these two things together here about the supplies because Ms. Toney sends an e-mail at 9:17 and says, I asked for the supplies yesterday, where are they? I don't have any.

And then you have to flip to the next page, because she didn't get a response at 10:49, which is, you know, another hour and a half later, she hadn't heard anything, she asked again, doesn't she? You see?

MR. NICKLES: May I approach?

MR. BOYKIN: Please.

BY MR. NICKLES:

Q. Mr. Webb, I'm not trying to --

A. That's fine.

Q. The way they're put together, it's misleading. Let me ask you this. Look at the page that says Tonya Addison to Laura Toney at the top. Now, e-mails read from the bottom to the top, don't they?

A. Yes.

Q. Okay. And this -- at 9:17, Ms. Toney says to Ms. Addison, I asked for a cartridge yesterday. Can you please get one as soon as possible? Right?

A. Yes.

Q. Please?

A. (Witness nods head.)

Q. Now, it looks like she says immediately, Your ink is delivered, doesn't it, the way you look at this?

A. (Witness nods head.)

MR. BOYKIN: Wait, now --

BY MR. NICKLES:

Q. But if you turn to over to the page before that, you see --

MR. BOYKIN: Madam Chair, I have no objection to him approaching, but if he's going to sit there and lecture and tutor him on the testimony, I will object to that.

MR. NICKLES: I'm just trying to expedite the process.

MR. BOYKIN: Well, he can expedite it from here. He can read.

BY MR. NICKLES:

Q. Well, what's the next e-mail from 9:17 --

MS. MOSES: Mr. Nickles, would you go back to the podium, please.

BY MR. NICKLES:

Q. Look at the document. 9:17. When is the next e-mail that goes out? You have to look at the other page. Is the next e-mail 10:49?

25 A. Yeah. 11:31. 9/4/2013, 11:31 a.m.

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1 Q. Let's think about sequentially here,
2 Mr. Webb. You have a teacher saying yesterday I ordered
3 some supplies. Where are they? Please get them to me
4 as soon as possible. 9:17. The next thing that's on
5 here, isn't it true, is 10:49, again, from Ms. Toney
6 saying I am again requesting cartridges? That's the
7 next entry, isn't it? Because 10:49 always comes before
8 11:17, doesn't it?
9 A. Yes.
10 Q. Okay. So you've got a request and then no
11 response and then a reminder and then you get 11:17 that
12 your cartridges have been delivered. Now, somehow I
13 guess Ms. Addison takes offense at being reminded and
14 she responds twice to it. 11:17 and 11:31. Both of
15 those were after Ms. Toney's last request, weren't they?
16 A. Timewise, yes.
17 Q. You're not sure if 11:17 and 11:31 are after
18 10:49?
19 A. I'm sure.
20 Q. Okay. So we can agree.
21 At any rate, did you talk to Ms. Toney about
22 this ink cartridge issue?
23 A. Not at the time, no, sir.
24 Q. Not ever, correct?
25 A. No.

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1 Q. Okay. The next document in here is May 15,

2013. If our calendar is correct, that would have been last school year, right?

A. Correct.

Q. That's over a year ago, correct?

A. Correct.

Q. Okay. And it says not notifying the district of your absence in a timely manner. You should be here before 7:00 a.m. Did Ms. Toney tell you she had a flat tire after the fact?

A. After the fact. After the letter, correct.

Q. She actually came in that day, she was just late because she had to change her tire, correct?

A. If I recall correct, she came later that day.

Q. Okay. All right. Have you ever had any situation in your lifetime where you had a flat tire?

A. We all have. Yes, sir.

Q. Okay. And sometimes does it slow you down?

A. It happens, yes, sir.

Q. Okay. You didn't think this was insubordinate, did you?

A. I mean, I didn't see her on duty at the time. She received the letter for not being there.

Q. Okay. Do you automatically generate these things out when somebody tells you somebody's not on

duty on time?

A. My process is we'll look and we can deal with it as we need.

Q. So it would be fair to say people other than Laura Toney got these type of letters?

A. Some (inaudible) folks.
Q. Other folks. All right. Other folks who are still working for you?
A. (Witness shrugs shoulders.)
Q. Fair?
A. Fair.
Q. The next one is, again, back in May of last year, not entering fourth quarter grades. Have you had others who have had problems entering grades from time to time? Have y'all had some computer glitches occasionally over at the school?
A. That happens everywhere.
Q. It happens everywhere. Okay. Not just to Laura Toney, correct?
A. Correct.
Q. Correct.
Now, this thing back in February of 2013, you were present at that meeting, I take it, correct?
A. Yes.
Q. And that parent got in Ms. Toney's face, did

she not?
A. They both had a verbal disagreement.
Q. All right. This is not copied to Ms. Toney's personnel file, is it?
A. This was put in the teacher's folder.
Q. Okay. It's not copied to her personnel file at the HR department, is it?
A. No, sir. It's in the building.
Q. And it doesn't say, Ms. Toney, if you do this

again, I'm going to fire you, does it?

A. No. Not here, no, sir.

Q. And you, in fact, rehired her after that because this happened February 2013 and you had to recommend that she be reemployed in April, didn't you?

A. As far as the recommendation process.

Q. And you did recommend that she be reemployed in April?

A. That's correct.

Q. And she was reemployed in April, correct?

A. Yes.

Q. All right. And then we have this e-mail, once again, this is from 2012 in March, so that would have been the 2011/2012 school year. We're going back another school year, correct?

A. Datewise, yes, sir.

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Q. Okay. And, once again, March is before April. So you recommend that she be rehired after this e-mail was sent, correct?

A. Yes, sir.

Q. Okay. And it says at the bottom from -- it says, I'm still waiting for textbooks, as 8/29. "Please let me know when I can pick them up."

That's what it says, right?

A. Correct.

Q. "I" being Ms. Toney.

And then the response is, "Per previous e-mail, please pick them up. Please do not send students."

Do you know if she sent students after she was told not to?

A. No. But during this process, she did.

Q. But it doesn't say here that she sent students after she was told not to, doesn't it?

A. No, it doesn't. No, sir.

Q. Okay.

MR. NICKLES: Yes, sir.

MR. DRAYTON: Don't e-mails read from the bottom up?

THE WITNESS: Yes.

MR. NICKLES: Yeah. She's asking for it --

MR. DRAYTON: She's asked that -- "I'm waiting on textbooks."

MR. NICKLES: Right. When --

MR. DRAYTON: Then the next e-mail was don't send students.

MR. NICKLES: Right.

MR. DRAYTON: She had sent students to get textbooks.

MR. NICKLES: She says they are -- it says, "Pick them up during your planning period."

She's telling them when to pick them up and then don't send students. It doesn't say students picked them up. It doesn't say it.

MR. DRAYTON: It says, "Please do not send students."

MR. NICKLES: Right. And I asked --

MR. DRAYTON: Whether she sent them or not,

the e-mail is not clear, but just reading it, you would -- I would assume that she sent students to give them.

MR. NICKLES: Well, you know, unfortunately, we don't have the luxury of that assumption in this process.

MR. DRAYTON: Okay.

BY MR. NICKLES:

Q. Now, Mr. Webb, the last one here, back, again, in March of 2012, there's something being sent to you about comprehensive health. Was Ms. Toney ever asked to teach that course?

A. We're going back to 2012, two years ago. Normally, teachers --

Q. Yes, I know.

A. Normally, teachers -- they are aware of their teaching schedules. We like to let them know that.

Q. All right. And let's look at the last sentence on this e-mail to you and others in the administration. What does she ask in that last sentence?

A. Please provide me some more -- please --

Q. Wait --

A. Please provide some more directives for me.

Q. It doesn't say more. It says please --

A. "Please provide some -- please provide some directives for me."

Q. Okay. Is it inappropriate for a teacher to ask the instructional leader for directives?

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A. No.
Q. All right. And, once again, you've routinely rehired her at least twice after this correspondence, correct?

A. Correct.
Q. Now, you testified, speaking to Mr. Boykin, that you're the instructional leader of the school, correct?
A. Correct.
Q. And as the instructional leader, you recognize that Ms. Toney had good rapport with her students, didn't she?
A. From what I've seen from some --
Q. From what you have seen?
A. From some of the students.
Q. And you were not consulted on her termination, were you?
A. Not consulted on her termination?
Q. The superintendent didn't ask you if she should be terminated, did she?
A. She's the superintendent.
Q. That's not my question. You're the instructional leader of the school. Did the superintendent ask you if Ms. Toney should be terminated?
A. She's the superintendent.
Q. It's a yes or no answer. Did the superintendent ask you if Ms. Toney should be terminated?

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A. No.
Q. No.
Do you have any information that Ms. Toney approached Mr. Baldwin after you told her not to?
A. Not in reference to that. But in reference to the documentation being sent to the district office, that, but I -- guidance given, but I don't know --
Q. I believe the word you're looking for --
A. I'm just --
Q. -- is assurance.
A. -- being, you know --
Q. Okay.
A. Yes, sir.
Q. The only person that complained to you about this was Michael Baldwin, correct? About the grievance, the only person who complained to you was Michael Baldwin?
A. The initial conversation was the grievance before I left.
Q. And let's look at that. It is our Exhibit Number 4 that's in the package there. And just for the very first page, you're familiar with that form, are you not?
A. Yes.
Q. And who did Mr. Baldwin want to handle this

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grievance? Our Exhibit Number 4.

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A. Myself.

Q. No, sir. Read what it says. "If you feel your supervisor is not the person" --

A. Oh, I'm sorry.

Q. -- "who should address the grievance, give the name of the person you feel who should address it."

And who does it say --

A. Dr. Andrews.

MR. BOYKIN: Objection. Relevance.

BY MR. NICKLES:

Q. Mr. Baldwin was asking you to take this out of the school, was he not?

A. Yes. And I shared it. Yes, sir.

Q. Did you share it with the superintendent?

A. I did, yes, sir.

Q. You shared it with the superintendent before Ms. Toney delivered anything to her, didn't you?

A. I did, yes, sir.

Q. Okay. So it was already -- the cat was already out of the bag, wasn't it, Mr. Webb?

A. In reference to what was taking place, yes, sir.

Q. It had already been taken to the superintendent.

Let me ask you, if you would, to look at Exhibit Number 3. Have you seen this document before?

MR. NICKLES: And for purposes of the record, it's Tab 3 in Exhibit Number 1.

A. There is no one -- no one signed off on the

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letter.

BY MR. NICKLES:

Q. I didn't ask you if it was signed. I asked you if you've seen this document before.

A. I understand.

(Witness reviews document.)

This document, I believe, came from Mr. Baldwin.

Q. Yes, sir.

A. It's been a while.

Q. Okay. You do now recognize it, correct?

A. Yes.

Q. And in it, Mr. Baldwin is complaining about Ms. Toney, isn't he?

A. From the document, yes, sir.

Q. Okay. And one of his complaints is that Ms. Toney objected to Ms. Addison having her buddies not get homeroom, correct?

A. Yes. In the document.

Q. Now, when -- did Ms. Toney tell you that she

had a concern about friends of Ms. Addison, your assistant principal, not having homeroom duty?

A. No, she didn't approach me.

MS. HEIZER: Mr. Nickles, if we could stop you for one minute. I think there's a concern that this document is not signed. So y'all clarify how somebody knows that this came from Mr. Baldwin.

MR. NICKLES: He's admitted it in his deposition.

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MS. HEIZER: Okay.

MR. NICKLES: And Dr. -- and Mr. Webb just said, yes, he received it from Mr. Baldwin.

MS. HEIZER: So for the board members, this document is now sort of officially one that you can consider coming from Mr. Baldwin. Even if it's not signed, it's been authenticated and identified sufficiently for it to be Mr. Baldwin's work product or his document.

Thank you.

MR. NICKLES: Thank you. Any questions about the source of the document?

BY MR. NICKLES:

Q. Now, when you got this from Mr. Baldwin, what, if anything, did you do?

A. I had a conference with him.

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Q. With who?

A. Mr. Baldwin.

Q. Did you have a conference with Ms. Toney?

A. No.

Q. Did you even inform Ms. Toney that this letter complaining about her activities had been provided to you?

A. No.

Q. Did you provide it to the superintendent?

A. No.

Q. Did you change the way that homerooms were being provided there in the school?

A. We made an adjustment to academic focus.

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After conference with the superintendent, we looked at numbers as far as instructional programming.

Q. Is the short answer, yes, these people got homeroom duty after this --

A. Everyone got homeroom.

Q. Okay. So you agreed with Mrs. Toney's objection?

A. I didn't agree. I -- the superintendent and I met and made --

Q. Okay. The superintendent instructed you to make the change?

A. We did an instructional change.

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Q. Okay. And Mr. Baldwin was none too happy about that, was he?

A. I can't say whether he was happy or not.

Q. You can read -- you read this, and you can't tell if he was unhappy about it?

A. After the fact, no.

Q. Okay. Now, did it concern you -- to use Mr. Boykin's word, did it concern you that you had this very strong, negative letter coming from one of your faculty members, even claiming he might even quit he's so upset? Right?

A. Yes, it concerned me. Any teacher --

Q. Okay. But --

MS. HAZEL: Objection. Relevance?

MR. NICKLES: Listen. You know, please. This is the attorney for a witness. This is not a party to the -- to the case.

MS. HAZEL: There has been a motion made that any testimony regarding Mr. Baldwin and his private life -- and I believe that includes his feelings --

MR. NICKLES: This --

MS. HAZEL: -- would be held in abeyance. Thank you.

MS. HEIZER: Yeah, I -- I would suggest that the board say that the point has been made and that --

MR. NICKLES: All right.

MS. HEIZER: -- the tone of this document speaks for itself. But there is a question --

MR. NICKLES: Okay.

MS. HEIZER: -- that nowhere in this document is Ms. Toney mentioned. So could y'all clarify why it is that the witness believes that this is about Mrs. Toney.

BY MR. NICKLES:

Q. You knew this was about Ms. Toney, didn't you, Mr. Webb?

A. Yes.

Q. Okay.

MR. BOYKIN: I think the question is for him to explain why he believed it to be about Ms. Toney.

MR. NICKLES: Okay.

MS. MOSES: Yes.

BY MR. NICKLES:

Q. Ms. Toney had voiced her concern to you about these homeroom assignments, had she not?

A. Yes.

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Q. And when this mentioned the teacher who voiced concerns about homeroom assignments, you naturally knew he was talking about Ms. Toney, did you not?

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A. Not naturally, but --
Q. But you did?
A. But there were some interactions in the past.
Q. Okay. Was Ms. Toney the president of the local LCEA?
A. Ms. Toney, yes, sir.
Q. What does the bottom line of this first page say it's referring to? First page. "Members fear she is using her position as our local LCEA president."
Is that Ms. Toney?
A. She was president, yes, sir.
Q. There was no doubt in your mind who was being referred to in this letter, was there?
A. No, not in the letter.
Q. Okay. Now, Mr. Webb, as the instructional leader of the high school, you were required to make decisions every year as to those teachers that could contribute to the school and should continue and those who could not and should leave; isn't that fair?
A. That's part of it.
Q. That's a very serious duty on your part, correct?
A. Correct.
Q. And it is the case that you never recommended that Laura Toney be nonrenewed or terminated from

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employment; is that true?

A. No.

Q. That is true?

A. Yes.

MR. NICKLES: Thank you.

MR. BOYKIN: I beg the board's indulgence, please.

Just a few questions, Madam Chair.

REDIRECT EXAMINATION

BY MR. BOYKIN:

Q. Mr. Webb, does the superintendent need your recommendation to recommend the termination of an employee?

A. No, sir. She's the superintendent.

Q. Okay. With regard to the employee conduct and job performance, have you -- are you -- does it always require termination for every transgression?

A. No, sir.

Q. But what happens, Mrs. Web, if you get a combination of transgressions?

A. It could lead to your termination.

Q. Okay. If you -- is there a trigger event sometimes that cause someone to have their recommendation of termination?

A. Yes, sir.

Q. Okay.

MR. BOYKIN: That's all for this witness.

MS. HEIZER: Do any board members have any questions?

MS. MOSES: Okay. Thank you, Mr. Boykin and Mr. Nickles.

At this time, the board will take a 15-minute recess.

(A brief break transpired.)

MS. HEIZER: Charles, before you get started, there has been a request from Ms. Toney's legal team for the board to consider authorizing the release of their witnesses. I understand there are a number of people that have been subpoenaed and they're all sequestered, and at least the attorneys think it's very unlikely that we will actually get to them today. So I guess I need to know if anybody objects to that request and if the board is comfortable with that concept?

MR. NICKLES: And, Madam Chair and Members of the Board, what we prefer that it's the board's pleasure to conclude at five o'clock or thereabouts, and we would ask that we not be required to divide our case, that you would have heard the district's case today and that you will hear Mrs. Toney's case on the next convening, because there's no way in the world of finishing by

5:00, and it's just hard to keep these things in your head. I know you're a lot smarter than I am, but it's hard to keep these things in your head. So that would be the reason that we would ask that they be released now so that they not have to wait another hour and a half for that decision.

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MS. MOSES: Thank you, Mr. Nickles.

MR. BOYKIN: We would have no objection to the witnesses being released. The only concern that we would have is that we would like to be able to conclude a witness. We recognize the board would like to stop at a time certain, but from our side, it would be awkward for us to have a witness who is on the stand until you meet again, because it certainly interferes with how we're getting right at the bat with that person, especially if it is the superintendent. So I would just ask for the board's indulgence, if that person is on the stand, to let us conclude a witness, whether it is at 4:30 or 5:30, but from that standpoint, that's what I would ask.

MS. MOSES: Okay. All right.

MS. HEIZER: And on behalf of the board and the next series of witnesses that might be called, if there are documents and things that you put into evidence and they're sort of self-evident and, you know,

you don't really need to get a witness just to read. So anything y'all can do to pick the pace up would be helpful, but everybody has full opportunity to present their case. We're not trying to deny anybody their due process right.

MR. NICKLES: And Ms. Fittipaldi's offered the following alternative. Our witnesses, with the exception of Mrs. Toney, are all brief. If you wanted to hear all of our witnesses with the exception of Ms. Toney today, we could definitely get all of them out

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of here and not have to recall all of those folks.

MR. BOYKIN: And if Mr. Nickles and Ms. Fittipaldi are willing to proffer the testimony, much of it, we, in all likelihood, would stipulate without having the witness come to -- as what happened with the first witness. We'd be more than willing to stipulate to what most of that testimony is going to be.

MS. HEIZER: I think that on the board's behalf there might be a concern that if you take Ms. Toney's witnesses now sort of out of order, there might be questions about what's relevant and not relevant with respect to Mr. Baldwin and the letter that still is -- is -- so I would ask on behalf of the board that to the extent we do stop today and reconvene, if during that break y'all could work together and any

stipulations that you can come up with in writing would probably be helpful, that way the board would have something visual when they're deliberating to be able to have the list of stipulations.

MR. BOYKIN: Thank you. Yes. So I would have no objection to the release of some of the witnesses at this juncture.

MR. NICKLES: Do we know when we're going to reconvene at this point?

MS. HEIZER: The suggestion was made that we reconvene late Tuesday morning of the coming week. That would be the 10th. And I don't know if there are scheduling issues. If so, then the board is going to need to decide either today or at their next meeting

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when they can reconvene.

MR. NICKLES: We could make that happen.

MR. BOYKIN: Tuesday, I have --

MR. NICKLES: Oh. Charles -- Charles --

MR. BOYKIN: -- an appearance with the circuit court for 10:00 a.m. Tuesday morning. I'm able to, once I'm released from that, to come in the afternoon, but I would be limited because of a previous engagement. I should be able to vote, you know, possibly in three hours.

MS. HEIZER: And I have a schedule that would

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require that I leave no later than 3:30 or 4:00 on Tuesday. And both --

MR. NICKLES: If we started at 2:00 and left at 3:30, we're not -- we'd be back in the same boat.

MS. HEIZER: Yeah, I don't think that would be very productive. And based on the chair's schedule and my schedule, we're probably looking at July before we could reconvene. Although, I would offer the alternative -- well, excuse me. The board chair has a work commitment that would make her unavailable for the balance of the month.

So why don't we get fired up and see what we can finish today.

MR. BOYKIN: Okay.

MS. HEIZER: But you're going to now release your witnesses, just so everybody understands.

MR. NICKLES: We'll release the witnesses, yes.

MS. HEIZER: Okay. Thank you.

MR. BOYKIN: We call Ms. Laura Toney.

(There was a pause in the proceeding.)

(Witness sworn.)

LAURA TONEY, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BOYKIN:

Q. Ms. Toney, how long were you employed in Lee County School System?

A. A total, I guess, of 23 years.

Q. Where were you employed prior to coming to Lee County?

A. I was employed with Sumter School District 2.

Q. Okay. Was there a recommendation in Sumter 2 that your employment there be terminated?

A. I don't recall. I recall resigning from Sumter School District 2.

Q. Okay. I understand what your recollection is. I'm asking do you recall a recommendation being put forth before that that your employment be terminated?

A. I don't recall that. But I recall resigning.

Q. Okay. So you have no recollection of that is what you're telling me?

A. Right.

Q. It doesn't mean that there wasn't; it's just that you have no recollection?

A. Right.

Q. All right. You're prepared to answer

23 questions completely today, Ms. Toney?
24 A. Yes, sir.
25 Q. Okay. So these would be your A answers?

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1 A. Yes, sir.
2 Q. Okay. There's a document in front of you.
3 Would you turn to the e-mail dated 9/17/2013.
4 MR. BOYKIN: Al, if you don't mind, I'm going
5 to show her the document I'm talking about.
6 MR. NICKLES: I don't have a problem with
7 that.
8 MR. BOYKIN: Madam Chair, I would approach
9 the witness.
10 BY MR. BOYKIN:
11 Q. Can you identify that document, Ms. Toney?
12 A. Yes, sir, I can.
13 Q. It's an e-mail; is that correct?
14 A. Yes, sir, it is.
15 Q. And that e-mail is written -- we'll start
16 from the bottom. Is that -- okay. Do you know
17 Ms. Fowler?
18 A. Yes, I do.
19 Q. She's the author of this e-mail. Who is
20 Ms. Fowler?
21 A. She's the administrative assistant at Lee
22 Central High School.
23 Q. And what do you understand her role to be as
24 administrative assistant?
25 A. To administer observations --

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Q. When you say "administer observations," what do you mean?
A. Just what she did when she came to my room and --
Q. And --
A. -- do the administrative duties at the school as well.
Q. When you say "just what she did when she came to my room," what did she do when she came to your room?
A. She came to observe.
Q. To observe what?
A. To observe my instruction.
Q. To observe your instruction.
A. Uh-huh.
Q. And do you recognize the feedback that she gave you?
A. Yes, I do.
Q. Okay. And what was your reaction to that feedback, Ms. Toney?
A. I -- her feedback was incorrect. Her observation about my essential questions, my standards. I have a big white board in the front of my classroom, a big white board, and I always write my essential questions and my standards in red. And I never did -- most days I make my students write the standards and the

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essential questions before I begin my instruction. And for her to say that my essential questions were not

there and my standards were not written on the board was incorrect. It was not . . .

Q. So it's your testimony that she either did not see them or ignored them; is that your testimony?

A. Well, it's -- it's -- I think it would be impossible for her not to have seen them because they were written in red ink.

Q. So since it would be impossible for her not to see them, it's your testimony that she ignored them?

A. I believe she did, yes.

Q. Okay. Then let's look at the last paragraph, the second to last paragraph that begins at the bottom that says, "again." Would you just read that again so -- read that aloud so we can hear -- because you are writing this; is that correct?

A. Yes.

Q. Okay. Would you just read that aloud, please.

A. "Again, I would like to know whether it is mandatory to write the standards and essential questions each day on the white board since you teach in your office daily with no white board."

Q. Okay.

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A. "How do you address these issues in your office?"

Q. Okay. So here, what are you trying to accomplish?

A. I'm simply saying she is -- Ms. Fowler is an administrative assistant and she had one class and she

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taught that class in her office with no white board, nowhere to write essential questions, nowhere to write the standards. And being the administrative assistant, I think she should be a role model for the teachers that she goes around to observe. And being that it's mandatory that we write essential questions and standards on the board, I just wanted to know whether it was still mandatory because she did not have a white board in her office.

Q. So it's fair to say that you turned the observation not from Laura Toney, but you turned it to Ms. Fowler, didn't you?

A. Well, I wanted to know whether it was still mandatory.

Q. But you -- my question is a yes or no. You turned it to Ms. Fowler, didn't you?

A. Well, I guess you could say that. I wanted to know whether it was still mandatory.

Q. Okay. In the first paragraph you say you

found it very difficult for you not to see these. So you were pretty much challenging the veracity or the intelligence or the truthfulness of Ms. Fowler; isn't that correct?

A. She was -- what she wrote was inaccurate. It was untrue.

Q. In fact, Ms. Toney, you approached people who disagree with you with both fists balled up, don't you?

A. No, I don't, but --

Q. If --

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A. -- if some -- may I finish, please?
Q. Please. Explain your answer.
A. But if someone places something in writing about me that's not true, I feel like I have a right to respond to that. And being that this was an evaluation, I felt that I had a right to respond. I had a duty to respond to the fact that her evaluation of my instruction was inaccurate.
Q. Okay. "Again, I feel that your interpretation of my classroom instruction was dishonest and libelous since you have placed this in writing. I will be addressing these issues further."
What did you do further, Ms. Toney?
A. I went to Ms. Fowler later that day, and we sat down and we had a conference and we resolved

everything, you know. I did not take it any further.
Q. So what did you -- you resolved it. Did you take back your challenge of how she taught in her office?
A. No. We -- I forgot what we said as far as the words were concerned, but we resolved this issue.
Q. Okay.
A. We had a conference.
Q. But in your mind, you think it's appropriate for a teacher to challenge an administrator in this tone?
A. It's appropriate if the administrator writes something that's not accurate. I have a right to respond to it, and that's what I did.

Q. Was it inaccurate or was it that you disagreed with it?

A. It was inaccurate.

Q. Okay. What made it inaccurate, Ms. Toney?

A. Because my essential questions and my standards were written on the white board. Every day.

Q. So you're saying Ms. Fowler was lying, aren't you?

A. Well, it was inaccurate.

Q. Okay. They were there, she didn't see them, she didn't acknowledge them, so she just lied about it.

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That was -- was she your superior?

A. I don't think an administrative assistant is my superior because it's like a certified teacher doing administrative work. But I respect her duties --

Q. Okay.

A. -- as an administrative assistant.

Q. "Yes, I made a comment about an administrative assistant doing my observations, but I was giving you a compliment."

Ms. Toney, weren't you being facetious?

