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THE STATE OF SOUTH CAROLINA

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In The Court of Appeals

DEC 19 2016

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Fourteenth Judicial Circuit

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

Case No.: 2015-CP-07-1343

APPELLATE CASE NO. 2016-000955

John Alden Bauer, III, Appellant

v

Beaufort County School District, Respondent

**APPELLANT'S REPLY TO RESPONDENT'S RETURN TO APPELLANT'S MOTION TO COMPEL RESPONDENT TO PRODUCE SEVENTEEN MISSING ADMITTED EXHIBITS FROM THE BOARD HEARING OF APRIL 30 TO MAY 2, 2015 AND TO COMPEL RESPONDENT TO PRODUCE PRESERVED EVIDENCE ORDERED BY, AND AGREED TO BY RESPONDENT**

Appellant is reluctantly compelled to “*Reply*” to the outrageously false statements in Respondent’s Return as well as address the threats.

Hopefully, Appellant’s Motion For Expedited Ruling, filed December 15, 2016, will be accepted and will put an end to these cantankerous and voluble motions, returns, and replies.

The Motion asks only that the ruling be based on one issue: **Appellant was terminated eleven (11) months prior to a hearing.**

Respondent should welcome the Motion For Expedited Ruling, since he asserted that Appellant was “*not terminated prior to a hearing.*”

Brief Background Information: Appellant is National Board Certified, the highest achievement in Education, has two cum laude degrees, including a Master of Arts in Teaching, and had no negative documents in his personnel file for 17 years.

Donald O. Clendaniel, Assistant Principal, “*...he was a good teacher. He seemed to love what he did, love children.*” (Board Hearing page 126, line 17)

### **Seventeen Missing Exhibits and Shredding**

These 17 exhibits are contended to be accepted exhibits, but were since shredded by Respondent or Respondent’s representatives.

On page one of his Return Respondent claims that the 17 exhibits were “*unidentified*”, “*outrageous, without proof or merit.*”

Contrarily, Respondent received a letter filed August 19, 2016 in the Court of Appeals (see exhibits pages 14-16) Each exhibit was listed by exhibit number with the

page number from the Board Hearing. There were no specific objections at the hearing to the exhibits and no objection was, therefore, sustained. Since Counsel for Respondent does not accept the obvious validity of the letter I am enclosing in the exhibits pages from the board hearing, pages 17-31 herein, which will indicate “*proof*” and “*merit*”.

(Counsel claimed that there was no “*proof or merit*”)

The proof of shredding is also included in the exhibits, 11 pages of emails, pages 32-42 herein, including emails to Respondent’s counsel, and to Robyn Cushingberry, Executive Assistant to the School Board, who informed Appellant of the shredding.

At the Beaufort County School Board Hearing April 30-May 2, 2015, Respondent’s counsel improperly assumed authority for deciding what evidence could be considered and counsel contradicted the rulings of Chairman Evans, as indicated below.

The question remains as to who ordered those documents shredded and to be removed from deliberations? The following will show that the removal of evidence was unlikely to be the act of Mr. Evans and could therefore most probably be that of Mr. Duff.

### **Duff Overrides Evans on Admission of Evidence**

It was a violation of case law for Mr. Duff or The General Counsel for the District, Drew Davis, to attend the deliberations of the jury. Gonzales v. McEuen, 435 F. Supp. 460 (C.D. Cal. 1977) March 2, 1977.

It was also inappropriate for Mr. Duff, as the deliberations were about to begin, to overrule Chairman Evans, who earlier had admitted “*substantial evidence*” (Evans’ words) that favored Appellant? Page 568, Line 17, of Board Hearing.

CHAIRMAN EVANS: “*And there was a substantial amount of---*”

MR. BAUER: *Yes.*

CHAIRMAN EVANS: “*-- evidence put into the record under cross-examination.*”

MR. BAUER: “*Exactly.*”

William Evans, Chairman of the Board, had ruled that evidence in the appellant’s notebooks could be considered by the Board (page 553, Line 4 of Board Hearing). Evans ruled, “*...but we will recognize that all these letters are in the booklet you gave us, so we can take them under advisement when we deliberate.*” Page 565, lines 17-19.

### **Preserved Evidence**

This is the same preserved evidence that was requested repeatedly prior to the School Board Hearing. Counsel now states that Appellant did not request specific evidence or how it would “*exonerate*” him. This subject had been addressed frequently since February 2014, but here it is in the kind of detail that Respondent claims was missing. (Legal citations below)

### **First the Agreements to Preserve Evidence, then the Specifics, and then how this would Exonerate Appellant.**

#### **Agreements**

As Ms. Jill McAden, principal of Hilton Head Elementary School testified, “*Everything was to be preserved.*” (Page 209, line 19+, Board Hearing)

Since the district had refused to allow Appellant to have, or to see, the exculpatory evidence (a violation of Brady v. Maryland, 373 U.S. 83. US Supreme Court 1963) George McMaster of Tomkins and McMaster, on Wednesday, May 21, 2014, sent a Litigation Hold Letter to Alice Walton, (Chief Administrative and Human Resources Officer), to Dr. Jeffrey C. Moss (Superintendent of the Beaufort County School District) and to Principal Jill Matthews McAden of Hilton Head Island Elementary. A Pre Litigation Hold Letter is sufficient notice for preserving evidence according to Wiginton v. CB Richard Ellis, Inc., 229 F.R.D. 568 (2004)

Mr. McMaster's letter emphasized "*...cease the regular use and rotation for reuse of those devices as described above until all relevant data can be copied..and verified...*" In a letter dated Thursday, June 26, 2014, the law firm of Childs and Halligan confirmed that all data had been preserved by the administration at both the district level and at the school level. "*We checked with the administration and have been assured that the staff has taken appropriate steps to preserve the data contained in District-owned computers and other electronic devices at the District level and at Hilton Head Elementary School, which are applicable to your client.*"

Do lawyers and administrators not understand the purpose of "*... cease the regular use and rotation for reuse of those devices as described above until all relevant data can be copied..and verified...*" (?)

