THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

Case No. 2015-CP-42-1688

Dedra H. Kiser, ... Appellant,

v.

Spartanburg School District 7, ... Respondent.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

(1) Did the Circuit Court err in upholding the School Board's determination that a continuing contract teacher's poor driving during an extracurricular athletic trip justified immediate termination under the "evident unfitness for teaching" clause of the SC Teacher Employment and Dismissal Act, where driving was not part of the teacher's job responsibilities or duties as a teacher, but only part of her supplemental assignment as an assistant coach?

(2) Did the Circuit Court err in concluding that the immediate termination of a continuing contract teacher was not pre-mature where the School Board disregarded an express provision of the SC Teacher Employment and Dismissal Act, as well as the Board's own written policy, by failing and refusing to await the outcome of the underlying criminal proceedings to which the teacher had pleaded not guilty and requested a jury trial?

STATEMENT OF THE CASE

This is a second-level appeal, pursuant to the South Carolina Teacher Employment and Dismissal Act ("SCTEDA"), S.C. Code Ann. § 59-25-480, of a certified public school teacher's termination of employment. The Spartanburg School District 7 Board of Trustees conducted a full evidentiary hearing in this matter on March 18, 2015, to consider the Superintendent's recommendation for Appellant's immediate termination of her employment with the District. By decision dated March 27, 2015, the District 7 Board approved the Superintendent's recommendation for immediate termination.

Appellant timely filed and served a Notice of Appeal to the Spartanburg County Court of Common Pleas on Monday, April 27, 2015, within 30 days of her receipt of the written decision of the School Board. The evidentiary record from the School Board hearing was filed with the Circuit

Court. On November 2, 2015, the Circuit Court conducted a hearing on the appeal after both sides filed supporting briefs.

The Circuit Court entered an order dated November 23, 2015, affirming the decision of the School Board. Appellant's counsel received notice of the entry of the order on December 2, 2015. Appellant timely filed and served her Notice of Appeal on December 23, 2015, within 30 days of her counsel's receipt of written notice of the entry of the order.

FACTS

Appellant, Dedra Kiser, was previously employed by Spartanburg District 7 as a math teacher at Spartanburg High School for over 10 years. (Tr. at 93, ll. 7-8). By all accounts, she was a dedicated teacher and never received any previous write-ups or disciplinary actions, nor was she ever the subject of any previous complaint by any student, parent, colleague, or administrator. (Tr. at 76, l. 20 to p. 77, l.9; at 151, ll. 21-24). She was employed pursuant to a continuing contract and never had any problem with the renewal of her continuing contract. (Tr. at 94, ll. 22-25) Throughout her tenure at Spartanburg High School, she consistently received outstanding performance evaluations and excellent class-room observations, including one conducted by the assistant principal only a few weeks before the incident in question. (Tr. at 95, ll. 1-11; and Tr. at 157, l.8 to 158, l. 12). During the School Board hearing, the Principal of Spartanburg High School described Ms. Kiser as "a great teacher," "a stellar teacher, a model teacher" prior to the underlying incident. (Tr. at 76, ll. 13-19). The chairperson of the math department at Spartanburg High School also testified that Ms. Kiser was a "fine teacher" who always taught students according to applicable standards and had "done everything she's supposed to do." (Tr., at 151, ll. 18-20).

In addition to her teaching duties, Ms. Kiser also served as an assistant cross-country coach

for Spartanburg High School, which she had done for a couple of years since her daughter had been on the school's varsity cross-country team. Ms. Kiser had a separate coaching supplement to her continuing contract as a teacher. (Tr. at 153, ll. 19-21). Ms. Kiser's employment contract specifically provides that "Extracurricular assignments, including coaching assignments, are for the stated school year only, and no expectations are created concerning assignments for future years. All extracurricular assignments are discretionary with the administration and may be made or terminated at any time, upon notice to and consultation with the Employee." (Kiser Ex. D).

Ms. Kiser is the mother of three children, the oldest of whom graduated in May 2014 from Spartanburg High School in the top 10% of her class and was the captain of the cross country team. (Kiser Pre-Hearing Br., at 1; Tr. at 91, l. 24 to p. 92, l. 3). Her younger two boys are currently students in Spartanburg School District 7. (Tr. at 93, ll. 1-3). Ms. Kiser would never do anything to knowingly or willfully place her students (or any child) in any type of danger. (Kiser Pre-Hearing Br., at 1).

The incident at issue in this case occurred on Friday, September 26, 2014, while Ms. Kiser was driving the Spartanburg High School girl's cross-country team to a meet in Charleston, South Carolina, in the school's 1999 Chevy Suburban. Ms. Kiser testified that she believes this was the first time she had ever driven the 1999 Suburban, although she had driven the District's newer, 2003 Suburban on a couple of other occasions to cross-country events in prior years. (Tr. at 99, ll. 17-22). The District's Suburbans were much larger than the vehicles Ms. Kiser was used to driving on a regular basis. (Tr. at 100, ll. 12-15). The wheel base of the Suburban is approximately 76 inches wide, with two side-view mirrors sticking out approximately 12 inches on each side, the overall total width of the vehicle being approximately eight-and-a-half feet wide. (Tr. at 101, ll. 3-13; 101, l. 23

