

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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SC Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Marvin H Dukes, III, Maser in Equity and Special Circuit Court Judge

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Case No. 2015-CP-07-1343  
Appellate Case No. 2016-000955

John Alden Bauer, III,

Appellant,

v.

Beaufort County School District,

Respondent.

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**RESPONDENT'S REPLY TO APPELLANT'S RETURN TO RESPONDENT'S MOTION  
TO STRIKE PORTIONS OF APPELLANT'S SECOND AMENDED DESIGNATION OF  
MATTER.**

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Pursuant to Rule 240(f), Respondent Beaufort County School District hereby replies to Appellant's Return to Respondent's Motion to Strike Portions of the Second Amended Designation of Matter. The gravamen of Respondent's motion is that Appellant's Second Amended Designation of Matter continues impermissibly to include materials not entered into evidence at any of the proceedings below, contrary to this Court's order issued on July 29, 2016.

During the teacher dismissal hearing before the Respondent's School Board—the decision of which is challenged on appeal—Appellant chose not to testify, present witnesses, or put on any case in his defense. Therefore, his defense was limited to his cross-examination of the District administration's witnesses and the few documents that were admitted into evidence during cross-

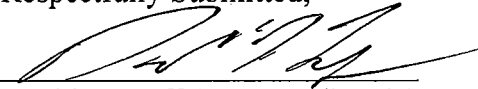
examination. After Appellant made it clear that he would not testify, the administration made a motion to exclude all of the exhibits Appellant had prepared for the hearing, except for those exhibits actually entered into the record, on the grounds that there was no foundation or testimony supporting the introduction of those exhibits. *See Exhibit A – Teacher Dismissal Hearing Transcript*, p. 563-64. Appellant conceded to the Administration’s motion and Appellant agreed that the Board Chairperson’s notes regarding what had been admitted during the hearing would constitute the documentary record. *See Exhibit A – Teacher Dismissal Hearing Transcript*, p. 565-66. Those items are listed in the Board Hearing Transcript, and the accuracy of that listing has, until this point, never been formally challenged.

Appellant has correctly stated that the item identified as “BH-A28 George McMaster 5/21/14, Litigation Hold letter to preserve evidence” was admitted at the Board hearing as Petitioner’s Exhibit 28. Respondent concedes this point. However, Appellant plainly has not, nor can he demonstrate, that any of the other documents which Respondent seeks to have stricken were admitted into evidence at the Board hearing.

Ultimately, Respondent does not consider the exhibits at issue relevant to the question before this Court—whether substantial evidence supports the Board’s decision to terminate Appellant’s employment as a teacher in the District. Nevertheless, Respondent is obligated to protect the integrity of the record and wishes to avoid having to explain in its brief exhibits not in evidence in the proceedings below. For the reasons stated herein and more thoroughly explained in Respondent’s Motion, Respondent requests that the Court grant its Motion to Strike the identified portions of Appellant’s Second Amended Designation of Matter.

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Respectfully Submitted,



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School District

September 2, 2016

# EXHIBIT A

1 opening statement have been reinforced through the  
2 witnesses' testimony. Therefore, I believe it can be  
3 considered and respectfully request that we move to closing  
4 statements.

5 CHAIRMAN EVANS: Okay. I will only say this, and  
6 I don't mean to be purposely redundant. I just want to  
7 make sure that you understand that you're giving up your  
8 right to testimony.

9 MR. BAUER: Yes, I do.

10 CHAIRMAN EVANS: And are we --

11 MR. BAUER: You've been very clear on that.  
12 Thank you.

13 CHAIRMAN EVANS: Okay. Anything from you, Ms.  
14 Fawley?

15 MS. FAWLEY: Yes, Mr. Chairman. At this time,  
16 the administration would move that all of the exhibits in  
17 Mr. Bauer's notebooks, except for the ones previously  
18 entered onto the record, be removed and not considered.  
19 Because they were not offered as a part of testimony,  
20 there's no foundation for them.

21 MR. BAUER: And I would like to respond to that,  
22 that the evidence that was turned in to Dr. Fawley and Mr.  
23 Williams didn't -- are you speaking of new evidence? I'm  
24 just wondering if she's talking about new evidence that was  
25 added within the last --

1 MR. JOHN BAUER: No.

2 MR. BAUER: -- week, or what?

3 MR. JOHN BAUER: She's talking about new  
4 testimony. You're not testifying.

5 MR. BAUER: Oh, I understand. Then strike that.  
6 Okay.

7 MR. DUFF: Well, first of all --

8 MR. BAUER: I misunderstood.

9 MR. DUFF: -- do the parties agree on what  
10 portions of Mr. Bauer's notebooks have been entered? Does  
11 the court reporter having a listing of that, because I --

12 MR. JOHN BAUER: I can give him a list.

13 MR. BAUER: Yes, I do have a list. Yes. Sorry.

14 MS. FAWLEY: Mr. Chairman, the exhibits that we  
15 did not -- in other words, Mr. Bauer presented to every  
16 witness certain exhibits. You've heard us request that a  
17 particular exhibit or exhibits be removed. Those were  
18 done. The court reporter has on the record the very few  
19 exhibits that we did not object to. Everything else, we  
20 object to, because there is no foundation, no testimony, to  
21 introduce those documents onto the record.

