

Volume I (to Second Supp. p. 67)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

MAR 21 2017

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

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.

SECOND SUPPLEMENT TO THE RECORD ON APPEAL

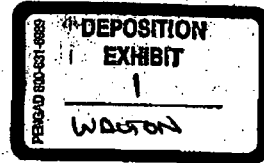
John Alden Bauer, III, pro se
109 Ashton Hill Drive
Columbia, SC 29229
(843) 384- 1506

David T. Duff
David N. Lyon
DUFF & WHITE, LLC
P. O. Box 1486
Columbia, South Carolina 29202
(803) 790-0603
Drew H. Davis (S.C. Bar # 102017)
General Counsel
Beaufort County School District
P.O. Box 309
Beaufort, South Carolina 29901-0309
843.322.2414
Attorney for Respondent Beaufort County
School District

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(Second Supplement to the Record on Appeal)

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IS - 2 Teacher Expectations And Accountability

9/09

Purpose: To provide Beaufort County School District students with instructional staff who meet the highest level of pedagogical proficiency and talent.

All teachers in the school district are expected to do the following.

- analyze data in order to plan and develop appropriate instructional content and use of strategies for all students
- be technologically proficient and to meet the technological goals and objectives as put forth by district. Integration of technology into classroom instruction is vital.
- manage and maintain a professional growth plan that supports life-long learning
- manage teacher certification requirements and documentation as outlined by the SDE in a timely and responsible fashion
- follow the resource adoption and procurement procedures (purchase order procedures, fee collections) of the district, under the direction and approval of the principal
- maintain strict confidentiality of all data, records and student information
- dress in a manner that reflects professional standing
- plan developmentally and content appropriate lessons on a daily basis for the students served
- provide developmentally and content appropriate substitute teacher lesson plans when absences occur
- supervise students in their charge throughout the day and at all times
- not engage in outside activities that may compromise their primary position and instructional duties
- carefully follow the directive that are related to state and local student testing as assessment
- model and enforce the acceptable use policy of the district. Teachers need to be cognizant of the fact that My.Space (or similar) participation is inappropriate conduct.
- regularly report student progress as related to district schedules and procedures
- conduct parent conference and maintain ongoing parent communication
- become proficient in the current academic district initiatives
- maintain accurate student attendance records
- adhere to the school/district progress reporting and grading procedures
- has a thorough command of the subject matter and skills that he/she is teaching
- has knowledge of researched-based instructional strategies and effective student assessment based on the state's academic standards

- develop effective interpersonal and communication skills
- demonstrate the willingness and the ability to deepen his/her understanding of cultural, racial, ethnic, linguistic and cognitive diversity
- demonstrate the willingness and the ability to work collaboratively and share instructional ideas, materials and data with colleagues
- demonstrate the willingness and the ability to engage in non-evaluative assessment processes, including the ability to hold planning and reflective conversations with colleagues about classroom practices

Adopted 5/31/07; Revised 9/09

Beaufort County Schools

PERIOD 80-81-888
DEPOSITION
EXHIBIT
2
WATSON

CLASS RECORD BOOK

Eight Subject/Quarterly

322652

*"What sculpture is to a block of
marble, education is to the soul."*

-Joseph Addison



**SCHOOL
SMART**

Substitute Information

SCHOOL SCHEDULE

School Begins

A.M. Break

Lunch

School Resumes

P.M. Break

Dismissal

CLASSROOM SCHEDULE

Class Begins

No. of Students

Class Ends

Lunch Time

Lunch Count

GET HELP FROM

Teacher(s)

Student(s)

Secretary

Principal

Counselor

Nurse

Custodian

Transportation

DISCIPLINE PROCEDURES

DISMISSAL PROCEDURES

EMERGENCY PROCEDURES

DISASTER PROCEDURES

HEALTH/MEDICAL INFORMATION

Student(s) with Special Needs

Nurse Schedule

First Aid

AUDIO-VISUAL EQUIPMENT PROCUREMENT PROCEDURES

NOTES

Student Roster

	STUDENT NAMES	PARENT/GUARDIAN NAMES	HOME PHONE	WORK PHONE
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No. in Class	Acc E	8 or 6	Cor M	Dir	F	Quarter

PERIOD 7 SEMESTER

Subject	1st WEEK					2nd WEEK					3rd WEEK					4th WEEK					5th WEEK				
	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F

THE BLANK COLUMNS AT THE RIGHT MAY BE USED TO RECREATE ASSIGNMENTS.

Text

- A [redacted]
- B [redacted]
- C [redacted]
- C [redacted]
- C [redacted]
- D [redacted]
- F [redacted]
- H [redacted]
- H [redacted]
- J [redacted]
- J [redacted]
- K [redacted]
- K [redacted]
- M [redacted]
- M [redacted]
- P [redacted]
- R [redacted]
- S [redacted]
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Day 7
Shupp

FIRST QUARTER

No. In Class	A or E	B or S	C or M	D or I	F	Quarter

PERIOD SEMESTER

Subject	1st WEEK					2nd WEEK					3rd WEEK					4th WEEK					5th WEEK				
	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F

THE BLANK COLUMNS AT THE RIGHT MAY BE USED TO RECORD ASSIGNMENTS

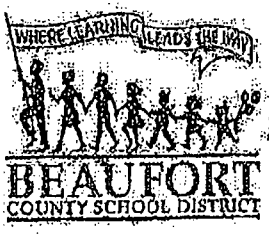
Text Book Number

STUDENT ID OR NUMBER NAME

- [Redacted]
- P [Redacted]
- F [Redacted] J [Redacted]
- F [Redacted], B [Redacted]
- G [Redacted] E [Redacted]
- G [Redacted] L [Redacted], F [Redacted]
- H [Redacted] J [Redacted]
- K [Redacted] D [Redacted]
- L [Redacted] G [Redacted]
- M [Redacted] K [Redacted]
- M [Redacted] E [Redacted]
- M [Redacted] J [Redacted]
- M [Redacted] J [Redacted]
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- P [Redacted] H [Redacted]
- R [Redacted], O [Redacted]
- R [Redacted] J [Redacted]
- R [Redacted] S [Redacted] Y [Redacted]
- S [Redacted] A [Redacted]
- V [Redacted] J [Redacted]
- W [Redacted]

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DEPOSITION
EXHIBIT
3
WALTON



February 7, 2014

VIA HAND DELIVERY, REGULAR U.S. MAIL AND
CERTIFIED RETURN RECEIPT REQUESTED

Mr. John Alden Bauer
5 Gumbree Road - E-11
Hilton Head, SC 29926

Dear Mr. Bauer:

The purpose of this letter is to summarize our discussion of February 5, 2014 in which I advised you that you were being placed on administrative leave with pay effective February 6, 2014. This action is being taken because of concerns of negligent actions with a student and unprofessional behavior toward administration at Hilton Head Elementary School.