to p. 102, l.20). Another assistant cross-country coach testified that the steering on the '99 Suburban was "loose" and that it "tended to drift to the right as it was driving down the road." (Tr. at 146, ll. 20-25). He also testified that the District's newer 2003 Suburban handles "a lot better" than the older 1999 Suburban. (Tr. at 147, ll. 18-25). Ms. Kiser testified that she also noticed that the steering was "loose" and that "she would have to fight it more to keep it on the road than say, my car." (Tr. at 109, l 22 to p. 110, l. 1). She acknowledged that during the drive towards Charleston, she occasionally ran onto the rumble strips on the highway and the reflectors between the lanes, which is not uncommon for her to do in her everyday driving. (Tr. at 110, ll. 2-6). Ms. Kiser's difficulty in handling the large Suburban was evident from the very beginning of the trip, when she hit the curb with the right side of the vehicle as they were first pulling out of the school parking lot. (Tr. at 104, ll. 3-6). The maintenance records for the District's 1999 Suburban revealed that the vehicle had received an alignment only one time in the 15-year ownership history by the District, and that the vehicle had hit a deer in 2008 causing over $1,000 in damages to the front end of the vehicle. (Maint. Records). The vehicle in question had over 120,000 miles on the odometer and was older than any of the student passengers on that particular trip.

Almost four hours into the trip, Ms. Kiser was stopped by a highway patrol officer on I-26 in Charleston County, following two motorists' reports to highway patrol that she was driving erratically. The first driver, who observed the vehicle near mile marker 156 outside of Orangeburg, reported "there is a blue Suburban, it's a car full of girls, and they are swerving all over the place." (Dist. Ex. 8). The second caller, who began observing the vehicle near mile marker 194, similarly stated, "there is a blue Suburban with . . . county government plates that is swerving all over the road." (Dist. Ex. 8).

When the highway patrol officer pulled Ms. Kiser over, she anticipated that he was going to write her a speeding ticket. (Tr. at 115, ll. 2-9). Instead, the trooper brusquely ordered her to get out of the car. (Tr. at 115, l. 22 to p. 116, l. 4). Although Ms. Kiser acknowledged that she was somewhat flustered and embarrassed to be pulled over, especially with a car-load of student athletes, she fully cooperated with the trooper. (Tr. at 115, ll. 16-18; 115, ll. 5-6). The trooper performed several field sobriety tests on the sloped emergency lane beside the highway. Ms. Kiser was ordered to stand on one leg with the other leg extended straight out for a prescribed length of time. She apparently wobbled a bit and put her arms out to balance her, which is completely understandable since she had just gotten out of a vehicle where she had been driving for over three hours straight by that time, without stopping or changing positions. (Tr. at 117, ll. 23-24). Ms. Kiser actually attempted to demonstrate this particular test during the School Board Hearing, which she had trouble doing even then because of her inherently poor balance. (Tr. at 117, ll. 19-23). The trooper also asked her to walk in a straight line, heel to toe, for approximately ten feet and back, which she found particularly difficult because she was wearing open-toed, slip-on sandals, which would have come off her feet had she attempted to slide her front foot back to touch the toes of her back foot. (Tr. at 116, l. 9 to p. 117, l. 18). The trooper also examined Ms. Kiser's eye movements by asking her to follow a pen or his finger with her eyes. Ms. Kiser testified that she understands that nystagmus (i.e., irregular, jerky eye movements) can be a side effect of nicotine. (Tr. at 117, l. 25 to p. 118, l. 8). Ms. Kiser believed that she performed okay on the field sobriety tests; however the trooper indicated that she did not pass and that he could smell alcohol on her breath. Significantly, Ms. Kiser had been discretely using a fruit-flavored e-cigarette device throughout the trip. (Tr. at 105, ll. 13-15; at 106, ll. 4-7). The trooper then ordered Ms. Kiser to place her hands behind her back, where he

placed hand-cuffs on her and placed her in his patrol car. (Tr. at 118, ll. 9-25).

Ms. Kiser was shocked about what was happening to her. She was humiliated and mortified that she was being arrested, and she was primarily concerned about what would happen to the girls in the Suburban who were under her care for the weekend. (Tr. at 120, ll. 2-6). She knew that she was not impaired in any way, but the trooper simply would not listen to her. The trooper took her from the scene to the highway patrol headquarters, where she repeatedly asked to be allowed to call an attorney. Ms. Kiser was not permitted allowed to make a phone call for over 10 hours after being taken into police custody. (Tr. at 121, ll. 8-14). When the trooper requested that Ms. Kiser submit to a Breathalyzer test, she repeated her request to speak with a lawyer. (Tr. at 121, ll. 15-17). The trooper considered Ms. Kiser's request for a lawyer to constitute a refusal to take the Breathalyzer test, and she was immediately taken to the County Detention Center, where she was formerly booked and spent approximately 29 hours in jail, finally being released on bond after 10:00 p.m. on Saturday night. (Tr. at 124, ll. 1-5).

