

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
Workers' Compensation Commission

WCC File No.: 1104105
Appellate Case No.: 2016-000597

Kelly McPherson.....Claimant/Appellant,

v.

Charleston County School District.....Employer/Carrier/Respondent.

THE SOUTH CAROLINA EDUCATION ASSOCIATION'S
AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT

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STATEMENT OF INTEREST OF AMICUS CURIAE

The South Carolina Education Association (“The SCEA”) is the largest organization of professional educators in South Carolina. Its members include public school teachers and administrators in every public school district in the state. The SCEA advocates for improved quality of public education and provides professional development and support services for its public educator members. The SCEA believes that public education is vital to building respect for the worth, dignity, and equality of every individual in our diverse society and that public education is the cornerstone of our republic. Public educators provide individuals with the skills to be involved, informed, and engaged in our representative democracy.

INTRODUCTION

In Kizer v. Dorchester County Vocational Educ. Bd. of Trustees, 287 S.C. 545, 549-55, 340 S.E.2d 144, 147 (1986), the Supreme Court recognized the fundamental importance of public education, citing the following from Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954):

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. 347 U.S. at 493, 74 S.Ct. at 691.

Appellant is a former public educator, employed by Respondent Charleston County School District (“CCSD”) under a normal teaching contract when injured by fighting students on February 3, 2011. Her entitlement to workers’ compensation benefits is not contested. Rather,

the sole issue on appeal is whether the rate for calculating those benefits should conform to Appellant's actual salary basis, or whether CCSD is entitled to discount its liability for her injury by approximately 27%.

The decision on appeal held the Appellant's workers' compensation rate should be calculated on a 260 day/52 week basis. As addressed below, this decision ignores legislation and policy establishing the "normal" salary for public school teachers as based on a 190 day/38 week period of active service. Like its counterparts, CCSD annually adopts a "Teacher Salary Schedule" calculated on 190 days. This schedule provides that when teachers are offered contracts other than 190 days, the annual salary is divided by 190 and multiplied by the number of days worked. See, CCSD 2010-2011 Academic Calendar provided as Attachment A; see also, CCSD FY 2017 190 Day Teacher Salary Schedule, provided as Attachment B.

The SCEA supports Appellant in challenging the decision to calculate workers' compensation benefits on a basis different from her contract and controlling law. If affirmed, this decision will adversely impact all public school teachers in a manner that violates the expressed public policy of this State.

ARGUMENT

1. The General Assembly and CCSD have established a school year of 190 days.

The public school year in this state is comprised of 190 days, 180 of which must involve the delivery of instruction covering nine months. S.C. Code Ann. § 59-1-425. CCSD as well as other school districts annually adopt budgets and establish teacher salary schedules on a 190 day basis. See, Attachments A and B; see also, CCSD Policy IC "School year" provided as Attachment C; CCSD Policy DKBB "Salary Guide" provided as Attachment D (special programs paid separately)

By law and policy, Appellant was paid on a 190 day basis at the time of her injury. Accordingly, the “actual number of weeks for which [her] wages were paid” as provided in S.C. Code Ann. § 42-1-40 was 38. Far from “exceptional,” Appellant’s contract term and compensation were computed in keeping with State and CCSD norms. Like other school districts, CCSD elects to compensate teachers and others employed fewer than 52 weeks of active service per year on 24 “pay days.” See, CCSD Pay Calendar for Academic Year 2015-2016 provided as Attachment E. This pay schedule does not affect the amount of compensation, whether based on 190, 195, 182, 180 or 170 days of service.

Appropriation for teacher salaries is also based on 190 days per school year. S.C. Code Ann. § 59-21-20. Because the General Assembly funded CCSD for Appellant’s services on a 190 day basis, the Workers’ Compensation Commission cannot reasonably use 52 weeks to calculate benefits based on 38 weeks of active (paid) service. As the laws controlling teacher schedules, salaries and appropriations demonstrate, the Commission’s interpretation of S.C. Code Ann. § 42-1-40 leads to an “absurd result” contrary to the intent of the General Assembly and unfair to Appellant. See, Duke Energy Corp. v. South Carolina Dept. of Revenue, 415 S.C. 351, 782 S.E.2d 590 (2016) (statutes may not be construed in a manner leading to an absurd result)

2. Teacher sick leave is calculated on a 38 week/190 day basis.

Sick leave for public employees is calculated according to the annual period of active service. Teachers like Appellant earn “one and one-fourth days for each for each month of active service or **twelve days for nine months of active service.**” S.C. Code Ann. § 59-1-400(A) Unlike full-time state employees, teachers do not earn statutory annual leave or paid holidays.

For this reason, a teacher must be at work or use an earned sick leave day to receive pay. Unpaid leave is “docked” by dividing the teacher’s salary by the number of contract days.