A. No, I was not.

Q. Just like you were being facetious when you talked to -- when you said you were giving condolences to a colleague, weren't you being facetious?

A. No, I was not. I was not. Giving condolences and being facetious, I mean how -- no.

Q. Tell me how you're saying I made a comment about an administrative assistant doing observations,

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but I was giving you a compliment in the tone of this, Ms. Toney.

A. It was -- I went to the back where she was sitting. I'm not used to an administrative assistant coming into my classroom and observing me. I welcomed her there. You know, I've had several people come into my classroom to observe me. People from the district

office. People from the state department. And I've never, ever had to write a response like this. I have received incentive awards from the State Department of Education --

MR. BOYKIN: Madam Chair --

A. -- where we had professors coming in --

MR. BOYKIN: I will ask questions. She can explain them. I would ask that the board instruct her to keep her explanations close to the question that she's explaining. And these statements, I would ask the board to instruct her not to make these statements.

MS. MOSES: That's appropriate, Mr. Boykin. Could you just answer the question?

THE WITNESS: Yes.

BY MR. BOYKIN:

Q. The teacher -- excuse me. The parent whose face you got into or who got in your face, what happened there, Ms. Toney?

A. This is a parent that came to my classroom on one occasion. She bypassed the office and came straight to my room. And she was very disruptive, she was very disrespectful, and I asked her to leave. And so she

came back because she made an appointment for a conference.

And I asked Mr. Webb -- she had already

transferred her child out of my room. So I asked Mr. Webb, I said, What is the purpose of meeting with this parent being that I don't have her child in my classroom?

He said, Well, Ms. Toney, she requested a conference.

When she came to the conference, she was very disruptive. She stood up, she put her hand in my face, and she said some inappropriate things to me. And I just stood up, and I said, Ma'am, I don't have to take that. I said, Look, you have to treat me with respect if you want respect. I did not curse, I did not yell, but I just let her know I'm not going to sit there and have her to put her hand in my face and threaten me about what she was going to do to me. I didn't have her child in my classroom. She had already transferred her child out of my room.

Q. Ms. Toney, the language is, "You allowed yourself to become irate with the parent." That's what it said. Now, and you're saying that --

A. I said --

Q. -- that's all you did was say, I'm going to be professional, you're not going to do this, and that's -- so --

A. And I asked --

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Q. -- and that's all --
Will you let me ask the question, Ms. Toney?
A. I'm sorry.
Q. So you're saying that you did not become irate?
A. No, not really. I guess my -- my voice might have been a little bit elevated. When someone puts their hand in your face, to me, that's kind of confrontational.
Q. Did you write a response to this?
A. I did.
Q. Okay. So where is your response?
A. It never did show up in my records.
Q. It never showed up in your records. Did you give a copy to your lawyer so he could give it to us?
A. It's on my e-mail at work.
Q. My question is did you give a copy to your lawyer so he could give it to us?
A. I e-mailed a copy to Mr. Webb.
Q. Did you give a copy to your lawyer?
A. Again, I did not have access to e-mails. When I was placed on administrative leave, I was given the directive not to go into the school's e-mail, not to go into the school's website. So there's no way I could have gotten that information.

Q. So you didn't have a copy is what you're saying?
A. No. It was all on hard drive e-mail. But I

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did respond to this.

Q. With regard to the grievance that was filed against you, when did you learn that the grievance was filed against you?

A. Mr. Webb called me in on a Monday morning and told me that Mr. Baldwin had filed a complaint, a grievance against me. That was on a Monday.

Q. What did Mr. Webb ask you to do?

A. He told me he was going away to a workshop, and he said wait until he gets back and he would address the issue. I wanted to go to apologize to Mr. Baldwin because I had no idea that he took it that way. And, I must say, the letter that he has in my file, September 15th, I didn't know he was writing letters behind my back because that letter was never shared with me. I didn't know Mr. --

Q. My question --

A. -- Webb had issues --

Q. -- of you is about your grievance.

A. Uh-huh.

Q. It's about the grievance that was filed that you were a part of.

A. Uh-huh.

Q. And I would just ask you, if you want to get to the letter -- I will ask you or your lawyer can ask you, but I need you to respond to the question that I'm asking you.

A. Okay.

Q. So I've asked you about the grievance and

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last -- and my last question was what did Mr. Webb say to you about the grievance?

A. He told me that a grievance had been filed with him by Mr. Baldwin. And he told me that he was going to a workshop for a couple of days and for me to wait and not do anything until he gets back.

Q. Okay. Did you follow that directive?

A. I feel like I did.

Q. You feel as if you did?

A. Yes.

Q. Okay. Did you bring some information onto campus that you said that you had gotten anonymously from somewhere?

A. I didn't bring it on the campus.

Q. Okay.

A. Someone gave it to me. It was on the floor in my classroom as I -- when I opened the door, it was on the floor.

Q. Okay. Let me make sure I'm understanding this. Did you tell anybody that a grievance had been filed against you by Mr. Baldwin?

A. No, I didn't tell anyone.

Q. Okay. So your testimony is nobody, as far as you knew -- you had discussed it with no one that there was a grievance filed against you; is that correct?

A. Right.

Q. But then -- was it the next day?

A. I think it was on Wednesday when I received it.

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Q. So your meeting with Mr. Webb was on that Monday?

A. Yes.

Q. And so Tuesday nothing happened?

A. Right.

Q. But Wednesday when you -- it was your classroom?

A. Okay.

Q. I'm asking.

A. Okay. May I respond, please? Okay. A student came to me and told me that Mr. Baldwin was cursing a teacher out on Facebook. That was on a Tuesday.

Q. And --

A. Students knew about it because the students are on Facebook. He said, Ms. Toney, Mr. Baldwin is cursing a teacher out on Facebook. So even though I was informed about the complaint on Monday --

Q. Just let me say this.

MR. NICKLES: Please let the witness complete her answer.

MR. BOYKIN: She will be allowed to complete her answer, but I want to make sure we understand that this is hearsay she's getting into and not object to what she's saying. It's hearsay.

A. It's in the records, Mr. Baldwin -- I mean Mr. Boykin. I'm sorry. It's in the records that the student indeed went around and this student showed other teachers Facebook as well.

MR. BOYKIN: Madam Chair --

A. So I'm pretty sure --

MR. BOYKIN: -- I would only ask that the witness be instructed to testify about what actually happened. She is describing something about a student, what a student is coming to her, what a student is saying. That is hearsay. That student is not scheduled to testify. So that is hearsay. She shouldn't be allowed to get into that. I was going to give her some latitude, but I'm asking that we stick to the rules, as

Mr. Nickles started off with.

MR. NICKLES: I'd like to respond. Of course, hearsay is inappropriate when it's presented for the truth of the matter, but if an individual is testifying as to what someone told them, it's that individual's credibility as to whether they received the information. You're not -- hearsay reaches only to the truth of what happened to the third party. So this is not hearsay. It's being presented only that she receive notice from a third party. That third party's credibility is not at issue.

MR. BOYKIN: With all due respect, there's a question before her about how she got this information. She said it came anonymously. Now she's introducing some nameless, faceless student as being involved in this discussion. And I think it's pertinent and it's important, if we can't bring that person in, I don't think she should be allowed to open the door to talk about that, because if we're going to do that, if we're

going to suspend the rules on that, then we might as well go back to that 2006 letter and bring that in as well because it has more credence and credibility than what she is saying right now.

MS. MOSES: Mr. Boykin, we will agree with your position that the student who is nameless in this

case has no bearing at this particular time.

BY MR. BOYKIN:

Q. Okay. My simple question to you, Ms. Toney, is you had your meeting on Monday. I'm wondering -- I'm asking now, when did this material get to your possession?

A. It was on a Wednesday.

Q. It was on a Wednesday.

A. Yes.

Q. And how did it get into your possession?

A. Someone pushed it under my door.

Q. Someone pushed it under your door.

A. Yes.

Q. Were you in the classroom when it came through the door?

A. No.

Q. So you -- it was in the -- okay.

Did you talk to anyone about the fact that a grievance had been filed?

A. No. I talked to Mr. Webb and Mr. McDaniel. Those were the two that I spoke with.

Q. So you had no conversation with no one else?

A. No one else, no.

Q. And then two days after you met with Mr. Webb and Mr. McDaniel, this material just came under your

door?

A. Yes.

Q. No explanation, just came in your door. Was it one packet of material? Two, three? Or how -- describe how it came to you.

A. It was one packet in a big, brown envelope.

Q. One packet in a big, brown envelope?

A. Yes.

Q. Now, the -- it's true, then, that you gave one envelope to Mr. McDaniel? Is that true?

A. Yes.

Q. Okay. And it's true that you took another packet of information to the superintendent's office?

A. Yes.

Q. Is that true?

A. Yes.

Q. Okay. So the information, then, that came to you, did you duplicate it?

A. I went home and made a copy. Yes.

Q. You went home and made a copy.

A. Yes.

Q. Okay. Did you make the copy for yourself?

A. Yes.

Q. Okay. You retained a copy, and you sent a copy to the district office or you carried it there?

ROA_00283

A. I took it there.
Q. You took it there. Did you give a copy to anyone else?
A. No, other than Mr. McDaniel and Dr. Andrews.
Q. Okay. And you did this because it was, you believe, that a child was at risk; is that correct?
A. Exactly. Yes.
Q. Okay. And you had been to training before on reporting suspected abuse and neglect; isn't that correct?
A. Yes.
Q. And it requires a teacher to report to DSS or the sheriff's office; isn't that correct?
A. Yes.
Q. Okay. But did you make any report to the sheriff's office?
A. I was told not to do anything.
Q. Okay. Did you make a report to the sheriff's office? It's a yes or no. Then --
A. No.
Q. -- you can explain.
A. No.
Q. Okay. Did you make a report to the sheriff's office in Sumter -- because you thought it was Sumter High School, correct?

A. Right.
Q. Okay. Did you contact the sheriff's office in Sumter County to say, okay, this is what I think is

ROA_00284

going on?

A. No.

Q. Did you contact DSS in Sumter County to say this is what I think is going on?

MR. NICKLES: I might ask Mr. Boykin to please lower your voice a little bit. Please.

MR. BOYKIN: With all due respect, Mr. Nickles, I will try, but, you know, I have a right to try my case.

MR. NICKLES: I'm not going to try to -- I'm not interfering with you trying your case. It's just it's hurting my ears.

MR. BOYKIN: Move.

BY MR. BOYKIN:

Q. So you took the information that, based on your testimony, should have gone to law enforcement and you took that information and you gave it to Mr. McDaniel and you gave it to Dr. Andrews; isn't that correct?

A. Yes.

Q. Okay. Inserting it into your grievance against you, but it had nothing to do with protecting

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the children that you're claiming you were protecting; isn't that true?

Withdrawn, you don't have to answer that.

MR. BOYKIN: I beg the board's indulgence.

BY MR. BOYKIN:

Q. Now, your testimony, Ms. Toney, is that you opened your door. Is that the beginning of the school

ROA_00285

day when you found this packet or was that --

A. Beginning.

Q. Okay. About what time was that?

A. Beginning of the school day.

Q. And so you didn't make a copy of it then; is that right?

A. No.

Q. You went home. Did you leave home [sic] during the school day to go make a copy?

A. No.

Q. So you went and made a copy after the school day and then you dropped it off; is that right?

A. Yes. But --

Q. Okay.

A. -- I had two copies. I was provided two copies.

Q. You were provided two copies?

A. Yes.

Q. And that's in an envelope?

A. Yes.

Q. Okay. And so you took -- you got yourself another envelope?

A. Yes.

Q. Okay. So where did you get that envelope from?

A. I don't remember. I think I had an envelope at home.

Q. Okay. So you had it at home. So you had two copies and you had that at home. So you gave one copy

to Mr. McDaniel?

A. Right.

Q. Okay. And where was the other copy?

A. I kept the other copy and I went home and I made a copy because I have a copy machine at home.

Q. Okay. Your purpose in giving that material to Mr. McDaniel was to discredit Mr. Baldwin, wasn't it?

A. No. No.

Q. So it is your testimony that you just happened to go to your classroom and got information that was on point in the middle of the grievance that was filed against you just two days earlier?

A. Mr. Boykin, students knew about this Facebook posting. I don't know who gave it to me, but I -- I

feel like a lot of students knew about this.

Q. Did they know about the grievance, Ms. Toney?

A. No, they didn't know about the grievance.

Q. Okay. It just seems to be fortuitous to me --

MR. NICKLES: Now --

A. But he did not make the posting. He didn't do the derogatory statements until after he filed the complaint towards me.

BY MR. BOYKIN:

Q. But it's still your testimony that, all of a sudden, it just appeared in your classroom two days after the grievance was filed; is that true?

A. Yes.

Q. Okay. All right. Now, Ms. Toney, you tend

ROA_00287

to retaliate against anyone who crosses you; isn't that true?

A. No.

Q. Okay. Okay. Is there a grievance filed against Judge Seymour?

A. Yes.

Q. Okay. Didn't you file a grievance against an attorney that represented you in the matter?

A. Yes.

Q. Okay. Didn't you have the attorney disbarred?

A. Yes.

Q. Okay. And you said you had Ms. -- Judge Seymour moved to senior status, didn't you?

A. Yes.

Q. Okay. And, let's see. Didn't you file a complaint against one of your principals, Ms. Richardson?

A. Yes. After she forged names on my ADEPT.

Q. And you -- okay. But the person that you are talking about in your ADEPT, one of them didn't follow the ADEPT procedures, didn't you?

A. I don't -- I don't understand what you're saying.

Q. You testified that Ms. Richardson sent you across campus before your observation; isn't that true?

A. She sent me across on the other side of the building.

Q. On the other side of the building before your observation; isn't that true?

A. Yes.

Q. You further testified that you didn't have time to write on the board the standards that you were teaching that day; isn't that true?

A. I began writing, but I didn't finish.

Q. And when the students came in, the standards weren't on the board. Is -- did -- you testified to

that, didn't you?

A. All -- I think most of the stuff was there, but I still needed to --

Q. You testified --

A. -- write some stuff.

Q. Ms. Toney, you testified when the students came in, the standards were not written on the board; isn't that true?

A. Some of the standards were there. They were not completed.

Q. And you further testified that one of the observers was there and did not charge that against you; isn't that true, Ms. Toney?

A. Well, I told him I had to hold a class. Ms. Richardson sent me to hold a class first period. I was going through the ADEPT, and I asked her -- that first period was my planning period, and I asked her to please let me stay in my classroom because I needed to write the standards on the board. Now, Ms. Richardson knew that the evaluator was coming.

Q. But it was your --

A. And that --

Q. You testified that Ms. Richardson was

conniving because she sent you across campus, across the school; isn't that true?

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A. Yes, because she knew the evaluator was coming because they always notify the administrators of the building. And there were other teachers available that could have held that class. So when I got back, my evaluator was there. And the -- and the bottom line of what happened in this case, Ms. Richardson forged an evaluator's name on my ADEPT. And --

Q. There is no evidence to support this testimony.

A. It's in my records.

Q. There's no evidence to support this testimony. What I'm asking you and what we will get to --

A. It's --

Q. -- we will get to it. Ms. Toney, you filed a grievance against Ms. Richardson; isn't that true?

A. Yes.

Q. And you had Ms. Richardson, according to you, removed as a principal because the day after you filed the grievance, she was not a principal anymore; isn't that your testimony?

A. Mr. Boykin --

Q. It's a yes or no. You can explain, but it's a yes or no --

A. Please let me answer.

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Q. -- Ms. Toney --
A. Why you won't let me answer?
Q. I want you to answer yes or no and explain.
A. I filed a grievance against her, but she -- she committed forgery. The school district terminated her the very next day after they -- it was verified that she committed forgery on the ADEPT.
Q. So if --
A. She forged two evaluator's names.
Q. You filed a grievance one day. They terminated her on the spot the next day. She didn't get due process like you have her. She didn't get a right to a hearing, did she?
A. Are you agreeing that forgery is a good thing, Mr. Boykin?
Q. What I'm suggesting to you is that you answer my questions, and you don't ask me questions. That's number one.
A. Uh-huh.
Q. I want to make sure that we understand how Laura Toney deals with people in the workplace. And my question is you are two-fisted by your own testimony. You come at me, I'm coming back at you. Isn't that your testimony, Ms. Toney?
A. Mr. Boykin, she forged names. She forged

people's names on my ADEPT. She committed forgery. Randy Burns --
Q. There is no record of her committing forgery.
A. Randy Burns --

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Q. And what did Judge Seymour do to cause you to have her taken down?

A. She violated Federal Rules of Civil Procedure.

Q. So you were the complainant, and you had Judge Seymour taken down?

A. We have agencies and offices that you can complain to even with lawyers when they don't follow rules. When they violate rules. And I'm the type of person, if someone violates me, I respond to it.

Q. Is it that they really violate you, or is it that you just disagree with what they said?

A. No. It's a violation.

Q. It's a violation. So what did Ms. Fowler violate to cause you to come back at her and say, You're just an administrative assistant, you -- you can't observe me?

A. I didn't say that.

Q. Well, what did you say?

A. I said I'm not used to an administrative assistant observing me. I didn't say she couldn't

observe me.

Q. And then you turned it on her and questioned her teaching; isn't that true?

A. Well, I questioned why she doesn't have the standards and her essential questions.

Q. That wasn't questioning her teaching?

A. I guess it was in a way.

Q. Was she your -- was she your superior?

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A. Not an administrative assistant, no.
Q. So she didn't have a right to observe you, is my point?
A. She had a right to be in my classroom to observe me.
Q. And so you were challenging that, though, weren't you?
A. Do what?
Q. You were challenging that, weren't you?
A. When she put hers in, I responded to her observation. I responded to her e-mail.
Q. But the tone of your response, Ms. Toney, was pretty negative.
A. She wrote down inaccurate information.
Q. She wrote down information that you disagreed with.
A. It was inaccurate.

Q. It was inaccurate merely because you say it was inaccurate.
A. No. It was inaccurate.
Q. Just like the parent was inaccurate -- the parent was the one that was out of sorts. But you were written up for it; is that correct?
A. The parent?
Q. When you became irate in the February 11, 2013 letter.
A. The parent stood up, almost jumped across a table, putting her hand in my face.
Q. Stood up and almost -- did you file a police

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report?
A. No.
Q. Well, that was an assault, wasn't it?
A. Close to it.
Q. Were you afraid she was going to hit you?
A. I was afraid, yes.
Q. You were afraid. So that's an assault. So you didn't file a police report?
A. No, I didn't.
Q. You just got her out your face, didn't you?
A. No. No. I just asked Mr. Webb to be excused. I be excused.
Q. Well, Mr. Webb thought that you had lost --

that you had become irate. Look at the March 28th e-mail, please. Was that a class you were teaching?
A. Yes.
Q. How long were you teaching that class?
A. For about three years.
Q. You'd been teaching it for about three years, and so, all of a sudden, you decided on March 28th that you were going to raise some legal issues about it?
A. Well, the first two years, Ms. Betty Pearson was our administrative assistant, and she would make certain that the parents got an opportunity to get these forms, giving me permission to teach comprehensive health. And, in this case, Ms. Howard did not follow procedure, and a parent approached me through my -- because comprehensive health is like sex ed. You show the picture of the male organ, female organ. We talk

ROA_00294

about those kind of things. And it's mandatory that the parents get an opportunity giving me permission whether or not they want their child in my classroom. And Ms. Betty Pearson would take care of that every year. But when Ms. Howard became principal or assistant principal, she didn't do it in that way, and I wanted to make certain that I was protecting myself as well as the school.

Q. When was Ms. Howard made assistant principal?

A. On this -- the -- 2012, I think.

Q. At the beginning of that school year, which would have been 2011?

A. Yes.

Q. Okay. And so you are all the way in March of 2012 --

A. Uh-huh.

Q. -- and you raised that issue at that time?

A. Well, comprehensive health --

Q. Okay.

A. Comprehensive health started around the end of January, second semester.

Q. Ms. Toney --

A. The second semester.

Q. -- you do it your way; isn't that true?

A. That's not true. In this letter, I was trying to protect the school as well as myself because they did not follow procedure in getting the parents --

Q. Ms. Toney --

A. -- to sign --

Q. -- there was no finding that the procedure was not followed. That was just your pushback, Ms. Toney.

A. No.

Q. There's no evidence -- what evidence do you

have the procedure was not followed? What evidence is there?

A. It's right here.

Q. No. That's your letter. That's your writing. So that's your opinion.

A. I quoted the code of law.

Q. Ms. Toney, people quote the code of law all the time. That's not evidence.

A. I know, Mr. Boykin, that the first two years that I taught comprehensive health that parents were given a form to fill out. Parents were given the opportunity to opt out their children out of comprehensive health.

Q. What evidence did you have that the form had not been provided?

A. They weren't given to me. They were supposed to have been --

Q. That's not my question. What evidence do you have that a form had not been provided?

A. Well, a parent came to me and asked about it, and we said no, we never --

Q. We have a mythical parent that came to you and asked you, and you fired off a letter to your supervisor. My --

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MR. NICKLES: Objection.

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BY MR. BOYKIN:

Q. My --

MR. NICKLES: Objection.

MR. BOYKIN: I get to characterize.

BY MR. BOYKIN:

Q. My question to you is what evidence do you have?

A. A parent came to me. I know in the past Ms. Betty Pearson would give me the forms to give to the students to take home. I never did receive any forms. I never did receive anything. And I was just alerting Mr. Webb. This letter didn't go any further than Mr. Webb's desk.

Q. Okay.

A. I wanted to make certain that everything is done the way it should have been done and nothing would come back to hurt me, the school district, or the school.

MR. BOYKIN: Madam Chair, I will move that we revisit my motion regarding the January 25th, 2006 letter. I believe Ms. Toney's testified enough. I believe Mr. Nickles has elicited enough testimony from witnesses about Ms. Toney's overall demeanor and work in the workplace.

One of the points that I would offer was

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Mr. Nickles made the point that the -- certain letters that Mr. Webb sent to Ms. Toney, well they didn't go in her personnel file, did they? His questions. He made -- he did that several times saying that if it was serious, it would be in her personnel file, wouldn't it? That was Mr. Nickles raising that question.

Here in talking to Ms. Toney, she talks about if something is in writing in my personnel file, I'll respond to it. So here we have this letter here, and the only thing that we have is her veracity in saying that she does not recall.

I believe enough evidence about Ms. Toney's relationship with the school district has been put on this record to have her respond to what is in this letter. I believe the board can give it whatever weight it chooses to. And on that basis, I renew the motion.

MR. NICKLES: May it please the board, this is called bootstrapping when you try to create an issue by your own questioning. What we have here is an instance where the letter that was presented is ancient history. It has nothing to do with what brought Ms. Toney to this board. It is over eight years old. She has been issued multiple continuing contracts since that. We do not have access to the person who wrote the letter. We do not have identities of the individuals

who are allegedly interviewed in the letter, and we have opinions offered by an individual who is not subject to cross-examination.

Now, Mr. Boykin has asserted, rightfully so,

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that Ms. Toney should not offer information about what other people said to her. This -- same sauce for the goose is sauce for the gander here. The opportunity to call this -- this former administrator, if he saw fit, and we think that the ruling should stand.

MR. BOYKIN: If I could just respond, when Ms. Toney was deposed, she said she had no recollection of the letter. And I've argued about her saying she was holding her A game for today. But more importantly, as we talked about the letter, when it got to an allegation that she made against another teacher, she had a very clear recollection of that on the letter that was there from that standpoint.

And so if the -- we're not offering it for the truth of her conduct in the matter that brought the board here. We're offering it to show that she was on notice as to what the reasonable expectations that the district had pursuant to the Statute 29 -- excuse me, 59-25-440, that it was asked to be put in writing from that.

Yes, she would get a chance -- she's here.

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She can respond to what's in the letter. If she remembered the conduct or not, whether she remembered the letter, that's one thing. Whether she remembered the conduct or not, she can respond to that. This board is certainly capable of giving that kind of information whatever weight it deems just and appropriate.

MS. MOSES: Thank you.

Board Members, do you now believe that the

letter that we discussed earlier is relevant? And if so, we do need a motion to override our motion and consider this as evidence.

MS. HEIZER: I think the board might need legal advice and executive session for ruling on this motion. We're now at almost 4:30 with the goal to wrap up by 5:00. Would there be some way to continue with this testimony without a ruling at this time, or should the board break and make a ruling?

MR. BOYKIN: There are other documents that we will go ahead and deal with, and I'll try to conclude with the -- you know, pending a ruling, the right to recall or conclude.

MR. NICKLES: So you want to continue and then have the board ruling on the document be its final act today? Is that what you're saying?

MR. BOYKIN: No. No. I'm saying I'm going

to try to conclude with this witness with the understanding that I have the right to recall whenever the board rules on that. I'm not going to extend the time on that today. Does that -- is that --

MR. NICKLES: Yes, that's fine.

MR. BOYKIN: Good.

(Complainant's Exhibit No. 4 was marked.)

BY MR. BOYKIN:

Q. Ms. Toney, I want to give you Complainant's Exhibit Number 4. Take a look at that and see if you can identify that, please.

A. Yes.

ROA_00300

Q. Okay. Tell the board what that is, please, ma'am.

A. This is a letter recommending my termination.

Q. Okay.

A. And amendment to -- for grounds for my termination from the county school district.

Q. And it has to do with your willingness to -- well, what does it say? What are the grounds?

A. It's based on, "Engaging in behavior and conduct which caused unnecessary disruption in the workplace, as evidenced by discussing a faculty member's personal information with other employees, even after being directed by an administrator to leave the matter

alone."

Q. Okay. And it says "Additionally, a review of your personnel file," does it not?

A. Yes.

Q. And what does that reveal?

A. "That you have been involved in other incidents of unprofessional conduct."

Do you want me to read the entire letter?

Q. No, ma'am, just the grounds. Go ahead.

A. That's it. It says, "Given the urgent need of the district to improve academic performance of our students, there is simply no tolerance for persons who put their personal agenda above the need to work in a cooperative fashion."