Shortly after the traffic stop, one of the girls in the Suburban called the other assistant cross-country coach, John Freed, who was driving the boys' team to the same meet in the District's other Suburban. Mr. Freed's testimony in this matter is crucial. He drove to the highway patrol headquarters to take care of the girls after they were transported there by other police officers following Ms. Kiser's arrest. He testified that he spoke with all seven girls at the highway patrol headquarters that night and they were all in disbelief that Ms. Kiser had even been stopped by the highway patrol in the first place, much less arrested on the scene: "they were surprised they got stopped. They didn't expect to be. They had no idea that anything was going on bad enough to be stopped." (Freed Depo., at 15, ll. 17-19). Although the girls indicated that Ms. Kiser had been

speeding a "couple of times" and that there were "only a couple of times where they had gone slightly off the [right] side of the road," the students never indicated to Coach Freed that Ms. Kiser ever came close to sideswiping another vehicle or running anyone off of the road. (Freed Depo., at 15, l. 24 to p. 16., l. 6). Importantly, with regard to Ms. Kiser's condition, Mr. Freed stated, "Nobody saw her drink anything, nobody smelled anything and nobody had any suspicion of anything at all, one hundred percent. They kept saying the same thing over and over and over again." (Freed Depo., at 16, ll. 11-15).

Ms. Kiser was ultimately arrested and charged with driving under the influence and child endangerment.[1] At the time of the School Board hearing and the first appeal to the Circuit Court, the criminal charges against Ms. Kiser were still pending.[2] She had pleaded not guilty to the charges against her and had requested a jury trial.

Ms. Kiser adamantly denies that she was intoxicated or impaired in any way in the operation of the school vehicle on the date in question. More importantly, there is absolutely no evidence in the record that Ms. Kiser was intoxicated or otherwise unlawfully impaired on the day in question.

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[1]Pursuant to S.C. Code Ann. § 56-5-2947(A), the offense of "child endangerment" is defined as where a person who commits one of four listed predicate offenses "has one or more passengers younger than sixteen years of age in the motor vehicle when the violation occurs." The four listed predicate offenses for child endangerment are violation of S.C. Code Ann. § 56-5-750 (failure to stop a motor vehicle when signaled by a law-enforcement vehicle), S.C. Code Ann. § 56-5-2930 (operating a motor vehicle while under the influence of alcohol or drugs), S.C. Code Ann. § 56-5-2933 (driving with an unlawful alcohol concentration), and S.C. Code Ann. § 56-5-2945 (felony DUI involving great bodily injury or death).

[2]The Charleston County Solicitor's Office eventually dropped the DUI and child endangerment charges against Ms. Kiser in exchange for her pleading nolo contendere to a simple traffic offense of reckless driving on November 19, 2015. Case No. H400277 (Charleston County). The undersigned counsel did not represent Ms. Kiser in the criminal matter, which was disposed of more than two weeks after the November 2, 2015 hearing before the Circuit Court on the initial appeal of the School Board's decision.

In fact, she produced multiple, compelling alibi witnesses who had collectively observed her at various points throughout the entire day in question, and who confirmed that she never ingested any mind-altering substance that could have impaired her driving ability.

Ms. Kiser had previously arranged to take the morning off of work that Friday, because she was moving furniture, clothes, and other household items in anticipation of her mother moving in with her and her family on a temporary basis after the mother sold her house much quicker than anticipated. (Tr. at 95, l. 18 to 96, l. 14). Ms. Kiser had an appointment first thing that morning to meet with a cable technician from AT&T, who was helping to re-locate TV and phone lines throughout the house in connection with her mother's move. Ms. Kiser submitted an affidavit from the cable technician, Geoff Cannon, in which he describes his repeated interactions with Ms. Kiser and his observations of her for approximately four hours that morning. (Kiser Ex. F). In summary, Mr. Cannon states, "I can say without equivocation that Ms. Kiser did not appear to be intoxicated, impaired, or under the influence of any substance at any time between 9:30 a.m. and when she left her house shortly before 1:30 p.m." (Id. at 2, ¶ 10). Ms. Kiser's mother, Elaine Hembry, also testified at the School Board hearing that she had spent approximately two hours with Ms. Kiser that morning and that her daughter appeared perfectly normal. (Tr. at 143, ll. 5-19). Ms. Hembry actually hugged and kissed her daughter good-bye that afternoon, and Ms. Kiser did not appear to be intoxicated or impaired in any way. (Tr. at 144, ll. 2-3).

Ms. Kiser left her house at approximately 1:30 p.m. to head for the school. She had to wait until Mr. Cannon had completed his work on the inside of the house and had moved to the outside of the house to finish the cabling job. Ms. Kiser was a little late in getting to the school that afternoon, as the cross-country team had planned to leave at 1:45 p.m. Once she arrived at the

school, she put her luggage in the Suburban, which had been pulled around to the front of the school. She then spoke briefly with the Cross Country Coach, Jack Todd, and assistant coach John Freed for 5-10 minutes about the trip before they started to leave. Both Coach Freed and Coach Todd testified that neither of them noticed anything unusual about Ms. Kiser's behavior or appearance before she got into the school vehicle to start the trip. (Tr. at 148, ll. 7-20; Tr. at 154, ll. 2-11; at 154, l. 24 to 155, l.12). They also both testified that if they had any suspicion that Ms. Kiser was somehow impaired, that they would never have let her get into the vehicle to drive the girls. Id. The girls were the only other people who had any contact with Ms. Kiser from the time they left the school shortly before 2:00 that afternoon until the time of the traffic stop. As noted earlier, all of the girls spoke with Coach Freed at the highway patrol headquarters shortly after Ms. Kiser's arrest, and all of them unequivocally told Coach Freed that she appeared to be fine. The following Monday, when the girls returned to school, Principal Stevens interviewed the three high-school students who were in the car with Ms. Kiser. None of them mentioned anything about Ms. Kiser appearing to be intoxicated or impaired in any way. (Tr. at 80, ll. 4-14; at 82, l. 19-p. 83, l. 2; and at 84, ll. 15-20).