A full inquiry regarding these claims will be conducted. I am unsure when this inquiry will be concluded; however, we will move forward as expeditiously as possible. In the meantime, you are not to return to Hilton Head Elementary School for any reason or to attend any school-related functions. Further, since it will be necessary for the administration to contact you as part of the inquiry, I ask that you remain available by telephone during normal school hours, between 7:00 am until 3:30 pm, while you are on administrative leave. As I understand it, your telephone number is 384-1506. Please contact me immediately if this contact number is incorrect.

Finally, you are not to have direct or indirect contact with any of your students or their parents while you are on administrative leave, and I encourage you not to contact Hilton Head Elementary School staff regarding this situation.

Very truly yours,

Alice W. Walton
Alice W. Walton
Chief Administrative and Human Resources Officer

cc: J. McAden

I acknowledge receipt of this letter.

John Alden Bauer
John Alden Bauer

2/7/14
Date

Post Office Drawer 309
Beaufort, SC 29915

Walton, Alice W

From: Walton, Alice W
Sent: Tuesday, March 25, 2014 9:12 AM
To: John Bauer (jaba23@gmail.com)
Subject: Medical Request
Attachments: PE Job Description.pdf

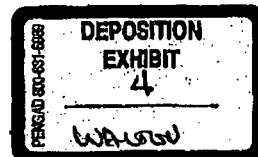
Alden,

I am requesting that you provide your physician a copy of your job description (attached) and that your doctor review it and submit a written statement to me on or before March 31, 2014, indicating whether she believes you are presently capable of performing the essential functions of your position, with or without reasonable accommodations.

If you have any questions, please don't hesitate to call.

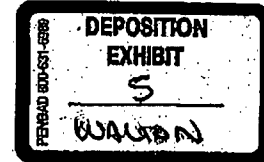
Regards,

Alice W. Walton
Chief Administrative and Human Resources Officer
Beaufort County School District
843-322-2419 | Office
843-812-8374 | Mobile



Walton, Alice W

From: Walton, Alice W
Sent: Tuesday, April 01, 2014 6:52 PM
To: John Bauer
Subject: Re: Report



Alden,

I did not receive a report from your Dr.

Alice W. Walton
Chief Administrative and Human Resources Officer
Beaufort County School District
843-322-2419 Office
843-812-8374 Mobile

Sent from my iPad

On Mar 31, 2014, at 8:51 AM, "John Bauer" <jabpe23@gmail.com> wrote:

I believe she said it would be by fax. But if you would prefer to have it sent a different way her phone number is 342-6000

On Monday, March 31, 2014, Walton, Alice W <Alice.Walton@beaufort.k12.sc.us> wrote:

Alden,

How will this report be submitted? Fax, mail, emailed?

Alice W. Walton

Chief Administrative and Human Resources Officer

Beaufort County School District

843-322-2419 | Office

843-812-8374 | Mobile

From: John Bauer [mailto:jabpe23@gmail.com]
Sent: Sunday, March 30, 2014 9:24 PM

RECEIVED

APR 07 2014

Main Street Psychiatry and
Psychotherapy

4101 Main Street Suite C

BCSD HUMAN RESOURCES Hilton Head Island, SC 29926

843-342-6000

843-342-6001

drlauran@hargaray.com

FAX

Pages:

To: Beaufort County School/ Alice Walton

Fax: 322-2371

Date: 4/7/2014

Re: John Bauer

- Urgent
- For Review
- Please Comment
- Please Reply
- Please Recycle

From: Laura Rosenbaum-Bloom, MD

Fax: 843-342-6001

Phone: 843-342-6000

Cc:

Attn: Official letter for John Bauer to replace handwritten letter. Sorry, for it being late. The office manager was not in the office last week. Thank you

DEPOSITION
EXHIBIT
6
WALTON

Main Street

Psychiatry



Psychotherapy

Laura Rosenbaum-Bloom, MD, BC.

Child, Adolescent & Adult Psychiatry
Board Certified in Psychiatry

RECEIVED

APR 07 2014

BCSD HUMAN RESOURCES

March 28, 2014

Re: John Bauer

To whom it concerns:

I saw John Bauer on March 28, 2014. We discussed his current situation and reviewed his job description. 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.

It is my medical opinion that John Bauer is indeed capable of performing the essential functions of his job and return to all of his duties as soon as possible.

Please do not hesitate to contact me on this matter if you require further assistance.

Best regards,

Laura Rosenbaum-Bloom, MD

47

Main Street

Psychiatry

Laura Rosenbaum-Bloom, MD

Psychotherapy

Laura Rosenbaum-Bloom, MD, FRC

Child, Adolescent & Adult Psychiatry
Board Certified in Psychiatry

March 27, 2014

Re: John Bauer

To whom it concerns:

I saw John Bauer on March 28, 2013. We discussed his current situation and reviewed his job description. 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.

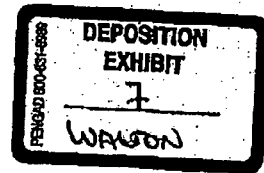
It is my medical opinion that John Bauer is indeed capable of performing the essential functions of his job and return to all of his duties as soon as possible.

Please do not hesitate to contact me on this matter if you require further assistance.

Best regards,



Laura Rosenbaum-Bloom, MD



HRS- 16 Staff Leaves And Absences
7/12

Purpose: To establish the basic structure for all types of staff leaves and absences.

General

The superintendent recognizes that an employee must sometimes take leave and that certain absences are unavoidable. On such occasions, the superintendent expects an employee to take leave in accord and compliance with the provisions of district policy.