Compensation to a teacher for an injury sustained while supervising students, whether by way of temporary replacement pay or permanent injury should correspond to the value of active service and sick leave. The decisions by the General Assembly to provide sick leave on a **daily basis**, to set active service at nine months and to appropriate teacher salary funds for 190 days all demonstrate the error below in computing Appellant’s benefits on a rate of 38/52 or 73% of her daily compensation.

3. Teacher earnings, if any, during periods of leave are off duty and not included in their “annual” contractual salary.

Teachers may be eligible to earn extra pay for special services to their districts. See, CCSD Policy DKBB “Salary Guide” provided as Attachment D (special programs paid separately) Programs such as summer school, occurring outside the statutory school year are also separately compensated. Washington v Salisbury, 279 S.C. 306, 306 S.E.2d 600 (1983) (summer school not included in the statutory school term); see also, S.C. Reg. 43-240 (discussing summer school and regular terms)

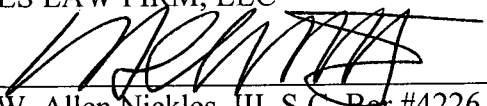
The opportunity afforded teachers to earn extra money while off duty, whether from the district or another employer has no bearing on the “value” of the services performed under contract. An injury such as that suffered by Appellant interrupts work, reduces employment opportunities and results in personal suffering. Having received State funds for teachers on the basis of 190 days per school year, neither CCSD nor any other school district should be entitled to discount workers’ compensation benefit rates below the daily rate established by teacher salary schedules.

CONCLUSION

Workers' compensation benefit rates for teachers should correspond to the rates paid for active service and earned sick leave. The decision below erroneously reduces the compensation available to public school teachers injured during the course of their employment. For this reason, The SCEA joins the Appellant in requesting that the decision on appeal be reversed and that this Court issue guidance regarding the appropriate manner for computing workers' compensation benefit rates applicable to public educators in this State.

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October 24, 2016
Columbia, South Carolina

ATTACHMENT A

ATTACHMENT B

CHARLESTON COUNTY SCHOOL DISTRICT

FY2017 190 Day Teacher Salary Schedule

Includes a step increase and 2.0% Cost of Living Adjustment

DBM	DCTR	MS30	MSTR	BC18	BACH
	Doctorate Degree	Master's +30 Degree	Master's Degree	Bachelor's +18 Degree	Bachelors Degree
Yrs of Exp					
0	\$ 46,086	\$ 42,545	\$ 39,581	\$ 37,210	\$ 35,355
1	\$ 47,166	\$ 43,518	\$ 40,493	\$ 38,061	\$ 36,161
2	\$ 48,214	\$ 44,490	\$ 41,405	\$ 38,927	\$ 36,982
3	\$ 49,294	\$ 45,494	\$ 42,317	\$ 39,778	\$ 37,787
4	\$ 50,358	\$ 46,466	\$ 43,244	\$ 40,645	\$ 38,608
5	\$ 51,406	\$ 47,454	\$ 44,141	\$ 41,511	\$ 39,429
6	\$ 52,486	\$ 48,427	\$ 45,053	\$ 42,362	\$ 40,234
7	\$ 53,534	\$ 49,415	\$ 45,965	\$ 43,229	\$ 41,055
8	\$ 54,598	\$ 50,403	\$ 46,877	\$ 44,080	\$ 41,861
9	\$ 55,678	\$ 51,376	\$ 47,804	\$ 44,946	\$ 42,682
10	\$ 56,726	\$ 52,364	\$ 48,701	\$ 45,798	\$ 43,502
11	\$ 57,806	\$ 53,352	\$ 49,628	\$ 46,649	\$ 44,308
12	\$ 58,870	\$ 54,325	\$ 50,525	\$ 47,500	\$ 45,129
13	\$ 59,918	\$ 55,313	\$ 51,452	\$ 48,366	\$ 45,934
14	\$ 61,089	\$ 56,377	\$ 52,440	\$ 49,309	\$ 46,816
15	\$ 62,229	\$ 57,426	\$ 53,443	\$ 50,236	\$ 47,713
16	\$ 63,384	\$ 58,490	\$ 54,416	\$ 51,163	\$ 48,594
17	\$ 64,524	\$ 59,569	\$ 55,389	\$ 52,090	\$ 49,476
18	\$ 65,679	\$ 60,618	\$ 56,407	\$ 53,018	\$ 50,358
19	\$ 66,834	\$ 61,697	\$ 57,380	\$ 53,960	\$ 51,239
20	\$ 68,005	\$ 62,746	\$ 58,368	\$ 54,887	\$ 52,121
21	\$ 69,145	\$ 63,794	\$ 59,371	\$ 55,814	\$ 53,002
22	\$ 70,300	\$ 64,889	\$ 60,359	\$ 56,742	\$ 53,899
23	\$ 71,455	\$ 65,938	\$ 61,347	\$ 57,669	\$ 54,781
24	\$ 72,610	\$ 67,002	\$ 62,335	\$ 58,611	\$ 55,662
25	\$ 73,750	\$ 68,066	\$ 63,323	\$ 59,554	\$ 56,544
26	\$ 73,750	\$ 68,066	\$ 63,323	\$ 59,554	\$ 56,544
27	\$ 73,750	\$ 68,066	\$ 63,323	\$ 59,554	\$ 56,544
28	\$ 73,750	\$ 68,066	\$ 63,323	\$ 59,554	\$ 56,544
29	\$ 73,750	\$ 68,066	\$ 63,323	\$ 59,554	\$ 56,544
30	\$ 73,750	\$ 68,066	\$ 63,323	\$ 59,554	\$ 56,544