The news reports about Ms. Kiser's arrest were immediate and, frankly, deeply concerning largely because they reported only the trooper's side of the story. Ms. Kiser's unflattering mug shot from the detention center on the night of her arrest was prominently featured in newspaper, TV, and Internet reports about her arrest and her alleged refusal to submit to a breath test, along with descriptions and even dash-cam video of her allegedly failed field sobriety tests. Respondent's counsel submitted at least nine separate news accounts of Ms. Kiser's arrest to the School Board during the hearing. (Dist. Ex. 20). Respondent's counsel actually stated in his pre-hearing brief that "The incident and [Ms. Kiser's] arrest have been reported throughout the local community and state-

wide." (Dist. Pre-Hearing Br., at 4). Respondent's counsel also noted that arrest "adversely affects the Administration's ability to maintain broad community confidence in the School District's ability to protect its students." (Id. at 5).

Ms. Kiser was horrified and embarrassed to have been arrested and forcibly removed from the care of the student athletes who were entrusted to her that weekend. She spoke with Principal Stevens on the following Sunday afternoon, shortly after she was released from the Charleston County detention center, and he informed her that she had been placed on administrative leave pending an investigation into the matter. On Monday, September 29, 2014, she was called into a meeting with Superintendent, Dr. Russell Booker, who requested her immediate resignation. (Tr. at 124, ll. 21-23). Ms. Kiser requested some time to think about the decision, because she loved her job and worked very hard to return to college to get her education degree and teaching certificate after her children were born. (Tr. at 124, l. 24 to p. 125, l. 16). Dr. Booker instructed Ms. Kiser not to have any communication with the students, their families, or anyone at the school about this matter. (Tr. at 124., ll. 14-17). Ms. Kiser testified at the hearing that she deeply regretted never having had an opportunity to apologize to the girls and their families for the horrible ordeal they were put through in this unfortunate situation. (Tr. at 125, l. 17 to p. 126, l. 2).

On or about October 15, 2014, Ms. Kiser received Dr. Booker's letter of September 29, 2014, informing her that he would be recommending her immediate termination to the District's Board of Trustees. Ms. Kiser timely requested a hearing before the Board to present her side of the story.

On October 27, 2014, Ms. Kiser through her undersigned counsel agreed to waive the 15-day deadline for a hearing before the Board in order to have a full and fair opportunity to conduct discovery about the underlying facts of this matter. Ms. Kiser reluctantly acceded to the School

District's attorney's condition that she be placed on unpaid suspension (rather than paid administrative leave) from the District beginning October 30, 2014, pending the outcome of her hearing before the School Board. The date of the School Board hearing was delayed on several occasions, primarily because of the District's refusal to issue subpoenas, pursuant to S.C. Code Ann. §§ 59-25-490, -500, and -520, commanding the attendance at depositions of the student witnesses who had been interviewed by Principal Stevens. Ms. Kiser eventually had to file a separate lawsuit seeking a writ of mandamus to require the District to issue the subpoenas, which action was settled with a consent order authorizing Ms. Kiser's attorney to issue the deposition subpoenas directly to the students. Dedra H. Kiser v. Spartanburg School Dist. 7, Case No. 2014-CP-42-4633.

ARGUMENTS

1. THE CIRCUIT COURT AND THE SCHOOL BOARD ERRED IN CONCLUDING THAT APPELLANT'S POOR DRIVING DURING AN EXTRACURRICULAR ATHLETIC EVENT "MANIFEST[ED] AN EVIDENT UNFITNESS FOR TEACHING," BECAUSE DRIVING IS PLAINLY NOT PART OF A TEACHER'S JOB DUTIES OR RESPONSIBILITIES, NOR DOES BAD DRIVING REFLECT SOME UNDERLYING CHARACTER DEFICIT THAT IS INCOMPATIBLE WITH BEING A PROFESSIONAL EDUCATOR.

Ms. Kiser was employed by Spartanburg School District 7 pursuant to a Continuing Contract of Employment, which gives her rights under the South Carolina Teacher Employment and Dismissal Act, S.C. Code Ann. § 59-25-410 et seq. Dismissal of a continuing contract teacher is governed by Section 59-25-430, which provides, in relevant 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,[3] or who shall otherwise manifest an evident unfitness for teaching."

[3]There has never been an allegation that Ms. Kiser was incompetent in her teaching duties or that she failed to give instruction in accordance with the directions of the superintendent.

S.C. Code Ann. § 59-25-430 (emphasis added). The statute contains a non-exhaustive list of conduct that constitutes "evident unfitness for teaching," which includes, but is 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." Id.

The Superintendent, as the Complainant in the underlying School Board hearing, had the burden of proving that "good and just cause" for the dismissal exists. S.C. Code Ann. § 59-25-470. There is not substantial evidence in the record that Ms. Kiser manifested an "evident unfitness for teaching" so as to justify her termination as a continuing contract teacher.

