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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

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

APPELLATE CASE NO. 2016-000955

John Alden Bauer, III

Appellant

v

Beaufort County  
School District

Respondent

**MOTION TO EXCLUDE UNCHARGED ACCUSATIONS**

Appellant moves to exclude any Uncharged Accusations that Respondent references during this appeal.

- *“No teacher shall be dismissed unless written notice specifying the cause of dismissal is first given the teacher by the District Board of Trustees and an opportunity for a*

*hearing has been afforded the teacher.*” Teacher Employment and Dismissal Act

§ 59-25-460

The only quasi “*Statement of Charges*” against Appellant, was a May 29, 2014 email sketch of three (3) complaints, in prose, that were called “bases”. The email was from Jeffrey C. Moss, Superintendent of Schools (attached). While acknowledging the existence of the email, and its importance, Appellant certified that the email also contained errors, concerning the psychiatrist (affidavit attached), alleged meeting refusal, etc., all of which have been revealed in earlier pleadings.

*“A tenured (i.e. continuing contract) teacher is entitled to a full statement of charges. The statement of charges must include specific allegations of wrongdoing supported by information about time, place, and other circumstances.”* Teachers Have Rights Too, Page 9, US Department of Health Education and Welfare. Library of Congress Card No.:80-7053 (Not dated) (parentheticals by Appellant)

The first two (2) days of the Board Hearing consisted of accusations not charged and accusations not revealed during Discovery. Appropriate objections were made.

Not until the third day of the Board Hearing did the Beaufort County School District, the Chairman of the School Board, the Advice Counsel to the Board, and all participating attorneys agree that the “*Charges*” were contained in an email, and only in an email, from Superintendent Moss, May 29, 2014 to Appellant. (Attached)

The email names one accusation of Negligence. One case of Negligence does not meet the requirement of “*Persistent Neglect*” in The Teacher Employment and Dismissal Act § 59-25-430

Again, this was the focus of objections at the School Board Hearing April 30 - May 2, 2015.

- Note: Following the Moss May 29, 2014 email, Appellant's termination was then finalized officially, without a hearing, to take effect thirty-one (31) days after Moss' email.
- *"The observance of the procedural requirements of the Employment and Dismissal Act is mandatory and not a matter of discretion."* Brown v. James. Opinion 4674. THE STATE OF SOUTH CAROLINA, In The Court of Appeals. July 21, 2010.
- *"The complainants shall initiate the introduction of evidence in substantiation of the charges."* Teacher Employment and Dismissal Act § 59-25-470

Objections had little effect. On March 4, 2016, Court of Common pleas, David T Duff, Respondent's Counsel, spoke continuously, about mostly uncharged accusations, from page 21 to page 37, equaling twenty-eight plus (28+) minutes. Appellant was allowed four (4) words.

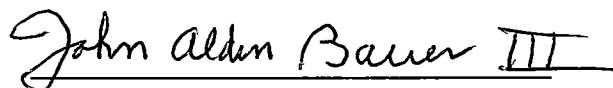
- Appellant: *"I object to this."* (page 32)
- Duff: *"You can't object to this. You were all over the place."*
- Judge Marvin Dukes overruled Appellant's objection, and counsel continued uninterrupted for the latter eight (8) minutes.

Duff is the same David Duff that acted/presided as Advice Counsel at the School Board hearing, April 29 - May 2, 2015, and attended the deliberations of the "Jury" (Board).

Conclusion

1. If the law is, indeed, "mandatory" this case should be reversed. (*Brown v. James*)
2. The court, at a minimum, should disallow any accusations that were not part of the May 29, 2014 "bases" of: "...leaving a special needs student off campus... characterized as Negligence and Insubordination".

Respectfully Submitted,



John Alden Bauer, III  
5 Gumtree Road  
E-11  
Hilton Head Island, SC 29926  
[aldenbauer706@gmail.com](mailto:aldenbauer706@gmail.com)  
(843) 384-1506

September 16, 2016

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SEP 16 2016  
SC Court of Appeals

CERTIFICATE OF SERVICE VIA US MAIL  
AND VERIFIED ELECTRONIC MAIL

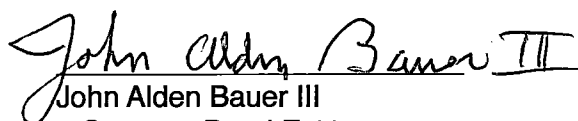
The undersigned, John Alden Bauer III, pro se, certifies that he has served the following Counsel of Record with the foregoing MOTION TO EXCLUDE UNCHARGED ACCUSATIONS by making a copy of same, via verified electronic mail, and via US Mail, postage prepaid, and return address clearly indicated to the following on the 16th day of September, 2016.

David Duff, Esq.  
Duff, White and Turner  
3700 Forest Dr.  
Suite 404  
Columbia, SC 29204

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SEP 16 2016

SC Court of Appeals



John Alden Bauer III  
5 Gumtree Road E-11  
Hilton Head Island, SC 29926  
[aldenbauer706@gmail.com](mailto:aldenbauer706@gmail.com)  
(843) 384-1506



Alden Bauer &lt;aldenbauer706@gmail.com&gt;

**Personnel Action**

8 messages

Moss, Jeffrey &lt;Jeffrey.Moss@beaufort.k12.sc.us&gt;

Thu, May 29, 2014 at 2:54 PM

To: Alden Bauer &lt;aldenbauer706@gmail.com&gt;

Cc: "Walton, Alice W" &lt;Alice.Walton@beaufort.k12.sc.us&gt;

Mr. Bauer:

I have been extremely patient with you while you have been on administrative leave. Your leave began on February 5, 2014 for leaving a special needs student unattended off campus. This was categorized as Negligence and Insubordination. You were requested to have an examination from a psychiatrist and report back. The date of the meeting to discuss the results was scheduled for April 25, 2014. You refused to attend the scheduled meeting while still receiving pay from Beaufort County Schools. I sent you a directive to attend and you still elected not to meet, which I do consider an act of insubordination. A letter was then sent to you describing the additional action necessary to bring closure. The directive was to meet with a psychiatrist we identified and paid for. This is allowable under our policy which was provided. You were report back to Ms. Walton no later than May 16, 2014. You have elected to ignore this directive as well. All of these directive have occurred while you are still a Beaufort County School Employee and receiving pay. I must now direct you to complete all requirements by Monday, June 2, 2014 or I will proceed with a recommendation for termination based upon the facts to date.