22 MR. BAUER: That's agreeable.

23 MR. DUFF: As long as the transcript will  
24 indicate clearly what you describe as the relatively few  
25 pages or filed files that were entered into the -- without

1 objection, without any objection -- as long as we can  
2 figure it out from the transcript, then that will become  
3 the record. And again, you know, Mr. Bauer, if you waive  
4 your testimony, then the only testimonial evidence in  
5 support of your position will be whatever concessions you  
6 were able to -- to get on cross-examination.

7 MR. BAUER: I understand, and that is agreeable.  
8 Thank you.

9 CHAIRMAN EVANS: Does anybody have anything?

10 MS. ANDERSON: Can I ask a question --

11 CHAIRMAN EVANS: Yes. Please go ahead.

12 MS. ANDERSON: -- so I understand? So does that  
13 mean, anything that Mr. Bauer has said, like, in his  
14 opening statements and stuff, we cannot consider?

15 MR. DUFF: Well, technically, that is true. I  
16 mean, you know, you've heard things, and you can't erase it  
17 from your memory. But, legally, it's not competent legal  
18 evidence in the record. The opening statement from either  
19 side is not evidence.

20 MS. ANDERSON: Okay.

21 MR. DUFF: The only evidence will be -- as I  
22 said, the testimonial evidence would be whatever Mr. Bauer  
23 has been able to accomplish through his cross-examination  
24 sessions, in other words, and the few documents that were  
25 admitted without objection, which I think is a very few

1 documents. So that -- Mr. Bauer, that's going to be the  
2 evidentiary record in this case.

3 MR. BAUER: I understand.

4 MR. DUFF: Okay.

5 CHAIRMAN EVANS: And to follow up to Ms. Fawley,  
6 as we went through all three of these books, whether it was  
7 your book or Mr. -- I marked documents that were either  
8 entered into evidence by you all on direct or by Mr. Bauer  
9 on cross, so I hope you accept that as a record of what's  
10 come in, because there are literally, I think, dozens of  
11 documents in here, particularly in Mr. Bauer's booklets,  
12 that were not introduced, and just in my simple way of  
13 categorizing, I mean, I circled documents that were  
14 discussed and --

15 MS. FAWLEY: We're comfortable with that, Mr.  
16 Chairman.

17 CHAIRMAN EVANS: Okay. Thank you, Ms. Fawley.

18 MR. DUFF: And you are, too, Mr. Bauer?

19 MR. BAUER: Yes, sir, I am.

20 MR. DUFF: You're comfortable with the -- with  
21 the Chair's, the presiding officer's, notes as to what was  
22 admitted and what was not?

23 MR. BAUER: Yes, I certainly am.

24 MR. DUFF: Okay.

25 CHAIRMAN EVANS: Ms. Bush, you had a question?

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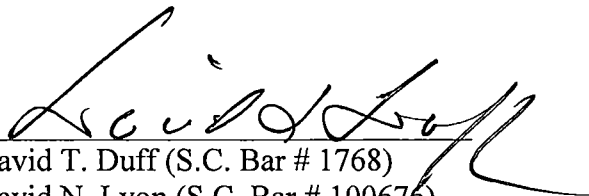
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**PROOF OF SERVICE**

I certify that I have served Respondent's Reply to Appellant's Return to Respondent's Motion to Strike Portions of Appellant's Second Amended Designation of Matter, by depositing a copy of it in the United States Mail, postage prepaid, on September 2, 2016, addressed to *pro se* Appellant John Alden Bauer, III, 5 Gumtree Road E-11, Hilton Head Island, South Carolina, 29926.

September 2, 2016

*SEE SIGNATURE NEXT PAGE*



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\* CERTIFIED SPECIALIST IN EMPLOYMENT AND LABOR LAW  
† CERTIFIED CIVIL ARBITRATOR AND MEDIATOR

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Re: John Alden Bauer, III, v. Beaufort County School District  
C.A. No. 2015-CP-07-1343  
Appellate Case No. 2016-000955

Dear Ms. Allen:

Enclosed for filing is the original and six copies of Respondent's Reply to Appellant's Return to Respondent's Motion to Strike Portions of Appellant's Second Amended Designation of Matter along with Proof of Service for same. Please return a time stamped copy in the enclosed self-addressed stamped envelope.

Thank you for your assistance in this matter.

Sincerely,



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Enclosures

Ms. V. Claire Allen  
September 2, 2016  
Page 2

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