Q. Okay. Now, do you understand those grounds, Ms. Toney?

A. Yes.
Q. And you -- I take it you probably disagree with them, though; is that correct?
A. Oh, yes.
Q. Okay. And -- but you admit that you believe that you followed the super- -- the principal's directive; is that correct?
A. Yes.
Q. Okay. But the principal didn't believe that

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you followed the directive. Do --
A. Yes.
Q. -- you understand that?
A. Yes.
Q. Okay. Is the principal entitled to his view of your conduct, Ms. Toney?
A. Yes.
Q. Okay. Would the principal -- is the principal's view wrong?
See, that just requires a yes or no, and then you can explain. Is the principal's view of your conduct wrong, Ms. Toney?
A. Yes, I believe it is.
Q. Okay. And what makes it wrong, Ms. Toney?
A. The last page of that Facebook stated that --
MS. HEIZER: Excuse me. If we're going to get into Mr. Baldwin's personal information, that would be --
MR. BOYKIN: It's -- she doesn't have to get there. All -- we're asking about the information. I

just asked what makes her view correct and the principal's view wrong.

MS. HEIZER: I think on behalf of the board I would just ask Ms. Toney not to delve into Mr. Baldwin's personal life. If you can answer the question without getting into that information, we'd appreciate it.

THE WITNESS: It's no way I can answer these questions. Everything is being avoided and covered up. The issue was there was a sexual conversation with Mr. Baldwin and a student on Facebook.

MR. BOYKIN: All due respect, Madam Chair, we have one directive that was given. Leave it alone. That is uncontroverted. Ms. Toney agrees with that and the administrators have testified thus far. She said she complied. It only requires an explanation of her conduct.

If she goes to the substance of the material, she is trying to -- well, I shouldn't -- know what she's trying to do. It seems to be more of a justification rather than explain why she sees it as wrong. She isn't explaining. She is defending her conduct. That's all I'm asking her to do so the board can understand, when she gets a directive from an administrator, how she is going to respond. You have a right to that. She has a right to explain that so you can make a judgment on that.

And that's what this is about. This is not about this employee or that employee. It's about the employee that's sitting here and how that employee

ROA_00303

25 responds to administrative directives.

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1 She said it was wrong. He said she didn't
2 follow it. I want to know how would she get her conduct
3 under making it right and making him wrong. That's all.
4 A. I felt I had a responsibility to report what
5 I received. If I had gone to DSS, I would have been
6 charged with insubordination. If I had gone to the
7 sheriff's department with this information --
8 BY MR. BOYKIN:
9 Q. Ms. Toney --
10 A. -- then I'd be charged with insubordination.
11 So I just --
12 Q. Ms. Toney, I want to make sure I'm
13 understanding what you're saying. If an administrator
14 gives you a directive, and if you violate that directive
15 because you are complying with law, it is your testimony
16 that the administrator could charge you with
17 insubordination if you did something to comply with the
18 law? Is that your testimony?
19 A. I was afraid -- I didn't know what to do. I
20 know I had this information, and I was concerned about
21 the safety of the child. That was my main concern.
22 Q. So you gave the copy to Dr. Andrews; is that
23 correct?
24 A. Yes.
25 Q. So Dr. Andrews has authority over Sumter

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1 County?

ROA_00304

A. Well, they told me not to do anything, so how could I go to Sumter County? How could I have gone to the sheriff's office.

Q. Did they tell you -- Dr. Andrews tell you in an earlier letter on administrative leave not to call any employees of the district, but you can call her if there are questions? Did she tell you that?

A. Yes.

Q. Okay. And you had a question about the certification of a teacher in the classroom, didn't you?

A. Yes.

Q. You didn't call Dr. Andrews, did you?

A. No.

Q. You called someone else, didn't you?

A. Yes.

Q. Okay. So you didn't follow that directive then either, did you?

A. Mr. Boykin, can --

Q. It's a yes or no, then you can explain. I will let you explain. When you start explaining, I just back away so you can explain. But it's a yes or no. You didn't follow that then, did you?

A. No.

Q. Okay. Now you can explain.

A. When I found out I did not have a certified teacher in my classroom, I had EOC U.S. history. I was pulled out of that class, sent home on administrative leave. And -- and -- and, to me, the step for the administration to do would be to make certain that a

certified employee was there. So being that my initial conference with Dr. Andrews was not a very pleasant one, I didn't feel comfortable in going and talking to her.

Q. But you felt comfortable talking to her boss, right?

A. Only thing I said -- I made reference to a certified teacher.

Q. You didn't know for a fact the teacher wasn't certified, did you?

A. Yes, I did.

Q. So when did you learn the teacher wasn't certified?

A. I knew she wasn't. I knew her for years. She was a sub- -- I knew her as a substitute teacher for years.

Q. When you were first asked, you said you didn't know. You felt that because it was a sub, she wouldn't have been certified? Isn't that -- wasn't that your testimony, Ms. Toney?

A. Right.

Q. Okay. And when you were asked again, you said that the students said that she wasn't certified. We say, how do the students know? And you say, well, I knew. So tell me how -- it took you three times before we could know what the truthful -- or a plausible answer for knowing that the teacher wasn't certified. Isn't that true, Ms. Toney?

A. I wouldn't call -- probably so. I -- one thing, it's public information. You can go on the

ROA_00306

website and find out who is certified and who is not certified.

Q. Well, you said that too, but you realized you didn't have the teacher's social security number so you couldn't get it?

A. Mr. -- Mr. Boykin, you don't need a social security number. You just need a name.

Q. And you looked the teacher up? Is that what you did?

A. Yes. And I have that right.

Q. Well, you testified that you didn't look the teacher up, but you testified that the teacher told you that she wasn't certified. Now, which is it, Ms. Toney?

A. Is it -- is it -- is it -- isn't that relevant whether the teach- -- the teacher was not certified. She was not a certified employee.

MR. BOYKIN: Madam Chair, Ms. Toney should really be responding to my questions. She doesn't get to object and ask about relevance.

MS. MOSES: Ms. Toney, please try not to answer a question with a question. Please be responsive to counsel, please.

THE WITNESS: Okay.

BY MR. BOYKIN:

Q. Is it normal for a substitute to be used when a teacher is absent?

A. Yes.

Q. Okay. And do you make it a practice to check to see whether every substitute teacher is certified,

Ms. Toney?

A. When it comes to my class. And I was on administrative leave for about two weeks. We have certified employees in the district, in the building that could have taught that class, but they chose -- and the students came to me. I see them all the time.

Q. So you were telling on Dr. Andrews to a board member that she has people available, but she won't use them. She has this certified -- uncertified person. You were telling, weren't you? You were having your fists balled up getting back at you, weren't you -- back at them, weren't you?

A. No, sir. That seems to be more your demeanor, Mr. Boykin.

Q. You're probably right, but it's you who's fighting for her job. And my question is were you trying get back at --

A. No.

Q. -- Ms. Andrews?

A. No. I was more concerned about my students.

Q. Were you concerned about your students when you violated Mr. Webb's directive, Ms. Toney?

A. What directive?

Q. To leave it --

A. Yes.

Q. -- alone?

A. Yes. I was concerned about a student at Sumter High School.

Q. But you go to Dr. Andrews, who has no

authority in Sumter. You knew Dr. Frank Baker, right?
A. No.
Q. Did you call him?
A. No.
Q. And y'all were friends, weren't you?
A. When you see that kind of language on Facebook, I couldn't just sit on it. I had to do something. I was told not to do anything.

Q. Well, let --
A. Until I --
Q. -- ask you a question. Tell me, how did you know and get such an urgency for something that just appeared miraculously in your classroom, you weren't even able to verify the authenticity of it?
A. That's why I gave it to Mr. McDaniel and Dr. Andrews.
Q. Well, it's one or the other. Either you thought the child was at risk or you didn't.
A. I felt that the child was at risk.
Q. But you didn't call DSS, though, right?
A. I was told not to do anything. I was caught between a rock and a hard place. If I move in this direction, I'm -- I'm violating the directive from Dr. Andrews. If I move in the other direct- -- I didn't know what to do. That's why I gave it to Mr. McDaniel.
Q. Well, what directive did you have from Dr. Andrews that day?
A. From that date?
Q. The day that you received the material

anonymously, what directive did you have from Dr. Andrews?

A. Well, I met with her the next day.

Q. No. My question is the day that you gave the

material to Mr. McDaniel and Ms. -- and Dr. Andrews, what directive were you working under from Dr. Andrews?

A. None. I was told not to do anything. I was told by Mr. Webb and Mr. McDaniel not to do anything. I found it very difficult to sit on that kind of information.

Q. Let me clarify this in this public meeting. Is it your testimony that employees of Lee County School System are told not to report suspected abuse and neglect to DSS or law enforcement?

A. We are told not to or to do it?

Q. I'm asking. Is it your testimony you're told not to?

A. I was trained to report it. But being in the position I was in, being told by Mr. Webb not to do anything, trying to follow his directive and at the same time trying to look out for the child that I thought was in danger -- the child was from Sumter High School. I didn't know whether the child was 13, 14, 15. I just saw this conversation between an adult and a child. And I felt obligated to let someone know.

Q. Ms. Toney, the only problem I'm having with this sincere testimony that you're giving is that Mr. McDaniel has no recollection at all, from his testimony -- and I'm not pitting you against

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Mr. McDaniel. I'm just trying to understand your testimony. He doesn't say that, that you said you were concerned about a child.

A. I told him there were inappropriate posting. And I can't talk about the Facebook, but I told him there were inappropriate postings on Mr. Baldwin's Facebook.

Q. It -- your testimony is not adding up, but that's for the board to resolve.

MR. BOYKIN: Okay. I will suspend any further questions subject to there's a motion pending, you know, on a document that I would like to cross-examine her on and with the right to recall her in my case in chief if that should -- if the board rules my way on that motion, number one. And, two, of course, I reserve the right to cross-examine her after -- should Mr. Nickles decide to call her in his case in chief.

MS. HEIZER: Mr. Nickles, will you want to address questions to Ms. Toney at this time, or are you going to wait --

MR. NICKLES: Yes, I will, and it will certainly take more than the time remaining for us to do that.

MS. HEIZER: I think the board may have a question. Then perhaps the board could go into

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executive session and provide a ruling on that motion

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and then that would probably be it for today.

MR. NICKLES: All right.

MS. MOSES: Ms. Toney, we just have a couple of questions for you. Without going into too many details, are you saying that the administration covered up the injury or a threat to a child?

THE WITNESS: Yes.

MS. MOSES: Okay. And, Ms. Toney, can you tell us who told you not to do anything that would -- about not reporting abuse for a child -- to a child?

THE WITNESS: Well, no one said anything in reference to the abuse. I was just told after Mr. Baldwin filed a grievance on me and Mr. Webb had to go out of town for a couple of days, I was told not to do anything until they got back. But before they got back, I got this information. And I really felt a child was in danger. It -- it was irrelevant to me about the other inappropriate postings. But that last page, I referenced the last page to --

MR. BOYKIN: Madam Chair.

MS. HEIZER: That's enough -- I think that's enough, if you don't mind. I think the board may have one more question.

MS. MOSES: We just have one clarifying

question, Ms. Toney. On this letter here dated March 28th, 2012, we just want to make sure that we are correct in understanding that you said you wrote this letter to protect yourself and Lee Central High.

THE WITNESS: (Witness nods head.)

ROA_00312

MS. MOSES: So we just have a question that if you felt that strongly about the comprehensive health subject, what prevented you from taking the same position when you were faced with this instance with a child?

THE WITNESS: When someone gives you a directive, I didn't want to violate what I was told that said don't do anything, don't do anything, but when I saw the last page of the Facebook, I had to do something. And I was really afraid. And I know the first thing to do was to maybe go to DSS or take it to the sheriff's department, but I did not want to do that. Now -- and I was afraid of being terminated.

So I did the next best thing. I gave it to Mr. McDaniel. He came -- let me -- let me clear this up. Mr. McDaniel came to my room for it. I went to him and I told him that there were inappropriate posting -- again, I'm talking about Face -- and I shouldn't say -- Facebook. And then he later came to my room. 15 minutes later, he came down to my classroom and he said

may I have it. And that's when I gave it to him. But just to take it to him, I didn't.

I was afraid because I was given a directive not to do anything. I said, but at the same time, if this is a child, 13, 14, 15 that's in danger because the words that were used in the Facebook.

MS. HEIZER: That's all --

MS. HAZEL: Objection.

MS. HEIZER: I think that the board is

ROA_00313

satisfied.

MR. DRAYTON: I just have one question. Ms. Toney, why -- it states here, "You further involved students by using a student's cellular phone to access another employee's social media account."

THE WITNESS: That was found to be inaccurate. That was -- that was disproved. The child did not even have any services on his phone.

MR. NICKLES: That's not a charge against her.

MR. BOYKIN: Well, let me --

THE WITNESS: The child --

MR. NICKLES: Mr. Drayton --

THE WITNESS: The child did not have any services on his phone.

MR. BOYKIN: Let me clarify.

MR. DRAYTON: It's in the letter.

MR. BOYKIN: The letter was amended. It was found not to be anything. The school district decided not to allow something involving a student, and so it was withdrawn. It was not found in any conclusion to be anything one way or the other.

MS. HEIZER: So would the position be for the board that the statement in that letter is not really an issue to be considered in this hearing?

MR. BOYKIN: Yes. Yes.

MS. HEIZER: So it's basically not a charge, not a ground, not something that would count for or against in this --

MR. NICKLES: It has been withdrawn as a charge.

MR. BOYKIN: Which is what I said. In fact, it probably -- if you're going to hold onto -- you know, and I understand Mr. Nickles' situation, but, you know, we would ask that it be taken out completely, but, you know, it's there. There's an amended letter out that we just introduced.

MR. DRAYTON: My question basically is why did you access another employee's social media?

THE WITNESS: I didn't. It was given to me. I don't even know anything about Facebook. I don't have

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any experience with Facebook. Never had a Facebook account.

MR. DRAYTON: So you're telling the board you did not use the phone?

THE WITNESS: No, sir.

MR. DRAYTON: Okay.

THE WITNESS: No, sir, I did not -- I did not use my -- his phone. The child did not even have any services on his phone. After they did the investigation, I felt like I was like a moving target. The first letter, she investigated, she couldn't find anything. So she wrote another letter, couldn't find anything. So Dr. Andrews amended that letter.

It was one letter to the next. But the investigation was done with the student and found out that I did not access Facebook with the student. I did not involve a child with Facebook. And then Dr. Andrews

amended that. She wrote another letter. Then that was disproved. I was like a moving target.

MR. BOYKIN: Just for clarification, Madam Chair, it was withdrawn primarily because it would require students to be involved in the process. That doesn't say it would have been proven. It doesn't say it wasn't proven. But I just don't want to reach that ultimate question. It was withdrawn, so it's not

contested here.

MS. HEIZER: So for purposes of this hearing, nothing about --

MR. BOYKIN: Right.

MS. HEIZER: -- that allegation in that letter, that statement in that letter is relevant. It should not enter into the board's decision in any respect.

MR. BOYKIN: Correct.

MR. NICKLES: Except the fact it's been withdrawn, correct.

MS. HEIZER: Okay.

MS. MOSES: Board Members, we do need a motion to enter into executive session.

MS. BOYD: Madam Chair, I move at this time.

MS. MOSES: Okay. We have a motion on the floor --

MR. BRUNSON: Second.

MS. MOSES: -- moved by Ms. Boyd and second by Mr. Brunson, this board will enter into executive session to discuss the motion that's before us coming

from Mr. Boykin.

Are we ready for questions? All in favor, please note that by stating aye.

THE BOARD MEMBERS: (Affirmative responses.)

MS. MOSES: Any opposes?

The ayes have it. We will now enter into executive session.

(The board entered into executive session.)

MS. MOSES: Okay. Welcome back to the open session. While we were in executive session, we did receive a legal briefing on Mr. Boykin's motion to have his letter admitted.

What is the pleasure of the board at this time?

MS. DUREN HAYWOOD: Madam Chair, I move that we grant the motion to Mr. Boykin that the letter in question is deemed admissible, and the board will determine how much weight the letter will be given at the appropriate time.

MS. BELVIN: Second.

MR. BRUNSON: Second.

MS. MOSES: It has been moved by Ms. Haywood and second by Ms. Belvin and Mr. Brunson that we admit the letter from Mr. Boykin and that the board will give it the appropriate weight that it deems necessary at the appropriate time.

Are we ready for questions? All in favor of said motion, please note that by stating aye.

THE BOARD MEMBERS: (Affirmative responses.)

MS. MOSES: Any opposes?
Ayes have it. Motion is granted.
At this particular time, we'd like to thank everyone for coming out today and participating in this hearing. We know it's been a very long day, and for board members and Dr. Andrews, it's been an extremely long day. We started off with graduation and now we're going to bring our day to a close.
Board Members, do I have consensus for us to meet again to reconvene the hearing on Tuesday, July 1, 2014 at 10:30 at the district complex.
THE BOARD MEMBERS: Consensus.
MS. MOSES: Thank you.
And I'd just like to state for the record and caution board members to remember that we will not make any decisions or prejudge this case until we have reconvened and this hearing is brought to a close.
Without objection, this is hearing will stand as adjourned.
MR. NICKLES: Point of protocol, where will we reconvene? Will that be here or will it be --
MS. MOSES: No. The district complex.
MR. NICKLES: The district complex and that's where we were --
MS. MOSES: Yes.

MR. NICKLES: Okay. Just for purposes of the record, I would like my objection continuing as to that

document just to preserve my objection for the record.

(The hearing was adjourned at 5:19 p.m.)

- - -

CERTIFICATE OF REPORTER

I, Heather M. Curlin, Professional Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth

and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate, and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 13th day of June, 2014, at Charleston, Charleston County, South Carolina.

Heather M. Curlin
Professional Court Reporter
Notary Public
State of South Carolina at Large
My Commission Expires:
May 27, 2021

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STATE OF SOUTH CAROLINA
COUNTY OF LEE

BEFORE THE BOARD OF TRUSTEES OF THE LEE COUNTY SCHOOL DISTRICT

Dr. Wanda Andrews,

Petitioner,

vs.

Laura Toney,

Respondent.

H E A R I N G

THE BOARD OF TRUSTEES OF THE LEE COUNTY SCHOOL DISTRICT

DATE: Tuesday, July 1, 2014, Volume II

TIME: 11:13 a.m.

LOCATION: Lee County School District
310 Roland Street
Bishopville, South Carolina

REPORTED BY: HEATHER M. CURLIN
Registered Professional Reporter

- -

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MS. MOSES: Good morning. Welcome to the called meeting of the Lee County School Board of Trustees.

We have declared a quorum.

The media has been properly notified, and this morning we do have Ms. Gee Atkinson with the Lee County Observer with us.

I ask that you please join me in a moment of silence.

(A moment of silence was observed.)

MS. MOSES: Thank you. Without objection, the agenda will stand as approved.

And we're now down to our employee hearing for Ms. Laura Toney, and we will reconvene where we left off last when we met on June 7th. And at this time, I'll please ask that if anyone has your smartphones with you, cell phones, that you please silence them.

Are there any questions coming from either counsel?

MR. NICKLES: No questions. I just ask the board to recall that, as we recessed, there was a decision by the board to allow Mr. Boykin to examine Ms. Toney on a document from 2006. We had previously stated our objection to that, and our Exhibit Number 2 contains some of the legal argument in support of that

objection. And Mr. Boykin kindly acknowledged that objection continues and is preserved for the record on appeal.

MS. MOSES: Okay.

MR. NICKLES: Thank you.

MS. MOSES: Thank you.

Mr. Boykin?

MR. BOYKIN: There is nothing from Dr. Andrews at this time, Madam Chair.

MS. MOSES: Thank you. So we'll begin where we left off, Mr. Boykin.

MR. BOYKIN: Madam Chair, Board Members, I believe I was in the process of cross -- not cross, but examining Ms. Toney.

For procedural-wise, is Ms. Toney still under oath, or would it be appropriate on the record in the presence of all those here for her to be sworn in again for this hearing?

MR. NICKLES: We'll stipulate that Ms. Toney remains under oath.

MR. BOYKIN: Thank you.

LAURA TONEY, being previously sworn, testified as follows:

DIRECT EXAMINATION (Continued)

BY MR. BOYKIN:

Q. Ms. Toney, how are you?

A. Good morning. How are you?

Q. Good. Good. I have just a few questions.

During your employment with the Lee County School District, were you ever assigned to Mount Pleasant Middle School?

A. Yes.

Q. And who was the principal during the time that you were at Mount Pleasant Middle School?

A. Deidra Johnson was the principal there at one point and Lenora Scott.

Q. Okay. During the time that you worked with those principals, did any of them ever have an opportunity to put you on notice about your conduct within the school?

A. Had an opportunity putting me on notice? I -- I don't recall ever being put on notice about any type of conduct --

Q. Okay.

A. -- or misconduct.

Q. So as we sit here today and you think about working with Ms. Lenora Scott particularly, you have no recollection of her ever meeting with you to talk with you about your conduct within your workplace; is that correct?

A. No, I don't.

Q. Okay. So you have no recollection of that?

A. I don't recall.

Q. Okay. Did you, during the time you were working with Ms. Scott, have occasion to have -- well, where a colleague or someone else employed with the school had used a racial slur?

A. Yes. Some students came to me and told me about a racial slur in the classroom.

Q. Okay. And what was the slur?

A. Said the teacher used the N-word.

Q. Okay. N-word being what?

A. Nigger.

Q. Okay. And did you report that?

A. I informed Ms. Scott of that. Yes, I did. I told her she needs to maybe keep an eye on --

Q. Okay.

A. -- what was going on in that class.

Q. Did you report that when you first heard it, or did you report that during the time you and Ms. Scott was having a conference about your conduct?

A. I reported that -- I never had a conference with Ms. Scott about my conduct. I informed her of that in the hallway, I think. I -- I just don't recall, but it was not in a conference.

Q. Okay. So as we sit here today, it's your testimony that you have never had a conference with Lenora Scott during the time she was principal and you were assigned as a classroom teacher to Mount Pleasant Middle School? You never had a conference where your conduct was discussed?

A. I don't recall.

Q. You have no recollection of that?

A. I don't recall --

Q. Okay.

A. -- having a conference.

(Petitioner's Exhibit No. 1 was marked.)

MR. BOYKIN: Madam Chair, with the board's permission, I'd like to approach the witness, please.

This is Exhibit 14?

THE REPORTER: No. 1.

MR. BOYKIN: Exhibit 1. Okay.

BY MR. BOYKIN:

Q. Ms. Toney, would you have a look at that, please.

A. Yes.

Q. Can you identify this, Ms. Toney?

A. I have seen it before. I saw it in my personnel file when I received my personnel file.

Q. Okay. Do you -- is there anything on this

letter that jogs your memory about your interaction with Ms. Lenora Scott?

A. Okay. She made reference to a student; the teacher called the student a nigger. Yes.

Q. That's the only thing that jogs your memory?

A. Yes.

Q. Okay. And do you recall receiving this letter, Ms. Toney, a copy of this letter?

A. No, I didn't receive this letter. Had I received this letter, I would have written a rebuttal or response.

Q. I understand -- I understand that's what you're saying. But you're saying that you never received this?

A. I don't recall ever receiving this letter, no.

Q. Okay. I want to be clear. Your testimony is -- well, let me ask, do you recall receiving it? That's a yes or no.

A. No.

Q. Okay. Did you receive it, yes or no?

A. I don't recall receiving it.

Q. Okay. So --

A. This letter.

Q. I'm sorry?

A. I don't recall receiving this letter.

Q. So as we stand here -- as I stand here today and you sit here, you have no recollection of whether you received it or not. Is that your answer?

A. Yes.

Q. Okay. Ms. Toney, do you recall receiving an e-mail description of Ms. Fowler's reaction to an observation in your class?

A. Yes.

Q. Okay. And you recall Mr. Webb, the principal, saying to you prior to his going on the professional development trip that you should leave the grievance that had been filed against you, leave that alone until his return? You recall that?

A. Yes.

Q. Okay. Now -- and I'm talking about those two points. One is your observation, the response from Ms. Fowler; and, two, the directive that came to you from Mr. Webb. Those are the two things that I want -- I want you to have in your mind as you respond to my questions.

You know -- is it Karin Davis or Corrine (ph) Davis? K-A-R-I-N. Maybe I'm mispronouncing it, but do you know who --

A. Yes.

Q. You know who that person is?

A. Yes.

Q. Okay. Was that person in any way in involved in Ms. Fowler's response to -- regarding your observation?

A. No.

Q. Okay. Was that person present when Mr. Webb told you to leave the grievance alone until he returned?

A. No.

Q. Okay. What about Stacy Harrison?

A. No.

Q. V. Mormon?

A. No.

Q. Okay. Shanequia -- Sheneaka Ratliff?

A. No.

Q. Gary Spann?

A. No.

Q. Virginia Stokes?

A. No.

Q. Linda Weaver?

A. No.

Q. Okay. Those names I just called, were they in any way involved with the observation that you received from Ms. Richardson when she was your principal?

A. No.

Q. Were they -- not just the observation, but

also the evaluation that you received from Ms. Richardson, were they involved?

A. No.

Q. Okay. Were they involved at all in your having been placed on administrative leave, to your knowledge?

A. Not to my knowledge, no.

Q. Okay. Were they involved in the allegation that you have regarding the forgery and Ms. Richardson?

A. No.

Q. Okay. Were they involved with any conversations at all that you had with Dr. Andrews?

A. No.

MR. BOYKIN: I beg the board's indulgence.

I have a few more questions for Ms. Toney.

BY MR. BOYKIN:

Q. Ms. Toney, harking back to the parameters that we established, and we're talking about Mr. Webb's directive to you to leave it alone until he returned. And you understood that clearly, didn't you?

A. Yes.

Q. And we also want to talk a little bit about Ms. Fowler's description to you giving you the feedback from her observations. You understood that too?

A. Yes.

Q. Okay. And was Mr. Anthony Blair involved in Ms. Fowler's feedback to you in any way?

A. No.

Q. Okay. Was Mr. Blair involved in any way with Mr. Webb's specific instruction to you?

A. No.

Q. Okay. Was Michael Baldwin involved in any way in the feedback that you received from Ms. Fowler regarding the observation she conducted in your classroom?

A. No.

Q. Okay. Was Michael Baldwin involved in any way with the directive that Mr. Webb gave you about leave this alone until he returns?

A. No.

Q. Okay.

MR. BOYKIN: I beg the board's indulgence.

Madam Chair, thank you, and I'm finished with this witness at this time.

(Reporter interjection.)

MR. BOYKIN: Madam Chair, may I?

MS. MOSES: Sure.

MR. BOYKIN: If you don't mind, Al, if we could move this table over here just a tad and then move this, I think it would help a little bit.

THE REPORTER: That would be great.

MR. BOYKIN: Just hold still for a second, Ms. Toney.

The court reporter was rubbernecking around. We might have to move this.

Just a second, Ms. Toney.

THE REPORTER: Thank you very much.