Ms. Kiser's alleged erratic driving and speeding on the day in question did not "manifest an evident unfitness for teaching" as required by section 59-25-430 to warrant her immediate termination. Driving is plainly not part of the job duties and responsibilities of a being a public school teacher. The District's written job description for a teacher does not list driving as a job responsibility. (Kiser Ex. E). The Spartanburg High School math department chair, Lisa Donahoo, testified that she has been a certified school teacher for 22 years, but has never had to drive a student anywhere. (Tr. at 150, ll. 12-18). Even if Ms. Kiser is a bad driver, that does not mean she is unfit to be a teacher. There is absolutely no nexus between being a good driver and being a good teacher. Arguably poor judgment behind the wheel or bad driving skills on the road simply do not demonstrate poor judgment in the classroom or unfit teaching abilities.

Driving arguably might be a necessary job duty or responsibility of Ms. Kiser's supplemental position as an assistant cross country coach, which is entirely separate from her teaching contract.

Thus, the first phrase of Section 59-25-430, is not applicable in this case.

As noted above, Ms. Kiser's employment contract specifically indicates that her coaching assignment is at-will, with no statutory protections or expectation that such assignment will continue from year to year. (Kiser Ex. D). The Superintendent could have terminated Ms. Kiser's coaching supplement without implicating her protected rights under the SCTEDA. Alternatively, he could have removed her driving responsibilities, placed her on probation, or required her to attend a safe-driving course before being allowed to operate another District vehicle again as a coach.

The Superintendent does not take any issue at all with Ms. Kiser's actual job performance as a classroom teacher. The undisputed evidence is that Ms. Kiser was a fantastic school teacher. Her arguably poor driving skills or overly aggressive driving do not translate into "unfitness for teaching" for purposes of the SCTEDA.

Ms. Kiser's conduct in driving the District's Suburban indisputably does not fit within Section 59-25-430's illustrative list of conduct that "manifest[s] an evident unfitness for teaching." Although the statute expressly indicates that the list includes, "but [is] not limited to" certain categories of conduct, all of the categories listed is section 59-25-430 relate either directly to the very core of a teacher's expected duties in the classroom, or indirectly to a fundamental character flaw that would tend to disqualify someone from being considered a competent and professional teacher. Ms. Kiser's conduct during the events in question clearly did not involve any of the verboten items listed in Section 59-25-430. She did not engage in a "persistent neglect of duty'" or a "willful violation of rules and regulations of district board of trustees." Id. (emphasis added). Although there were multiple suggestions or innuendos of "drunkenness" on Ms. Kiser's part (and perhaps even probable cause for the trooper to have stopped Ms. Kiser's vehicle for suspicion of DUI), the only substantial evidence in the record is that Ms. Kiser was not intoxicated or impaired in any

manner while driving the District's vehicle. She had consumed a moderate amount of wine with dinner the night before the trip and over a period of approximately six hours after dinner as she did laundry and other household chores, finally going to bed around 2:00 a.m. (Tr. at 97, ll. 17-25). Ms. Kiser did not feel intoxicated when she went to bed, nor did she feel any effects of the wine when she woke up the next morning at 6:00 a.m. to get her own children ready for school. (Tr. at 98, ll. 1-16). Ms. Kiser also testified that going to bed at 2:00 a.m. and waking up at 6:00 a.m. was a typical schedule for her as a busy mother of three children. (Tr. at 135, ll. 14-21)). Respondent's counsel's suggestion that she was "up all night drinking" the night before the trip is a gross mischaracterization of the facts. (Tr. at 135, l. 14). Further, at the time of her termination from the District, Ms. Kiser had not been "convict[ed] of a violation of the law of this State or the United States," nor had she engaged in any conduct that could be considered "gross immorality" or "dishonesty." S.C. Code Ann. § 59-25-430. Finally, there is no evidence in the record (or even a real allegation) that Ms. Kiser engaged in the "illegal use, sale or possession of drugs or narcotics." Id. Although the police video excerpts introduced by Respondent's counsel refer to some "pills" that were found in Ms. Kiser's purse, she forthrightly explained that those medications were one of her son's prescription ADHD medications which she routinely carries with her, as well as a prescription medication she takes daily that does not impair her ability to drive an automobile. (Tr. at 92, ll. 3-25).

The Superintendent's letter recommending Ms. Kiser's termination states that his determination of her "evident unfitness for teaching" was based on "the extreme hazard to the safety and well-being of the student athletes entrusted to your care, misuse of a school district vehicle, and multiple violations of the law and school district policy, not to mention extremely poor judgment."

(Kiser Ex. B). Clearly, all of these items relate only to the manner in which Ms. Kiser drove the District's vehicle to Charleston with the girl's cross-country team. There is simply nothing about Ms. Kiser's arguably bad driving habits or undesirable tendencies while operating a vehicle that would interfere with her teaching abilities.

Ms. Kiser acknowledged that she is an aggressive driver and that she routinely drives faster than the average driver. (Tr. at 110, ll. 7-16). Ms. Kiser's mother even corroborated that "you know, she does drive fast." (Tr. at 144, ll. 7). However, Ms. Kiser was not driving any differently on the day in question than she normally drives with her own children in the car.