Definitions

For this policy, the term "full-time employee" means a person employed by the district who works a minimum of 30 hours per week. The term "active service" means days actually worked or earned sick leave days used. "Immediate family member" includes parents, spouse, child and other relatives who live in the home of the employee.

Sick leave

Accrual

All full-time district employees will accrue sick leave as follows.

Workdays	Days per month	Months accrued	Total days
180-190	1.2	10	12
195-220	1.3	10	13
240-260	1.25	12	15

An employee may accumulate up to 90 days of unused sick leave.

Advancement

At the beginning of a school year, 12 days of sick leave will be advanced to full-time certified and classified school-based employees if they are actively at work. In cases of termination from employment during the course of a fiscal year, an adjustment will be made for any sick leave that may have been advanced and used but not accrued.

Use of sick leave for absences

An employee may use sick leave for absences caused by personal illness or illness of an immediate family member which require the employee to provide care. The superintendent or chief administrative and human resource services officer may grant leave for the illness for other members of an employee's family in unusual situations.

An employee must notify his/her principal or designee or immediate supervisor as early as practicable when it is necessary for him/her to be absent. Unless the length of absence has been definitively set through prior communications, each employee who is absent must notify the school/job site in accordance with procedures established by the school principal or the chief officer for the division.

An absent employee must furnish a signed statement on a leave form setting forth the specific reason for his/her absence. This form should be submitted within five days of the employee's return to work. The principal or supervisor may also require a physician's statement verifying the nature of the employee's illness. If an employee does not provide the required medical physician's statement

within five workdays upon written request or after 10 workdays of consecutive sick leave, the administration may move to terminate his/her employment.

An employee returning from sick leave may be required to present to the office of human resource services a statement from the attending physician certifying the employee's ability to return to normal duties.

The superintendent or the chief administrative and human resource services officer can require any employee to undergo an examination by a doctor or psychologist/psychiatrist selected by the district. The district will pay for the cost of this examination. Failure on the part of the affected employee to carry out said directive is grounds for discipline, up to and including immediate dismissal from employment.

Dismissal from employment

The superintendent may recommend the immediate dismissal of any certified staff member or terminate the employment of any classified staff member who fails to comply with the requirements of this policy, who fails to request extended leave as contained herein, who fails to report to work at the expiration of authorized leave, who fails to obtain an extension of previously approved leave should it become necessary or who fails to produce requested absence or physician's statements.

The superintendent may also recommend the immediate dismissal of any certified staff member or terminate the employment of any classified staff member for misstatements of fact and/or misrepresentations of purpose for which sick leave is desired or obtained.

Transfer of sick leave

An employee of a state agency transferring to the district or a district employee transferring to a state agency or other South Carolina public school system may transfer and retain all statutorily-eligible sick leave he/she has accumulated but not used.

Family and Medical Leave Act (FMLA)

The district will provide leave to eligible employees consistent with the Family and Medical Leave Act of 1993 (FMLA). Eligible employees are entitled to up to 12 workweeks of unpaid FMLA leave in any 12-month period. "Any 12-month period" is defined in the regulations at 29 C.F.R. § 825.200(b), and allows an employer to elect a "rolling" 12-month period measured backward from the date an employee uses any FMLA leave. Under the rolling 12-month period, "each time an employee takes FMLA leave, the remaining leave entitlement would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months." The district will continue to pay its share of the employee's health benefits during approved FMLA leave. Additionally, the district will restore the employee to the same or a similar position after the termination of approved FMLA leave in accordance with law.

When an employee knows of the need for absence in advance, or it becomes necessary to be absent for a period longer than five days, he/she should file a request for extended leave under the FMLA unless the illness does not qualify as a serious health condition under the FMLA.

Employees must adhere to the district's FMLA procedure as outlined in HRS-16(R).

Organ donor leave

An employee may take a leave of absence to be an organ donor without loss of pay, time or leave not exceeding a total of 30 workdays in a fiscal year. An employee seeking leave to be an organ donor must forward a written request, including the appropriate documentation from the attending physician verifying the employee will be a donor, to the office of human resource services with a copy to his/her principal or supervisor at least 30 days prior to the commencement of leave or as

soon as practicable based on the specific circumstances.

Personal/Emergency/Legal/Bereavement leave and procedures

Personal leave

All employees may use a maximum of two sick days per year for personal leave. This leave is not cumulative, must be approved in advance, and may be used for personal matters which cannot be attended to on non-school days or after school hours.

A request for personal leave must be submitted to the employee's principal or immediate supervisor using a leave form available in each school and at the district office. Personal leave requests should be presented at least two working days in advance. Partial days for personal leave are allowed, but may only be taken in half or full day increments.

Personal leave may be granted or denied by the principal or immediate supervisor based on the best interests of students. Personal leave will generally not be granted during the first five days and last five days of student attendance of the school year, on staff development days, or the day before or immediately after a holiday.

Emergency leave

For emergencies and unusual situations not covered by the leave procedures of the district, an employee may request the superintendent or chief administrative and human resource services officer's authorization for use of sick leave days and/or unpaid leave. Such a request must be submitted in writing through the employee's principal or supervisor.

Legal absences

An employee should notify his/her principal or immediate supervisor as soon as the employee knows he/she is being called for jury duty or subpoenaed. The superintendent will grant an employee leave without loss of pay when an employee is summoned for jury duty or subpoenaed to testify in any district-related case or in a criminal case. An employee must submit a copy of a jury duty summons or subpoena to his/her principal or supervisor. If an employee on jury duty is released not later than 12:00 p.m., he/she should return to work. If an employee must appear in court for any reason other than the above, he/she is expected to use personal days or the district will deduct full pay from his/her salary.

Any jury fee and travel payment may be retained by the employee.

The superintendent encourages an employee selected for jury service during the school term to request that his/her service be postponed to a date that does not conflict with school responsibilities. Pursuant to state law, the court will likely grant the postponement.

Bereavement leave

The district will grant an employee five days of bereavement leave at full salary upon the death of a family member. For purposes of this section, "family member" includes spouse, mother, father, son, daughter, brother, sister, mother-in-law, father-in-law or a member of the affected employee's household living with the employee.

The district will grant an employee up to three days of bereavement leave at full salary upon the death of a grandparent, grandchild, aunt, uncle, niece or nephew.