With such duplicitous official behavior should not remedial action have been required in light of: (SCRCF Rules 3.3(3), 1.2(d), 1.0(f), 1.6); SCRPC 8.4(a)

The **2006 Amendment** to the FRCP requires that public schools be able to reproduce emails. Section VI, Video Monitoring System Procedures of the Beaufort County School District Policy Manual, "*Video recordings and data files may be viewed and used by appropriate BCSD administrators as part of student and/or employee disciplinary hearings.....or are being used for an investigation of a particular incident or as part of a potential claim against the district.*"

Appellant asked for all of his emails. The response from Vernie Williams of Childs and Halligan was, "*We are continuing to review approximately several thousand emails to determine the ones that are responsive to your request.*" August 11, 2014.

Since when does the prosecution determine or deny the evidence for the defense? The Teacher Employment and Dismissal Act 59-25-470 states, "*The teacher has the privilege...(to) present any and all defenses to the charges.*"

No phone records, thousands of emails withheld, no video footage, etc. Here is a partial list of the dates of Appellant's requests, all prior to the hearing and ignored, a violation of Gathers v. South Carolina Elec. & Gas, 311 S.C. 81, 427 S.E. 2d 687 (Ct. App. 1993)

**Thurs, June 26, 2014** to Childs and Halligan

**Sat, July 5, 2014** to Childs and Halligan

**Mon July 7, 2014** 4:32PM to Chairman Bill Evans

**Tues July 8, 2014** 11:12 AM to Childs and Halligan

**Sat July 12, 2014** via letter Childs and Halligan

**Thurs July 17, 2014** 9:01 AM to Childs and Halligan

**Fri Aug 8, 2014,** 3:20 PM to Childs and Halligan

**Tues Aug 12, 2014,** 4:05 PM to Childs and Halligan

**Sun, Sept 21, 2014** 3:48 PM to Childs and Halligan

**Wed. Oct 29, 2014** to David Duff

**Fri, Dec 5, 2014** to Childs and Halligan

**Fri Dec 26 2014** at 11:58 AM to Childs and Halligan

**Wed, Jan 28, 2015** to Childs and Halligan

**Mon, Feb 2, 2014** to David Duff, Childs and Halligan

**Thurs Feb 4, 2015** to David Duff, Drew Davis, Childs and Halligan

**Mon, Feb 16, 2015** at depositions to Childs and Halligan

**Tues Feb. 23, 2014** to David Duff, Childs and Halligan

**Wed. Feb 24, 2015** to David Duff, Childs and Halligan

**Sat. Feb 28, 2015** at 9:22 AM via email and attachments to David Duff who forwarded to Fawley and Williams

**Fri. March 6, 2015** to Childs and Halligan

**Thurs March 17, 2015** to David Duff, Childs and Halligan, Drew Davis

**Mon April 6, 2015** to Childs and Halligan and David Duff

None of the attorneys for Childs and Halligan, Duff White and Turner, General Counsel for the District Drew Davis, nor attorneys for the district, Shirley Fawley, and Vernie Williams, responded in any way. (Similarly, attorneys for the

district, nor the district, ever responded to a FOIA request [a misdemeanor] petitions, and motions, inter alia)

### **Specifics**

1. Appellant requests the preserved Video Surveillance Tape February 5, 2014, 12:00 Noon to 1:30 PM, pool area. This would show that Appellant took his class of 23 students to the pool and that he returned with the same 23 students. Since there was no investigation it is not clear where or when a 24th student arrived or where he went. The footage would also show that the classroom teacher of the class did a head count and accepted that all of the 23 students had returned.

2. November 1, 2013, 12:30 PM to 1:45 PM. Video footage of Gym area. This would show the location of a student that was reported to be hiding, but who was in fact standing at an assigned location with hand marks clearly conspicuous on the “*Rest Wall*” and that the teacher was in the line of sight, i.e., exoneration.

3. The school district (Walton) estimated that there were 2,000 emails per year. 12.4 years would indicate about 24,000 emails. The attorneys for the district reviewed the emails and provided 1,087, i.e., 4.5%. How is it that attorneys for the district can review Appellant’s emails and decide what was relevant?

The importance of the emails has not been disclosed. If the court will order those emails to be completely released it will be quite significant to this case. The District is well aware of what the emails would disclose and is withholding them.

**Preserved Evidence Withheld**

It is unethical, and worse, to withhold exculpatory evidence and then blame Appellant for introducing “*New Evidence*” when Appellant only requests withheld evidence that should have never been hidden.

MR. BAUER: “*Withholding of evidence --*

MR. DUFF: “*It wasn't withheld... Board Hearing, page 247, line 8.*

Why would Mr. Duff, now Respondent’s Counsel feel compelled to “*testify*” for, or defend, the District?

**District Documents that were not objected to, and referenced in the Beaufort County School Board Hearing Transcript but now objected to by the District**

- a. Minutes of Board meeting where Appellant was Terminated
- b. Ratification of Termination (Published for 5½ months!)
- c. Termination *email* from the Superintendent.
- d. Also Appellant’s FOIA request for evidence (No Response, a misdemeanor)
- e. Also Appellant’s Petitions/Motions for scheduling a hearing (No Response)

It is odd that the Respondent now objects to its own official documents that reveal the truth. The issues surrounding these documents were addressed at Trial/Board Hearing but the documents were not preserved by Advice Counsel to the Board, who is now Counsel for Respondent.

There was a commingling of attorneys for Respondent (‘*Complainants*’) and “Jury/Board” where attorneys for the Respondent attended deliberations of the “Jury/

Board” and then decided, after the hearing, which exhibits should not have been admitted. Attendance at the deliberations violated Gonzales v. McEuen, 435 F. Supp. 460 (C.D. Cal. 1977) March 2, 1977.

Withheld evidence, or ‘*spoliated*’ documents, are new only in the sense that the district knew that they would exonerate Appellant, and with bad faith withheld them in violation of South Carolina Rules of Civil Procedure, Rule 26(5)(A).

*“...there are nevertheless many occasions in which federal and state appellate courts will consider new evidence on appeal. Whether presented through petitions for discretionary review... amicus briefs,... “Brandeis briefs,” or other mechanisms for supplementing the record, appellate courts often consider and rely upon this sort of new evidence.”* (Emphasis Appellant)

Jeffrey Dobbins  
Minnesota law Review, 2016-

- Fed. R. Civ. P. 56(c)(4) “*but (the court) can consider other materials in the record in its discretion.*”
- And  
*“The matter of what questions may be taken up and resolved for the first time on appeal is one left primarily to the discretion of the courts of appeals, to be exercised on the facts of individual cases.”* Singleton v. Wulff, 428 U.S. 106 (1976) No. 74-1393

Clearly this case has been badly handled from the beginning and the Judge’s Oath should be taken seriously.