The Circuit Court's description that "On Interstate 26, Kiser was driving at speeds of 90 and 95 miles per hour or more" (Order at 6), is somewhat of an overstatement of the evidentiary record in this case. Neither of the motorists who called the highway patrol about Ms. Kiser's erratic driving mentioned anything about her speeding. No law enforcement officer clocked Ms. Kiser's speed with a radar gun, and the trooper who stopped her for suspected DUI did not include a citation for speeding. The girls in the Suburban testified that Ms. Kiser "normal rate of speed" on the trip was "seventy to eighty if there wasn't any traffic." (M.G. Depo., at 22, l, 24 to p. 23, l. 2). The same student said that she noticed Ms. Kiser driving upwards of 90 or 95 only on three occasions, and that Ms. Kiser slowed down every time excessive speed was brought to Ms. Kiser's attention. (M.G. Depo., at 22, ll. 15-22). Ms. Kiser conceded that she would occasionally catch herself going faster than usual, especially since the Suburban did not have cruise control, but that she was generally driving with the flow of traffic on I-26 towards Charleston. (Tr. at 108, ll. 9-25). Even Coach Freed acknowledged that he generally drove 7-8 miles per hour over the posted speed limit, but that the traffic flow on I-26 frequently moved much faster than that. (Freed Depo., at 19, l. 12 to p. 20, l. 18).

The Circuit Court's quotation from the student's account of the incident where Ms. Kiser had to pull the car off into the emergency lane to avoid a collision is unfairly taken out of context. Another student described the incident as follows: "We were near North Charleston and traffic was starting to back up. And the car in front of us had slowed down. And [Ms. Kiser] slammed on the brakes but she couldn't stop in time. So she swerved over to the shoulder of the road to avoid hitting the car." (M.G. Depo., at 23, ll. 12-16). Ms. Kiser recounted that event as follows: "The car in front of me slammed on brakes, so I had to slam on brakes and go off to the right of the road. I mean who hasn't done that?" (Tr. at 113, ll. 17-19).

Exactly how bad Ms. Kiser's driving skills are, and whether the circumstances here were mitigated somewhat by the facts that Ms. Kiser was driving a very large, very old, high-mileage vehicle that had loose steering, soft brakes, and tended to drift to the right, plus the fact that she was not familiar with this vehicle, are all subject to some debate. However, none of this implicates her fitness for teaching, nor does it serve as a predictor of her ability to continue serving as an effective educator. Generic allegations of "exercising poor judgment" in a skill set such as driving are wholly unrelated to Ms. Kiser's profession as a certified high school math teacher.

The SCTEDA establishes statutory protections for public school teachers employed pursuant to a continuing contract of employment. The court of appeal's decision in Hall v. Board of Trustees of Sumter County School Dist. No. 2, 330 S.C. 402, 499 S.E.2d 216 (Ct. App. 1998), illustrates the limitations imposed by the Act on a school district's ability to terminate a continuing contract teacher immediately under the "evident unfitness for teaching" standard. At issue in Hall was the termination of a 15-year veteran teacher who had arranged with another teacher to chaperone a senior class trip to Florida in a very limited manner, without disclosing to the principal that the teacher was actually

staying in a different hotel than the student group. When the principal learned of the arrangement, the teacher was placed on administrative leave pending an investigation and was explicitly told not to have any contact with any other district employees about the matter. The teacher was fired for failing to supervise the students appropriately during the trip and for insubordination after she disregarded the instruction not to contact anyone during the investigation. The Hall court affirmed the circuit court's determination that the school board could not establish conduct that manifested an evident unfitness for teaching. The court of appeals recognized that the SCTEDA's "evident unfitness for teaching" standard was "intended to prevent the abuse of a school board's power of termination." Id. at 407, 499 S.E.2d at 219. The Hall court recognized that immediate termination of a continuing contract teacher under this particular standard is appropriate "only where evidence of unfitness for teaching [is] 'undeniably and abundantly present.'" Id. (quoting Kizer v. Dorchester County Vocational Educ. Bd. of Trustees, 287 S.C. 545, 550, 340 S.E.2d 144, 147 (1986)). The court in Hall also recognized that, although the list of categories illustrative of evident unfitness for teaching is not exhaustive, the articulated grounds for termination must be related in some way "to the discharge of [the teacher's] teaching responsibilities." Id. at 408, 499 S.E.2d at 220.

The cases cited by the Circuit Court in affirming the School Board's decision are not particularly persuasive because they all presented very different factual scenarios than are presented here. In Felder v. Charleston Cty. Sch. Dist., 327 S.C. 21, 25, 489 S.E.2d 191, 193 (1997), the South Carolina Supreme Court upheld the termination of teacher under the evident unfitness for teaching standard where the teacher had encouraged students to continue an unauthorized protest, despite the principal's directives to the students to return to class. The teacher was fired for insubordination and for making a false statement to a superior. Id. at 25, 489 S.E.2d at 193.

Clearly, interfering with students' attendance in class and directly encouraging defiance of the principal's directions are related to a teacher's job duties and responsibilities in educating children according to particular directives of his administrators.