A request for bereavement leave must be submitted to the employee's principal or immediate supervisor.

Military leave

An employee may take military leave without loss of pay, seniority or efficiency rating for one or more periods not exceeding a total of 15 workdays in one year. Saturdays, Sundays and state holidays may not be included in this 15 days unless the Saturday, Sunday or holiday is a regularly scheduled workday for the employee.

This leave may be taken when the employee is engaged in training or other duties ordered by the governor, the department of defense, the department of the army, the department of the air force, the department of the navy, the department of the treasury, or any other department or agency of the government of the United States having authority to issue lawful orders requiring military service. This leave applies to an employee who is either an enlisted or commissioned member of the South Carolina National Guard, the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve or the United States Coast Guard Reserve.

In the event an employee is called upon to serve during an emergency, he/she will be entitled to such leave of absence for a period not exceeding 30 additional days.

The superintendent expects an employee to request his/her training for a period when school is not in session.

An employee seeking leave for annual active duty training must forward a written request, including the appropriate verifying data, to the office of human resource services no later than 30 days prior to the prearranged military activity.

Professional leave

The administration may grant professional leave to an employee for the purpose of attending activities designed to improve employee competency or to improve the instructional or service programs of the district.

Approved professional leave will be with pay. The employee must apply for professional leave through his/her principal or district office supervisor in accordance with guidelines established by the office of human resource services. Principals and district office supervisors are authorized to grant up to three days of professional leave to an employee they supervise. For professional leave beyond three days, authorization from the employee's chief officer must be obtained.

Reimbursement of unused but accumulated sick leave at separation

The district will reimburse full-time employees for unused accumulated sick leave days, up to 90, at the time of retirement. Reimbursement for unused sick leave will be at the rate of \$10.00 per day.

Adopted 7/01/01; Revised 8/10, 7/12

Legal references:

United States Code:

P.L. 103-3 and 29 CFR Part 825 - The Family and Medical Leave Act of 1993.

Title 38 U.S. Code, Chapter 43, Sections 4301-4333, Public Law 103-353 - The Uniformed Services Employment and Reemployment Act of 1994 (USERRA).

S.C. Code, 1976, as amended:

Section 8-7-20 - Requires granting of military leave, without pay, up to five years.

Section 8-7-90 - Requires 15 days per year of leave with pay for members of National Guard and Reserve Units of the various Armed Forces. Also grants an additional 30 days of leave

with pay in emergency situations.

Section 8-11-65 - Organ donor leave.

Section 9-1-2210 - Teacher and Employee Retention Incentive Program.

Section 14-1-190 - Compensation received for jury duty deemed to be expense money.

Section 14-7-845 - Relating to optional postponement of jury service for students and employees.

Section 25-1-2250 - Employees entitled to leave with pay when serving in National Guard.

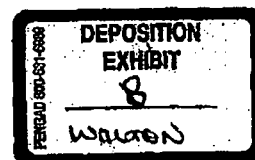
Section 59-1-400 - Sick leave for public school district employees.

Beaufort County Schools

From: John Bauer [mailto:jabpe23@gmail.com]
Sent: Thursday, April 24, 2014 3:45 PM
To: Walton, Alice W
Subject: hello

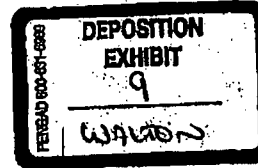
I'm sorry to contact you at such a late hour before our meeting, but I assumed that my eye condition would have been improved by now. I possibly have acquired Conjunctivitis (Pink Eye) in my right eye. I'm currently taking some left over eye drops from a previous infection. Along with a fever, I believe it would be best if we rescheduled our meeting. I'm confident that I will have improved by Monday if that is convenient for you. Please let me know your decision. Also, would you be able to obtain a copy of the November 1, 2013 documentation? I never received the revised copy. Thank you and have a great weekend.

IMPORTANT: The contents of this email and any attachments are confidential. They are intended for the named recipient(s) only. If you have received this email in error, please notify the system manager or the sender immediately and do not disclose the contents to anyone or make copies thereof. Barracuda Networks scanned this email for viruses, vandals, and malicious content. ***



Walton, Alice W

From: Walton, Alice W
Sent: Monday, April 28, 2014 7:29 PM
To: John Bauer
Cc: Moss, Jeffrey
Subject: Re: hello



No

Alice W. Walton
Chief Human Resource Officer
Beaufort County School District
843-812-8374

Sent from my iPhone

On Apr 28, 2014, at 7:07 PM, "John Bauer" <jabpe23@gmail.com> wrote:

Is this for reinstatement?

On Monday, April 28, 2014, Walton, Alice W <Alice.Walton@beaufort.k12.sc.us> wrote:
Alden,

After reading Dr. Moss' email, can I expect you in my office at 9:00am in the morning?

Alice W. Walton
Chief Administrative and Human and Resources Officer
Beaufort County School District
843-322-2419 Office
843-812-8374 Mobile

Sent from my iPad

Begin forwarded message:

From: "Moss, Jeffrey"
<Jeffrey.Moss@beaufort.k12.sc.us<mailto:Jeffrey.Moss@beaufort.k12.sc.us>>
Date: April 28, 2014 at 6:45:23 PM EDT
To: "Walton, Alice W"
<Alice.Walton@beaufort.k12.sc.us<mailto:Alice.Walton@beaufort.k12.sc.us>> "Bauer, John
A" <John.Bauer@beaufort.k12.sc.us<mailto:John.Bauer@beaufort.k12.sc.us>>
Cc: "Moss, Jeffrey"
<Jeffrey.Moss@beaufort.k12.sc.us<mailto:Jeffrey.Moss@beaufort.k12.sc.us>>
Subject: Re: hello

Mr. Bauer:

Ms. Walton is correct in informing you that while you are on administrative leave with pay you are to report as requested. This is no different than if you were reporting to work at a school location. Ms. Walton has requested you to attend a meeting with her and failure to do so without a valid reason could be considered insubordination.

This is our personnel policy and administrative rule. The topic for the meeting is decided by Ms. Walton, not you. If you are requesting to change your leave status please let me know, otherwise I can expect you to meet with Ms. Walton at the designated time.