Ms. Walton will follow up with a certified letter and an email copy outlining the process from this point. It is disappointing you have continually refused to cooperate to bring about a resolution to your suspension.

cc: Personnel File

Jeffrey C. Moss, Ed.D.  
Superintendent  
Beaufort County School District

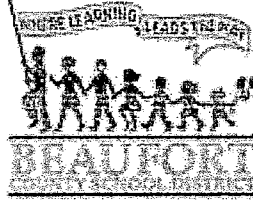
2900 Mink Point Blvd

Beaufort, South Carolina 29901

843-322-2326

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<https://mail.google.com/mail/u/0/?ui=2&ik=c3a05574d0&view=pt&q=Alice.Walton%40b...> 2/27/2015



June 6, 2014

VIA CERTIFIED MAIL RETURN  
RECEIPT REQUESTED AND U.S. MAIL

John Alden Bauer  
5 Goutrree Road - E-11  
Hilton Head, SC 29926

Dear Mr. Bauer:

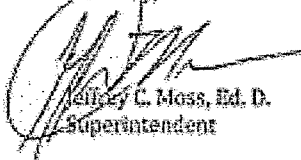
The purpose of this letter is to advise you that at its meeting on June 5, 2014, the Beaufort County Board of Education conditionally accepted my recommendation that you be suspended and that your contract of employment with the Beaufort County School District (District) be terminated subject to the Board's duty to review the matter on the merits in a hearing pursuant to S.C. Code Ann. § 59-25-470, should you request such a hearing. Please understand that the Board has not at this time reviewed or considered the merits of the recommendation, so this action is not a final decision of the Board.

The bases for the recommendation include the grounds provided to you in my email dated May 29, 2014. It is the administration's position that your conduct justifies the immediate suspension and termination of your employment with the District pursuant to S.C. Code Ann. § 59-25-430 and § 59-25-450.

Please be advised that, pursuant to S.C. Code Ann. § 59-25-470, you have the right to request a hearing on this matter before the Board, provided that you request the hearing in writing within 15 days of your receipt of this letter. Your request should be addressed to me, as Superintendent, or to Bill Evans, Board Chairperson.

If you have any questions about the substance of this letter, feel free to contact Alice Walton or me. In the alternative, you may have your attorney contact the District's legal counsel.

Sincerely,



Jeffrey C. Moss, Ed. D.  
Superintendent

cc: Alice Walton

Post Office Drawer 309  
Beaufort, South Carolina 29901-0309

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

John Alden Bauer III  
Appellant

v.

Beaufort County School District  
Respondent

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT  
C.A. No.: 2015-CP-07-1343

AFFIDAVIT

2016 MAR -4 PM 8:36  
CLERK OF COURT  
SOUTH CAROLINA

From: Laura Rosenbaum-Bloom, MD

Subject: Incorrect Conclusion by Beaufort County Board of Education  
regarding my evaluation of John Alden Bauer III.

The Board Order States (Page 8)

*"Mr. Bauer missed the deadline he was given for submitting the physician's statement, but more importantly, the statement, from a psychiatrist who had seen Dr. Bauer, indicated in a rather general manner only that Mr. Bauer was capable of performing the essential functions of his job, adding that he should be returned to his duties as soon as possible. Ms. Walton considered the psychiatrist's statement insufficient in providing adequate assurance that Mr. Bauer appreciated the importance of supervising students and recognized his failure in that regard. "*

---

Mr. Bauer did not miss the deadline. The deadline was March 31; my evaluation was dated March 28. There was a problem with faxing to Human Resources. I faxed a copy to Jeffery Moss who apparently failed to forward it to Alice Walton.

I was asked to generally assess Mr. Bauer's ability to return to his job, but I went beyond that. (See attached marked as exhibits 45, 63 and 77)

The statement that Ms. Walton asserts that my statement was insufficient for Bauer's realizing the importance of his responsibilities is incorrect. Walton did not ask for that, nevertheless, I did address the subject by observing:

*"He takes his job very seriously and is very conscientious. His role as a Physical Education Instructor means the world to him and he values each student."*

Who ever wrote that paragraph in the Board Order has seriously misrepresented my professional judgment.

Submitted by

*Laura Rosenbaum Bloom MD*  
*LB*

\_\_\_\_\_  
Laura Rosenbaum-Bloom, MD

4101 Main Street  
Hilton Head Island, SC 29926

Date: \_\_\_\_\_

Notarized

\_\_\_\_\_  
\_\_\_\_\_

J. Reuben - Bloom

Signature

The foregoing instrument was acknowledged by Laura Rosenbaum - Bloom who has placed his/her signature on this instrument before me personally, and who is known to me or has produced \_\_\_\_\_ as identification and who did take an oath, this 2 day of March, 2016.

State of South Carolina

County of Beaufort

Notary Public Signature

Laurie Parsons

My Commission Expires May 17, 2023

Seal