In Barrett v. Charleston Cty. Sch. Dist., 348 S.C. 426, 559 S.E.2d 365 (Ct. App. 2001), the teacher was terminated for dishonesty for mishandling money from an ice-cream fundraiser through the Parent Teacher Student Organization and for placing grant money for the drama department into her personal checking account, rather than the school's account. The court of appeals affirmed the school board's determination that teacher should be terminated immediately under the evident unfitness for teaching standard based on her dishonesty in handing the ice cream money. Significantly, dishonesty is specifically listed in section 59–25–430 as an example of conduct that manifests an evident unfitness for teaching. The Barrett court determined that the record from the school board hearing contained substantial evidence to support the school board's finding that the teacher "was dishonest in her dealings with the ice cream account." Barrett, 348 S.C. at 433, 559 S.E.2d at 368. The South Carolina General Assembly has made a specific determination that honesty and integrity are core character traits that are required of all public school teachers.

The case of Hillard v. Orangeburg County School Dist. No. Three, 300 S.C. 123, 386 S.E.2d 628 (Ct. App. 1989), which is also cited by the Circuit Court's order, has no application whatsoever to the facts here. First of all, the Hillard case involved a teacher with a probationary contract, not a continuing contract. Id. at 124, 386 S.E.2d at 629. Second, the Hillard case involved the non-renewal of a contract, not a termination for "evident unfitness for teaching." Third, the teacher in Hillard was a welding instructor who was terminated for "allow[ing] a student to be unsupervised in the work area of the welding shop," even after the teacher's probationary contract specifically

contained conditions relating to student supervision and safety and after the teacher received two subsequent warning letters about not properly supervising students in the shop areas. Id. at 126, 386 S.E.2d at 630. Obviously, a welding teacher's job responsibilities include proper student supervision and safety in the welding shop.

Here, by contrast, Ms. Kiser's job responsibilities as a classroom math teacher did not include a general duty of safety in transporting members of the cross-country team to an off-campus meet. The School Board's termination of Ms. Kiser from her teaching contract, which is protected by the SCTEDA, based on alleged deficiencies in the performance of her at-will coaching contract, which is not covered by the SCTEDA, would eviscerate the measure of tenure earned by veteran teachers under the express provisions of the statute. Ms. Kiser is not minimizing the District's legitimate concerns for student safety in extra-curricular activities; however, the District's proper course of action should have been to discontinue her coaching supplement, not her teaching contract. An otherwise "stellar" and "model" teacher such as Ms. Kiser should not have her otherwise admirable career in public education destroyed by an episode of poor driving that rapidly devolved into a series of very unfortunate and regrettable events that spiraled wyr beyond her control.

The School Board's decision to terminate Ms. Kiser's employment is not supported by substantial evidence, but was based on a clear error of law. Accordingly, the Circuit Court's decision affirming the School Board's decision should be reversed, and Ms. Kiser should be reinstated to her position as a continuing contract teacher, with back pay.

2. THE SCHOOL BOARD'S TERMINATION OF APPELLANT WAS PREMATURE BECAUSE IT DISREGARDED AN EXPRESS PROVISION OF THE SC TEACHER EMPLOYMENT AND DISMISSAL ACT, AS WELL AS THE BOARD'S OWN WRITTEN POLICY, BY FAILING AND REFUSING TO AWAIT THE OUTCOME OF THE UNDERLYING CRIMINAL PROCEEDINGS AGAINST APPELLANT.

The Superintendent's recommendation of termination was clearly premature. The District should have placed Ms. Kiser on paid suspension pending the outcome of the criminal charges. The second paragraph of S.C. Code Ann. § 59-25-430 provides as follows:

> Notwithstanding the provisions of § 59-25-450,[4] when any teacher is charged with a violation of the law of this State or the United States which upon conviction may lead to, or be cited as reason for, dismissal, such teacher may be suspended pending resolution of the charges and receive his [or her] usual compensation during the suspension period, such compensation not to exceed the term of his [or her] teaching contract. If the teacher is convicted, including pleading guilty or *nolo contendere* to the charges, he [or she] may then be subject to dismissal proceedings. If no conviction results, his [or her] suspension shall be terminated.

S.C. Code Ann. § 59-25-430.

A criminal charge alone against a teacher is clearly not sufficient grounds for termination of that teacher under the SCTEDA. Shell v. Richland Co. School Dist. One, 362 S.C. 408, 608 S.E.2d 428 (2005) (holding that a school teacher's arrests for two separate criminal charges, 12 years apart, for possession of crack cocaine, both of which charges were eventually dismissed without any conviction, did not constitute sufficient grounds to terminate the teacher's contract under the "unfitness for teaching" provision of S.C. Code Ann. § 59-25-430). Significantly, the Circuit Court's decision does not cite the Shell case at all, much less make any attempt to apply its holding

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[4]Section 59-25-450 allows a superintendent immediately to suspend a teacher when "necessary to protect the well-being of the children of the district or . . . to remove substantial and material disruptive influences in the educational process." S.C. Code Ann. § 59-25-450. This section has no application to Ms. Kiser's suspension or termination in this case.

or distinguish it, despite the Shell case being a primary focus of Ms. Kiser's arguments at the School Board hearing and on appeal.

Appellant's counsel concedes that if Ms. Kiser were convicted of DUI and/or child endangerment, she would clearly be subject to termination under Section 59-25-430; however, a criminal charge or an arrest is plainly not a conviction. One of the most fundamental principles of the American criminal justice system is the presumption of innocence, unless and until one is proven guilty of an alleged crime beyond a reasonable doubt. See, e.g., Coffin v. United States, 156 U.S. 432, 453 (1895) ("The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law.").