Jeffrey C. Moss, Ed.D.
Superintendent
Beaufort County School District
2900 Mink Point Blvd <x-apple-data-detectors://0/0>
Beaufort, South Carolina 29901 <x-apple-data-detectors://0/0>
843-322-2326 <tel:843-322-2326>

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On Apr 28, 2014, at 6:36 PM, "Walton, Alice W"
<Alice.Walton@beaufort.k12.sc.us<mailto:Alice.Walton@beaufort.k12.sc.us>> wrote:

Alden,

I will discuss your request below with the Superintendent. Please remember that you are on administrative leave with pay. If you would prefer, I will place on you on administrative leave without pay, then we can operate on your schedule and demands.
Regards,

Alice W. Walton
Chief Administrative and Human and Resources Officer
Beaufort County School District
843-322-2419 Office
843-812-8374 Mobile

Sent from my iPad

On Apr 28, 2014, at 10:52 AM, "John Bauer"
<jabpe23@gmail.com<mailto:jabpe23@gmail.com>> wrote:

Hello Mrs. Walton

My eye is just about better. I believe it's just a severe case of allergies with all the pollen in the air.

If you would like to schedule a meeting for reinstatement I am available any time after today.

If our meeting is for anything other than reinstatement you will need to contact my attorney George McMaster.

George Hunter McMaster, esq.

1701 Richland St

Columbia, SC 29201-2611

or

PO Box 7337

Columbia, SC 29202-7337

(803) 799-4499<tel:%28803%29%20799-4499>

e-mail: ghm@tnmlaw.net<mailto:ghm@tnmlaw.net>

I also request a copy of the Noy 1, 2013 documentation. As a courtesy I have included an account of the events from my point of view.

Finally, I have attached a bill from Dr. Rosenbaum-Bloom for reimbursement. Thank you and I look forward to hearing from you.

The Rest Wall In November, I was teaching a 1st grade class, when I began to develop a

migraine due to the heat and humidity in the gym. This humidity in the gym has been a consistent difficulty since I've been at this school. Several students informed me of heat related issues also. One student was sent to the nurse.

I called Mrs. Jorgenson, the office manager, to request a substitute. She did not have one available. She suggested teaching something like yoga. I informed her that I would probably set up some stations around the gymnasium, and to the immediate area adjacent to the gym in order to open doors for air. I positioned myself in the doorway monitoring everyone in the gym and adjacent to the gymnasium.

Lakeisha Lofton, from office personal, arrived and informed me that a student was spotted hiding in the bushes outside the gym by a 4th grade teacher. I told her that I did not think that it was not one of my students because they were all present. I told her that I thought the student was likely a student from another class, playing kickball in the field near the bus parking lot.

Ms. Lofton checked around and agreed and called Mrs. Brockway to tell her that all students were present and accounted for. Mrs. Brockway then arrived at the gym and asked me again if any students were unaccounted for. I said "no". The student in question had been standing at an area that we call the "rest wall".

The idea for a "rest wall" is from the web site listed on Virginia Tech's PE Central web site www.pecentral.org/lessonideas/ViewLesson.asp?ID=860#UznhoWePKM8 <<http://www.pecentral.org/lessonideas/ViewLesson.asp?ID=860#UznhoWePKM8>>

The rest wall is an area that students may visit without asking permission if they feel the need to take break, in order to provide themselves a timeout and to collect their faculties.

The fourth grade teacher that noticed this student only observed him alone because the remainder of the class was positioned behind the wall adjacent to her room. I was behind the brick wall of her class. She was not able to see me or the other students, who were playing soccer and Lacrosse. I explained to Ms. Brockway that the student did not do anything inappropriate and that he was clearly in my line of sight.

She stated to me that she was compelled to discipline the st.

Walton, Alice W

From: Walton, Alice W
Sent: Monday, April 28, 2014 7:01 PM
To: John Bauer
Cc: Moss, Jeffrey
Subject: Fwd: hello

Alden,

After reading Dr. Moss' email; can I expect you in my office at 9:00am in the morning?

Alice W. Walton
Chief Administrative and Human and Resources Officer
Beaufort County School District
843-322-2419 Office
843-812-8374 Mobile

Sent from my iPad

Begin forwarded message:

From: "Moss, Jeffrey" <Jeffrey.Moss@beaufort.k12.sc.us>
Date: April 28, 2014 at 6:45:23 PM BDT
To: "Walton, Alice W" <Alice.Walton@beaufort.k12.sc.us>, "Bauer, John A" <John.Bauer@beaufort.k12.sc.us>
Cc: "Moss, Jeffrey" <Jeffrey.Moss@beaufort.k12.sc.us>
Subject: Re: hello

Mr. Bauer:

Ms. Walton is correct in informing you that while you are on administrative leave with pay you are to report as requested. This is no different than if you were reporting to work at a school location. Ms. Walton has requested you to attend a meeting with her and failure to do so without a valid reason could be considered insubordination.

This is our personnel policy and administrative rule. The topic for the meeting is decided by Ms. Walton, not you. If you are requesting to change your leave status please let me know, otherwise I can expect you to meet with Ms. Walton at the designated time.

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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Alice W. Walton
Chief Administrative and Human and Resources Officer
Beaufort County School District
843-322-2419 Office
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Sent from my iPad

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George Hunter McMaster, esq.
1701 Richland St

Columbia, SC 29201-2611

or
PO Box 7337
Columbia, SC 29202-7337
(803) 799-4499

e-mail: ghm@tmmlaw.net

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She stated to me that she was compelled to discipline the student. I disagreed stating that he had done nothing unsatisfactory. He was doing precisely what I had instructed him to do.

At the initial meeting, immediately preceding my being placed on administrative leave, Mr. Clendaniel and Mrs. Brockway retrieved a copy of this discipline referral from my personnel file. I could only observe the document from behind. I was unaware that this document was placed in my personnel file. It was my interpretation that this file, to my objection, was to be placed in the students' file as a penalizing discipline referral. It appeared that it may have been altered. I possess a copy of the original, and I would welcome the chance to compare the copies.

On Mon, Apr 28, 2014 at 8:48 AM, Walton, Alice W
<Alice.Walton@beaufort.k12.sc.us> wrote:

Alden,

What are you plans for coming in today?