***“I pledge to seek justice, and justice alone” Rule 502(1)***

**Threats from Respondent. Respondent asks the court for “severe sanctions”**

Rule 38, Title VII. General Provisions, Frivolous Appeal, Federal Rules of Appellate Procedures.

*“A statement inserted in a party's brief that the party moves for sanctions is not sufficient notice. Requests in briefs for sanctions have become so commonplace that it is unrealistic to expect careful responses to such requests without any indication that the court is actually contemplating such measures. Only a motion, the purpose of which is to request sanctions, is sufficient. If there is no such motion filed, notice must come from the court. The form of notice from the court and of the opportunity for comment purposely are left to the court's discretion.”*

If “severe sanctions” in this case are appropriate Appellant believes that they are warranted only for Respondent who withheld exculpatory evidence, falsified evidence, fabricated evidence, and violated Federal, State, and Case Law.

Respectfully Submitted,

*John Alden Bauer III*

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(843) 384-1506

December 19, 2016

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**SC Court of Appeals**

CERTIFICATE OF SERVICE VIA ELECTRONIC MAIL AND VIA US MAIL

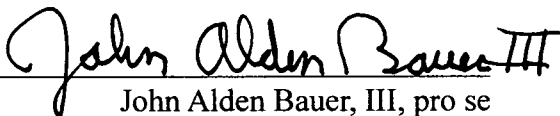
The undersigned, John Alden Bauer, III, pro se, certifies that he has served the following Counsel of Record with the foregoing APPELLANT'S REPLY TO RESPONDENT'S RETURN TO APPELLANT'S MOTION TO COMPEL RESPONDENT TO PRODUCE SEVENTEEN MISSING ADMITTED EXHIBITS FROM THE BOARD HEARING OF APRIL 30 TO MAY 2, 2015 AND TO COMPEL RESPONDENT TO PRODUCE PRESERVED EVIDENCE ORDERED BY, AND AGREED TO BY RESPONDENT by making a copy of same, via electronic mail, and via US Mail, postage prepaid, and return address clearly indicated to the following on the 19th day of December, 2016.

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

**RECEIVED**

DEC 19 2016

SC Court of Appeals



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John Alden Bauer, III  
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August 19, 2016

David T. Duff, Esquire  
Duff White and Turner  
3700 Forest Drive  
Suite 404  
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**RECEIVED**  
AUG 19 2016  
SC Court of Appeals

Re: John Alden Bauer, III v. Beaufort Co. Sch. Dist.  
Appellate Case No. 2016-000955

Dear Mr. Duff,

Subject: Moss v. Bauer (No Case Number; April 30-May 2, 2015)  
Exhibits *admitted* during hearing, but now missing, and needed  
for appeal:

During the Board Hearing I presented exhibits during five cross examinations. Many exhibits were entered and numbered without objection, but are not listed in the Exhibits Index. Apparently the Court Reporter was instructed as to which exhibits were to be removed. Since you were the Advice Counsel to the Board and attended the Deliberations perhaps you can explain the rationale for the removal of the exhibits, and perhaps act to restore the exhibits.

During the cross examination of Human Resources Officer, Alice Walton twenty-nine (29) exhibits were presented by me, without objection, and numbered by the court reporter. Only Twelve (12) of these were listed by the Reporter in the Index of Exhibits.

Exhibit Admission Number	Board Hearing Page where admitted	Status
13	398	Missing
14	395	Missing
15	404	Missing
16	408	Missing
17	412	Missing
18	425	Missing
19	433	Missing
20	445	Missing
22	449	Missing
23	461	Missing
24	472	Missing
25	475	Missing
26	485	Missing
27	Referenced 497	Missing
28	494	Missing
29	496	Missing

Example of importance of missing exhibits: Exhibit 15 revealed false testimony by Alice Walton, Human Resources Officer.

The Chairman of the Board of Education was granted authority, assisted by you as Advice Counsel, to determine the exhibits to be considered by the Board during Deliberations. He and you were not authorized to remove preserved evidence.

The missing preserved evidence would provide rationale for reversing the Board Order and reinstating me to my job.

I believe that you should, in the interest of justice, take steps for remediation.

---

Very truly yours,

  
John Alden Bauer, III

Copies:  
Jenny Abbott Kitchings, Clerk of Court  
David Nelson Lyon, Esquire  
Drew H. Davis, Esquire

RE: Missing Documents

• Board Hearing held April 30 to May 2, 2015 •

1 my attorney has sent you a letter. My attorney has sent  
2 the superintendent a letter, and I am not going to come see  
3 you until you read that letter." And at that point, I  
4 said, "Alden, this is not the way it works. You're on  
5 administrative leave with pay. I am requesting that you  
6 come meet with me." And you said, "Well, I'm not going to  
7 do it," and we ended the conversation. That was the  
8 belligerence I was talking about.

9 Q Okay. Did I ask questions about Dr. Moss'  
10 citation of the sick leave portion of human resource -- or  
11 HRS-16? And that would be file 17-B. Do you remember me  
12 asking questions about Dr. Moss' citation of the sick leave  
13 portion of HRS-16?

14 A I don't remember you asking me a question about  
15 that.

16 MR. BAUER: Okay. Let me just hand it --

17 MR. WILLIAMS: Objection to -- same  
18 objection concerning the -- using a redacted email, as  
19 opposed to the actual original email.

20 (WHEREUPON, a document was marked as  
21 Defendant's Exhibit Number 14 for Identification to  
22 the Walton Deposition.)

23 BY MR. BAUER:

24 Q Now, do you believe that these are valid  
25 questions, my asking Dr. Moss about this HRS-16?

---

Witness: Walton  
Cross by Bauer

Betty Anderson & Associates  
Beaufort, South Carolina  
(843)525-0791 (800)543-5506

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RE: Missing Documents

Board Hearing held April 30 to May 2, 2015

1 A There's a written record asking you to meet with  
2 me.

3 Q Okay.

4 A I did not provide you an agenda for the meeting  
5 when I requested you to meet with me. It was a standard,  
6 employer-employee meeting that I requested you to attend.