CROSS-EXAMINATION

BY MR. NICKLES:

Q. Ms. Toney, good morning.

A. Good morning.

Q. Ms. Toney, let me ask you a few questions relating to your employment history, please, ma'am. Tell me, did you have to go to school to become a teacher?

A. Oh, yes, sir.

Q. Where did you go to school?

A. I got my B.A. degree from Coker College, and I later decided I wanted to teach. I did not complete the teacher education program at Coker, so I enrolled in the University of South Carolina where I completed the teacher education program there. And I did my student teaching at Coastal Carolina, and I also completed a master's degree at Francis Marion University in education.

Q. Okay. Why did you want to enter the field of education?

A. I love teaching. I love children. And I feel like teaching is a calling, you know. It's your livelihood, but at the same time, you have to have a calling to be effective in teaching.

Q. Do you feel passionate about teaching?

A. Oh, yes.

Q. Now, Ms. Toney, did you work in any school districts before coming to Lee County?

A. Yes.

Q. Which districts did you work in?

A. Sumter School District Two.

Q. Okay.

MR. NICKLES: Can the board hear Ms. Toney okay?

BY MR. NICKLES:

Q. Now, Mr. Boykin asked you some questions about your employment at Sumter District Two. Do you remember those questions?

A. Yes.

Q. And he asked you if you had any difficulties at Sumter Two?

A. I had an attendance problem there. I --

Q. Why is that?

A. My husband took sick with cancer. I had to take a number of days, a lot of days out.

Q. And did you receive any suggestions that that was causing a problem?

A. Yes.

Q. And did you acknowledge that your absences were causing a problem?

A. Yes.

Q. Did you leave that district voluntarily?

A. I resigned, yes.

Q. Okay. Did you get a job after the Sumter job?

A. Yes.

Q. Where did you go then?

A. Lee County.

Q. This county?

A. Yes, sir.

Q. Why?

A. This is home, and I wanted to be home. Then I wanted to be closer to my husband who was --

Q. Was your husband in poor health?

A. -- very sick. My husband and my mother both were in poor health.

Q. Here in Lee County?

A. Yeah. I had them both in my home in hospital

beds.

Q. All right. Did you have to care for them?

A. Yes.

Q. And did that cause you to miss some time even in Lee County?

A. Oh, yes. Yes, I had some attendance problems as well. There were times when both my husband and my mother were on life support, and it was very difficult to be effective when you have two people that you love on life support. Numerous surgeries for my husband, who had cancer.

Q. Did you do your best to do your job here in Lee County?

A. Yes.

Q. And I believe you first came here in 2005; is that correct?

A. No. I came to Lee County, I think, in 1999.

Q. 1999?

A. Uh-huh.

Q. And when -- I know it's not pleasant, but when did your husband and your mother pass away?

A. They both died in 2005.

Q. Okay. Would it be fair to say that they suffered a very lingering --

A. Yes.

Q. -- death?

A. Yes.

Q. Was that hard on you?

A. Very.

Q. Now, I'd like for you to look, if you would, at the package that I put in front of you that's previously been marked as a part of Exhibit 1 for identification purposes.

A. Okay.

Q. Look at the first tab, if you would, and I'm going to ask you to scroll back to the last page of that first tab. Is this a -- is this a contract?

A. Yes, it is.

Q. And what form of contract is that?

A. It's a continuing contract for Lee County School District.

Q. Okay. And that is issued for the 2005/2006 school year?

A. The last one, yes, sir.

Q. Okay. And do you see your signature there?

A. Yes, sir.

Q. Now, Mr. Boykin asked you some questions about things that took place reportedly in January of 2006. He just questioned you about that, didn't he?

A. Right. Yes, sir.

Q. And he handed you a document that carries a date of January 25, 2006, correct?

A. Right.

Q. Now, was your principal at that time Lenora Scott in 2005/2006, to the best of your recollection?

A. When I came back -- I took a family sick leave act. Under the family sick leave act, I took a leave, and I returned -- my mother and my husband both died in September. And I returned to work, I believe, in October.

Q. That would have been October 2005?

A. October 2005, yes.

Q. Okay. So that was a short year for you?

A. Yes.

Q. Okay. Now, Mr. Boykin asked you if you received this letter marked Exhibit Number 1, the one that he just handed to you. It's on the table there with you. Ms. Toney, had you received this letter, what actions would you have taken?

A. I would have written a rebuttal.

MR. BOYKIN: Madam Chair, I would object. There was a question that was asked that was never answered, and he asked whether or not Ms. Scott was her principal. She never answered that question. I recognize he's got to do some other things, but I would

like to have on the record her answer to that question.
BY MR. NICKLES:
Q. Do you recall -- looking at Exhibit Number 1, do you now recall whether or not Ms. Scott was your principal?
A. Yes.
Q. Okay. And was she your principal only for a short period of time?
A. Very short.
Q. And it was a long time ago?
A. Yes.
Q. Now, Ms. Toney, when -- according to this letter Mr. Boykin presented to you, he asked you if you recall anything about this, and you said you recall making the reference to this bad word to your principal, correct?
A. Yes.
Q. Now, did your principal at that time tell you, I don't want to hear this?
A. No. She told me she would look into it.
Q. Okay. Did you think you were being insubordinate or irresponsible in reporting what this student had said to you?
A. No.
Q. Okay. Now, you said that you saw this in

your personnel file?

A. Yes.

Q. When did you see it in your personnel fie?

A. I received it from you.

Q. Okay. After --

A. After I --

Q. -- you had been --

A. After I was placed on administrative leave.

Q. Okay. After you had been given a notice of termination?

A. Yes.

Q. And so you didn't know it was in your personnel file, did you?

A. No.

Q. Ms. Toney, after this 2005/2006 school year, did you receive a contract for the next year?

A. Yes, sir.

Q. And is that the next page -- if you flip forward in Exhibit Number 1, Tab 1, is that the next contract?

A. Yes.

Q. Was that also a continuing contract?

A. Yes, sir.

Q. Were there any stipulations or restrictions placed on you?

A. No, sir.

Q. Okay. Look at the next page, flipping forward, 2007/2008. Do you remember receiving this contract?

A. Yes, sir.

Q. And were there any restrictions or stipulations placed on you?

A. No, sir.

Q. Look at the next one for 2008/2009. Do you see that contract?

A. Yes.

Q. Is it a continuing contract?

A. Yes.

Q. The next one is 2009/2010. Do you see that contract?

A. Yes.

Q. And was that a continuing contract?

A. Yes.

Q. Looking at the next one from 2010/2011, was that a continuing contract?

A. Yes, sir.

Q. And were there any restrictions or stipulations placed on you then?

A. No, sir.

Q. Looking at the next one from 2011/2012, is

that a continuing contract?

A. Yes.

Q. And looking at the next one from 2012/2013, is that a continuing contract?

A. Yes.

Q. And the contract for this past year, 2013/2014, is that a continuing contract?

A. Yes.

Q. And is that the contract that you were hired under for this most recent school year?

A. Yes.

Q. So, Ms. Toney, would it be fair to say that you received eight continuing contracts since January 25, 2006?

A. Yes, sir.

Q. And during that period of time, up until this year, had you been placed on suspension?

A. No, sir.

Q. Had anybody recommended that you be terminated?

A. No, sir.

Q. Did anybody recommended that you not be renewed?

A. No, sir.

Q. As far as you knew, were you an employee in good standing in this district when you came back in

August of 2013?

A. Yes, sir.

Q. Now, Ms. Toney, Mr. Boykin asked you some questions about an evaluation that you objected to. Do you remember that line of questioning?

A. Was it Ms. Richardson or --

Q. Yes, ma'am.

A. Yes, I remember.

Q. Now, why did you object to that evaluation?

A. Well, the final conference with Ms. Richardson, she did not have the other two evaluators there with her. And I had gone through ADEPT years ago, and I know that all three of the evaluators supposed to be there at the final conference. So I questioned her about that, and she said that's not necessary. And I had some suspicion about that. And she handed me a document where I failed the ADEPT. And she asked me to sign, and I said, "No, ma'am, I can't sign because my other evaluators are not here for me to ask questions."

Q. Uh-huh.

A. So one of my evaluators, Mr. Sam McDonald, from -- a professor from South Carolina State University, he's also a member of Unionville AME Church. And I was just curious. And I went to the church that

Sunday, and I told him that I'm sorry I failed my ADEPT.

And he said, "Ms. Toney, fail? You didn't fail."

I said, "Yes, I did," and I showed him the document.

He said, "That's not my signature." He said, "That was not the consensus of your ADEPT."

Q. Now, did you make those objections known to the district administration?

A. Yes. I -- I -- I don't recall whether I wrote a letter to Randy Burns or -- but I did let Dr. Townes and Mr. Burns know about what was going on. And Mr. McDonald called the other evaluator -- I forgot her name -- and they met with Randy Burns and -- and Dr. Townes, I believe. And --

Q. As a result of that, was the evaluation withdrawn?

A. It was withdrawn, and she had to do another one.

Q. Okay. Now, did anybody tell you at the time this was going on that you were being disrespectful in challenging this evaluation?

A. No. No.

Q. Did anybody tell you when this was going on that you didn't have the right to challenge this

evaluation?

A. No. As a matter of fact, I remember Randy Burns telling me -- thanking me for bringing it to their attention. I didn't take it anyplace else. I took it directly to them.

Q. When this was going on -- I'm not talking about now. When this was going on, did anybody tell you you did wrong by challenging that evaluation?

A. No.

Q. Okay. Now, Mr. Boykin also asked you some questions about some issues you had with a lawyer and a judge. Do you remember those questions?

A. Yes.

Q. Now, let me ask you this. Did that have anything to do with your work here in the Lee County School District?

A. No, it did not.

Q. Were those issues related in any way to your employment or your performance as a schoolteacher?

A. No.

Q. Did anybody at the district at that time tell you you shouldn't be standing up for yourself?

A. No. And I did not make the decision on Judge Seymour. I wrote the US Senate Judiciary Committee, and President Obama made that decision. It was not my

decision. It --

Q. Now, Ms. Toney, do you have the power to get a lawyer disbarred, remove a judge, or anything like that?

A. I don't know -- I don't have that power, no.

Q. Now, in these other instances that don't relate in any way to teaching, did anyone tell you that you, as a citizen, didn't have the right to complain about what you thought was wrong?

A. No.

Q. I mean, you teach social studies?

A. Yes.

Q. In teaching social studies, do you look at situations where people stand up for their rights?

A. Oh, yes. I teach my children that, to stand up for their rights, know their rights.

Q. Now, just this last week, we had the 60th anniversary of Brown v. Board of Education.

A. Yes.

Q. Do you remember that?

A. Oh, yes.

Q. Do you ever teach your students about that?

A. Yes.

Q. And is that something where people stood up for their rights?

A. Yes. You know, that's how --

Q. Do you think that's important?

A. Yes. That's how we've gotten this far by -- sometimes it only takes one person.

Q. Is it always popular to stand up for what you think is right?

A. No.

Q. Is it always easy?

A. No.

Q. Now, I want you to look at -- I want you to look at Tab 3 in the document in front of you, and this is a letter that Mr. Webb has previously identified that he received from another teacher and he said that he knew it was about you. Do you remember that testimony?

A. Right.

Q. Now, first let me ask you, did Mr. Webb ever talk to you about any of the concerns in this letter --

A. No.

Q. -- of September 15, 2013?

A. No. I did not even know this letter exists.

Q. Did you know this teacher had made a complaint about you --

A. No.

Q. -- to Mr. Webb?

A. No.

Q. Well, let me ask you this. Do you remember having a concern about friends of Ms. Addison getting out of homeroom duty?

A. I had a conversation with -- could you repeat that question?

Q. Yeah. Did you have a concern about certain teachers getting out of homeroom duty?

A. Oh, yes, sir.

Q. Okay.

A. Yes, sir.

Q. Okay. Now, what kind of concern did you have about that?

A. There were teachers that, I would say, got two planning periods.

Q. Did every teacher get two --

A. No.

Q. -- planning periods?

A. No.

Q. Did you notice anything in common about these teachers who got two planning periods?

A. All the Facebook friends.

Q. Of who?

A. Mr. Baldwin.

Q. Okay. Who was responsible, to the best of your knowledge, of this schedule where these folks got

two home rooms?

A. Ms. Addison.

Q. She was the assistant principal at the time?

A. Right. And she was also a friend on the Facebook.

Q. Okay. Well, so did you make it known that you had a concern about these individuals getting preferential treatment?

A. Yes. And there are a couple other teachers too that were not on Facebook. The majority of the teachers were on the Facebook page, friends with Mr. Baldwin.

Q. Now, did you -- did Mr. Baldwin or Ms. Addison ever come to you and explain to you why they thought they should be getting this break?

A. No.

Q. Did Mr. Baldwin ever tell you he was going to write a letter to the principal about you?

A. No.

Q. And this letter was September 15, 2013, correct?

A. Right.

Q. You didn't know about it at the time, did you?

A. No, I didn't know.

Q. Now, Ms. Toney, I want to ask you, when you made this concern known about these teachers getting two planning periods, was there any action that was taken?

A. Yes.

Q. What was that?

A. Dr. Andrews gave a directive. She changed it from homeroom to academic enrichment.

Q. So the teachers would have this responsibility?

A. Right. And she said she wanted instruction to go on during that time and all teachers should have it.

Q. Okay. And as a result of that, did these folks who got the two planning periods lose that extra planning period?

A. They lost that extra planning, yes.

Q. And you've had a chance to look at the letter of September 15. Do you now know that Mr. Baldwin, among others, wasn't too happy about that?

A. No, they were not.

Q. And this overruled something Ms. Addison had done, correct?

A. Yes.

Q. Now, Ms. Toney, shortly after this change where these people got their extra planning period taken away, did you participate in a departmental meeting at

the school?

A. Yes.

Q. And at that meeting -- I believe it was in late September, correct?

A. Yes.

Q. Did you know anybody had a grudge against you in that meeting?

A. I had no idea these letters were being written behind my back, no.

Q. What do you remember about that meeting in September?

A. Like all of our departmental meetings on Thursdays, we engage in small talk before the meeting, you know. And I think it was Ms. Fowler, she said, Ms. Toney, you look kind of sad and -- no, she said, "Are you okay?"

And I said, "Yeah, I'm okay." I said, "You know," I said, "this is a sad time of the year for me." I said, "This month is -- I lost my husband and my mother." And I said, "It's very sad.

And she said she was sorry and everybody's -- and I said, "Mr. Baldwin, I know you can relate to this because you lost a spouse as well, and it can be very difficult."

Q. How --

A. And he shook his head up and down in agreement.

Q. How did you know or how did it come to your attention that Mr. Baldwin may have lost a spouse?

A. When they first got to -- when -- when they first were employed with the Lee County School District, we, as a staff, sometimes used to get together and go out on Fridays or Saturdays at Harry & Harry Too. And I asked Ms. Addison, I said, "You should invite the new teachers and tell them to bring their wives or girlfriends or whatever."

And she said Mr. Lee was not married, but she said Mr. Baldwin had -- spouse had died. And that was the end of that conversation, because it was like between the changing of class and then she had to go and help a student --

MR. BOYKIN: Madam Chair, I'm going to object. It's -- this is getting far afield, and she's continuing -- there's a lot of hearsay here. And until we get a better foundation or at least until a better background is laid, I would object to her going into this testimony, because I do believe -- well, I would render the objection at this point as being irrelevant and inappropriate based on the Court's earlier rule.

BY MR. NICKLES:

Q. My question is: Ms. Toney, when you made the statement at the departmental meeting that Mr. Baldwin had lost a spouse, did you know the gender of that spouse?

A. No, I did not.

Q. Okay. And the information came to you from Ms. Addison; is that correct?

A. Yes.

Q. Now, let me ask you, please, to look at Tab Number 7 of the document in front of you. And I just want you, very first thing, to look at the page that's marked number 1. That's the third page in in Exhibit Number 7, please, ma'am.

MS. HAZEL: Objection. This has not yet been ruled by the board. It is evidence that will be taken in consideration. Everything past document -- or Tab Number 7 has not been entered as evidence, and the board has not yet ruled.

MR. NICKLES: Well, I'm getting ready to introduce this as a piece of evidence.

MS. HEIZER: I think that the board has earlier ruled all this information regarding Mr. Baldwin will be held in abeyance until the conclusion of the administration's case.

MR. NICKLES: Well, I will beg the board's

indulgence, because there will be testimony -- and I -- let me -- if you want to allow me to make a proffer at this time, I will, but I can ask Ms. Toney --

BY MR. NICKLES:

Q. Did you receive the material marked as Exhibit Number 7?

MR. BOYKIN: I would object on relevancy grounds. I mean, it's not clear to me -- the board has a ruling, and it seems that this is an attempt to bootstrap or backdoor the ruling of the board; and I object to it on that basis. It continues to be irrelevant at this juncture.

MR. NICKLES: It is most relevant if you allow me a couple questions. And I'm not asking anything about the content of any communication at this point. I'm asking about a specific document that's in Exhibit Number 7. You have it in front of you. It's page number 1.

MR. BOYKIN: The -- my statement is that this document is more inflammatory than probative. It does not go to any point. Mr. Nickles won't identify the point that he's trying to make. That's a different discussion. And I believe that, if anything, this should be done in an in camera review and not in the public, if anything.

If Mr. Nickles wants it to go, if anything, it does not prejudice Ms. Toney at all for the board -- if Mr. Nickles feels that he needs to make some complete disclosure. But other than that, I believe this is a sincere effort to annoy, harass, and embarrass an employee of the district, and it's not necessary for Ms. Toney to defend herself in this proceeding at this juncture.

MR. NICKLES: Well, I would take umbrage at the suggestion that we're trying to do anything other than bring to the attention of the board information that's relevant to this case and provide background as to Ms. Toney's actions that have been challenged at this departmental meeting and the reasons for that. So, you know, I have to strongly suggest to you that I be allowed some latitude to look at the specific pages without making reference to any of the content.

These pages are before you only at this point. And if you prefer to do this in executive session, you know, I would -- for proffer purposes only, I understand that position of the board. But this is not controversial testimony that I'm trying to elicit from my client at this point.

MS. HEIZER: Well, I don't speak for the board, but just information for the board, we have spent

a fair amount of time since we convened last time discussing this issue of information regarding Mr. Baldwin. And y'all's decision was that you were going to embargo, you weren't going to hear any of this until you decided at the conclusion of the administration's case. I think that we're going to continue to bump up on these issues that how do you know if the information is relevant or not if you don't know what the information is.

And so I think it might be appropriate for the board to ask Mr. Baldwin's attorney what her position is on the concept that y'all would be allowed a preview. A proffer is like a, you know, if the testimony was made available, this is what you would hear. That's what a proffer is. Hear that in executive session so that you will have at least a preview of what the information is as you make your decision.

And the potential advantage of that is that we don't have to keep stopping and having these discussions over and over again. It might ultimately expedite the hearing moving forward. I think it would be helpful to know what Mr. Baldwin's attorney's position is so that y'all can decide if you want to hear this in camera or in executive session where it's shielded from the public.

MS. HAZEL: We would have no problem with this evidence being proffered in executive session out of the public.

MS. MOSES: Board Members, you've heard the recommendation come from Ms. Heizer explaining the position that we have before us. The last time we met on June 7th, we did take a motion to take action that we would not hear this, we would keep this in abeyance until the conclusion of the district's case.

So what is the pleasure of the board at this time? Would you like to review this information in executive session? What is the pleasure of the board at this time?

MR. DRAYTON: Madam Chair, I make the motion that we go into executive session to hear the arguments.

MR. BRUNSON: Second.

MS. BOYD: Second.

MS. MOSES: It has been moved by Mr. Drayton, second by Mr. Brunson and Ms. Boyd that we enter into executive session to take this information in executive session.

Are we ready for questioning? All in favor of said motion, please note that by stating aye.

THE BOARD MEMBERS: (Affirmative responses.)

MS. MOSES: Any opposes?

Ayes have it. We will now enter into executive session and we will leave this ruling over to the executive board.

MS. HEIZER: Madam Chair, I think it would be appropriate for the attorneys, including Ms. Hazel, to be present during the executive session.

MR. NICKLES: Do you want me to bring Ms. Toney for purposes of examination, further examination, at this point, or do you want to have Mr. Baldwin available for examination at this point for proffer purposes?

MS. HEIZER: I would foresee the proffer being you, Mr. Nickles, telling the board what this information would be --

MR. NICKLES: All right.

MS. HEIZER: -- if there was testimony so it can be as quick as possible and --

MR. NICKLES: I'd be happy to.

MS. HEIZER: -- get to the point.

MR. NICKLES: Okay.

MS. HAZEL: Mr. Baldwin will be made available if needed in executive session.

(The board entered into executive session.)

MS. HEIZER: Thank y'all. On behalf of the board, I would like to state that no action was taken in

executive session, and I think that the board is prepared at this time to consider a motion to the effect that the information in question has still not been ruled upon as relevant. It was heard -- a proffer was heard in camera. The board continues to reserve the decision on the relevance of the information that was discussed in executive session and to have things move forward this afternoon.

If one of the witnesses wants to reference any of the information discussed in executive session, we would ask that the phrase -- the board would ask that the phrase "Baldwin Facebook pages" be used without any indication that that information actually would be deemed relevant.

And if that is an acceptable motion to the board, if someone would make the motion as I just stated it, then we can get y'all going again.

MS. BOYD: Madam Chair, I offer a motion that it was -- the statement that the lawyer just stated, that we follow moving forward.

MS. BELVIN: Second.

MS. MOSES: It has been moved by Ms. Boyd and second by Ms. Belvin and that we agree to the statement just made by Ms. Heizer regarding the Baldwin Facebook pages, and we will now proceed -- we will proceed if

that is acceptable to the board.

So are we ready for questions? All in favor of said motion, please note that by stating aye.

THE BOARD MEMBERS: (Affirmative responses.)

MS. MOSES: Any opposes?

Ayes have it. Motion is granted.

MR. NICKLES: Madam Chair, I have a question of procedure. We have a collection of documents that are now being referred to as Baldwin Facebook pages. That's Tab 7 in our Exhibit Number 1. May I have the witness look at the content while I ask questions without referring to the specific content of that exhibit?

MS. MOSES: Yes.

MR. NICKLES: All right. Thank you.

Now, do you want me to proceed with my examination of Ms. Toney?

MS. MOSES: Yes.

MR. NICKLES: And with your restrictions on the discussion of the material that we addressed in executive session, I will proceed.

BY MR. NICKLES:

Q. Ms. Toney, look at the material marked as Tab 7 in the notebook in front of you, Exhibit 1. Do you see that?

A. Yes.

Q. Now, did this material -- how did this material come to your attention?

A. It came to me anonymous.

Q. Okay. And how was it -- how did you find it?

A. It was on the floor in my classroom, inside of my classroom.

Q. Did you request that anyone provide this information to you?

A. No.

Q. Did you discuss the content of this document with anyone?

A. Well, I gave a copy to Mr. McDaniel and Dr. Andrews.

Q. Okay. Anyone else?

A. No.

Q. Did you -- did Mr. McDaniel ask you for the document?

A. Yes, he did.

Q. And did you provide it to him in response to his request?

A. Yes.

Q. Now, I'm going to hand you a photocopy of an envelope and ask if you recognize that.

A. Yes.

Q. What does that document represent?

A. This is the front cover of the envelope when I dropped a copy off to Dr. Andrews.

Q. And when you say "a copy," it would be a copy --

A. Face --

Q. -- of the Baldwin Facebook material --

A. Yes, sir.

Q. -- provided to you, correct?

A. Yes. Uh-huh.

MR. NICKLES: I'll have this marked as an exhibit, please.

(Discussion off the record.)

(Respondent's Exhibit No. 1 was marked.)

BY MR. NICKLES:

Q. Now, Ms. Toney, when you received the material we're referring to as Baldwin Facebook pages, did you look at the content?

A. Yes.

Q. Was there anything in the content that concerned you?

A. Yes.

Q. Okay. As a result of that, did you take action to provide a copy to Dr. Andrews?

A. Yes.

Q. And looking at Exhibit Number 1 of today, is that the envelope that you provided the material in?

A. Yes.

Q. Was it a sealed envelope?

A. Yes.

Q. Apart from providing this material in response to Mr. McDaniel's request and providing it to Dr. Andrews, have you given it to anyone else?

A. No.

Q. Did you discuss it with any of your colleagues?

A. No.

Q. It says -- and without referring to the content, it says, "Please read the last page. Seems that a child might be in danger."

Do you see that?

A. Yes.

Q. And without addressing the content, Ms. Toney, if you would turn to page 9 of Tab 7, I would ask, is that the material that gave rise to your concern?

A. Yes.

Q. It says here, "A child might be in danger."

Did you know whether or not a child was in danger?

A. No, I didn't.

Q. Did you feel that you had adequate information to make a child abuse report to anyone based upon this document?

A. No.

Q. Okay. Then what was your purpose in providing it to Dr. Andrews?

A. I wanted her to look into it to see if maybe there was a reason to investigate this.

Q. Okay.

A. Because when I saw the first statement, "But I'm a student" --

Q. Okay. Don't --

A. I'm sorry.

Q. Don't talk --

A. I'm sorry.

Q. Don't talk about --

A. I'm sorry.

Q. -- the content.

A. I'm sorry. I won't do that. I promise.

Q. Now, once you provided it in response to Mr. McDaniel's request and provided a copy sealed to Dr. Andrews, did you post this on the Internet or anything like that?

A. No.

Q. And were you a Facebook friend of Mr. Baldwin?

A. No.

Q. Do you have a Facebook page?

A. No. I've never had any -- any type of activity as far as Facebook. This is my first experience with Facebook.

Q. Okay. Did you solicit this information from anyone?

A. No.

Q. Did you believe that you were doing anything contrary to the instructions of Mr. Webb or Mr. McDaniel when you alerted Mr. McDaniel to the receipt of this information?

A. No. I . . .

Q. Did you feel that you were doing anything contrary to the interest of the district?

A. No. I felt like I was following the directive by not saying anything to anyone, but I had to say something about this last page. And I went to Mr. McDaniel -- I didn't take this to him. He came and asked me for it.

Q. All right. And when you say the "last page," it is page number 9 of Tab 7; is that correct?

A. Yeah. Yes, sir.

Q. Ms. Toney, if you would look at --

MR. NICKLES: Is there a question?

MR. BOYKIN: I would object if I did.

MS. HEIZER: I think one of the board members has a question for clarification.

MR. NICKLES: Yes?

MR. DRAYTON: You were stating that page 9 is the last page.

MR. NICKLES: When it was delivered. These have been reorganized in chronological order by my office.