In recommending Ms. Kiser's immediate termination, the Superintendent also disregarded the School District's own policies regarding "Arrest of an employee," which provide as follows: "Employees arrested for a misdemeanor offense which would indicate a possible danger or appearance of danger to the school district, co-employees or to pupils will normally be suspended with pay pending adjudication." (Dist. Ex. 7, Policy GBEB Staff Conduct) (emphasis added).

Although the School Board contends that the Superintendent's recommendation to fire Ms. Kiser immediately was based on her exercising poor judgment and endangering the safety of the student athletes in the vehicle with her, rather than the actual pendency of the criminal charges, the contemporaneous evidence in this case indicates otherwise. The letter of September 29, 2014, from the Assistant Superintendent for Personnel and Student Services, Dr. Carlotta Redish, to Ms. Kiser informing her of her suspension states, "This letter is to officially inform you that you have been placed on administrative leave with pay, effective Sunday, September 28, 2014, until further notice.

We are currently investigating a recent incident regarding your charges of driving under the influence and child endangerment." (Kiser Ex. A). In addition, Dr. Redish sent a letter to the SC Department of Education three days later on October 1, 2014, stating that Ms. Kiser had been separated from employment because she "has been charged with Driving under the Influence and Child Endangerment in Charleston County." (Kiser Ex. C). Both letters illustrate the true motive for Ms. Kiser's termination: the fact that she had been arrested for criminal charges in connection with the underlying incident. The District's argument that Ms. Kiser was not fired because of the criminal charges themselves, but rather because of her exercise of bad judgment in the underlying conduct that gave rise to those charges, would render the second paragraph of Section 59-25-430 meaningless.

The Superintendent's and the School Board's rush to judgment in this matter appears to have been motivated by the public outcry over the media reports of Ms. Kiser's arrest. As noted earlier, at the School Board hearing the District's counsel submitted at least nine different news reports relating to Ms. Kiser's arrest. (Dist. Ex. 20). The District's pre-hearing brief also notes that "The incident and her arrest have been reported throughout the local community and state-wide." (Dist. Pre-Hearing Br., at 4-5). These submissions reflect that the Superintendent and the School Board felt compelled to act swiftly against Ms. Kiser's employment, rather than allowing the criminal justice system to take its course and afford her the due process required by the law.

The SCTEDA and even the School District's own policies spell out the appropriate procedures to follow when a teacher is arrested and charged with a misdemeanor crime, the conviction of which could lead to her dismissal from employment. Both procedures require administrative suspension, with pay, pending the outcome of the criminal case. The Superintendent

disregarded both the statute and the District policy by not awaiting the outcome of the criminal proceedings against Ms. Kiser, but instead immediately taking steps to remove her from employment. This strongly suggests that the Superintendent was more concerned with assuaging the public outcry over Ms. Kiser's arrest than in affording her the statutory rights provided to her under the SCTEDA as a continuing contract teacher.

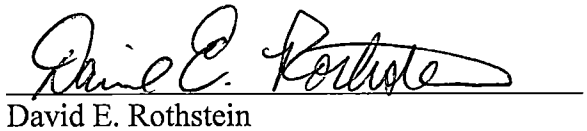
In the Shell case mentioned earlier in this section, the court of appeals had ruled that the teacher's immediate termination was justified by evidence from the school board hearing about "the publicity surrounding Shell's 2000 arrest and the negative response it engendered among the school's teachers, parents, and children [that] led Shell's principal to conclude it was not in the students' best interests to be taught by Shell." Shell, 362 S.C. at 410, 608 S.E.2d at 429. On certiorari, the South Carolina Supreme Court rejected the notion that negative publicity surrounding a teacher's arrest could be a valid justification for the teacher's immediate termination for unfitness for teaching. Id.

The Circuit Court here improperly accepted the District's argument in ruling that "The School Board had broad discretion to consider and weigh the evidence that news of 'the Spartanburg High Coach' being arrested was reported throughout the school community and state, which brought discredit to the School District and its ability to maintain confidence in its ability to protect its students." (Order at 15). The School Board's and the Circuit Court's complete disregard of the Shell case, both in terms of the presumption of innocence and the impropriety of considering press reports about an arrest of a school teacher, erroneously resulted in Ms. Kiser's termination before the criminal charges against her were addressed in due course by the criminal justice system.

CONCLUSION

The media accounts of Ms. Kiser's arrest on September 26, 2014, unfairly and inaccurately portrayed the events underlying this matter by reporting only the trooper's incorrect perception of events or his incomplete understanding of the true facts. Ms. Kiser is a wonderful school teacher even if she is not the greatest driver. The Superintendent did not produce substantial evidence to prove that Ms. Kiser has engaged in conduct that "manifests an evident unfitness for teaching," sufficient to justify her immediate termination under the SCTEDA. Accordingly, Appellant respectfully requests that this Court reverse the Circuit Court's ruling affirming the School Board's decision to accept the Superintendent's recommendation of immediate termination. Ms. Kiser should be reinstated fully to her teaching position at Spartanburg High School, with back pay and without any loss of seniority or service credit.

June 10, 2016



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