7 Q Okay. So, basically, are you saying that you  
8 wanted to meet, speak verbally, and therefore, there would  
9 be no written record?

10 A That's not what I'm saying.

11 Q All right. Did I indicate that I would meet with  
12 Dr. Gay or someone else acceptable to you? File 49. Oh,  
13 she's got it? Okay. Please refer to file 49.

14 A Exhibit 13?

15 Q I'm sorry. That's my file.

16 MR. WILLIAMS: Just for the record, it's  
17 Exhibit -- what's the exhibit number?

18 THE WITNESS: Exhibit 13.

19 (WHEREUPON, a document was marked as  
20 Defendant's Exhibit Number 13 for Identification to  
21 the Walton Deposition.)

22 BY MR. BAUER:

23 Q Thirteen. Okay. Now, question 32. All right.  
24 Would you please read the entire file out loud -- out loud,  
25 please, for me?

Witness: Walton  
Cross by Bauer

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Beaufort, South Carolina  
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RE: Missing Documents

• Board Hearing held April 30 to May 2, 2015 •

1 A I don't remember.

2 MR. BAUER: Okay. All right. File, let's  
3 see, 97. Thank you.

4 (WHEREUPON, a document was marked as  
5 Defendant's Exhibit Number 15 for Identification to  
6 the Walton Deposition.)

7 MR. BAUER: Here we go. There.

8 BY MR. BAUER:

9 Q And please identify file 97 -- I'm sorry I keep  
10 calling it my file -- third paragraph, first sentence.  
11 That would be, "On March 5th, we met again with Ms.  
12 McAden," and dot, dot, dot. And let me remind you of what  
13 you said before I give you the question. "Mr. Bauer did  
14 not come back. He did not even come back to even discuss  
15 the improvement plan." The question from Ms. Martel is,  
16 "Was he invited back?" And answer was, "Yes, he was,  
17 several times." And you continued later, dot, dot, dot --  
18 or, I'm sorry, quote, dot, dot, dot, put down what you  
19 think you can do to improve, and when we get back together,  
20 we will discuss it. He never came back.

21 Since I had sent the plan to both you and Ms.  
22 McAden in February, would March the 5th have been a good  
23 time to discuss it?

24 A I don't know if it would have been or not. I  
25 don't know what the circumstances were.

Witness: Walton  
Cross by Bauer

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RE: Missing Documents

• Board Hearing held April 30 to May 2, 2015 •

1 COURT REPORTER: It'll be 15.  
2 MR. WILLIAMS: Fifteen?  
3 MR. BAUER: I'll have to start doing that.  
4 You said 15?  
5 THE WITNESS: I have another one. Fifteen.  
6 Uh-huh.  
7 MR. BAUER: So this is 16.  
8 (WHEREUPON, a document was marked as  
9 Defendant's Exhibit Number 16 for Identification to  
10 the Walton Deposition.)  
11 BY MR. BAUER:  
12 Q Now, in the first email at the top, the first  
13 paragraph, would you please read that out loud?  
14 A The email from you to --  
15 Q Yes, to Jill --  
16 A -- Ms. McAden?  
17 Q Yes.  
18 A Okay. I believe that some type of communication  
19 before the end of the school year must be made to faculty  
20 -- for faculty and parents regarding my leave. It should  
21 state that I did nothing illegal nor anything immoral.  
22 Since I was placed on administrative leave on February 5th,  
23 I have heard rumors concerning the reasons why I was placed  
24 on leave.  
25 Q Oh, no, I'm sorry. You don't have to -- you

Witness: Walton  
Cross by Bauer

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RE: Missing Documents

• Board Hearing held April 30 to May 2, 2015 •

1 he -- does he state that HRS-16 is listed anywhere under  
2 the subcategory -- or the category of sick leave?  
3 A I'm sorry, but I don't see that in this email.  
4 Q Okay.  
5 A I don't see the words "sick leave," if that's  
6 what you're asking me.  
7 Q Yes. Thank you. Okay. Now, the third paragraph  
8 -- and it says -- I thought it was in blue, but I don't  
9 have it in blue.  
10 MR. WILLIAMS: Now you're referring to a  
11 third paragraph of --  
12 MR. BAUER: Oops, I don't have that. I have  
13 the wrong version. File -- oh, I need file 51. I  
14 don't have that. There we go. We're looking at file  
15 51. I'm sorry. I'm confusing you, I know, with this.  
16 MR. WILLIAMS: Are you offering this --  
17 MR. BAUER: Yes.  
18 MR. WILLIAMS: -- as a second exhibit, or  
19 another exhibit?  
20 MR. BAUER: Another exhibit.  
21 (WHEREUPON, a document was marked as  
22 Defendant's Exhibit Number 17 for Identification to  
23 the Walton Deposition.)  
24 BY MR. BAUER:  
25 Q Now, please read the third paragraph, which is in

Witness: Walton  
Cross by Bauer

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RE: Missing Documents

• Board Hearing held April 30 to May 2, 2015 •

1 respond to the improvement plan?

2 A I can't answer that.

3 Q Okay. Now, section -- do we have -- yeah,  
4 section 440 of the Teacher Employment and Dismissal Act  
5 requires a reasonable time for improvement, and I need file  
6 42-A.

7 (WHEREUPON, a document was marked as  
8 Defendant's Exhibit Number 18 for Identification to  
9 the Walton Deposition.)

10 BY MR. BAUER:

11 Q All right. Now, please refer to section 440, and  
12 that would be on page nine of this document; section  
13 59-25-440.

14 MR. WILLIAMS: You said page nine?

15 MR. BAUER: It is on mine. I think she's  
16 got it. Yes.

17 THE WITNESS: He's got them, yeah.

18 MR. BAUER: Yours is different?

19 MR. WILLIAMS: I don't -- I have pages 1  
20 through 5.

21 MR. BAUER: Oops. Okay. I have him -- all  
22 right. Just find section 440. It's, I believe, on  
23 that somewhere.

24 MR. WILLIAMS: I see section 440, but just  
25 so I, at some point, have what you have, do you have

Witness: Walton  
Cross by Bauer

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determines those steps.

Q Are you familiar with something called "progressive discipline"?

MR. BAUER: Yeah. Good. There you go.

(WHEREUPON, a document was marked as Defendant's Exhibit Number 19 for Identification to the Walton Deposition.)