MR. DRAYTON: Oh, okay.

MR. NICKLES: Okay?

MR. DRAYTON: All right.

BY MR. BOYKIN:

Q. Just for clarification, Ms. Toney, these are not in the order in which they were distributed to you, correct?

A. Right.

Q. When they were distributed to you, what is now page 9 was the last page?

A. It was the last page, yes.

MR. NICKLES: And I apologize for the confusion. It was my attempt to put things in order. Sorry if it caused a problem.

BY MR. NICKLES:

Q. Now, Ms. Toney, did you receive a letter

dated October 4, 2014, I believe?

A. Yes.

Q. It's Tab 9 of the material in front of you.

A. Yes.

Q. And is this the information provided to you by then-assistant superintendent for personnel placing you on administrative leave?

A. Yes.

Q. Now, did you share any personal information with any other staff members about Mr. Baldwin?

A. No, I did not.

Q. Did you share any personal information with any students?

A. No.

Q. This says that you are not to visit the Lee County facility, utilize any school equipment to communicate, and you are not to contact fellow employees of the Lee County School District. You see that?

A. Yes.

Q. Did you violate any of those directives?

A. No.

Q. Did you initiate any contact with any students?

A. No.

Q. Did you initiate any contact with any

employees?

A. No.

Q. Did you have communication while on administrative leave with a board member?

A. Yes.

Q. And describe that communication, if you will.

A. I informed a board member that my students did not have a certified teacher in the classroom.

Q. How did that come to your attention, Ms. Toney?

A. My students told me.

Q. Did you solicit that information from them?

A. No. I see my students all the time. They come up to me in the supermarket, everywhere.

Q. So did the students say they didn't have a certified teacher, they weren't learning anything?

A. They said, "Nothing's being done in the classroom."

Q. Did that concern you?

A. Yes, it did.

Q. Now, what did you -- what actions, if any, did you take, as a result of receiving that information from your students?

A. I spoke with Ms. Boyd.

Q. Spoke with -- let's just say a board member.

A. A board member.

Q. And what information did you share with that board member?

A. I informed her that the students were complaining -- I told her I was on administrative leave and students were complaining about not having a certified teacher in the classroom. Well, they said they're not doing anything. And they kept asking, "Ms. Toney, when are you coming back?"

Q. Were you attempting to violate the directive of the superintendent --

A. No.

Q. -- in sharing that information with the board member?

A. No. This board member would not even allow me to say anything about my case.

Q. Did you intend to say anything about your case?

A. No.

Q. Were you trying to influence the board member in any way?

A. No.

Q. Now, after you had that communication with that board member, did you receive any -- did you receive any contact from the superintendent or anybody telling you, don't do that?

A. Yes. I had a conference with Dr. Andrews shortly after that, and she accused me of being insubordinate.

Q. Now, did you -- did you have any other communication with a board member other than the one occasion you described to me?

A. No.

Q. Did you lay eyes on a board member during this period of administrative leave other than on that one occasion?

A. Well, I see them, you know --

Q. Okay.

A. -- from time to time.

Q. Okay.

A. Uh-huh.

Q. Did you express condolence for a board member's loss?

A. Yes.

Q. Did you do that in your personal capacity, not as a teacher?

A. Right.

Q. Okay. At any time, have you asked any board member for any favor or attempted to influence any board member with regard to this matter?

A. No.

Q. After the superintendent indicated to you that she objected to your communication with the board member, did you violate that in any way?

A. No.

Q. If you had been told not to talk to a board member on October 4th, would you have obeyed that?

A. Oh, yes.

Q. Did you consider your communication with the board member a violation of the superintendent's directive?

A. No. The letter says employees. School board members are elected officials.

Q. Okay. If you will, turn to Tab Number 10 of the material in front of you. Did you have a meeting with Dr. Andrews, Mr. McDaniel, and Ms. Vaughn on or about the 22nd of October?

A. Yes.

Q. Did you later receive notes, which have been identified as Ms. Vaughn's notes, of that meeting?

A. Yes.

Q. So these notes in Number 10 are not your own; it's Ms. Vaughn making a record of that meeting?

A. Right.

Q. There is an allegation here that you took action to distract students and to talk to students

about Facebook information. Did you ever do that?

A. No, I did not.

Q. Did any student attempt to communicate with you about the Facebook?

A. This Facebook was open to the public. A lot of students had access to it. It was not private until Dr. Andrews coached Dr. Baldwin into making it private.

Q. My question is: You didn't approach any student, correct?

A. No. The student approached me.

Q. Okay. Now, it says in this October 22 meeting you were asked the question by Dr. Andrews, "Why didn't you take the information to Mr. McDaniel?"

You did that, didn't you?

A. Yes. I informed him there is some inappropriate posting on Mr. Baldwin's Facebook.

Q. Okay. If you look at the third page of this, you indicated in your meeting with Dr. Andrews that no one could say that you talked to Mr. Baldwin -- talked about Mr. Baldwin to them. Do you stand by that?

A. Oh, yes.

Q. At no time before you received your termination notice did you involve any faculty member in this?

A. No.

Q. If you would look at the fifth page of this, it says -- it says, "You are going down a path that will lead to a bad end. SCEA won't save you."

Do you see that?

A. Yes.

Q. Did you feel that Dr. Andrews was trying to intimidate you?

A. Yes. She said, "Are you going to resign or you're going to be terminated, because if you don't resign, you will be terminated."

Q. Now, does Dr. Andrews have the authority to terminate you?

A. No, but she -- she made it clear. She said, "I know what I'm doing." She said, "I know personnel like the back of my hand. And if you don't resign, I promise you, you will be terminated and it would be difficult for you to find a job because they will call me," she said.

Q. Now, in this meeting, I see that you were there, Dr. Andrews, Mr. McDaniel, and Ms. Vaughn were there.

A. Yes.

Q. So it's three against one?

A. (Witness nods head.)

Q. Is that right?

A. Yes. Yes.

Q. Was anybody there with you?

A. No. She did not allow me --

MR. BOYKIN: Object to the characterization. These are all district employees. Each have a job to do. This notion about three against one is an unfair characterization, and I object to it.

MR. NICKLES: I'm trying to point out -- the board members can count who was in that meeting.

MR. BOYKIN: You're -- and my colleague is absolutely right. The board members can count, and we don't need the characterization "three against one."

BY MR. NICKLES:

Q. Were any of those folks in there on your side?

A. No.

Q. Okay. After that meeting on the 22nd of October, if you turn to Tab Number 11, did you receive a certified letter --

A. Yes.

Q. -- telling you that you had been recommended for termination?

A. Yes.

Q. And did this certified letter also go to the chairman of the board?

A. Yes.

Q. And to your principal?

A. Yes.

Q. And to the personnel file?

A. Yes.

Q. And to the director of human resources and communication?

A. Yes.

Q. So looking at this letter, did you understood -- stand that this was the reasons -- based after this conversation you had with Dr. Andrews, the reasons she was recommending you be terminated?

A. She kept changing her reasons.

Q. Well, was this a reason at that time, as best as you knew?

A. Well, during the meeting, she said insubordination, conversation with a board member, engaging students in Facebook.

Q. Okay.

A. And I -- I -- I never engaged a student in the Facebook. The student that she was referencing to did not even have services on his phone.

Q. Now, Ms. Toney, did you discuss a faculty member's personal information with other employees and students?

A. No, I did not.

Q. Did you use a student's cell phone to access a social media account?

A. No, I did not.

Q. Did you instruct a student to refuse to cooperate with the administration?

A. No, I did not.

Q. Now, it says here that you -- there are other incidents of unprofessional conduct. Did this letter explain to you what those were supposed to have been?

A. No.

Q. This letter reference anything back in 2006?

A. No.

Q. Was Dr. Andrews here in 2006?

A. No.

Q. Let's look at the Tab Number 12. This is a letter, December 18, 2013. This is, what, almost two months after you were given notice of termination?

A. Yes.

Q. Had anything been going on during that period of time, been -- documents produced and people having their depositions taken?

A. I don't believe so. No.

Q. Okay. If you look at this letter, this also says it's to the board chair and to Dr. Vaughn. Do you see that?

A. Yes.

Q. Now, it says, again, "You discussed personal information with other employees."

You see that?

A. Yes.

Q. Did you do that?

A. No.

Q. Did you attend Dr. Andrews' deposition?

A. Yes.

Q. Did she identify any individuals you're supposed to have talked to?

A. She said I gave the Facebook to the secretary at the school --

Q. Did you do that?

A. No.

Q. Now, after Mr. Webb told you to leave it alone, did you go out and stir things up?

A. No.

Q. Okay. Did you ask for the Facebook information?

A. No.

Q. When you got it, did you show it to your friends?

A. No.

Q. Did you put it on your bulletin board?

A. No.

Q. Did you give it to students?

A. No.

Q. Ms. Toney, it says that your personnel file reveals other incidents of unprofessional conduct. Well, and we saw this letter from 2006. Now, you don't remember receiving that, right?

A. No.

Q. Okay. Did this letter tell you what those alleged incidents were?

A. No. I -- at this point, I was just confused because Dr. Andrews kept changing her reasons for terminating me.

Q. Did they -- did the letter tell you when --

A. No.

Q. -- these things were supposed to have occurred?

A. No.

Q. And who was supposed to have been involved in them?

A. No.

Q. It says that you had a lack of candor with the administration. Did you try to mislead the administration in any way?

A. No. The conference I had with Dr. Andrews, I think it was Oct- -- September 27th, I was telling the

truth. Dr. Andrews was very accusatory. She was condescending and intimidating. It was a very, very bad experience.

Q. Now, you have been asked a bunch of questions about an e-mail that you sent to Ms. Fowler following an observation. Do you remember those questions?

A. Yes.

Q. Now, did you object to Ms. Fowler observing your classroom activity?

A. I didn't object to her being there, but I objected to her coming into my classroom and writing something that was inaccurate.

Q. Okay.

A. I --

Q. What did you immediately do when you saw what you perceived to be an inaccuracy? What did you do?

A. I wrote a response to it. Whenever someone writes something about me that is not true, I do a response. And that's what I did.

Q. Now, did you send it to the superintendent?

A. Oh, no.

Q. Okay. Did you send it to the principal?

A. No.

Q. Okay. Just to Ms. Fowler and to Ms. Addison, correct?

A. Yes.

Q. And that's even though Ms. Fowler's criticism of you went to the principal; isn't that right?

A. I didn't send it to the principal.

Q. All right. But she did. You sent it just to her and Ms. Addison, correct?

A. Right. Uh-huh.

Q. Did you have any conversation with Ms. Fowler after this incident?

A. Yes. We conferenced [sic] and we resolved it.

Q. Okay.

A. Everything was resolved.

Q. Did you think it was resolved?

A. Yes, it was.

Q. Was that -- that supposedly happened on the 17th of September. Did anybody make any mention of this to you on the 18th? The 19th? The 20th?

A. No.

Q. Any time while you were at school?

A. No.

Q. Mr. Webb, Ms. Addison, they didn't come to you and say, gee whiz, Ms. Toney, we think you're being insubordinate here?

A. No.

Q. You didn't get any response to it?

A. No. None.

Q. Now, have you had the occasion to communicate with Ms. Addison by e-mail about things like supplies?

A. Yes.

Q. Do you have to give tests sometimes?

A. Yes.

Q. Do you need to have material to copy your tests?

A. Yes.

Q. And have you -- is Ms. Addison the proper person to address that request to?

A. Yes.

Q. Have you been insubordinate in asking for these materials?

A. No. I -- I asked several times for some ink for my printer.

Q. Okay.

A. So I just e-mailed her and told her I needed some ink for my printer. And -- and -- and this was in-house. None of this was in my personnel file. It was just in-house correspondences.

Q. Did Mr. Webb ever tell you that he was dissatisfied with your instruction as a teacher?

A. No.

Q. How long was he your principal?

A. Two years.

Q. Did Ms. Addison ever tell you she was dissatisfied with your instruction as a teacher?

A. No.

Q. Now, did Ms. -- did Dr. Andrews ever come to your classroom and tell you that she was dissatisfied with your performance as a teacher?

A. No.

Q. In looking at this letter, these letters that you've been sent, were you given any warning that you were poorly performing and you needed to correct your actions or anything like that?

A. No. Like I said, these -- these were just in-house correspondences that a lot of teachers get.

Q. Okay. Well, I mean, do you recall Mr. Webb saying he thought he got along good with you?

A. Oh, yes. We had a very good working relationship.

Q. Did you share that? Did you believe you got along well with him?

A. Oh, yes.

Q. Let's look at this -- trying to bring up this stuff from 2011/2012 school year about comprehensive health. Do you remember that?

A. Yes.

Q. There's a letter here, a memo to Mr. Webb, Mr. Howard [sic], Ms. Addison, and Mr. Turner, about comprehensive health. Why did you write that?

A. Because they were in violation. I taught comprehensive health for years. And at the beginning of each year, you have to send a consent form home to the parents to give me permission to teach. And I was just letting Mr. Webb know.

I've already had a conference with him, I had already brought it up to him in the hallway, and he did nothing, so I decided to go ahead and put it in writing because I was confronted by a parent, I believe, in Food Lion. And she questioned me on what I was teaching in my classroom.

And during that time, I was teaching the male reproductive system, and I had to put a picture of a penis -- it was -- I mean, and the parent said, "Well, I don't want my child to know that. It's my job to teach my child about sex." And that's when I really went to Ms. -- Mr. Webb, "You have to get approval."

Now, when Ms. Betty Pearson was there as administrative assistant when I was teaching this course, every year at the beginning of the school year before those students were even placed in comprehensive health, she would make certain that she had consent

forms, and she would give me a copy of it and keep a copy for her records. But the parents would sign it saying it's okay to teach the comprehensive health. Mr. Webb, Ms. Howard, none of the administration this year gave me the forms to send home. And --

Q. Now, Ms. Toney, were you trying to be insubordinate?

A. Oh, no. No.

Q. After you sent this letter, did Mr. Webb or Ms. Howard or Ms. Addison or Mr. Turner tell you that they didn't appreciate it?

A. No.

Q. Okay. Did they tell you that you were being insubordinate or you were not doing your job?

A. No.

Q. Now, I see that this is dated March 28, 2012?

A. Yes.

Q. If you'll look at Exhibit Number 1, Tab 1 in our exhibit, the very first page in there.

A. Uh-huh.

Q. That's a contract for the 2013/'14 school year; is that right?

A. Yes.

Q. What's the date that you signed that?

A. April 22nd, 2013.

Q. Now, does April come after March on the calendar?

A. Yes.

Q. So after this letter, memo, that they're making a big fuss over was issued, you were given a contract, weren't you?

A. Yes.

Q. Anybody tell you at the time that you were stepping out of line?

A. No.

Q. And you indicated in responding to Mr. Boykin that you got some memos from Mr. Webb about being late a time and then missing a --

A. On -- on --

Q. -- faculty meeting; do you remember that?

A. On that particular morning -- if you're going to be absent, you have to call before 7:00. On that particular morning -- I always leave home around 7:15 -- I noticed I had a flat tire, so I called in. It was not my intent to be absent that day. So I wasn't absent, but I got to work but I got to work late.

Q. Now, did you -- these things happened last school year, is that right --

A. Right.

Q. -- the year before this?

A. Yes.

Q. So look at the -- let's see. February 13, 2013, that's before April, isn't it?

A. Yes.

Q. That's when you had the conference with the parent, and they complained and Mr. Boykin complained about your conduct there?

A. Yes.

Q. Did Mr. Webb indicate at that time that he was going to send anything to your personnel file or he was going to recommend your nonrenewal or termination of employment?

A. No.

Q. In fact, this memo was not in your personnel file, was it?

A. No.

Q. And September -- well, let's go to this. Back in May of this year, when they say you didn't enter your fourth quarter grades on time -- back in May of 2013, last year, do you remember getting that unsigned document from Mr. Webb?

A. Yes.

Q. And did you talk to him about it, explain what had happened?

A. Yes. I was having computer problems in my

classroom.

Q. Did he ever follow up and say, I don't believe you or I'm going to fire you or anything like that?

A. No. And these were interim progress reports. These were not nine-weeks' grades. And my computer sometimes would kick the grades out if I put it in. I would save it -- and Ms. Getty (ph) in the guidance department can attest to the fact that every time it's time for me to put in my grades, she would have to assist me with my computer because my computer was acting up. I've never been late putting in grades before.

Q. Did Mr. Webb --

A. This is a one-time --

Q. -- tell you --

A. -- thing that --

Q. Did Mr. Webb tell you that he didn't accept your explanation?

A. He did, because he knew I was having problems with my computers.

Q. He did accept your explanation?

A. Oh, yes. Uh-huh.

Q. Other teachers from time to time --

A. Oh, yes.

Q. -- have had similar problems?

A. Yes, yes.

Q. I believe you had a flat tire back in May of 2013?

A. Yes.

Q. Did you know in advance you were going to have a flat tire?

A. No. 26 years, one flat tire.

Q. Did you get to work that day?

A. Yes.

Q. And after Mr. Webb sent you this unsigned thing about not being there at 7:00 a.m., did you explain it to him?

A. Yes.

Q. Did he accept your explanation?

A. Oh, yes.

Q. Was that made a part of your personnel file?

A. No.

Q. Now, Ms. Toney, how long have you been away from your students?

A. The entire school year.

Q. Since October 4th?

A. Yes.

Q. Have you wanted to go back every day?

A. Oh, yes.

Q. Do you feel that you have something to contribute to this district?

A. My students were doing so well. We were -- we had just completed Standard 3. And I had them motivated. And all of a sudden, I was pulled out of an EOC class.

Q. Explain what you mean by that.

A. It's end of course. They were going to be tested on that particular subject, U.S. history, and I was pulled out. And until today, I'm dumbfounded. I don't understand why I was pulled out. And then, to make matters worse, a substitute teacher was placed in that classroom in EOC. Now, if you really have concerns for the students and you have the students' best interest at heart, this is an EOC class. U.S. history is at the bottom. And we have --

MR. BOYKIN: Madam Chair --

A. We have --

MR. BOYKIN: -- I'm going to object. I mean, she can answer his question. I mean, she'll get a time -- if he wants to tell her to make a statement, you can tell her to make a statement, but, you know, this speechifying, I think, is not responsive.

MR. NICKLES: I asked the witness how it affected her and did she miss teaching. I think this is

responsive to that question.

MR. BOYKIN: All due respect, her saying if somebody had some concern has nothing to do with how it affected her. That's speechifying, Madam Chair.

MS. MOSES: Board Members, do we have consensus on sustaining the objection?

THE BOARD MEMBERS: (Affirmative responses.)

MS. MOSES: Consensus.

BY MR. NICKLES:

Q. Let me ask you this, Ms. Toney. Did it frustrate you that you were not able to teach your students?

A. Oh, yes.

Q. Do you continue to want to teach in this district?

A. Oh, yes.

Q. Why?

A. This is home. I have a personal interest in Lee County. I was born and raised here. My parents, my brothers, and the -- one of the saddest things, I couldn't see my students walk across the stage this year. First time in 20-something years, I was denied the opportunity. I had these kids since eighth grade. And I was told I couldn't even go in the building to see my students walk across that stage and receive their

diplomas. I had to see them -- when I see them at McDonald's, I always stop and talk to them.

Q. Do you want to return to --

MR. BOYKIN: Object.

A. Yes.

MR. BOYKIN: Seeing them at McDonald's is not responsive to his question as to why she wants to come back here and teach. She's continuing to do that. She -- she certainly has a right to defend herself, but getting this far afield is inappropriate under the circumstances, Madam Chair.

MR. NICKLES: Madam Chair, I asked her why she wants to come back and teach. Her students take the initiative to come see her even when she's not teaching them. I think it illustrates part of the reason why she feels a dedication to this profession and why she wants to come back and participate actively in this district. So I take exception to the characterization here that it's not responsive.

MS. MOSES: We understand that you're trying to prove a point, Mr. Nickles, but we would ask that you kind of move this along for us, please.

MR. NICKLES: Well, with all due respect, we've been here for quite some time, and I think that I've been economical in my examination of this witness,

particularly in comparison to some of the earlier direct examinations; but I understand the need for speed.

MS. MOSES: All due respect, Mr. Nickles, that's the same way that we feel as well. We're trying to be accommodating. Thank you.

BY MR. NICKLES:

Q. Do you believe that you can be effective if you return to employment in this district?

A. Yes.

Q. Are you willing to work with Dr. Andrews and the other individuals who would be responsible for supervising your performance as an employee?

A. Yes.

Q. Have you done anything, Ms. Toney, intentionally, to not follow a directive by a supervisor concerning when you discovered or is provided to you the material we've identified as the Baldwin exhibit?

A. No. I really felt that I was doing the right thing when I gave it to -- I put it in the hands of Dr. Andrews and Mr. McDaniel.

Q. All right.

A. And Mr. McDaniel, again, he asked for it. I did not take it to him. He came to me.

Q. Is --

A. Had I not given it to him, it would have been

insubordination.

Q. Is there anything --

A. And then if I gave it to him, then it's still insubordination. I don't understand.

Q. Is there anything that you would like to say to the board concerning your recommended termination from employment?

A. This has been one of the hardest things I've done since --

MS. FITTIPALDI: Do you want a tissue?

THE WITNESS: I'm sorry.

MS. FITTIPALDI: It's okay. Have some water.

A. The embarrassment; the humiliation; the emotional distress; being intimidated, telling me if I don't resign, I will be terminated; and the whole time I'm wondering what did I do so wrong to warrant the way I was being treated. I was dragged for nine months. And I'm still thinking I'm going to wake up and find out this is just a dream, a bad dream, but I know it's not.

Just months ago, Dr. Cleo Richardson wrote me a note before he left telling me how proud he was of me, he and the district, because I was inducted into the International Honor Society at Francis Marion University, the only African-American. A few months later, I'm on administrative leave for turning in some

documents where I thought a student was in danger.

And, again, I felt that I didn't do it just not to follow the directive. He came down to my room and asked for it.

I'm asking that the board will please consider what I'm saying because I love Lee County, I love teaching here, I love the students, and this is home for me. The last nine months, I can't describe the emotional distress that I've undergone. The whole time I'm being asked to resign, but I had to take a stand. Why resign when I know I didn't do anything wrong? If I was trying to hide something, of course I would have resigned and moved on.

MR. NICKLES: Thank you.

MS. MOSES: Mr. Boykin, do you have any questions?

MR. BOYKIN: Madam Chair, unless the board is pressed, I would ask that the board take a lunch break or let folks take a lunch break and we could make that decision. It won't add to the time one way or the other, but at least folks could have a chance to react -- to relax for a few minutes. So that's what I would ask, unless there's an objection.

MS. MOSES: Thank you, Mr. Boykin.

Board Members, it is about that time when we

need a break. Are we in consensus with taking a 45-minute lunch break?

MR. NICKLES: Madam Chair, I would just suggest to you that Ms. Toney has been on the stand for a long time. To delay the few final questions that Mr. Boykin may have so that we can be convenienced by lunch, I think, is not appropriate, and I would ask that the examination of this witness conclude.

MS. MOSES: Mr. Boykin, do you have any questions?

MR. BOYKIN: With all due respect, Madam Chair, and I will continue with that -- beg the board's indulgence.

Let me --

MS. MOSES: And I just want to clarify something, Mr. Boykin.

MR. BOYKIN: Yes.

MS. MOSES: On behalf of the board of trustees, we're not taking a lunch to convenience the board. We're taking lunch to give everyone an opportunity to relieve themselves, because we've been here for quite some while. So that's the only offer we have for lunch, but if you have any questions for redirect, you may continue.

MR. BOYKIN: Yes, I'll have questions, but I

have a case, a rebuttal case, so I could still call her if I need to call her. And so this hearing is ongoing from that standpoint. So whatever relief she finds here, I'll be more than happy to give it to her.

REDIRECT EXAMINATION

BY MR. BOYKIN:

Q. With regard to the packet of material, whose decision was it to give that material to Dr. Andrews? Did she ask you for it?

A. No.

Q. Okay. She didn't ask you for it.

When you gave the material to -- when you talked to Mr. McDaniel about it, did he ask you did you have some material or did you go to him and say, oh, look what I have?

A. I never did show him anything.

Q. But you went to him -- you approached him to tell him what you had; is that correct?

A. I told him that there was some inappropriate postings on Mr. Baldwin's Facebook.

Q. But did he tell you to give it to Dr. Andrews?

A. No.

Q. That was a decision you made on your own, isn't it?

A. Yes.

Q. Okay. Now, we have a copy of what you said to Dr. Andrews in the -- but we don't have a copy of what you gave to Mr. McDaniel, do we?

A. The Facebook -- they received --

Q. Do we have a copy of the envelope that this mysterious material appeared in?

MR. NICKLES: Object to the form. Characterization.

A. Oh, God, help me. Jesus. Jesus. No.

BY MR. BOYKIN:

Q. We don't have a copy of that?

A. No.

Q. Okay. And what time of morning did that material appear?

A. It was when I entered the classroom.

Q. Okay. And you're absolutely sure that during the time when you were on administrative leave that the teacher was not certified?

A. Yes.

Q. Okay. And you were sure of that because the students told you?

A. Well, I knew Ms. McDaniel was not certified.

Q. And that's who taught the class the entire time; is that your testimony?

A. She was there for a -- no -- a couple weeks.

She was in and out throughout the entire school -- first semester.

Q. So you are objecting to her being in and out? Is that your objection?

A. My problem is that was an EOC class, and they needed someone there. It was no stability in that classroom. Sub- -- I came in beginning of the school year, substitute teacher, Ms. Fowler, then another substitute teacher, and then Mr. Peyton. That's an EOC class. Those students needed stability.

Q. Well, did you think about the students when you had the student removed from your class when you became irate with the student's mother? Did you think about that student?

A. I did not have the student removed from my class; the parent removed the child from my class.

Q. Did you talk to the parent and say, I'm a good teacher, why don't we just keep this child in my class, because I can help this child?

MR. NICKLES: I think Mr. Boykin's --

A. Oh, God --

MR. NICKLES: -- theatrics --

A. -- Jesus, help me.

MR. NICKLES: -- need to be --

A. Jesus, help me.

MR. NICKLES: -- toned --

A. Lord Jesus.

MR. NICKLES: -- down, Madam Chair.

A. Jesus.

MR. BOYKIN: I think Mr. Boykin should be allowed, Madam Chair, to try his case.

A. Jesus. Jesus. Jesus. Jesus.

MR. BOYKIN: Mr. Nickles stood up here like an undertaker --

A. Jesus.

MR. BOYKIN: -- I didn't complain.