Alice W. Walton

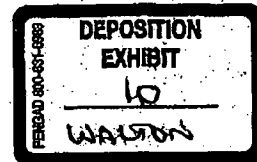
Chief Administrative and Human Resources Officer

Beaufort County School District

843-322-2419 | Office

843-812-8374 | Mobile

From: John Bauer [mailto:jabpe23@gmail.com]
Sent: Thursday, April 24, 2014 3:45 PM



April 29, 2014

REGULAR U.S. MAIL AND CERTIFIED
RETURN RECEIPT REQUESTED

Mr. John Aiden Bauer
5 Gumtree Road - E-11
Hilton Head, SC 29926

Dear Mr. Bauer:

The purpose of this letter is to give you an update on your leave status. As you know, I have requested you to attend a meeting with me and you have refused. As per Dr. Moss, I am communicating my instructions to you via this letter.

As background information, you will recall that you were placed on administrative leave with pay and full benefits effective February 6, 2014. That action was taken because of concerns of negligent actions with a student and unprofessional behavior directed toward the administration at Hilton Head Elementary School. You met with me and Mrs. McAden, principal of HHES on February 11, 2014 to further discuss the accusations of your conduct. I informed you that a full inquiry regarding these claims would be conducted.

On March 5, 2014 we met again with Mrs. McAden and I informed you that in accord of HRS - 16 (Staff Leaves and Absences) I was requesting that you undergo an examination by a psychologist/psychiatrist before I would consider your inquiry closed. I told you that I would have my office call you with the name and contact number of the doctor we use as a district. When my assistant called you, you stated that you needed to talk to your attorney because you thought you had the right to see your physician. I told you that calling your attorney was not necessary because I would agree for you to see the physician of your choosing. I then requested that you call me when you scheduled the appointment. I did not hear from you until I called you. You told me that you would be seeing Dr. Rosenbaum-Bloom and at that time, she was on vacation. On March 25, 2014 I emailed you with what I was requesting of your physician and asked you to have it in my office by March 31, 2014. I did not receive the statement from Dr. Rosenbaum-Bloom's office until April 7, 2014.

On April 23, 2014 my assistant called you to schedule you to meet with me at 9:00 am on April 25, 2014. You stated to her, that you did not need to meet with me if this meeting was not a meeting of reinstatement. I spoke with you and you repeated the same demand to me. In fact you said "you are getting a letter from my attorney and you should not be making a decision about me until you read that letter." I told you that I had not received a letter from your attorney and furthermore, my decision will not be made based on your attorney's letter. At that point, you said you were not going to meet with me unless you had your attorney present. I reminded you that you were on paid administrative leave, and as long as I scheduled the meeting during normal school hours, you were required to be there. On Thursday, April 24, 2014, I received an email from you stating that you could not attend the meeting on

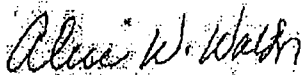
Post Office Drawer 309

Friday because you had acquired Conjunctivitis. On Monday, I inquired about a meeting time and you continued with your demands. You wrote: "Is this reinstatement?"; "as I stated earlier in an email please contact my attorney George McMaster." Paid administrative leave does not afford you the right to set agenda or establish meetings. Dr. Moss was made aware of your demands and refusal to meet with me. He instructed me to write you to let you know what I wanted to discuss with you had you agreed to come to the meeting.

I am in receipt of the statement from Dr. Rosenbaum-Bloom, and she states that in her medical opinion that you are capable of performing the essential functions of your job. I may be willing to return you to your position with another opinion. Thus, in accordance with HRS-16 Leaves and Absences, we are requiring you to see a second health care provider of our choosing. The District will pay all costs you incur in obtaining a second opinion. We are recommending that you see Mary St. John Gay, M.D. Her contact number is 843-524-0449. I have spoken with Dr. Gay and she is aware that you will be calling for an appointment. I am requesting that you have Dr. Gay submit a written statement to me on or before May 16, 2014.

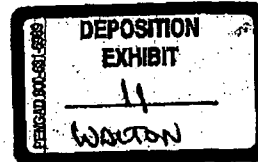
Finally, I will look to hear from you at your earliest convenience informing of your scheduled appointment with Dr. Gay.

Sincerely,



Alice W. Walton
Chief Administrative and Human Resources Officer

c. Jeffrey C. Moss
Superintendent



Judy A. Venters

Subject: FW: Closure

From: John Bauer [mailto:jabpe23@gmail.com]
Sent: Thursday, May 08, 2014 4:12 PM
To: Walton, Alice W
Subject: Re: Closure

I responded to your certified letter on April 30 but I have not received a response from you. Did you receive my e-mail? If not I will forward the email.

On Thu, May 8, 2014 at 3:57 PM, Walton, Alice W <Alice.Walton@beaufort.k12.sc.us> wrote:

Alden,

I realize I have given you a May 16th date to get back with me on my request. I am inquiring today to see where you are in the process; and ask if you believe there is a possibility for us to bring closure to this matter before May 16th.

Regards,

Alice W. Walton

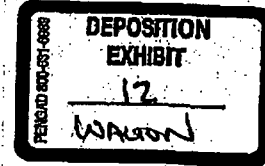
Chief Administrative and Human Resources Officer

Beaufort County School District

843-322-2419 | Office

843-812-8374 | Mobile

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May 29, 2014

VIA EMAIL, REGULAR U.S. MAIL AND
CERTIFIED RETURN RECEIPT REQUESTED

Mr. John Alden Bauer
5 Guntree Road - E-11,
Hilton Head, SC 29926

Dear Mr. Bauer:

The purpose of this letter is to outline the process as expected by Dr. Moss as we move forward with bringing resolution to your suspension.

As you will recall in a letter to you dated April 29, 2014, I requested that you obtain a second opinion from Mary St. John Gay, M.D. I asked that you have Dr. Gay submit a written statement to me on or before May 16, 2014. Dr. Moss is asking you schedule an appointment and present this written report to me in my office by June 2, 2014.

Once you present this documentation, we will inform you of all charges against you. At that point, we will move to resolve your suspension. If you do not appear for a meeting with me on Monday with your documentation, Dr. Moss will proceed with a recommendation for your termination.

If you have any questions concerning these expectations please don't hesitate to call.