MR. WILLIAMS: I'm not sure what this -- this Number 19 -- what it's being offered for.

MR. BAUER: Well, it -- we'll get into that.

MR. WILLIAMS: Well, before you get into it, I would object to the extent you're offering this as evidence of --

(LIVE discussion begins.)

MR. WILLIAMS: I'm not sure what the number is in the actual notebook, but this was a document from the SCEA which Mr. Bauer offered into evidence, and I'd have the same objection that is contained in my motion in limine, that that's not evidence.

CHAIRMAN EVANS: Excuse me. I'm simply trying to find it.

MR. WILLIAMS: I am also.

CHAIRMAN EVANS: This isn't 19-A, is it?

MR. WILLIAMS: It is not.

CHAIRMAN EVANS: Do we know what number it

RE: Missing Documents

• Board Hearing held April 30 to May 2, 2015 •

1 THE WITNESS: Okay.  
2 BY MR. BAUER:  
3 Q What would a reasonable, commonsense person think  
4 of 13 months to provide what is required by law, quote,  
5 early in discovery? File 35.  
6 A I can't answer that.  
7 MR. WILLIAMS: Same objection.  
8 MR. BAUER: Ah, yes. Let's put this in --  
9 MR. WILLIAMS: I'm not certain of what this  
10 is, but to the extent it's not a district policy, I  
11 would object on the basis of relevance.  
12 (WHEREUPON, a document was marked as  
13 Defendant's Exhibit Number 20 for Identification to  
14 the Walton Deposition.)  
15 (LIVE discussion begins.)  
16 MR. WILLIAMS: This is another document that  
17 appears to be some kind of excerpt. The heading is --  
18 it's file 35. The heading says "district  
19 administration." It talks about a federal law  
20 mandating email archiving, and it's some sort of case  
21 summary, so the same objection that was referred to in  
22 our motion in limine.  
23 MR. BAUER: You said 35?  
24 MR. WILLIAMS: Yes.  
25 MR. BAUER: Or 35-D or --

Witness: Walton  
Cross by Bauer

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RE: Missing Documents

- Board Hearing held April 30 to May 2, 2015 -

1 believe, through Ms. Lopatka to come to Beaufort?

2 A To make arrangements --

3 Q Right.

4 A -- so that you could get -- you wanted your  
5 emails. I was trying to accommodate you, here again, in  
6 June.

7 MR. BAUER: Great. Can I have file -- yes.  
8 Here's the file of my request on -- to make an  
9 appointment with Ms. Lopatka.

10 (WHEREUPON, a document was marked as  
11 Defendant's Exhibit Number 22 for Identification to  
12 the Walton Deposition.)

13 BY MR. BAUER:

14 Q And, again, these are -- these are actually  
15 original. That's the original. Yeah, this is the  
16 original. All right. Now -- so, from this -- yeah, I've  
17 already asked that. All right. So, from this document,  
18 did I contact Ms. Lopatka and ask to make an appointment,  
19 according to your instructions?

20 A According to this email that was dated August  
21 3rd, 2014, my email to you was June 10th 2014.

22 Q Okay.

23 A So we didn't hear from you in June, didn't hear  
24 from you in July. We heard from you August 3rd.

25 Q But did I make an attempt --

**Bettye Anderson & Associates**  
Beaufort, South Carolina  
(843)525-0791 (800)543-5506  
Witness: Walton  
Cross by Bauer  
Page 449 of 587

RE: Missing Documents

• Board Hearing held April 30 to May 2, 2015 •

1 (WHEREUPON, a document was marked as  
2 Defendant's Exhibit Number 23 for Identification to  
3 the Walton Deposition.)

4 BY MR. BAUER:

5 Q Now let's identify file 260. Do you see here  
6 that Ms. Baker had failed to take the roll or had failed to  
7 submit her roll before 10:00 a.m.?

8 A How do I determine that?

9 Q Well, basically, her name is the first name where  
10 it says, "No attendance for meetings, Mary A. Baker," and  
11 then up here at the top --

12 MR. WILLIAMS: Can we pause for a second?

13 MR. BAUER: Yes.

14 MR. WILLIAMS: Can we go off the record for  
15 a second?

16 MR. BAUER: Yeah.

17 (Brief recess.)

18 MR. WILLIAMS: Well, actually, before we go  
19 back on, we might --

20 (Brief recess.)

21 BY MR. BAUER:

22 Q On this document, up at the top, you'll see it's  
23 from the data specialist, and it gives the time as 10:03.  
24 February 5th, 2014, 10:03 a.m. That would be the time, and  
25 then teacher A's name. There were no attendance for

Witness: Walton  
Cross by Bauer

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Beaufort, South Carolina  
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RE: Missing Documents

• Board Hearing held April 30 to May 2, 2015 •

1 Q Okay. So you don't remember answering it.  
2 Well, would this jog your memory? Do you remember that you  
3 said that a substitute would be made available and that,  
4 quote, we need to get the teacher home?

5 A That would be standard: if a teacher is ill, then  
6 yes, we would --

7 Q Okay.

8 A -- get the teacher out of the building.

9 Q And did we want to put that 248 -- okay. Were  
10 you aware that Hilton Head Island Elementary routinely does  
11 not use substitute teachers?

12 A I was not aware of that.

13 Q Were you aware that Hilton Head Island Elementary  
14 -- I'm not going to ask this question. Okay.

15 MR. BAUER: All right. I need file 272.

16 Thank you.

17 MR. WILLIAMS: And will this be Number 24?

18 (WHEREUPON, a document was marked as  
19 Defendant's Exhibit Number 24 for Identification to  
20 the Walton Deposition.)

