

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

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APPEAL FROM LEE COUNTY  
Court of Common Pleas

Maité Murphy, Circuit Court Judge

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Appellate Case No. 2015-000558

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MAR 06 2017

**SC Court of Appeals**

Laura Toney ..... Respondent

vs.

Lee County School District ..... Appellant.

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**REPLY TO RESPONDENT'S RETURN TO PETITION FOR REHEARING**

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## ARGUMENT

### I. THE DECISION OF THE BOARD OF TRUSTEES IS SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD RELATING TO TONEY'S EVIDENT UNFITNESS FOR TEACHING

“In order to prevail on a petition for rehearing, appellants must demonstrate the Court overlooked or misapprehended their argument.” Kennedy v. S.C. Ret. Sys., 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (citing Rule 221(a), SCACR). The purpose of a Petition for Rehearing “is to aid the Court in deciding correctly a case heard by it.” Arnold v. Carolina Power & Light Co., 168 S.C. 163, 172, 167 S.E. 234, 238 (1933).

In her response, Toney contends that the District’s Petition for Rehearing fails to identify any overlooked or misapprehended issues necessary for reconsideration, stating that this Court properly applied the controlling law in finding that the record before the Board of Trustees (“Board”) for the District lacked substantial evidence supporting Toney’s termination. However, the District’s Petition for Rehearing expressly asserts that this Court overlooked issues and improperly applied the authority in concluding that the Board’s finding of evident unfitness was not supported by substantial evidence in the record.

The Court found that Toney disobeyed her supervisors’ reasonable directives to leave alone her disagreement with another teacher pending the investigation by the school administration into that teacher’s grievance against Toney. Despite this finding, the Court concluded that Toney’s disobedience did not constitute insubordination warranting dismissal under S.C. Code Ann. § 59-25-430. Basing its conclusion on Hall v. Bd. Of Trs. Of Sumter Ct. Sch. Dist. No. 2, the Court held that the record does not contain

substantial evidence that Toney's insubordination affected her primary duties as a teacher. 330 S.C. 402, 499 S.E.2d 216 (Ct. App. 1998). However, the District submits that this holding improperly applied the holding in Hall. Because Toney's insubordination involved her willful disregard of her supervisors' directives in conjunction with her inability to behave professionally with a colleague within her academic department at the school, Toney's insubordination directly affected her primary duties as a teacher at the school.

Similarly, the Court concluded that Toney's communication with a Board member did not amount to insubordination evidencing an unfitness to teach. The basis of the Court's conclusion is that because Toney's communication was not related to the reasons for her administrative leave, the record does not support the Board's finding that Toney willfully disregarded the Superintendent's directive. However, the Court's conclusion overlooks the issue underlying Toney's communication.

Toney's communication to the Board member concerned the certification of the substitute covering Toney's class while Toney's was on administrative leave. The substitute's certification was a concern only because Toney's administrative leave created the need for the substitute. Having overlooked this connection in the record, the Court, the District contends, improperly concluded that the Board's finding that Toney willfully disregarded the directive in speaking with the Board member is not supported by substantial evidence in the record.

Therefore, this Court should reconsider its decision affirming the Circuit Court, as there is substantial evidence in the record to support the Board's decision.

### **CONCLUSION**

For the aforementioned reasons and for the reasons set forth in Appellant's Petition for Rehearing, the District respectfully submits that this Court overlooked and misapprehended issues in the record justifying the reversal of the Circuit Court and upholding the termination of Toney's employment.

Respectfully submitted,

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March 6, 2017

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

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APPEAL FROM LEE COUNTY  
Court of Common Pleas

Maité Murphy, Circuit Court Judge

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Case No.: 2014-CP-31-0227

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**SC Court of Appeals**

Laura Toney..... Respondent,

vs.

Lee County School District..... Appellant.

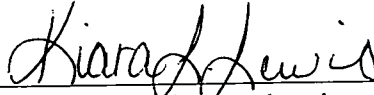
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**PROOF OF SERVICE**

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I certify that I have served the **REPLY TO RESPONDENT'S RETURN TO PETITION FOR REHEARING** in the above-referenced matter on all counsels of record, by mail a copy of same, postage prepaid and return address clearly indicated, to the following on this 6th day of March 2017:

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March 6, 2017

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street  
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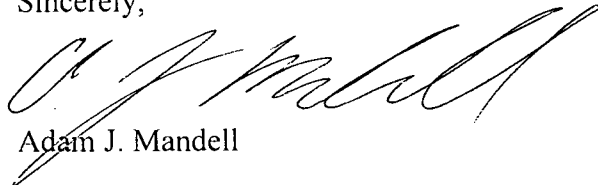
SC Court of Appeals

Re: Laura Toney vs. Lee County School District  
C.A. No.: 2014-CP-31-227

Dear Ms Kitchings:

Enclosed herewith for filing, please find the original and seven (7) copies of Reply to Respondent's Return to Petition for Rehearing in the above-referenced matter. Please return the file-stamped copies of the pleading to our courier.

Sincerely,



Adam J. Mandell

/kl

Enclosures

cc: W. Allen Nickles, III, Esq. (w/encls.)  
Susan Fittipaldi, Esq. (w/encls.)  
Charles J. Boykin, Esq. (w/o encls.)  
Shawn D. Eubanks, Esq. (w/o encls.)