Sincerely,

Alice W. Walton
Chief Administrative and Human Resources Officer

cc: Jeffrey C. Moss, Ed. D.
Superintendent

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Appearances

Representing the Plaintiff:

JOHN ALDEN BAUER, III
Pro Se

Representing the Defendant:

DREW HENDERSON DAVIS, ESQUIRE
Beaufort County School District
P.O. Drawer 309
Beaufort, South Carolina 29901-0309
drew.davis@beaufort.k12.sc.us

DAVID T. DUFF, ESQUIRE
Duff, White & Turner, LLC
P.O. Box 1486
Columbia, South Carolina 29202
dduff@dwtlawfirm.com

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EXHIBIT INDEX

Exhibits: Marked at Page

(None were proffered.)

* * * * *

1 This hearing is taken in accordance
2 with the South Carolina Rules of Civil Procedure.

3 JUDGE DUKES: Good afternoon. It's
4 2015-CP-07-1343 is the case number. This is Bauer
5 versus Beaufort County School District. We have on
6 our motions roster this afternoon several motions.
7 Not the first filed, but the first I've decided to
8 take up is Mr. Bauer's motion to disqualify Mr. Duff
9 as Respondent's counsel. And I'm happy to hear from
10 you, Mr. Bauer.

11 MR. BAUER: Okay. The South Carolina
12 Rules for Professional Conduct, the American Bar
13 Association, and the South Carolina Bar Association
14 are all clear on the subject that a lawyer must not
15 represent anyone in connection with a matter in
16 which the lawyer participated personally and
17 substantially as a judge, et cetera, or other
18 third-party neutral unless all parties give informed
19 consent confirmed in writing.

20 Again, all parties to this proceeding must
21 give informed consent confirmed in writing. I was
22 never asked and I do not consent. Duff -- Mr. Duff
23 was hired on July the 7th, 2015. Mr. Duff in an
24 e-mail to Lauren Martel, my former lawyer before I
25 became pro se on July the 13th, 2015, stated,

1 Lauren, thank you for our call this morning in which
2 you mentioned that perhaps I should consider
3 possible legal ethics issues in regard to the recent
4 decision that I will be representing the School
5 Board or District in your appeal to Circuit of the
6 Board's decision to dismiss Mr. Bauer. I gave
7 advice to the Chair or the Board in regard to
8 necessary rulings on procedural matters or
9 objections that did not make myself -- did not
10 myself make rulings or decisions.

11 Again, all parties to the proceeding must
12 give informed consent confirmed in writing. And I
13 was never asked and I do not consent. I would think
14 that this would be enough to disqualify him for
15 that, but I want to make a couple more points here.

16 According to Rule 1.12 if informed consent
17 was not given and the lawyer is disqualified, the
18 lawyer's firm cannot knowingly begin to continue
19 representation.

20 In an e-mail Mr. Duff detailed his role as
21 merely legal counsel to the Board in connection with
22 the hearing. He says he has -- I have no authority
23 to make decisions on rulings. My involvement
24 prehearing with the parties and/or their attorneys
25 is to answer questions primarily procedural in

1 nature and to facilitate discussions in the hopes of
2 resolving disagreements that may exist.

3 Duff then acted as advocate for the
4 District at the hearing including giving false
5 information concerning the withheld e-mail evidence.
6 Between April 29th and May 2nd, Mr. David Duff
7 participated personally and substantially in my
8 School Board hearing. He made countless
9 recommendations to the Judicial Officer Bill Evans
10 on the admissibility or relevance of evidence.

11 Bill Evans stated in the hearing that he
12 spoke with Mr. David Duff regarding the motion in
13 limine two days before the hearing. Even though
14 this motion in limine was provided to me only 23
15 hours before the hearing Mr. Duff allowed it in, but
16 now says it was not admitted, but he invoked it
17 repeatedly during the hearing.

18 The law states that a motion in limine
19 cannot be filed less than 10 days before a hearing
20 and cannot be presented in front of the jury, and in
21 this case it was the School Board. Both
22 requirements were violated.

23 As far as the grade book, which has been a
24 big controversy in this case, a false grade book.
25 Mr. Duff recommended to the judicial officer to

1 allow it into evidence after my repeated objections
2 during the hearing.

3 An empty grade -- an empty false grade
4 book that the -- that Childs & Halligan used that
5 the opposing counsel Childs & Halligan submitted
6 even after Mr. Duff and Childs & Halligan were made
7 aware on five different occasions that this was not
8 the correct grade book.

9 The real grade book had been confiscated
10 on February 11th, 2014, by principal Jill McGadden
11 and Chief Administrative and Human Resources Officer
12 Alice Walton. The grade book then was inexplicitly
13 sent to my father on July the 2nd, 2015, along with
14 a set of Beaufort County School District master
15 keys, Beaufort County School District's own computer
16 accessories which I have here today --

17 JUDGE DUKES: Now let me ask you
18 this, Mr. Bauer. You seem to be getting a little
19 off topic. Are we still on the --

20 MR. BAUER: Yes.

21 JUDGE DUKES: Okay. All right. Go
22 ahead.

23 MR. BAUER: Yes. Yes. This is just
24 part of this.

25 JUDGE DUKES: All right. Go ahead.

1 MR. BAUER: And I'm almost done.

2 JUDGE DUKES: Okay. Take your time.

3 MR. BAUER: And student confidential
4 forms which is a violation of the Family Educational
5 Rights and Privacy Act. I know it's a little off
6 topic here, but -- Mr. Duff was obligated to know
7 and investigate the truth, yet he chose not to and
8 then allowed the false grade book into evidence.

9 And finally, December 10th -- this is the
10 letter that allegedly Ms. McGadden wrote. Mr. Duff
11 recommended to the judicial officer to allow into
12 evidence a questionable December 10th, 2013, the
13 spelling incorrect or, yeah. Letter from McGadden.

14 I've asked that the letter be subjected to
15 forensic computer analysis. And Mr. Duff said that
16 it could be asked -- that it could be asked at the
17 hearing. When I asked Ms. McGadden at the hearing
18 if she would allow for analysis I was interrupted
19 and not allowed to continue.

20 The validity of this letter was even
21 questioned by a School Board member during the
22 hearing. Mr. Duff allowed it into evidence.