21 MR. WILLIAMS: I'm not certain what this  
22 document is.

23 MR. BAUER: Student Health and Fitness Act?

24 MR. WILLIAMS: Well, there are several --

25 MR. BAUER: Oh, I see.

---

Witness: Walton  
Cross by Bauer

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Beaufort, South Carolina  
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RE: Missing Documents

• Board Hearing held April 30 to May 2, 2015 •

1 MR. BAUER: We'll switch.  
2 MR. WILLIAMS: So we're substituting now --  
3 what had previously been item 24, we're making it item  
4 25? And this offered in addition to item 24?  
5 MR. BAUER: Yes, but we'll --  
6 MR. WILLIAMS: Okay.  
7 MR. BAUER: We'll read it, Student Health  
8 and Fitness Act.  
9 MR. WILLIAMS: So this is Number 25? Thank  
10 you.  
11 (WHEREUPON, a document was marked as  
12 Defendant's Exhibit Number 25 for Identification to  
13 the Walton Deposition.)  
14 BY MR. BAUER:  
15 Q Now -- therefore -- all right. So do you see  
16 that the legal limit is 500 students?  
17 A I see what you have on Exhibit 24. I have not  
18 located that --  
19 Q Okay.  
20 A -- in Exhibit 25.  
21 MR. WILLIAMS: And just for the record, you  
22 may have a better copy of Exhibit 25. The copy of  
23 Exhibit 25 that I have, some of the language is very  
24 difficult to read.  
25 MR. BAUER: Yes.

Witness: Walton  
Cross by Bauer

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1 back to the shelter of the lockers. Would the -- do you  
2 think the camera data might show that?

3 A I don't know, because I don't know what cameras  
4 we're talking about. I don't know if you're talking about  
5 our cameras.

6 Q Both. The rec center --

7 A Rec center cameras, we don't own the rec center  
8 cameras. We have no control over those cameras.

9 MR. BAUER: All right. Let's go to files  
10 two -- I need files 269 and 275. Do you have it? Two  
11 sixty-nine and 275? I have it. No, I need the emails  
12 dated March 2nd. Yeah.

13 (WHEREUPON, a document was marked as  
14 Defendant's Exhibit Number 26 for Identification to  
15 the Walton Deposition.)

16 BY MR. BAUER:

17 Q Now, I'm looking at -- towards the bottom, the  
18 email dated March the 2nd, 2015.

19 A Okay.

20 Q And would you please read that out loud for --  
21 please, real quick.

22 A This is an email from you --

23 Q Yes.

24 A -- to Velda Vaughn. He's the benefits  
25 administrator in my office. It states, "I'm assuming that

RE: Missing Documents

• Board Hearing held April 30 to May 2, 2015 •

1 Q So it mattered how soon? Is that your opinion,  
2 that I should have done it in June, not August?

3 A No.

4 Q Okay.

5 A You could have done it any time you wanted to,  
6 Mr. Bauer.

7 Q Any time I wanted? So August 3rd would have been  
8 okay? Why -- I just am wondering why I didn't receive a  
9 response from Ms. Lopatka --

10 A I can't answer that question.

11 Q -- even if it was August 3rd. Okay. Now, are we  
12 going to -- all right. Here is the background for my next  
13 question to you. This was a question to Ms. McAden at the  
14 deposition on December 16th, 2014: Do you have surveillance  
15 cameras in the gym? Her answer was no. What if there are  
16 10 e-mails to and from Ms. McAden stating that she was  
17 aware of the cameras and -- the cameras in the gym?

18 MR. WILLIAMS: To the extent you're asking  
19 her about Ms. McAden and what Ms. McAden knew --

20 MR. BAUER: Yes.

21 MR. WILLIAMS: -- then I would object to her  
22 ability to answer on Ms. McAden's behalf.

23 (WHEREUPON, a document was marked as  
24 Defendant's Exhibit Number 28 for Identification to  
25 the Walton Deposition.)

**Betty Anderson & Associates**  
Beaufort, South Carolina  
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Witness: Walton  
Cross by Bauer

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MR. WILLIAMS: -- does not contain any photos.

THE WITNESS: Neither does mine.

MR. BAUER: Okay.

(WHEREUPON, a document was marked as Defendant's Exhibit Number 29 for Identification to the Walton Deposition.)

MR. WILLIAMS: I'll just state a general objection. These may, in fact, be from the gym. I have no way knowing that they are or are not, other than your representation.

BY MR. BAUER:

Q Now, if I -- since I found 10 emails between Ms. McAden and other people regarding cameras, and we have pictures of cameras, why would Ms. McAden deny that there were cameras in the gym?

MR. WILLIAMS: Mr. Bauer, as I have objected to every time you ask Ms. Walton a question about what somebody else thought -- and I'm not trying to be difficult --

MR. BAUER: I understand.

MR. WILLIAMS: -- but she cannot answer for somebody else. She can only answer for Alice Walton. So you are free to ask her any question about what she thinks. It's not appropriate for you to ask her what

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# EMAILS

Subjects: SHREDDING, MISSING NOTEBOOKS OF EVIDENCE

From: Alden Bauer  
Sent: 5/9/2015 10:18 AM  
To: Dave Duff  
Subject: Notebooks

Mr. Duff,

X I would like to have my notebooks back please, but no one seems to know about them. Robin C. thought that they were shredded—I hope not the ones that were not used by the board.

And since they represent a large investment could not the Board have made their notes on note pads?

The Black and Navy Blue Notebook was my backup copy. But they would not let me take it.

I was told that I could pick up the notebooks later.

X There was no mention about shredding, or I would have insisted on my backup copy.

Thank you,  
Alden Bauer

---

Dave Duff <dduff@dwtlawfirm.com>

Sat, May 9, 2015 at 10:57 AM

To: Alden Bauer <aldenbauer706@gmail.com>

Cc: "Davis, Drew H." <Drew.Davis@beaufort.k12.sc.us>

There is at least one complete unmarked set you certainly can have as well as all your binders. Contact Drew Davis on Monday

---

From: John Bauer [mailto:jbauer2@sc.rr.com]

Sent: Wednesday, July 08, 2015 6:45 PM

To: Cushingberry, Robyn L

Subject: Notebooks and keys

The box containing the notebooks had a set of keys with the district name on the tab. I am wondering if you may have dropped them into the box. I will be glad to send them to you, or to whomever you wish.

The notebooks arrived and I was pleased that he did not ask for money. If they were sent prepaid, I thank you.

Nine of the notebooks are missing including the Black 4" and the Blue 3" which contained my back-up evidence. If they are found I would appreciate getting them back.

Cordially,

John Bauer

On Jul 9, 2015, at 9:52 AM, Cushingberry, Robyn L  
<Robyn.Cushingberry@beaufort.k12.sc.us> wrote:

---

Good Morning Mr. Bauer,

Thank you for finding the keys. Yes, those keys need to be returned to me.

FedEx was supposed to collect \$19.80 from you. I found out that they charged our account. Please send me a check made out to Beaufort County School District for the amount of \$19.80.