A. Jesus. Jesus.

MR. BOYKIN: Withdrawn. I apologize.

A. Jesus. Jesus.

MR. BOYKIN: Beg the board's indulgence.

A. Jesus.

BY MR. BOYKIN:

Q. Ms. Toney, how long had you been a schoolteacher?

A. About 26 years.

Q. About 26 years. When did you know that you had a personnel file as a schoolteacher?

A. From the beginning.

Q. From the beginning. Did you know that that file included information about you?

A. Yes.

Q. Oh. How often did you review your personnel file?

A. I've never reviewed my personnel file.

Q. Okay. You knew that there was a file with information being kept on you regarding your performance relationship with the district; is that correct?

A. Yes.

Q. But you never reviewed the file?

A. No.

Q. So in 26 years, the only time you reviewed your personnel file was when there was a recommendation for termination of your employment?

A. Yes.

Q. Okay. All right.

MR. BOYKIN: Thank you. No further questions for the witness at this time, but of course, reserve the right to call during my rebuttal case.

MS. MOSES: Okay.

Mr. Nickles?

RECROSS-EXAMINATION

BY MR. NICKLES:

Q. Ms. Toney, in those 26 years that Mr. Boykin made reference to, did you have any reason to think that there was manufactured information in your personnel

file?

A. No. Huh-uh. Lee County always had problems, but we always had competent people in the district office. I never did feel the need to check my personnel file.

Q. And, for the record, you didn't go to the district office to check your personnel file; your lawyers asked for your personnel file, correct?

A. Yes.

MR. NICKLES: Okay.

MS. MOSES: Thank you. Board members, do we have consensus now to take a 45-minute break to allow everyone an opportunity to relieve themselves and get something to nourish themselves?

THE BOARD MEMEBERS: (Affirmative responses.)

MS. BOYD: Consensus.

MS. MOSES: Thank you.

(A lunch break transpired.)

MS. MOSES: Welcome back to our hearing. Before we turn it back over to Mr. Boykin, if we do not conclude today, I just want to go ahead and make everyone aware that the board is considering July 8th, which is next Tuesday, for reconvening if we do not conclude today. And we're looking at the time of about 1:00 p.m.

MR. BOYKIN: Does July 8th work for you?

MR. NICKLES: Yes.

MR. BOYKIN: Okay.

MS. MOSES: And, Mr. Boykin, you can begin whenever you're ready.

MR. BOYKIN: I call Dr. Andrews.

DR. WANDA L. ANDREWS, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BOYKIN:

Q. Dr. Andrews, would you state your full name for the record, please.

A. Wanda Lester Andrews.

MR. BOYKIN: Madam Chair, I know this is for recording purposes, but this -- does this amplify as well? Does anyone know?

Because I don't mind her having the microphone. As was pointed out to me in the last hearing, my voice carries.

MS. MOSES: I'm trying to see if they're on.

THE WITNESS: And I can speak louder. I don't have the loudest voice, but can you hear me?

MR. BOYKIN: Yes, I'm hearing you.

MS. HEIZER: I don't think it's amplifying, so I don't think it's --

MR. BOYKIN: Okay. It doesn't matter. Okay.

MS. MOSES: No, it's on.

MR. BOYKIN: I'll assume there's no objections to this?

MR. NICKLES: None from me.

MR. BOYKIN: It's on now.

THE WITNESS: Is this better?

BY MR. BOYKIN:

Q. Dr. Andrews, would you briefly tell the board about your educational background, please.

A. I am a graduate of Lander University with a B.S. in elementary education and a graduate of South Carolina State University with a master's in special education and a graduate of Nova Southeastern University and -- with a doctorate in educational leadership.

Q. Okay. Where are you currently employed?

A. Lee County School District.

Q. And what position do you hold at Lee County School District?

A. I'm superintendent for Lee County Schools.

Q. And how long have you been employed in Lee County School District?

A. July 9th I -- will be my first year, completing my first year.

Q. How long have you been an educator,

Dr. Andrews?

A. For approximately 33, 34 years.

Q. Prior to your employment with Lee County School District, where were you employed.

A. I was employed in -- assistant superintendent for personnel and student services in Spartanburg School District Seven.

Q. Okay. I'll address the duties of a superintendent in a minute, but tell the board what your duties were as assistant superintendent for personnel and student services.

A. For assistant superintendent for personnel, I was responsible for, first of all, all of the records, training, teacher and principal evaluations, teacher certification, the hiring, the recommendations for dismissal, facilitating and processing -- you know, processing all of that. And a lot of interviewing, a lot of visiting classrooms. The handbook for the district and the policies that addressed personnel. Just the celebrations. Just about anything you can name falls under that office.

Q. Okay. And how long were you in that position, Dr. Andrews?

A. I was in that capacity for five years.

Q. Prior to your work in Spartanburg, had you

done any work in human resources in a school district before?

A. Yes. I served as director of personnel in Sumter School District Two for two years and then as deputy superintendent for personnel and student services for one year. So a total of three years in Sumter and five years in Spartanburg.

Q. Okay. In your experience as an educator, had you ever served as a building principal?

A. Yes, I have.

Q. And when was that?

A. I served as principal of High Hills Elementary School in Sumter School District Two for about eight years, and I think that tenure began in 1996.

Q. Okay. Well, you've done -- were you ever a classroom teacher?

A. Yes, I was, prior to that.

Q. Okay.

A. I actually taught one year at Shaw Heights Elementary School in Sumter School District Two and taught for six years for Department of Defense schools in Spain and Germany.

Q. Now, as superintendent of schools in Lee County School District, where are your duties?

A. They are vast and widespread, but ensuring, number one, the priority that our students are receiving the best education academically; and ensuring the safety of personnel, of staff, of teachers; ensuring that training continues for everyone; the goals that we've established going forward, making sure they're met. I'm responsible also for the budget, for prioritizing what the needs are, for communicating with the board and making sure that, you know, we are all on the same page for communicating with the community; principals, their training, their evaluations; and especially for what happens to children in this school district.

Q. Okay. Dr. Andrews, briefly tell the board the areas in which you are certified to work in education. You hold a certificate; is that correct?

A. I do.

Q. And with that certificate, what areas are you certified to work in?

A. I am a certified superintendent, a certified principal, a supervisor of elementary schools. And I believe that's -- those are the only endorsements on my certificate.

Q. Okay. As an educator, have you ever had any disciplinary actions asserted against you, Dr. Andrews?

A. I have not.

Q. Have you ever been either terminated from a position or asked to resign from a position as an educator?

A. I have not ever been terminated, nor have I been asked to resign.

Q. As superintendent of schools in Lee County, do you have access to personnel files in the district?

A. Yes, I do.

Q. Okay. Dr. Andrews, tell the board what purpose the district would have for keeping personnel files.

A. Okay. First of all, with the hiring process, it establishes that you have done due diligence to the background check, that you've looked at this person, that they are certified, and all of these initial materials are there establishing a record for that person. And then the record is maintained because it establishes the history, how that person has worked within the school district, if there are any reprimands or significant letters or anything that speaks to their performance. And they can be letters of, you know, we're excited about what you're doing, congratulatory letters, and, of course, anything that addresses any type of reprimand or behavior.

Q. Okay.

A. But it is a history that stays with, you know, that school district and just establishes what that employee is like as a teacher or whatever position they hold.

Q. Is there any reason which requires a school district to maintain certain documents in a personnel file in -- that you know of?

A. Yes. Certain documents have to be maintained. Like, for example, the teacher's license, if -- with your hiring, the application, the background check is required. You know, the things -- the references, all of what we put there, the clearance from DHEC saying that this person has had a tuberculin test, all of that is part of, you know, what we keep in our school district.

Q. What about disciplinary actions, Dr. Andrews?

A. Disciplinary actions are also kept in -- or are a part of the personnel file.

Q. Okay. What is the overall mission, as you understand it, of the Lee County School District?

A. In general terms, the overall mission would simply be to ensure that the students of the district receive a quality education and that when they leave this school district, that they are prepared to -- for college or the workplace, and, more importantly, to be

good citizens of the community.

Q. Do you know Ms. Laura Toney?

A. I wouldn't say that I know her. I do know who she is, and I do know that she is a teacher. To say that I've spent time with her personally to really know who she is, no.

Q. Okay. Tell me, have you met Ms. Toney?

A. Yes, I've -- I have met Ms. Toney. I have had the opportunity to have several conversations with her. Unfortunately, they were all unpleasant toward the end of her being here. So I have talked with her and met with her.

Q. Do you recall your first meeting with Ms. Toney after you began working with the district?

A. I believe she came over to -- for some reason, she introduced herself to me. She also invited me to stop by Staples, which I did, because The SCEA was going to be there. If I recall correctly, she came to just talk with me, nothing serious at that time. That was my first encounter with her.

Q. Okay. Do you have any recollection of Ms. Toney raising allegations or claims about anything that was happening at the school where she was assigned?

A. She did contact me and she told me -- and she began to e-mail me as well, but she told me about a

situation where the high school had homeroom times and she felt it was unfair to her that certain teachers didn't have the homeroom class. She also stated that she had more students than the other teachers, that her class size was larger; however, that was not true when I asked for the class schedule.

I also heard her testify that I did something about the homeroom. The homeroom changed because academically we are not where we need to be and our students need more time for learning, and we just turned that time in the schedule for tutoring, flexible grouping, and an academic focus.

Q. Okay. When Ms. Toney raised her concern with you about the use of the homeroom period, did she raise it within the context of what was happening with students or did she raise it in the context of what she thought was happening to her?

A. She raised it in the context of what was happening to her.

Q. Okay.

A. And she stated that Ms. Addison was showing favoritism towards her friends, but that was not the case. They did establish homeroom for the purpose of some announcements and other things that -- information they would be sharing with students, but it was not

outlined as Ms. Toney said. But we always have to be mindful of how we use time during the school day.

Q. Did you have occasion to meet with Ms. Toney again about anything?

A. Yes, because Ms. Toney left a packet on my desk. I was away, and when I got in that evening, I saw the packet that she left me. So I called the principal who was --

MR. BOYKIN: Madam Chair, I'm going to approach. Do you have Exhibit 1?

THE REPORTER: The ones that were there earlier, somebody got them. I didn't get them back.

MR. NICKLES: Here you go, Charles. Is that what you're looking for?

MR. BOYKIN: Why don't we just put them over there?

MR. NICKLES: All right.

MR. BOYKIN: Thank you, Al.

MR. NICKLES: Sure.

BY MR. BOYKIN:

Q. Okay. I'll hand you Defendant's Exhibit 1, I believe. Could you identify that document for us, please?

A. It looks like a copy of what she had on the packet that she left for me.

Q. Okay.

A. In my office.

Q. Is it -- did the packet contain information?

A. The packet contained information. And after I opened the packet, I did contact the principal who was still away, but we were able to talk, and I contacted Mr. McDaniel. Both were very surprised that this packet had made its way to my office.

MR. NICKLES: I'm going to object to the -- the witness can testify as to what she said but not what other people say to her. That's hearsay.

MR. BOYKIN: With all due respect --

MS. MOSES: Okay.

MR. BOYKIN: -- she did not quote anyone. She is giving her interpretation as to what she thought their reaction was, and she's entitled to her impression. And so she did not quote that they said they were surprised. That was her judgment, and she's entitled to her judgment in her testimony, Your Honor.

MS. MOSES: That's fine, Mr. Boykin.

BY MR. BOYKIN:

Q. Would you go ahead, Ms. Andrews?

A. Yes. The principal and the director of secondary education shared with me that there was a problem --

MR. NICKLES: Objection.

A. -- at the school --

MR. NICKLES: This is -- once again, this is hearsay, Madam Chairman. She's repeating something that someone who is not testifying said to her. It's hearsay.

MR. BOYKIN: Hearsay is when it's offered for the truth of the matter that's asserted. And here, she is just giving background description, but she's not suggesting that there was a specific matter. She said "a problem." So I do believe latitude is warranted under the circumstances, Your Honor.

MS. MOSES: Okay.

Okay, Mr. Boykin, you can continue.

MR. NICKLES: Does that mean my objection is overruled, Madam Chair?

MS. MOSES: It is.

MR. NICKLES: Just for the record. Thank you.

BY MR. BOYKIN:

Q. You were talking about --

A. Right.

Q. -- the communications.

A. Right. The communications. So the principal returned to the school. She had not done -- the secondary -- the director of secondary ed both said that

she -- the teacher --

MR. NICKLES: Objection. This witness is communicating again something that somebody else said to her, which is hearsay, inadmissible in this proceeding.

THE WITNESS: I don't believe it's hearsay. I'm just saying --

MR. NICKLES: Now, the witness can't argue with me.

THE WITNESS: Okay. I'm just sharing how I found out.

MR. BOYKIN: Just hold on a second.

Madam Chair, I believe both Mr. McDaniel has testified and Mr. Webb has testified to these very points, so this is already in. It would be one thing if these witnesses had not been called and not been cross-examined on these very points. But these -- both witnesses have taken the stand and they've testified to this and they were subject to Mr. Nickles' cross-examination. For him now to raise this as a hearsay, this is a matter in the record.

MR. NICKLES: And if I might be heard in response, page 74 of the record of the preceding hearing, I did question Mr. McDaniel about this particular exchange. Mr. McDaniel's sworn testimony is that he contacted the superintendent and shared with her

that he had received this document so that he followed protocol. That's page 74 of the record of June 7, 2014. So it's a mischaracterization of the record to say that it's already been testified in the way that this witness is presenting it.

MR. BOYKIN: It's the background, the testimony subject to cross-examination, which is what the hearsay rule prohibits where you don't have cross-examination. The witness has been here, has talked about it, and Mr. Nickles has had a chance to cross-examine. Here, this witness is talking. The board can decide. You can't pit the witnesses against one another. Each one is entitled to their own testimony on the point.

MR. NICKLES: And that's precisely why witnesses should not say what other witnesses say to them.

MS. MOSES: Okay. Mr. Nickles, your objection is noted; however, it is overruled.

Mr. Boykin, you may continue.

BY MR. BOYKIN:

Q. Dr. Andrews, I'm just asking you to go ahead. You're talking about your second meeting with Ms. Toney and you're talking about the steps you took. So if you would be so kind as to continue that testimony, please,

ma'am.

A. Okay. So I went to the high school to meet with Mr. Webb and Mr. McDaniel and to also talk with -- meet with Ms. Toney to -- and Mr. Baldwin, all of that in the same day.

When Ms. Toney came in, she, first of all, didn't want to talk and said she needed an attorney. Then she said it was a conspiracy. When I asked her, you know, what type of conspiracy, "I can't say. I don't want to tell you." And she continued to talk but didn't want to speak and answer questions. And she did -- she knew that she was told to wait until the principal came back by both the principal and the director of secondary ed, which she had already violated that.

So there was a situation where, while I was present and at the school, that Ms. Toney sent for a student from another class -- sent a student to get a student to come to her class to inquire about us being in the office.

MR. NICKLES: Object.

A. I asked Ms. Toney why she --

MR. NICKLES: I don't think this is responsive to the question --

A. -- was asking that student --

MR. NICKLES: -- Madam Chairman. I mean, he asked a question. This is a speech.

BY MR. BOYKIN:

Q. Dr. Andrews, just --

MS. MOSES: All right. This is a quasi-judicial hearing, so we are granted a little latitude here. So we will allow Dr. Andrews to continue with her response, so the objection is overruled.

MR. NICKLES: And so, just so I understand, unlike Ms. Toney, you're going to allow Dr. Andrews to expound on her answers and to go beyond the questions that are asked? Is that the ruling of the board, Madam Chair?

MR. BOYKIN: Madam Chair, if I could be heard, I will -- I --

MS. MOSES: No, this is not the ruling of the board, to answer your question, Mr. Nickles. And from our observation, from our point of view, Ms. Toney was given latitude, so we will continue with Dr. Andrews' testimony.

Mr. Boykin, you may continue.

MR. BOYKIN: Yes, Madam Chair.

BY MR. BOYKIN:

Q. Dr. Andrews, you were telling me -- or telling the board about your meeting with Ms. Toney and the

conduct of Ms. Toney either during that meeting or on the day of that meeting. Would you continue with that, please.

A. Well, Ms. Toney thought we were there talking to the student, but I was not there to speak with the student.

Q. Okay. How did you know that Ms. Toney thought that you were going to talk to the student? What made you believe that?

A. Because the student reported to --

MR. NICKLES: Objection.

A. -- the principal.

MR. BOYKIN: Okay.

MR. NICKLES: Objection.

MR. BOYKIN: Calls for hearsay, Mr. Nickles. I would agree. I just asked the question. Thank you.

Withdraw the question.

A. Okay. All right.

BY MR. BOYKIN:

Q. Tell me what Ms. Toney did after or during the meeting or while you were on the campus.

A. Well, during the meeting, she was very uncooperative. She didn't want to answer questions. She --

Q. What made you conclude that Ms. Toney was

being uncooperative, Dr. Andrews?

A. Because she continued to either say she needed representation or she needed an attorney to be present, and she continued to just not be direct with her answers. Whatever was asked and then the -- the questions that were asked of her, she skirted around, she changed her answers, and it was just not a very good conference.

Q. Following that meeting, what, if any, action did you take regarding Ms. Toney?

A. After that meeting and being able to collect all of the information and to talk with other witnesses to find out what actually transpired in school for that day and to talk with Mr. Webb and Mr. McDaniel to find that she had not followed their directives, which is very critical, that's insubordination plain and simple.

And I believe that if she had followed what they asked her to do, it would have remained at the school. They, at that point, had not involved me. And once the packet came to me and was given to Mr. McDaniel, that's where my involvement began.

Based on the information I had, Ms. Toney was placed on administrative leave until we could investigate completely and thoroughly. I met with her; I explained to her that she did not need to talk with anyone. I

believe I covered board members; but she has been around 26 years, and I believe she understands that the board members are -- you know, they are who I report to. They are my bosses.

And if she -- I clearly stated to her, if she had a question about anything, she could call me. She could contact me with any questions during this period. I asked her not to talk with students. I went over the letter, went over the purpose of that, because if she is talking and interfering, we cannot investigate as we need to.

Q. Okay.

A. So she left with a good understanding that she was not going to have this communication with anyone and let us investigate.

Q. Okay. Dr. Andrews, under what circumstances does an individual board member assign teachers to a classroom?

A. They do not.

Q. And it is clear to you that you said to Ms. Toney, if she had questions --

MR. NICKLES: Object to the form.

MR. BOYKIN: Okay. I withdraw the question.

BY MR. BOYKIN:

Q. Did Ms. Toney contact you at all about who

was in your classroom?

A. No, she did not.

Q. Okay. Did she ever send you an e-mail or call or anything expressing concern about the teacher that was in the classroom while she was away?

A. No, she did not.

Q. Is it your understanding that Ms. Toney made contact with a board member?

A. She made contact with a board member after our conversation and me placing her on the administrative leave.

Q. Okay.

A. So she -- that was in, you know, addition -- I was very clear that was my reason for not just giving her the letter but talking through it, so she could understand that she needed to just not talk with anyone.

Q. But, Dr. Andrews, did you give her a point of contact? If she has a reason to contact someone, did you give her a point of contact?

A. Yes. That was me.

Q. Okay. Did she contact you?

A. No, she did not.

Q. Okay.

MR. BOYKIN: I beg the board's indulgence.

BY MR. BOYKIN:

Q. Dr. Andrews, after the meeting in which Ms. Toney is placed on administrative leave, when did you next talk to her?

A. Well, I called her in -- and I don't recall the exact date, but it was shortly after finding out that she had, in fact, violated the administrative leave. And also because we had come to some conclusions about the -- you know, what had transpired and the fact that she had not done what she was asked to do.

During this period of investigation, of course I have not been to -- I had not been to her classroom to watch her teach. I did know who she was; I saw her in the buildings. I had -- but I went to her personnel file, which is, as I stated, a record for administrators. It does not begin anew because a new superintendent comes or a new principal comes. It is maintained. And it is maintained for the purpose of, you know, what -- what steps needed -- what steps I needed to take after that.

It was my hope that when I went to her file that this was just an isolated incident, that for some reason something just went wrong, but that I would be able to just handle this with talking with her. That's what you always hope in the review of a record.

But when I went to Ms. Toney's file, there

was a lot to read. And there was the theme of her being untruthful. It's right there in that file beginning with her application, beginning with her job application. I worked in Sumter Two, so I know that where it tells you to list all of your experiences, teaching experiences, she did not do that. There were two principals from Sumter Two that she worked under that were not listed and neither were those schools listed.

Also, when I looked in her file, there was also the theme of being insubordinate. She had that with every person she worked under, the principals. One principal described her as being chronically insubordinate. There were all these other types of situations like what we were dealing with. The principal sent her to her classroom in one incident, and she came back out of her classroom, left the students unattended -- all of this is documented -- so that she could go and talk with the assistant principal.

There were -- the themes of -- for example, she wanted to leave early to go to a doctor. As she stated, she had attendance problems. So the principal said she wanted a doctor's statement. And she accuses the principal of being unprofessional and saying that, you know, this was so unprofessional of her to ask her

for a doctor's statement, when that is what we do.

She fought her evaluation, did not want to be evaluated. I don't know of any -- I've had, you know, plenty of experience over time in working with teachers, and generally, they are asking can you -- will you please come to my classroom and observe. And at no time -- you know, she fought hard about her not being evaluated.

There was -- I -- not reporting for bus duty. There's always an excuse and someone else's fault and it's threaded throughout that she is a person who will not do what she's asked to do. Also, the SLED report is right there as well, and it stated that she had been charged with threatening the school --

MR. NICKLES: Objection. There's been a --

MR. BOYKIN: We will -- we will withdraw that. We will ask that that be struck. With all due respect, we will ask that that be struck --

MR. NICKLES: This is an obvious attempt to prejudice this board against Ms. Toney, and I object and want my objection stated on the record.

MR. BOYKIN: Please put the objection on the record. It was something that I did not anticipate, and I'm asking that the statement regarding the SLED report be stricken from the record. That's what I'm asking. I

did not know the witness was going to go into that coming from the personnel file. So I'm asking that that be struck for the record.

MR. NICKLES: Thank you.

MS. MOSES: Granted.

MR. BOYKIN: Okay.

BY MR. BOYKIN:

Q. Dr. Andrews, I'm going to try to ask my questions a bit more artful --

A. Okay.

Q. -- so that we can sort of work with it here. I was allowing you some latitude so we could get through this for the sake of time.

A. Okay.

Q. But given the circumstances, I'm just going to ask you to respond to the question that I ask you directly.

MR. BOYKIN: That was open-ended, I would say to the board, and it -- and that it requires the person to respond rather than cross-examination is a bit more concise.

BY MR. BOYKIN:

Q. Were you able to review any documents concerning Dr. -- concerning Ms. Toney's relationship with her principal, Mr. Webb?

A. There were several documents and pieces of information that Mr. Webb shared with me. I did talk with him.

MR. BOYKIN: Madam Chair, approach the board.

Al, I believe you have a copy of this already.

MR. NICKLES: You can show it to me.

MR. BOYKIN: I'll show it to you.

MR. NICKLES: What I was given this morning, the first page is completely illegible.

MR. BOYKIN: Take a look and see if -- before I hand it to the witness.

MR. NICKLES: I can't read it. If the witness can . . .

MR. BOYKIN: Okay.

BY MR. BOYKIN:

Q. All right. Are you able to identify any of that, Dr. Andrews? Not the best copy, but --

MR. BOYKIN: Al, I believe you'll concede that this is already in the record. Is that correct?

MR. NICKLES: That's correct.

MR. BOYKIN: Okay.

A. I can't read the first document --

BY MR. BOYKIN:

Q. Okay.

A. -- but I am familiar with all of the documents, and this is just with Mr. Webb and his experience with Ms. Toney as a teacher. And, again, he states here that she wasn't --

MR. BOYKIN: I beg the board's indulgence.

Dr. Andrews, could you hold for just a second.

MR. NICKLES: Go ahead. I thought you asked her to identify the documents?

MR. BOYKIN: Okay. I mean, you want to make an objection?

MR. NICKLES: No. Fine. Go ahead.

MR. BOYKIN: Okay. I appreciate the board's indulgence.

BY MR. BOYKIN:

Q. Dr. Andrews, I wanted you -- I believe I asked could you identify the documents, and your response was you were familiar with this -- these documents or -- is that --

MR. BOYKIN: Madam Court Reporter, how did she respond to my question?

(The record was read back.)

MR. BOYKIN: Okay. I found that to be responsive to my question, Mr. Nickles.

MR. NICKLES: Okay. When she stopped, yes.

Go ahead.

BY MR. BOYKIN:

Q. Okay. You were sharing with the board your understanding of those documents and your familiarity with them. So would you please continue, Dr. Andrews.

A. Yes, I will. These documents are part of the conversation that I had with Mr. Webb. There were things like not being present for the faculty meetings even when the principal had stated that they are mandatory, that he had to loop back with her because she wasn't there.

Q. Dr. Andrews, within what you were doing, were you troubled by what you were finding?

A. I was troubled by what I found because there was a longstanding history of insubordination, a longstanding history of somewhat bullying in the workplace. If you say something to me, there's going to be a reaction. Not cooperative, not a team player.

Q. Would you explain to the board, Dr. Andrews, why, as superintendent, you found that troubling?

A. I found it troubling because we have a focus in the school district, and our focus is on teaching and learning. And we have to have order, just as we do in the classrooms. And the order of things, that she was always out of order. She wouldn't turn in her grades on

time; she couldn't turn in her lesson plans; she could watch movies, and when she was asked not to do that, she had a rebuttal to everything instead of following what she was asked to do.

I would say that I found her to be chronically insubordinate. And it is extremely difficult in the workplace to have any employee be effective and for your organization to function and to deliver instruction as it should be if the employees are going to do whatever they determine they would like to do.

It may appear to be a small thing when a person says I called in 15 minutes later. But with the schools, when you are expected to be on duty, that is the reason why they have a time of seven o'clock and procedures that must be followed. That keeps the children safe.

Q. Dr. --

A. So --

Q. -- Andrews --

A. Uh-huh.

Q. Let me -- could you identify this document, please? Excuse me.

A. This is a letter that I sent to Ms. Toney in October.

Q. Is it October, Dr. Andrews?

A. Wait a minute. December. I'm sorry.

Q. Dr. Andrews --

A. December 18th.

Q. -- the second paragraph, you're making a recommendation for termination. And what grounds are you relying upon, Dr. Andrews?

A. The recommendation was based on her engaging in behavior and conduct which caused unnecessary disruption in the workplace. And an additional review of her personnel file revealed that she had been involved in other incidents of unprofessional conduct.