*To calculate your annual salary if you're a 195, 200, 210, or 218 day teacher:

1. Find your corresponding DBM and Step/Years of experience
2. Divide the annual salary by 190
3. Multiply that amount by the # of days worked (195/200/210/218)
4. Multiply the total salary by your appropriate fte and this is the annual salary

Example: DBM BACH/Step 15 at 210 days
 $47,713/190=251.12$
 $251.12*210 \text{ days} = 52,735.20$
 $52,735.20 * .80 \text{ fte} = 42,188.16 \text{ annual salary}$

ATTACHMENT C

CHARLESTON COUNTY SCHOOL DISTRICT
I - INSTRUCTION
Policy IC School Year

Policy IC School Year

Issued 9/05

Purpose: To establish the basic structure for the length of the school year and the school calendar.

The superintendent may not propose a school calendar which does the following.

- provides for a school year of fewer than 190 days or fewer than 180 days of instruction
- provides for fewer than 160 days of instruction prior to state-required standardized tests
- provides fewer than three days to make up days lost to weather or other disruptions

Adopted 9/12/05

Legal references:

S.C. Code, 1976, as amended:

Section 59-19-90(12) - General powers and duties of board; establish an annual calendar.

Section 59-1-370 - Closing of educational institutions on general election day.

Section 59-1-420 - Provides for length of school year.

Section 59-1-430 - Provides that all missed school days must be made up.

Section 59-1-440 - Minimum hours and use of school day.

CHARLESTON COUNTY SCHOOL DISTRICT

ATTACHMENT D

CHARLESTON COUNTY SCHOOL DISTRICT
D - FISCAL MANAGEMENT/
Policy DKBB Salary Guide

Policy **DKBB** Salary Guide

Issued 8/05

Purpose: To establish the basic structure for the regulations governing salaries for employees of Charleston County School District.

The superintendent shall use a salary schedule approved by the board of trustees. When applicable, local, state and federal allotments or any combination of these shall be included. A TERI (Teacher and Employee Retention Incentive Program) program participant is retired for retirement benefits purposes only. A TERI program participant is considered to be an active employee, retaining all other rights and benefits of an active employee and is eligible for any salary increases that other employees receive.

Salary schedules shall be published by the human resource department in accordance with the adopted budget of the board.

Any employee whose position remains unchanged and whose salary is higher than that provided for his/her classification on any newly adopted salary schedule shall remain at the higher salary but shall not be entitled to an increase until such time as his/her classification warrants it on the salary schedule.

For special programs not included in the adopted budget, i.e., summer projects, adult education, community school activities, etc., the board approved hourly wage or a pro rata amount as needed, in accordance with job responsibilities and requirements, shall be used. These salary rates shall be recommended by the human resource department and approved by the superintendent.

A substitute employed for a classified employee shall be paid at a rate commensurate with the task to be performed as approved by the human resources department. This rate must not exceed the minimum rate for the position substituted.

Adopted 5/10/73; Revised 5/26/86, 12/11/00, 8/8/05

CHARLESTON COUNTY SCHOOL DISTRICT

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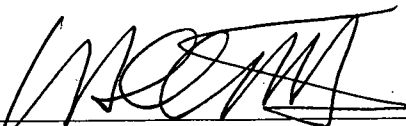
CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served the South Carolina Education Association's Motion for Leave to File Brief of *Amicus Curiae* in Support of Appellant and Brief by depositing a copy of same in the United States Mail, postage prepaid and addressed as follows:

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This 25 day of October, 2016.


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October 25, 2016

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Via Hand Delivery


The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

**Re: Kelly McPherson v. Charleston County School District
Appellate Case No.: 2016-000597**

Dear Ms. Kitchings:

Enclosed please find the original and copies of The South Carolina Education Association's Motion for Leave to File *Amicus Curiae* Brief in Support of Appellant, Brief of *Amicus Curiae* and Certificate of Service in the above-referenced matter, along with a check in the amount of \$25.00 for the filing fee. Please file the required copies and return the extra, clocked-in copies with the bearer. Thank you for your cooperation and assistance in this matter.

Sincerely,



W. Allen Nickles, III

WAN/pfb

Enclosures

cc: All counsel of record

File #: 16-106