You only had red notebooks. The black notebooks were Childs and Halligan. I did not have a blue notebook. Please clarify and I will follow-up.

Thank you.

Robyn

---

From: John Bauer <jbauer2@sc.rr.com>  
Date: Thursday, July 9, 2015  
Subject: Notebooks and keys  
To: "Cushingberry, Robyn L" <Robyn.Cushingberry@beaufort.k12.sc.us>  
Cc: Bauer Alden <aldenbauer706@gmail.com>, Lauren Martel <martellaw@hargray.com>, "Davis, Drew H." <Drew.Davis@beaufort.k12.sc.us>

Thank you for your response.  
Since Mr. Duff is no longer the board's counsel whom should I contact?  
Also, may I suggest that someone review the video of the hearing and see how many notebooks that I had--and their colors.

---

---

From: John Bauer [mailto:jbauer2@sc.rr.com]  
Sent: Thursday, July 09, 2015 11:16 AM  
>To: Cushingberry, Robyn L  
Cc: Bauer Alden; Lauren Martel  
Subject: Re: Notebooks and keys

I had 20 notebooks. 10 sets of evidence in 2 volumes. 10 of them were 4 inch and 10 were 3 inch. 9 sets were in 2 shades of red, and one set, my back-up Master Copy, was one black (4") and one Navy Blue (3"). (Actually the measurement of a 4 inch is really 3 1/2, etc.)

May I wait to pay for the returned 11 notebooks, as soon as I know how I will receive the other 9?

X If the notebooks are not found, who is responsible?  
Why were the notebooks not protected?

---

On Jul 9, 2015, at 12:06 PM, Cushingberry, Robyn L  
<Robyn.Cushingberry@beaufort.k12.sc.us> wrote:

Mr. Bauers,

.You have been provided with all notebooks in possession of the Beaufort County School District. Should you wish to pursue this issue further, please have your Counsel discuss with the Board's Counsel. I appreciate you letting me know when you are placing the keys and check in the mail, and we will consider this matter concluded.

Thank you,  
Robyn

---

---

From: John Bauer [mailto:jbauer2@sc.rr.com]  
Sent: Saturday, July 11, 2015 10:49 AM  
To: Cushingberry, Robyn L  
Cc: Bauer Alden; Lauren Martel  
Subject: Notebooks etc.

Since I emailed you on July 9, I have more information. I am told that Mr. Duff is again representing the board.

I was naive enough to assume that I could just drop the keys in the mail to you, and then thank you for sending the 11 remaining notebooks pre-paid (so I thought) and that I would probably just forget the 9 missing notebooks as "somebody goofed—forget it."

Do audits allow that? Must I produce my sales slips for the notebooks?

And the mail-security for the keys has become an issue.

I will not give all details but just enough for you to see my dilemma: the USPS computers show 2900 Mink Point Blvd as a viable mailing address at 29902. Some mail from us has been delivered there, including certified mail, but during June we had 4 certified envelopes returned as "No Such Number". Then there was a problem with the PO Box. The Ed Department has 2 mistakes in the address. BCSD home page has no separate mailing address. The substitute telephone person at BCSD insisted that the zip for "The Box" was 29902. Your keys have it as Drawer 309, 29901. And your post office "corrected" the envelope for Drawer 309 as 29902.

So how do you want me to return the keys to insure security, and who will pay? Perhaps I should just give them to Mr. Duff here in Columbia?

---

On Jul 12, 2015, at 8:08 AM, Cushingberry, Robyn L  
<Robyn.Cushingberry@beaufort.k12.sc.us> wrote:

You may deliver them to Mr. Duff in Columbia, or send them to Beaufort County School District att: Robyn Cushingberry at P.O. Drawer 309 Beaufort, SC 29901. You may subtract the cost from the \$19.80 if necessary.  
Thank you.

---

From: John Bauer [mailto:jbauer2@sc.rr.com]  
Sent: Sunday, July 12, 2015 9:58 AM  
To: Cushingberry, Robyn L; Bauer Alden  
Subject: Re: Notebooks etc.

Thank you. I have contacted Mr. Duff to arrange giving the keys to him.  
What about the 9 missing notebooks?  
JB

---

Cushingberry, Robyn L <Robyn.Cushingberry@beaufort.k12.sc.us>  
Mon, Jul 13, 2015 at 2:39 PM  
To: John Bauer <jbauer2@sc.rr.com>, Bauer Alden  
<aldenbauer706@gmail.com>  
Cc: "Davis, Drew H." <Drew.Davis@beaufort.k12.sc.us>,  
"dduff@dwtlawfirm.com" <dduff@dwtlawfirm.com>  
Good Afternoon Mr. Bauer,  
Thank you for taking care of the keys for me. As far as the notebooks go, I have  
sent you everything that I have.  
Robyn

---

---

John Bauer <jbauer2@sc.rr.com>

Mon, Jul 13, 2015 at 4:31 PM

To: "Cushingberry, Robyn L" <Robyn.Cushingberry@beaufort.k12.sc.us>

Cc: Dave Duff <dduff@dwtlawfirm.com>, Bauer Alden

<aldenbauer706@gmail.com>

X The notebooks were in two boxes. The other box must be there somewhere.  
Surely no one would throw them away.

---

From: John Bauer [mailto:jbauer2@sc.rr.com]

Sent: Wednesday, July 22, 2015 12:31 PM

To: Dave Duff; Cushingberry, Robyn L; Bauer Alden

Subject: Notebooks

Attached are the receipts for the notebooks 9 four-inch, and 9 three-inch from Office Depot. The Print Shack receipt indicates 9 books (@ 2 volumes). The 10th being my original to Print Shack for copying, hole punching, and placing them into the 9 two-volume 'books', i.e., 18 notebooks.

X I am curious as to who was responsible for protecting the notebooks, and why the board could not take notes on pads and preserve my thousands of hours labor, and significant \$.

---

On Jul 22, 2015, at 6:58 PM, Dave Duff <dduff@dwtlawfirm.com> wrote:

X Dr. Bauer - I am not clear about what further you are asking the District to do or provide you. The contents of evidence notebooks from both sides passed out to board members are often written on by board members as they take notes during the hearing. There generally is no expectation that those contents, often written on, are returned to the parties. Please clarify what you want.