Q. Okay. Unprofessional conduct. You didn't mention insubordination in your letter, did you?

A. Let's see. In this letter, I don't see it here, but I'm scanning, so . . .

Q. You said "unprofessional conduct"?

A. Right.

Q. Tell the board what constitutes unprofessional conduct.

A. Well, if you look here, I didn't use the term insubordination; it is written into this reason. I state here that she -- after being directed by an administrator to leave the matter alone, she did not do that. That is the insubordination. Although it's not

labeled, it is spelled out --

Q. Let me ask you this question. Is insubordination unprofessional?

A. It is.

Q. Okay.

A. It is very unprofessional. It is -- it creates havoc in the workplace. And this had been a problem with her, for her, throughout several administrators. She was placed on administrative leave the previous year for telling a student she was going to hit her and also causing a commotion and disturbance in her own classroom. She was placed on administrative leave during the '12/'13 school year. So there -- there's just a lot documented.

Q. Dr. Andrews --

A. Uh-huh.

Q. -- threatening to hit a student, do you consider that insubordination?

A. I consider it a serious conduct issue.

Q. Okay. And is that --

A. Unprofessional.

Q. -- unprofessional conduct?

A. Yes, it is.

Q. Okay. Turning your attention back to the documents, the other documents, please, and explain to

the board why those things troubled you.

A. These document?

Q. Yes, the documents I first handed you.

A. Okay. There is the document from Kara Fowler where she has observed in Ms. Toney's classroom, and she is providing feedback as she should; and she is simply informing her of, you know, things that could be better for the students to learn and for her to be a better teacher.

Q. And when you say she's informing her, you mean --

A. Kara Fowler is informing Ms. Toney of what she could do to be a better teacher and for the students to have a, you know, good opportunity and experience learning.

Q. In your experience as an educator, is this a normal practice for persons observing in a classroom, Dr. Andrews?

A. Definitely. The purpose of it is to provide feedback to help teachers to look at what could be done in a better way for students, to develop teachers professionally. It has -- it serves a lot of purposes. And to ensure, number one, that learning is going on in the classroom.

Q. Okay.

A. And that good teaching is happening.

Q. But you would expect teachers -- if they disagreed, wouldn't you expect teachers to say, hey, wait a minute here, there's something -- something about this is wrong? Wouldn't you expect that?

A. Well, they -- they don't see it as wrong. And in my professional experiences, most teachers, that is the one thing they want to know, how will I develop -- that's the question that's asked in your interview, how will I be able to develop here? What about professional development? So teachers want that, actually.

Q. Okay. Is it unusual to have -- well, let me ask you this. Would you characterize the response from Ms. Toney and what -- how would you characterize Ms. Toney's response, Dr. Andrews?

A. It falls under -- under what I was saying earlier. Her response of asking Ms. Fowler to post the essential questions in her office, administrators don't post questions in their office.

She's saying that -- here Ms. Fowler tells Ms. Toney that a lot of the students said the work that she was giving them was already work that they had completed. Several students in the classroom were saying, we've done this. She's saying -- Ms. Kara

Fowler is saying, you remained behind your desk for the entire observation, and the only thing that she, I guess, came from behind her desk during this time was to make a comment to Ms. Fowler about her performance of the evaluation.

And so Ms. Fowler is telling her that -- and it is a team approach. Principals, teachers, district-level staff, we are all on the same team, and students don't benefit if we are not working together. And an administrator ought to be able to walk in a room, provide feedback, give it to the teacher, have the conference, and for something productive to come out of it.

Q. Okay. But Ms. Fowler was the administrative assistant, though, wasn't she?

A. She was serving in that capacity.

Q. Was she qualified to conduct an observation of Ms. Toney's teaching?

A. Yes, she was. Teachers can observe other teachers. And frequently we have that. We are asking teachers to observe each other. Yes, she was very qualified.

Q. What is your impression of the feedback that Ms. Toney was giving Ms. Fowler?

A. That she was somewhat of a bully and attempting to intimidate Ms. Fowler.

Q. Did you find Ms. Toney's feedback as a classroom teacher who had been observed by someone representing the administration, do you find Ms. Toney's feedback acceptable?

A. It is not acceptable.

Q. Would you tell the board why did you believe -- why did you find that feedback not acceptable?

A. Her feedback in what she said to Ms. Toney [sic] was -- it was disrespectful. It was not what you say to an administrator or someone who is coming in -- even another teacher to, you know, have that collaborative working relationship is not what you can have a teacher saying to anyone, really. And it was -- as I said, she was attempting to say you came in my classroom, these are the things you said, but you need to do it, you need to put the questions in your office, it was very rude, unacceptable, unprofessional, and insubordinate saying that really I -- this is my classroom, you can't tell me what to do.

Q. Dr. Andrews, were you familiar with the September 27th incident between Ms. Toney and Mr. Baldwin?

A. I don't have all of the dates committed to memory.

Q. Okay. The incident where the comment was

supposed to have been made regarding condolences or something?

A. Yes, I'm aware of that.

Q. Are you familiar with a meeting between Mr. Webb, Mr. McDaniel, and Ms. Toney prior to Mr. Webb going away for a professional development?

A. I'm just trying to remember which one. I -- I -- I --

Q. It's the meeting where Mr. -- where the record reflects a directive was given to Ms. Toney.

A. Yes.

Q. You're familiar with that?

A. Yes, sir.

Q. What did you understand the directive to be?

A. That Ms. Toney was to have no communication, no discussion at all with anyone until the principal returned from the school and could, in fact, meet and investigate.

Q. When -- is it your understanding that Ms. Toney followed that directive?

A. She did not.

Q. Okay. Now, I want to go back to Exhibit 1. Do you recall receiving that?

A. Yes.

Q. Dr. Andrews, are you familiar with the

requirement of reporting suspected abuse and neglect?

A. Yes, I am.

Q. Okay. Under what circumstances, if a person -- well, excuse me. Strike that.

On Exhibit 1 that I just handed you, would you read the handwritten note on that, please. Publish that to the board.

A. It's from Laura Toney, and she has Lee Central High School abbreviated. She has her phone number written here, and she has the note "Dr. Andrews, please read!!" There are two exclamation marks. "The last page" -- and she underlines "the last page" -- "seems that a child might be in danger!"

Q. Okay. If a teacher thinks that a child is in danger, what is the teacher to do?

A. According to the law, it must be reported by that teacher. They are bound by law to report it.

Q. To report it --

A. Report it --

Q. -- to the administration of the school?

A. No, they don't have to. They --

Q. To report it to the administration of the district?

A. No, they don't have to do that.

Q. They are required by the law to report it

where?

A. To DSS, if they feel that a child is in danger.

Q. Okay. From -- from the wording on that envelope, does it suggest that somebody thought that a child was in danger?

A. Yes, it does.

Q. Okay. So where was that report, in your mind, to have been made to?

A. To DSS or to contact law enforcement.

Q. Well, they gave it to you. Why didn't you just go ahead and give it to DSS or law enforcement?

A. Well, first of all, I don't have the knowledge to do it, and they -- they don't really want the report coming from a person who has no firsthand knowledge of the incident and they will let you know that if you call. So teachers receive this training annually telling them of their obligation by law, and then under no circumstance would it have had -- have made it all the way to me. They don't need permission to call DSS. They don't need the principal's permission. They don't need my permission.

Q. Let me -- Dr. Andrews, you're the superintendent. You mean to tell me any classroom teacher can pick up the phone and call DSS or the

sheriff's department anytime they want without getting your permission?

A. If they -- if they think a child is in danger, if something has happened, if a child shows up and they've been beaten or bruised or burned or any of the above, they don't need my permission to do that.

Q. It's the evidence that the teacher has --

A. Right.

Q. -- that causes the report to be made --

A. Right.

Q. -- is that what you're saying?

A. Yes.

Q. Okay. All right. Did you reach a recommendation regarding Ms. Toney's continuing employment, Dr. Andrews?

A. Regretfully, I did.

Q. Okay.

A. Because I was not able to -- in a review of her record -- now, that's her performance in Lee County schools -- she had a problem with every principal she worked for with documents being in writing. From refusing to sign the letter she was given; to refusing to follow the school's policies, whatever they were; from leaving students unattended; showing movies in the classroom, she justified all of her behaviors. And,

again, I still say the themes that ran through all of the documentation I read, which was very time-consuming because it was a lot there, to include the school years with Mr. Ron Webb.

The theme was one of not being truthful, uncooperative, chronically insubordinate, unprofessional. The incident with the parents, the incident with the students, the incident in her classroom during the '12/'13 school year that caused her to be placed on administrative leave from Mr. Webb's office.

Q. Did she have an incident where she became irate --

A. With a parent.

Q. -- with a parent with Mr. Webb?

A. Right. Right.

Q. Dr. Andrews, did you inform Ms. Toney of your decision to recommend the termination of her employment?

A. I did.

Q. Okay. Did you bully Ms. Toney into trying to resign?

A. Oh, absolutely not.

Q. Okay. Would you tell the board about whatever discussion you had with Ms. Toney about resignation, if there was such a discussion had?

A. Okay. First of all, by the time we are at a place where I am making a recommendation to the board for termination, I am standing firmly behind what I -- behind that recommendation, and I have enough documentation and proof that this is not an employee that we would like to continue in -- with the district, that our students are not benefitting, and that we need to part company.

I did not solicit her resignation. I didn't need it. What I said to her was I was prepared to recommend her termination. If she provided me with the resignation, of course I would accept that; that's fine; that, at the end of the day, we needed to part company.

Did I tell her I knew personnel? Yes, because she had the threat of I would get an attorney and all of this. Yep. Yeah, I do know it.

And what I saw of Ms. Toney in my assessment as a professional -- I don't know her personally, so I am not attempting to say what kind of person she is; I don't know that -- but I can look in judgment at a record that is pretty stockpiled of evidence and her behavior during the time that I served here as superintendent that she is probably one of the worst teachers I've encountered in my career.

Q. Worst teachers in teaching or worst teachers

in her relationship with administrators?

A. Worst teacher with her relationship with administrators, with understanding her role. There were things that were indicative of her teaching as well in her file, but I did not observe that. But things like showing movies and having administrators to say we don't want you to show the movie. As Ms. Fowler stated, you sat behind your desk the entire time. You know, not -- there was the teaching aspect, but then there was a whole host of evidence --

Q. Okay.

A. -- dating, you know --

MR. BOYKIN: Madam --

A. -- the time of her hire.

MR. BOYKIN: Madam Chair, I'm going to gather some of these so that we --

What do we have here?

THE REPORTER: These are from the 7th, these are the ones from today.

MR. BOYKIN: I beg the board's indulgence.

Okay. Did you put this in -- did you put this in evidence?

MR. NICKLES: All of them are available for discussion with the witnesses.

MR. BOYKIN: Okay. May I have one?

MR. NICKLES: You want to share something with the witness?

MR. BOYKIN: Yes, please.

MR. NICKLES: I don't have one that's not written on.

MS. FITTIPALDI: Here you go.

MR. BOYKIN: Excellent.

BY MR. BOYKIN:

Q. I need you to look at Exhibit 1, Dr. Andrews, in this document.

MR. NICKLES: Exhibit Number 1, Tab 1, is that --

BY MR. BOYKIN:

Q. Well, Tab 1 --

A. Okay.

Q. -- in that document I just handed you.

A. Okay.

Q. Can you identify what you're looking at?

A. This is a contract for Laura Toney.

Q. Okay. What type of contract is this?

A. This is a continuing contract.

Q. Okay. Would you explain to the board what a continuing contract is --

A. Okay.

Q. -- Dr. Andrews?

A. Yes. The continuing contract in the state of South Carolina, once issued, cannot be changed. So once a teacher receives a continuing contract in this state, whether it's in Sumter Two, York County, wherever they go, this status follows them. And from year to year, you are not allowed or permitted to change the status of a continuing contract.

In the past, during her time, she would have been able to receive that status within three years, because during the time she began teaching, it took three years to reach continuing contract status.

Q. Okay. Let me ask this question of you. Down near the bottom, do you see a section that is identified as "Special Covenants"?

A. Yes.

Q. Okay. There's a paragraph that precedes that. What's -- would you publish for the board the first sentence in that paragraph. What does it say?

A. "The employee may be released from this contract" --

Q. Okay.

A. Stop there?

Q. The paragraph just above "Special Conditions."

A. Okay. "All personnel are responsible to their immediate supervisor."

Q. Okay. That's a part of the contract?

A. Yes.

Q. What do you expect from employees who sign this contract?

A. For them to be cooperative, for them to make sure they understand the expectations as laid out to them from their supervisors, and for them to work respectfully and cooperatively.

Q. Would you -- there are several contracts, copies of contracts in this Item 1. Would you thumb through and see whether that requirement is in each one of the contracts that were signed by Laura Toney, please.

A. Yes, they are.

Q. Okay. In your judgment, did Ms. Toney comply with that provision of her contract?

A. She did not.

Q. Okay. Would you explain to the board how we reached that conclusion?

Thank you.

A. In all of the documents that I've reviewed and that I sort of talked about here this evening, they speak to Ms. Toney and her lack of cooperating with, you know, even the simple things that were asked of her by her principals and supervisors.

So no matter how simple, if it's be at the faculty meeting because it's mandatory and we're going to discuss something that's very serious or turn your grades in at this time or write your essential question or make sure that you call by 7:00 a.m. to let us know so that we can cover the classes, no matter what it was, she never would cooperate or comply. Please sign this saying that you received it, she is refusing.

So just from the very simple things, and that interferes greatly with the school district. And, you know, in a school operation when they are spending that amount of time with an employee who cannot do -- Mr. Webb is taking away time to write letters, taking away time to conference, when this time should all be spent on the focus of the students and making sure they're learning.

MR. BOYKIN: Beg the board's indulgence.

BY MR. BOYKIN:

Q. Dr. Andrews, in your experience as an educator, have you been involved in the recommending the termination of classroom teachers before?

A. Yes, sir.

Q. Any idea how many such terminations you've been involved in?

A. I really don't -- don't keep a count of that.

And that's been, you know, through more than one school district.

Q. When you reached a determination regarding Ms. Toney's employment, did you feel you needed to consult with anyone else about your -- you know, such as the principal or someone else about your decision?

A. I did speak with the principal.

Q. Okay.

A. And --

Q. Did you need the principal's recommendation for your recommendation?

A. No, because I -- I did not need his recommendation to move forward with this because at that time, you know, she had violated even what I asked her to do. And I do want to state for the record, although I asked her not to talk with people, she continued to do that. She came in the conference stating -- after being placed on the administrative leave, stating that everyone in the community was talking about this and her situation, and I asked how did she know when we have clearly asked you not to have these conversations.

So what I'm saying, no, I didn't need Mr. Webb's recommendation, but I did have enough from him, enough from everyone else she'd worked for in her history in Lee County schools to say that really it's

past time to part company.

MR. BOYKIN: Beg the board's indulgence.

No additional questions at this time. I would ask that you listen carefully to Mr. Nickles and respond to his questions. Thank you.

CROSS-EXAMINATION

BY MR. NICKLES:

Q. Dr. Andrews, we've had the occasion to meet before, have we not?

A. Yes, we have.

Q. And I believe that you provided sworn testimony by way of a deposition in this case, did you not?

A. I did.

Q. Were you under oath at that time, as you are under oath now?

A. Yes.

Q. One thing I would hope, Dr. Andrews, that you would do in investigating any serious charge that might lead to the termination of an employee is to make sure you got your facts right. Would you agree that that is very important?

A. It is important, and I did that.

Q. Okay. It's also important to be fair when you're talking to the board about Ms. Toney's employment

record, isn't it?

A. Yes, it is.

Q. Okay. Now, you, in response to questions from Mr. Boykin, indicated that there was an allegation that Ms. Toney had hit a child?

A. That's not what I said.

Q. Last year -- threatened to hit a child --

A. Yeah, exactly.

Q. -- last year, and she was put on administrative leave for that?

A. Yes, she was.

Q. Now, you were present when Mr. Webb was deposed, weren't you?

A. Yes, I was.

Q. And you know that Mr. Webb said that that allegation was unfounded. He said that, didn't he?

A. I don't recall his exact words, but I do know that it was a disturbance in the classroom and that she was accused of threatening to hit a student. That was what started the commotion.

Q. You were present on December the 18th of this year at Mr. Webb's deposition, correct?

A. Yes, I was.

Q. Okay. Mr. Webb was asked the question:

"All right, Mr. Webb, do you remember" --

MR. BOYKIN: I object. This is -- this is classic pitting the witness.

MR. NICKLES: No.

MR. BOYKIN: Mr. Webb's testimony -- I'll finish and then you can go ahead, if you don't mind. Mr. Webb's testimony before the board has already been made. His transcript is here. He can go ahead and ask her whatever question he wants to ask her about it; she can answer it. If he wants to read Mr. Webb's testimony into the record, he's free to do that. But to sit and cross-examine one witness against another is classic witness pitting.

MR. NICKLES: I'm not cross-examining her against somebody. I'm asking her did she fully investigate and was she fair. And, Board, this question is very important.

MR. BOYKIN: That's important for his argument, but that's not appropriate for him with the witness, Your Honor.

MR. NICKLES: She's already testified she was there. This is the transcript of the principal of this school district, sworn to tell the truth. She was present.

MS. MOSES: (Indicating.)

MR. NICKLES: Proceed?

MS. MOSES: (Nods head.)

BY MR. NICKLES:

Q. Mr. Webb was asked the question:

"All right, Mr. Webb. Do you remember back in August of 2012, that would have been the very first of 2012/2013 school year, Ms. Toney was placed on administrative leave for a very short period of time based upon an allegation that she told a student she wanted to hit her?

"ANSWER: Yes, sir.

"It was found that there was no support for that investigation, wasn't it?

"Yeah, that's right.

"And she was brought back to school?

"Correct.

"Right?

"Yes, sir.

"So sometimes you find that what people tell you just ain't true; isn't that right?

"It happens from time to time."

You weren't there that year, were you?

A. I --

Q. In 2012/2013, you weren't here, were you?

A. I was not here. No, I wasn't.

Q. Mr. Webb was here, wasn't he?

A. Right.

Q. Mr. Webb was the principal of the school, wasn't he?

A. He was.

Q. And he was responsible for investigating allegations against teachers at that time, wasn't he?

A. He was.

Q. And he made a finding that there was no support for the allegation that Ms. Toney threatened to hit a student; isn't that right?

A. That is what you say, and honestly, the document that you're holding, I did not commit to memory --

Q. It's not important enough for you to do that, get it right?

A. I said I did not commit that document to memory.

Q. Okay. You just came to tell the board that Ms. Toney was accused of threatening to hit a student and trying to get the board to think --

MR. BOYKIN: Objection.

BY MR. NICKLES:

Q. -- she's a danger --

MR. BOYKIN: Argumentative.

BY MR. NICKLES:

Q. -- isn't that right?

A. I don't (inaudible) --

MR. BOYKIN: Argumentative. Objection.

A. -- but she was accused of that. That is a part of her record.

BY MR. NICKLES:

Q. And it's unfounded. Is that part of her record also?

A. It's still a part of her record.

Q. Okay. Now, you know that people can be accused of things that they don't think are correct, right? You've been accused of things, haven't you? Haven't you?

A. Yes, of course.

Q. Okay. I mean, you've been sued in federal court, haven't you?

A. Yes, I have.

Q. Okay. People accusing you of conspiracy, right?

MR. BOYKIN: Objection, Madam Chair. This has -- I mean, he has latitude to test the witness's veracity, but he's getting into things that are clearly unfounded. The lawsuit exists, speaks for itself, but it has no place in here.

MR. NICKLES: This is cross-examination.

MS. MOSES: Objection sustained. We do not see the relevance in that piece of information.

MR. NICKLES: How can you know if it's relevant or not unless I have the opportunity to question the witness?

MS. MOSES: That is the pleasure of the board, Mr. Nickles.

MR. NICKLES: Okay.

MS. MOSES: Please continue.

BY MR. NICKLES:

Q. Now, you said that over the course of your career, you've been involved in so many terminations and nonrenewals, you can't even keep count --

A. I didn't --

Q. -- is that right?

A. -- say that.

MR. BOYKIN: Objection.

A. I didn't --

MR. BOYKIN: Mischaracterization.

A. I did not say that.

BY MR. NICKLES:

Q. Okay.

A. I said that I don't keep a count of it. I didn't say that I've been involved in so many. I said that it's been through two school districts. So you are

putting words in my mouth, and I -- I did not say that.

Q. How about here? How many people have been terminated --

A. I --

Q. -- or nonrenewed here? You've only been here a year.

A. Did I say that I don't keep a count of it? And I still say that I don't keep a count of it in my head.

Q. So is the answer to my question, in this one year, your only year as a superintendent, your only year employed in this district, you don't know how many people you have terminated or nonrenewed; is that fair?

A. To say that -- I would have to look, but I believe that -- I just can't recall --

Q. Okay.

A. -- and I don't want to say --

Q. Fine.

A. -- because I cannot give you an exact figure.

Q. Tell me the names of all of Ms. Toney's former supervisors.

A. Of course there was Mr. Webb and then any assistant principals under him.

Q. Who would they be?

A. Ms. Addison.

Q. Who else?

A. Ms. Fowler. And --

Q. She's not an assistant principal.

A. She still was in a capacity serving as someone who would evaluate and provide feedback.

Q. What about the year before that?

A. I don't have them committed to memory. I know that Ms. Lenora Scott was one of her principals. I know --

Q. Back in 2006?

A. Well, I don't have that committed to memory. That's why we have a record of it. So --

Q. Well --

A. So --

Q. -- I mean, did --

A. -- I say that what I found in the record, the principals that she worked for, she had a problem with them and --

Q. All right.

A. -- it was threaded throughout that --

Q. And I'm --

A. -- the record.

Q. I'm interested. Name those people.

A. I don't need to do that for you. It's in the record. If you provide me the record, I'll read the

names out.

Q. Ma'am, no. That's not the way this works.

A. Okay.

Q. You have to give me the record.

A. I do not have to name them all, because she's worked for several principals, there have been several transfers in her file to where she was transferred from school to school, and I cannot tell you who her principal was because --

Q. Did you talk to any of these former principals?

A. I did not do that.

Q. And you've produced this one document from 2006. That was under Ms. Scott, correct?

A. I didn't produce it.

Q. Well, it came from somewhere.

A. It was there --

Q. Where did it come from?

A. It was there in the record. I didn't produce it.

Q. Okay. You've never seen it before?

A. I've seen it, but I didn't produce it.

Q. Okay. Well, who did?

A. Well, I would imagine that Ms. Scott produced it.

Q. Okay. Did you ever talk about this letter

back in 2006, talk about it with Ms. Toney?

A. No, I didn't -- I don't recall talking about it directly. I did mention to her what I saw in her record. So it was -- I think I probably covered that but not to the degree that you read from what Ms. Lenora Scott said.

Q. Did you talk to Dr. Nelson about his experiences with Ms. Toney?

A. Did I talk with Dr. Nelson?

Q. Uh-huh.

A. No, I did not.

Q. How about James Gray -- Gary, excuse me. James Gary, did you talk to him about his experience?

A. No, I did not.

Q. How about Clifton Jefferson, did you talk to Clifton Jefferson about his experience with Ms. Toney?

A. I've already stated that I didn't talk to her former principals, that I used what is established as her record here in the district and what they had written and supplied.

Q. It's your understand -- you understand, Dr. Andrews, that when you make a recommendation to terminate an employee, it is your obligation to provide the board evidence to support your recommendation, correct?

A. I have provided that. I have stated that she was insubordinate to me, to Mr. Webb, and to Mr. McDaniel.

Q. Now, you were present when Mr. Webb was testifying in this proceeding back on the 7th of June; isn't that correct? Weren't you in the room, you know, over there at the middle school when he was testifying?

A. Yes, I was present for that.

Q. And you said that if Ms. Toney hadn't brought this document to you in the sealed envelope when she did, we wouldn't be here? Isn't that your testimony?

A. What I said was it -- that was the catalyst to all other events that happened; that when she brought the document, that violated what our principal had asked her to do; when she brought it, it involved me, and at that point, I was not involved; and then it just rolled and continued; and then she continued to not do what she was asked to do --

Q. So --

A. -- and to not be truthful.

Q. And you said earlier that Mr. Webb wanted to keep this in the school and you wouldn't have even been involved in it; isn't that right?

A. I said it was in the school and that Mr. Webb, his -- his stating to her to wait until he returned implies that he had planned to handle that upon his

return and --

Q. So you don't recall Mr. Webb telling you that Mr. Baldwin had filed this grievance even before this document was delivered to you? You don't recall that, then?

A. I don't believe it happened in that manner. I think I received this and then I was given all the other information when I inquired. And --

Q. So you don't --

A. -- when Mr. --

Q. You don't remember it that way?

A. No, I don't, sir.

Q. Okay. Now, you said that you didn't have to get Mr. Webb's approval to terminate Ms. --

MR. BOYKIN: Objection. That's a mischaracterization. No one said "approval." That's not what was said.

BY MR. NICKLES:

Q. In this case, you didn't ask Mr. Webb his opinion on whether or not Ms. Toney should be terminated, did you?

A. I asked Mr. Webb his opinion and about his experiences with Ms. Toney.

Q. Okay.

A. And he -- while I didn't ask for his

permission, we did discuss what would be our next steps.

Q. So your recollection is that Mr. Webb was involved in the decision-making process?

A. He was involved, as he had input.

Q. And Mr. Webb would have been much more knowledgeable about Ms. Toney's interactions with himself, with other administrators, with other teachers at his school than you would have been; would you agree with that?

A. Correct.

Q. So Mr. Webb is asked the question by Mr. Boykin: "Does Ms. Toney receive feedback easily?"

He answers: "Yes."

MR. BOYKIN: Objection. This is continued witness pitting. The record is there. It can be argued. The board can -- can make that credibility determination --

MR. NICKLES: My -- my --

MR. BOYKIN: -- but you don't get to pit one witness's --

MR. NICKLES: No --

MR. BOYKIN: -- testimony against another.

MR. NICKLES: I do. I do get to ask the witness the question --

BY MR. NICKLES:

Q. Is that what he told you?

A. You'll have to repeat it.

Q. Okay.

A. I don't know what you're --

Q. I'm just saying Mr. Webb was asked the question: "Does Ms. Toney receive feedback easily?"

He said: "Yes."

My question for you is: Did he share that with you?