John Bauer <jbauer2@sc.rr.com>

Wed, Jul 22, 2015 at 8:02 PM

To: Dave Duff <dduff@dwtlawfirm.com>, "Cushingberry, Robyn L"  
<Robyn.Cushingberry@beaufort.k12.sc.us>, Bauer Alden  
<aldenbauer706@gmail.com>

Question from Duff:

"Dr. Bauer - I am not clear about what further you are asking the District to do or provide you."

Answer:

I want my empty notebooks back. (9 of them). Or please pay for them. \$125.91.  
Receipts sent earlier.

X I had offered to write that off, but I was told to pay \$19.80 for a partial return, yet not even an apology for not protecting my property, nor being told who was responsible.

Why is this so difficult? Why should I pay \$19.80 when you have kept or lost my notebooks valued at \$125.91

Lots of other complaints but this one seems so easy.

---

From: Alden Bauer [mailto:aldenbauer706@gmail.com]  
Sent: Wednesday, November 11, 2015 5:11 PM  
To: Dave Duff; drew.davis@beaufort.k12.sc.us  
Subject: Good Evening

Mr. Duff and Mr. Davis,

I anticipate filing a Return to Respondent's Return to the Summary Judgment this Friday, November 13, 2015.

I've completed notebooks with exhibits, etc. for the Dec 3 hearing and will have them timely delivered.

You have not responded to my email of Monday, Nov 2, 2015, a request for errors to be corrected in the October 14 Order. I do not wish to file a Motion to Reconsider; it seems to this pro se PE Teacher, that it could prove to be embarrassing to you and to the judge, which is not my intent.

On the flip side I appreciate that you corrected your Answer and Return

Also, I have received no response to several requests for a status update on the FERPA violations. My interest lies, not so much on the status of any ongoing or potential investigations, but instructions for appropriate delivery or discarding of district owned computer hardware, un-redacted student confidential files (IEP's, 504's, Behavioral Intervention Plans, Etc).

I'm also deeply concerned that several groups of parents may still, not be aware, that their children's confidential student files have been compromised.

You may remember that a member of the School Board questioned the authenticity of the specious Dec. 10, "1013" McAden communication, that was delivered to me in July, by Child's and Halligan. I have asked repeatedly if I could have a forensic analysis concerning that item. I have agreed to pay initially, but I would expect that you would pay when I am proven correct.

There has been no response.

X The Donald O. (Cy) Clendaniel Tuesday, February 4, 2014, document that I had also wished to have analyzed was admitted to be falsely dated. For now, I am not pressing the Clendaniel issue.

---

X I still have received no further information about the second box of notebooks that were to be sent to my father in July.

My father had the decency to return the Master Keys to the District Offices that, oddly, had been sent to him, along with unreacted confidential student files, district owned computer equipment, etc.

X I know that Robyn Cushingberry said that she sent all the notebooks that she had, but did anyone look for the second box? Perhaps the persons responsible for shredding the evidence, that I spent so much time and money to organize and print out, threw away the notebooks at the same time.

And we all know that even after my father asked to have someone look at the surveillance tapes at the school board hearing to verify that what I am saying is true, no one checked.

X A simple honest answer is all I ask. Did someone throw away my notebooks after shredding my documents?

Please Respond.

Respectfully ,

Alden Bauer

---


From: Dave Duff <dduff@dwtlawfirm.com>  
Date: November 11, 2015 at 9:36:57 PM EST  
To: 'Alden Bauer' <aldenbauer706@gmail.com>,  
"drew.davis@beaufort.k12.sc.us" <drew.davis@beaufort.k12.sc.us>  
Cc: David Lyon <DLyon@dwtlawfirm.com>  
Subject: RE: Good Evening

Mr. Bauer, you don't, in my view, file a motion to reconsider simply to correct a non-substantive one-word mistake ("Board" instead of "District") in the caption of a case, especially when the mistake has already been corrected – see Amended Answer and Return of Respondent and Respondent's Return to Appellant's Motion for Summary Judgment.

---

We will look to receive your Return to Respondent's Return to Appellant's Motion for Summary Judgment, but please be advised that we will be filing a motion to dismiss/ strike your "Pre-Trial Brief" and your appeal itself for continued failure to comply with the court's directives in its two prior Orders regarding the nature and scope of an appeal under sec. 59-25-480.

Also, unfortunately, and to my regret, I will be asking for a postponement of the Dec. 3 motions hearing – when I had hoped the court would hear your motion for summary judgment and our motion to dismiss/strike – because I have a long-standing commitment as a main presenter in a National Business Institute program in Columbia on Dec. 3. I am hopeful that, assuming my request to continue the hearing is granted, the court will re-schedule the motion hearing promptly so that we may get this case concluded.

X  I am not responding to the other matters you mention in your email because either they don't pertain to your appeal or I have no information to provide you.

John Alden Bauer III  
109 Ashton Hill Drive  
Columbia, South Carolina 29229

December 19, 2016

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
PO Box 11629  
Columbia, SC 29211

RECEIVED  
DEC 19 2016  
SC Court of Appeals

Re: John Alden Bauer, III v. Beaufort Co. Sch. Dist.  
Appellate Case No. 2016-000955

Dear Ms. Kitchings,

The polyphonic title APPELLANT'S REPLY TO RESPONDENT'S RETURN TO APPELLANT'S MOTION TO COMPEL RESPONDENT TO PRODUCE SEVENTEEN MISSING ADMITTED EXHIBITS FROM THE BOARD HEARING OF APRIL 30 TO MAY 2, 2015 AND TO COMPEL RESPONDENT TO PRODUCE PRESERVED EVIDENCE ORDERED BY, AND AGREED TO BY RESPONDENT.

In spite of the pretentious appellation this 42 page document is actually most important. Mr. Duff reserved his heavy canon for his response to my motion ignoring that all of his contentions had been belied in earlier filings. Apparently he does not have faith in the memories of the readers, therefore, I responded with appropriate 50% detail which will signify that I will not be deterred by camouflage. The other 50% can be produced, if necessary.

My Reply deals with case law that Mr. Duff chooses to ignore. Although this is only a Reply it contains the gravity, significance, and detail of a motion. I will pay the fee for a motion if it is thought to be appropriate for my 6 copies to receive the same consideration as a motion.

Very truly yours,



John Alden Bauer III

cc: David T. Duff, esquire