A. I don't recall him saying that she receives feedback easily, and that was not the description that he gave.

Q. Okay. Of course, he wasn't under oath when he was talking to you, was he?

A. No, he was not.

Q. Now, Ms. Addison [sic], Mr. Boykin asked you a bunch of questions about Exhibit Number 1. Excuse me for walking behind you. I'll hand it to you. And this is a document that you've testified that was presented to you at your office by Ms. Toney, correct?

A. I -- I didn't say that. I said it was left in my office.

Q. Okay.

A. It was not presented to me.

Q. You weren't present when it was delivered?

A. It was delivered and in my office.

Q. Okay.

A. That's what I said.

Q. All right. And it was in a sealed envelope, was it not?

A. Yes, it was.

Q. Okay. Now, Mr. Boykin asked you questions about did Ms. Toney have the opportunity to go to DSS if she felt she had firsthand information --

MR. BOYKIN: Objection.

BY MR. NICKLES:

Q. -- about abuse?

MR. BOYKIN: Mischaracterization. I didn't ask about an opportunity. I asked about obligation.

MR. NICKLES: Well, I was trying to be kind to you.

MR. BOYKIN: Don't be kind to me.

BY MR. NICKLES:

Q. You were not suggesting, Dr. Andrews, that it's inappropriate for a teacher to share a concern with a superintendent, are you?

A. Well, my concern with this would be --

Q. No. Please answer my question, then you can explain.

A. Okay.

Q. You're not suggesting that it's inappropriate for a teacher to share a concern with a superintendent --

A. It is --

Q. -- are you?

A. It is not -- I'm not suggesting that it is inappropriate, but in this case, when a teacher doesn't know when I will return and for this packet -- when I did return to the office, it was late, everyone had gone for the day, and she couldn't be certain if I were going to be out two days or three days. You don't want to leave something of this nature unattended to when you think a child is in danger.

Q. So it's a good thing she gave it to Mr. McDaniel, isn't it?

A. It's a good thing that she should have reported -- it would be a good thing if she had reported it.

Q. Well, did you look at the content of the package?

A. I did review the packet.

Q. Okay. And did you make any report to DSS or law enforcement or SLED?

A. I did not.

Q. Now, the term "might" is used in this --

A. Yes, it is.

Q. -- envelope?

A. Uh-huh.

Q. It doesn't mean that I -- it doesn't say. I have evidence of something. It says "might," correct?

A. It does say "might."

Q. Okay. And did you examine it to determine whether or not you thought it might be substantiated?

A. I examined it.

Q. Okay. And you must have reached the conclusion that it did not require a report, because you didn't report it, correct?

A. Sir, first of all, I did look into this and I --

Q. Did you report it to SLED?

A. There was nothing that I found to report --

Q. So the answer is --

A. -- in the packet.

Q. -- that you looked at it --

A. Right.

Q. -- as Ms. Toney asked?

A. Right.

Q. You made a determination independently that you didn't see anything in it that you felt needed to be reported, correct?

A. To SLED.

Q. All right.

A. Or law enforcement.

Q. Did you report it to DSS?

A. There was nothing there that warranted a report to DSS. It was not --

Q. So the answer is you did not?

A. I did not.

Q. So the question being asked, "might be in danger," you concluded was not sufficient information in there to support a report, correct?

A. From me, no.

Q. Okay.

A. Now, I can't speak to what Ms. Toney knew.

Q. Well, did Ms. Toney represent to you that she had any different information than that which she had delivered to you?

A. No, she didn't.

Q. Okay. And she put her telephone number on this document, and if you wanted to know if she had additional information, you knew how to get in touch with her, didn't you?

A. Well, I wasn't going to call her at that late hour.

Q. Okay. Did you --

A. I saw her the next day, the next morning.

Q. Okay. And as a result of that, you did not make any reports, correct?

A. Correct.

Q. Now, Mr. McDaniel notified your office that he had received this same information, did he not?

A. Yes.

Q. And that was actually before you saw the package from Ms. Toney, correct?

A. In all honesty, I cannot recall if he notified me first or if I saw the packet first. I was out of the office that day and arrived late and got it out of my office.

Q. Would you defer to his recollection of that?

A. I'm not -- I don't want to do that because he and I do talk late, as I do talk with principals and other supervisors, and I could have called him even after hours.

Q. All right. You indicated, Dr. Andrews, that you have experience in human resources and experience as principal and experience now over the last year as a superintendent, correct?

A. Yes, sir.

Q. I'm going to hand you a document that is Exhibit Number 1 from the earlier hearing, and Tab 9, and it's a letter dated October 4, 2013. Do you see

that?

A. Yes.

Q. Now, this doesn't have your signature on it, does it?

A. It doesn't need my signature. The assistant superintendent for personnel is authorized to sign a letter of this nature and also to place a person on administrative leave upon consultation with the superintendent.

Q. So --

A. It doesn't need my signature.

Q. So is the short answer no, your signature is not on this piece of paper?

A. It's not required.

Q. So is the answer no, it's not on there?

A. It -- my signature is not there.

Q. Okay. That was easy.

Now, looking at this document, you believe it's important to be clear in your communications to employees, correct?

A. Of course I do.

Q. I mean, you've learned that through your human resources days, and it's important that if you want somebody to be on notice of something they're not supposed to do, you put it in writing to them, don't

you?

A. Yes, you do.

Q. Okay.

A. Or you say it.

Q. Now, in this particular letter, it says that while on administrative leave, you will not visit any Lee County facility. Are you alleging that Ms. Toney visited Lee County facilities without your authorization during this period?

A. I'm saying that she should not do it going forward, as I stated to her.

Q. All right.

A. When a person's placed on administrative leave, that is like a suspension, and that person is not permitted to be on the premises.

Q. So I asked you the question: You are not accusing her --

A. No, sir.

Q. -- of this?

Okay. "Utilize any school equipment to communicate, including access to computers or e-mails."

You're not accusing her of violating that, are you?

A. I'm letting her know that she should not do that.

Q. But are you today accusing her of violating that?

A. I am accusing her of violating the administrative leave.

Q. No, ma'am. Please listen to my question.

You told us that she was told not -- clearly not to visit any Lee County facility. This is in this letter. You got a copy of the letter, correct?

A. I met with her and went over this letter.

Q. Did you get a copy of the letter?

A. I have a copy, but I had a conversation.

Q. Okay. The letter says don't visit a facility. You're not accusing her of that, are you?

A. No. I'm saying not to do it.

Q. Okay. And today you're not accusing her of violating that directive, are you?

A. Of visiting --

Q. Yes.

A. -- the facility?

Q. Yes.

A. No, I didn't say that she visited a facility.

Q. Or utilize any school equipment or communicate, including access to computer or e-mail, you're not accusing her of violating that, are you?

A. My letter is not accusing her of anything.

Q. No. I'm talking about today.

A. Oh, you mean --

Q. You're telling the board why you want to fire her.

A. I've told them that, yes.

Q. That's not a basis, is it?

A. It is a basis of violating her administrative leave.

Q. In what way did she use computers and e-mails contrary to your directive?

A. She -- it -- it said -- it states here that she's not to do that.

Q. Yes.

A. But she was also told about this investigative process and asked not to contact anyone nor --

Q. It doesn't say that.

A. -- discuss that with anyone.

Q. It doesn't say that either, does it?

A. It doesn't have to say if it I told her that.

Q. It says, "You are not to contact fellow employees."

You can't tell Ms. Toney not to talk to her neighbors, can you?

A. I can say that she doesn't need to discuss this situation --

Q. Did you tell --

A. -- with her neighbor.

Q. -- Ms. Toney not to talk with her neighbors or her family?

A. I asked her not to talk with anyone about this situation.

Q. Is there a directive that she not talk to her family or her neighbors or receive telephone calls from her friends?

A. I --

Q. Is it or is it not in this letter?

A. I asked her not to discuss this situation.

MR. NICKLES: Madam Chairman, I would just like for the witness -- we can go a lot quicker if the witness will answer my questions.

BY MR. NICKLES:

Q. Does it say in here that Ms. Toney is not supposed to talk to anyone? Is the word "anyone" used in there at all?

A. No, sir, because that's never the intent of administrative leave.

Q. Okay. It does say "employees of Lee County School District." What employees of Lee County School District did she communicate with, talk to after she was told not to?

A. Well, let's see. I probably -- probably don't have a good count of them, but Ms. Toney proceeded to go to churches and ask people to come here for this hearing. She proceeded to --

Q. Wait a minute.

A. -- talk with people. Even as you were here with us, she proceeded to talk to an employee in this building and to start to walk around and ask the employee what -- what do you do here? What is your name? And she's still on this status of --

Q. No, ma'am.

A. Yes, she did.

Q. No, ma'am.

A. We had to ask you to stop her from --

Q. Ma'am --

A. -- walking this building --

Q. Ma'am --

A. -- and talking to employees.

Q. Ma'am --

A. Or your assistant.

Q. You recommended her termination. She has a right to defend herself. You recognize that, don't you?

A. She cannot violate the status of administrative leave.

Q. That's what Mr. Boykin told you, that this

administrative leave trumps your notice of termination and she can't defend herself, she can't ask witnesses to appear? Is that your understanding?

MR. BOYKIN: Objection. Assuming, for the sake of discussion, any communication I had with her is inappropriate for him to seek to cross-examine her on. I'm not saying I did or did not, but that was totally inappropriate.

MR. NICKLES: Madam Chairman, I withdraw the question. I'm pointing out the absurdity of the witness's response.

MR. BOYKIN: Well, what --

BY MR. NICKLES:

Q. You did --

MR. BOYKIN: -- (inaudible) absurdity?

BY MR. NICKLES:

Q. You did -- did you send a letter to Ms. Toney on October 29? It's Tab Number 11 of this document.

A. Yes.

Q. Excuse me.

A. And I can read. I see it.

Q. Okay.

A. You don't need to show it to me.

Q. And did that put Ms. Toney on notice that you were recommending the termination of her employment?

A. She was on notice, this -- this letter, yes.

Q. And does it, at the bottom, say, "As provided by South Carolina Code Section 59-25-470, you have a right to a hearing in this matter before the board"? Correct?

A. It does say that.

Q. Are you familiar with the procedures for these types of termination hearings? You've been in administration for a long time.

A. Yes, I am aware of that.

Q. Okay. And once you send this notice, doesn't Ms. Toney have a right to ask witnesses to be present and to testify on her behalf? Doesn't she have that right?

A. She does have that right.

Q. Okay. You tell me every person that you know of that Ms. Toney communicated with about this proceeding who is an employee of this district before October 29, 2013.

A. Well, she would have to provide that information, but during my discussion with her, she did state that everyone was talking about this. And she was engaging in conversations, she had contacted a board member, which when I asked her did she call the board member, she said, "Who me? No, I didn't call," until I

let her know that I was aware that she had made the contact.

What we have here is a very untruthful person who --

MR. NICKLES: I would --

A. -- is uncooperative --

MR. NICKLES: I would ask the witness to respond to my question.

BY MR. NICKLES:

Q. My question was to tell me every person you know of that Ms. Toney talked to who was an employee of this district before October 29th of 2013. Name them.

A. I cannot name them. I just explained to you why I cannot name them.

Q. Well, you accuse her of that in the -- in the letter, that you've shared information with other employees and students. You accuse her of that, right?

A. And to my knowledge, she did speak with other students and employees.

Q. Did you interview any student?

A. Of course I did not, and you know why.

Q. I'm not -- I asked you the question. Did you interview any student?

A. I would not.

Q. Okay. There you go.

A. Because I --

Q. You accuse her of something --

A. Excuse me --

Q. -- you're not prepared to prove --

A. -- I would not talk with a student about the nature of this. I don't think this is what our students need to be involved in.

Q. Well, nobody twisted your arm to put the accusation in the letter, did they? You're the one that accused Ms. Toney of this and you're the one who is saying I will not present that information to the board, correct?

A. I said I would not parade students in front of this board nor have their families a part of this kind of thing. It is clear that we -- I know that she -- there's enough here, there's enough that she's done that says she is not what we are looking for where we are in this school district and what we need to do. It is --

Q. You're speaking --

A. -- not a part of that.

Q. You're speaking for the board now using the word "we"?

A. I am speaking for myself as superintendent. I do not speak for the board.

Q. Well, I heard the plural.

A. The "we" is my cabinet, my team here, my principals. When I speak of the "we," it's what we are looking to do.

Q. Okay.

A. And we have to have cooperation, respect, and truthfulness as we move forward.

Q. Including truthfulness in presenting accusations about an employee, correct?

A. I've been very truthful, and I hope that you are not implying that I'm not a truthful person.

Q. Dr. Andrews, you pointed out -- excuse me -- that in every one of the contracts that was entered by Ms. Toney, Tab Number 1, it says, "Personnel are responsible to their immediate supervisor."

Correct? In this case, the principal. Correct?

A. That's correct.

Q. And in all of these years, all of these years, if any principal had a reason to recommend that Ms. Toney be discharged because she was not responsible to them, they could have done that, couldn't they?

MR. BOYKIN: Objection. That calls --

A. I can't speak --

MR. BOYKIN: -- for speculation.

A. I can't speak to that.

MR. BOYKIN: That calls for speculation.

BY MR. NICKLES:

Q. Let me put it to you a different way. Do you have any evidence that any teacher in any of these contracts made any recommendation that Ms. Toney be discharged for being irresponsible?

A. I really don't know what you're talking about or what you're asking me. You'll need to restate that question so I can answer it for you.

Q. Has any principal to this day in Lee County School District made a recommendation to terminate Ms. Toney's employment?

A. Now, I will say this to you. This is my first year here, so I do not know what happened behind closed doors with a superintendent and a principal. I don't know what happened behind closed doors with the director of human resources and the principal. And so I cannot answer your question. I don't have all that information --

Q. Well --

A. -- to give you.

Q. -- you know there's no record of that?

A. I know that it's not in her personnel file, but, my goodness, there's enough there --

Q. Well, you --

A. -- for termination.

Q. You say "there's enough there."

A. Heavy.

Q. You've presented what you've selected for the board to consider?

A. I have presented that.

Q. Okay. And you had access to the entire file, did you not? You could have selected anything your heart desired to present to them, correct?

A. What I did was an overview.

Q. Okay.

A. I did not give the board members her personnel file.

Q. Okay.

A. An overview of what is there.

Q. Okay.

A. Are you suggesting that I need to do that? Because I can.

Q. Including 2006, going back to 2006.

A. I can provide the personnel file to them, if you would like.

Q. Ma'am, that's not the way this works.

A. That's what I thought.

Q. Do you understand -- did your lawyers tell

you you have the burden of proof in this case?

A. I think I've proven my point. She's insubordinate, untruthful, uncooperative. And in my opinion, those are the qualities that will not allow this mission of our school district to be achieved if we have employees of that caliber.

Q. Now, Ms. -- excuse me. Dr. Andrews, the last letter that you wrote to Ms. Toney, I believe, was December 18th. That was the day of your deposition, correct?

A. Will you please tell me which tab you're referring to?

Q. It's Tab 12.

A. Tab 12. Okay.

Q. And just to refresh your recollection, that was the day of your deposition, correct?

A. Okay.

Q. Okay.

A. And we -- we know why I wrote that letter on the day of my deposition. We were at odds about students being involved. There's enough not to even involve them. And you know that.

Q. Dr. Andrews, I'm here to ask questions of you.

A. Okay.

Q. Now, if you want to volunteer information to the board, you can do so when Mr. Boykin asks you questions. But when I'm asking you questions, there are rules.

A. Okay. Well explain them to me, because honestly --

Q. When I ask a question, you answer it unless Mr. Boykin objects, but you answer the question only. Is that fair?

A. I will try to be fair.

Q. Okay. You don't get to get your shots in every time somebody asks you a question.

A. Okay. If you say so. I don't consider them shots, but I consider them truthfulness.

Q. Look at -- this bears your signature, Exhibit -- Tab 12 in -- do you recognize this document?

A. Yes, I do.

Q. And this is the second notice of termination that you sent to Ms. Toney, correct?

A. It is.

Q. And in it, Mr. Boykin said, quite candidly, there is no reference to insubordination in this document, is there?

A. There is reference to what she did, and it speaks to insubordination. Although the term may not be

used there, it's insubordination.

Q. Do you know, Dr. Andrews, that under law you have an obligation to give notice of the reasons that you're bringing a charge of termination against a teacher? It's your obligation to identify the specific instances in which you rely. Is that fair?

A. And it's there.

Q. Okay. And the word "insubordination" ain't there nowhere, is it?

A. Okay. Well, let me read this to you.

Q. No, ma'am. I'm asking you --

A. Okay.

Q. -- a question.

A. All right.

MR. BOYKIN: She's able to answer her question -- answer his question, and he needs to allow her to answer the question. Whether it's the one he wants or not, she should be able to answer the question.

MR. NICKLES: But she's obligated to answer the question first.

BY MR. NICKLES:

Q. And the question was: The word "insubordination" ain't there nowhere; isn't that right?

A. The word "insubordination" is not in the letter.

Q. Okay. And you remember I asked you what other employees Ms. Toney allegedly shared personnel information with? Do you remember I asked you that question in your deposition?

A. You asked a lot and I don't have all the questions committed to memory, so you --

Q. Okay.

A. -- will have to remind me.

Q. I'll give you your deposition. I'm not trying to trick you, Dr. Andrews.

A. Okay. You will have to --

Q. I'll be happy to.

A. -- tell me which page you're referring to.

Q. If we go to page 47 of your deposition.

A. Okay.

Q. Okay. And you see there that I asked you the questions about the allegations on cell phone use. You say, "I'm not relying on that anymore."

Do you see that page, lines 21 and 22?

A. Okay. Is it at the top or at the bottom that -- please don't approach me, just say where you want --

Q. The lines go down the side.

A. I know that. Just say which line you want me --

Q. I said 21 and 22.

A. Okay. And they weren't clear, but go ahead.

Q. Okay. Let's look over on page -- you said, "I'm not relying on that as grounds for termination."

Correct?

A. The incident that occurred at the school with the social media and Mr. Baldwin, that is what I said I'm not relying on that for the grounds of her termination.

Q. Okay. Let's look at page 51 of your deposition. And we're talking about who Ms. Toney allegedly talked to or shared personal information.

The question: "Who apart from yourself and Mr. McDaniel did Ms. Toney provide the information contained in Exhibit Number 2?"

Your answer was: "The secretary was given this information."

You see that?

A. Yes, I do.

Q. "The secretary of who?

"In the office, one of the secretaries.

"But the name is what, ma'am?

"I'm sorry, I don't have a name.

"In your office?

"No.

"In the school office?"

No. It says: "In your office?

"No, no.

"In the school office?

"Yes."

And you said: "She provided a copy of the same package to her."

Okay. Now, did you talk to that school secretary about receiving a package from Ms. Toney?

A. I did not, but I think Mr. Webb did.

Q. Okay. Were you there at the secretary's deposition?

A. I was present at that deposition.

Q. And she said she didn't ever get anything from Ms. Toney, didn't she?

A. I don't recall exactly.

Q. Okay. But that's what you thought --

A. And specifically.

Q. -- at the time?

A. And specifically.

Q. That's what you thought at the time?

A. I was told that the information was shared with the secretary. The secretary provided Mr. Webb. That could have been the cell phone incident or the packet of information. But the --

Q. So --

A. -- secretary knew.

Q. So when you're writing here on your December 18th letter, you don't have any evidence that Ms. Toney shared any personal information with other employees than yourself and Mr. McDaniel; isn't that true?

A. No. She shared personal information with Ms. Addison, and I believe Ms. Addison did testify to it.

Q. With Ms. Addison?

A. Uh-huh.

Q. Now, Ms. Addison didn't recall much, did she? Did she?

A. I -- I didn't hear you.

Q. Ms. Addison didn't recall a whole lot, did she?

A. According to you, she didn't.

Q. Well, according to the record, she didn't.

A. When you -- she didn't. I do recall you stating that she had a memory problem.

Q. Did you read her deposition?

A. I did scan it, but I was present for her deposition.

Q. Okay. Did it concern you that your assistant principal said she didn't recall answers to 41 questions

in 39 pages of deposition?

A. If she didn't recall them, she didn't recall them.

Q. Okay. She didn't even recall calling or speaking with Mr. Baldwin over the telephone and telling him what she was accusing Ms. Toney of, did she? She didn't recall doing that?

A. As I said, I don't have it committed to memory.

Q. Okay.

A. But if she said she didn't recall it, then I trust her word.

Q. Okay. You do remember saying that Ms. Addison should have taken some action if she saw things on Facebook that were in the package you received. Do you remember saying that, that you would have expected her to do something about it?

A. I think you asked that question. So if there was a Facebook situation that an administrator had knowledge of that warranted us taking some action, I would expect that to happen, but I also believe that she did not recall a Facebook page that warranted that.

Q. And you didn't take any action --

A. She didn't take --

Q. -- against Ms. Addison, did you?

A. She said she didn't see whatever you were asking her about.

Q. Well, you talked to Mr. Baldwin about what he had entered in the Facebook postings, correct, the material that you saw in the package?

A. I did talk with Mr. Baldwin.

Q. Okay. And he admitted to you that those things that were attributed to him were his postings, correct? Did he admit that to you?

A. He did.

Q. Okay. And there were some rather vulgar things that he admitted saying, correct?

MR. BOYKIN: I will object to this continued line. I think the board has ruled; and I think that if this hasn't crossed, it's getting close to crossing what the board has asked.

MS. MOSES: Just let's please refer to just the Baldwin Facebook page.

MR. NICKLES: Right. I mean, I haven't made any comment about any specific entry, as I recall.

BY MR. NICKLES:

Q. But did you take any action with regard to Mr. Baldwin's Facebook postings with regard to him?

A. I did take action. I went and reviewed his file, which was impeccable, his person --

Q. How long has he been here?

A. -- his personnel record.

Q. How long has he been here?

A. He, I think, has been here three or four years.

Q. No. He's been here -- this is his second year.

A. Okay. Well, his record, there was nothing there and no reprimands and nothing -- so in that case, I did just counsel with him and ask him some questions. He did believe that his page was private, but as you know, nothing is really ever private.

Q. And you told him that, didn't you, that it wasn't private?

A. Yes, I did.

Q. Your current recollection is that you did consult with Mr. Webb. Would you defer to him if he says he didn't talk to you?

MR. BOYKIN: Objection. That's pitting the witness. Each testimony stands on its own --

MR. NICKLES: Okay.

MR. BOYKIN: -- and the board can decide what they want to believe.

MR. NICKLES: That's fine.

BY MR. NICKLES:

Q. Look at Tab 10, if you would, Dr. Andrews. You talked about meeting with Ms. Toney on the 22nd of October; is that correct?

A. That was one of the meetings held, yes.

Q. And did you have Ms. Vaughn do some record of that meeting?

A. Yes.

Q. And do you recognize Ms. Vaughn's handwriting here?

A. Yes, I do.

Q. And this is a record that you had previously reviewed, correct?

A. Yes.

Q. Now, you were indicating earlier that you didn't have any intent to intimidate Ms. Toney or influence her to give up her rights under the law; is that what you intended to communicate to the board?

A. That is what I communicated, and that's what I still communicate.

Q. Okay.

A. No intent to ever intimidate anyone.

Q. It says here, "Please be careful. Termination record. Future employment will be difficult. Not a game you want to play. I want you to know what happens down the road. Look ahead.

Circumstantial evidence against you."

On the next page, you say, "You are going down a path that will lead to a bad end. SCEA won't save you."

Correct?

A. Um --

Q. That's what Ms. Vaughn wrote down about your meeting with Ms. Toney on that day?

A. Okay. And I don't recall saying that, but at the place where we were in that discussion, I guess I can explain what I meant by that, if you would like to have that. For me to explain what I meant, they cannot save a teacher who is not telling the truth. SCEA cannot make her a better teacher. I don't know that you have classes on the skill set that's needed to improve teachers. I don't think that's what The SCEA does nor their attorneys. And, of course, she had said throughout that she needed them.

I -- you read these words unlike I said them. I certainly don't want to hurt anyone. And a termination is very different than a resignation. And if she wanted to tender her resignation, I would have accepted it.

Q. So are you suggesting that Ms. -- Ms. Vaughn here inaccurately represented what you said to

Ms. Toney?

A. No. I said that with -- this is what I'm saying to you. With any incident, you read that but you weren't present, and it's very hard to exactly -- she was taking some notes but not all. The entire conversation is not -- but what I'm saying is that was at the point where she began saying about needing an attorney and all of the other, and so my response of SCEA not being able to save her if she traveled down the path and got herself terminated, I still stand behind those words.

Q. Dr. Andrews, would you say that Mr. McDaniel, Ms. Addison, and Mr. Webb would be in a better position than you to determine whether there was any disruption at Lee County High School caused by Ms. Toney?

A. We're still experiencing disruption. To this date.

Q. Because she's defending herself?

A. No. Because of what's going on around this whole case that -- that I have not, you know, had the opportunity to make the board aware of. So we are still having disruptions in the district due to that.

Q. Didn't each --

A. Disruptions in the community.

Q. Didn't each of those people say under oath

that they were not aware of any disruption of the educational process occasioned by Laura Toney? Isn't that correct?

A. When -- I don't think I said --

Q. The answer is either yes, no, or I don't know.

A. I -- well, I don't know exactly what they said --

Q. Okay.

A. -- and what you interpreted.

Q. Fine.

A. But, then, they don't receive the calls from administrators and local community members and Facebook pages and other information. It didn't -- it doesn't go directly to them.

Q. So you're firing Ms. Toney because of other people's reaction to your recommendation --

A. No, sir.

Q. -- to terminate her?

A. No, sir.

Q. And you object if other people express their opinions about whether or not this was a good or bad idea? Do you object to that?

A. I would say to you that if you have an uninformed opinion, that you do have that. And I didn't

go out and ask anyone for their opinion of this decision. I stand firmly behind what I have given to the board, which is my recommendation to terminate her employment, and I still stand firmly behind that.

Q. And do you stand behind what you recommended -- I mean, you -- in October you made a recommendation that you changed in December, correct?

A. But we know why some of the information was excluded and changed, because I wasn't willing to allow the students to be paraded through here and questioned and a part of this. And I still stand behind that decision.

Q. And so when you look at the reasons that are given for Ms. Toney's termination currently, you're talking about your December 18 letter, that letter that you prepared on the day of your deposition, correct?

A. I'm talking about everything that I have said and everything that I have put in writing. And the fact that she does not do what she is asked to do by her supervisors, to include the superintendent. And I will not use the term "insubordination" because that is not what you would like for me to use.

Q. Well, ma'am, you are trying to convey to this board one case, and you have another in your letter. That's why I wanted to know which one you're choosing