23 And last comment here. Mr. Duff stated to
24 me on May 1st, 2014, during a break -- I tell you
25 what. I'm going to go ahead and -- I'll conclude

1 that right now since we are getting a little off
2 topic here, but that is my argument for motion to
3 disqualify.

4 JUDGE DUKES: All right. Now, when
5 you -- you stated several times Mr. Duff allowed
6 something into evidence. Now, I haven't read
7 everything you've got in front of me, but did Mr.
8 Duff make that ruling or did Mr. Evans make that
9 ruling?

10 MR. BAUER: He made -- he made
11 several rulings. In fact, and I have them with me.
12 He, in fact, even testified at one point stating
13 that the School District had provided me with all of
14 the evidence. He even admits in his letter from
15 October 28th that he made recommendations on rulings
16 and objections. This is clearly a third-party
17 neutral person that had -- in fact, he even stated
18 that he was in the School Board during their
19 deliberations. He was present during deliberations
20 of my School Board hearing.

21 I don't think that it would be -- it would
22 definitely be a conflict of interest for Mr. Duff to
23 continue.

24 JUDGE DUKES: All right. Thank you,
25 sir. Happy to hear from you.

1 MR. DUFF: Your Honor, first of all
2 in opposition to the motion to disqualify, these
3 documents have been forwarded but have not been
4 filed, yet. There is my affidavit and the affidavit
5 of the two Childs & Halligan attorneys who
6 represented the administration in the School Board
7 hearing during which I sat as advice counsel to the
8 School Board.

9 And there -- as was made clear in both
10 affidavits, both prior to the hearing, during the
11 hearing, and subsequent to the hearing, I acted
12 solely as advice counsel to the School Board. I was
13 never involved in any way with the administration or
14 its preparation of the case or presentation of the
15 case.

16 And every discussion I had prehearing at
17 times with Mr. Bauer when he was pro se, at an
18 earlier point in time with his then attorney Lauren
19 Martel, and the Childs & Halligan attorneys I
20 addressed numerous procedural matters. Never made
21 any ruling whatsoever at the hearing.

22 And made it very clear to both Mr. Bauer,
23 Lauren Martel, and the Childs & Halligan attorneys
24 that I had no authority to make rulings. That I was
25 there to facilitate any discussion they wanted to

1 have with me when they were having various disputes
2 over procedural matters, a deposition de bene esse.

3 Mr. Bauer when he was pro se didn't really
4 understand how the hearing works. It was all
5 procedural, and I made that very clear to the
6 parties. Now, the rule -- Rule 1.12 only requires
7 consent of the parties if the individual is serving
8 as an adjudicative officer, an arbitrator, a
9 mediator or other third-party neutral who
10 essentially is in the role of a mediator.

11 And we all -- those of us who are
12 attorneys know what mediation is. I never -- I
13 never served, and the affidavits confirm, and you
14 can look at various e-mails that are attached to my
15 affidavit, the affidavits confirm that I never
16 stepped outside of the role and function of advice
17 counsel to the School Board.

18 And now that this appeal is essentially a
19 challenge to the School Board's ruling back in May
20 of 2015, obviously it is logical that I now am
21 counsel to the District or the Board in this appeal.

22 I mean, Your Honor, I don't know whether
23 you are familiar with the Department of Labor
24 Licensing, and Regulation and all of the various
25 administrative boards that are within that agency

1 and the fact that advice counsel, you know, sit with
2 the Board that oversees doctors, dentists,
3 contractors, builders, nurses. The advice counsel
4 is always present in those LLR -- LLR proceedings.

5 And, you know, again, this is a lay School
6 Board of trustees, none of whom are attorneys who
7 during the hearing need certain guidance on what the
8 law is, what certain evidentiary rules are. And
9 what I did more than anything at the hearing was try
10 to assist Mr. Bauer who was pro se to proceed in a
11 way that would be helpful to him and which was in
12 compliance with the fairly loose rules of evidence
13 and procedure that exist.

14 One of the most important things, and this
15 is going to come up when we talk -- when we discuss
16 the other motions. I practically begged Mr. Bauer
17 to take the stand on his own behalf so that he could
18 testify and that he could seek to introduce several
19 notebooks of documents to put on a case in his own
20 defense.

21 And it's clear in the transcript. You
22 know, I can -- I can point you immediately to Pages
23 18 on the attachment.

24 JUDGE DUKES: Let me see. It starts
25 with 19 on --

1 MR. BAUER: Yeah. This is completely
2 irrelevant.

3 MR. DUFF: Well, no, because it
4 absolutely confirms the fact that I was dealing with
5 procedural matters and that I was -- as advice
6 counsel to the Board I was assisting Mr. Bauer in
7 every way I could.

8 If you will look at Page 19 and the next
9 several pages, I said, Mr. Bauer, if you choose not
10 to testify and be sworn, there will be no
11 testimonial evidence in support of your case. And
12 you will not be able to introduce any documents that
13 you've not -- beyond those that you were able to
14 introduce during your cross examination of the
15 administration's witnesses.

16 And you will see in the transcript Mr.
17 Bauer steadfastly refused to testify. Now, he has
18 some explanation that he wanted his father to be
19 able to examine witnesses while he prepared for his
20 own testimony. You know, this is a case that he
21 complains had gone on for many, many months.

22 And Lauren Bacall had dropped out of the
23 picture --

24 MR. BAUER: Martel.

25 MR. DUFF: -- a full month -- Lauren

1 Martel had dropped out of the picture a full month
2 earlier. So -- and along with the Board Chair, we
3 literally begged Mr. Bauer to take the stand. We
4 took a lunch break to let him think about that.

5 When we came back I said, Mr. Bauer, you
6 read an opening statement. And he had it all
7 scripted out. He read it verbatim. I said, if you
8 do nothing else, Mr. Bauer, take the stand, be sworn
9 in, and reread your opening statement. At least at
10 that point your statements will be sworn testimony
11 and they can be considered by the Board.

12 He refused. And consequently, Your Honor,
13 these -- there is no testimony in the record in this
14 case by Mr. Bauer. There is only testimony by the
15 administration's witnesses. And you will see where
16 he agreed that the -- this is the entire record that
17 has been admitted on Mr. Bauer's behalf, these few
18 documents, all of which were entered during cross
19 examination by him of administrative witnesses.

20 So, again, confining myself to the motion
21 to disqualify, there is nothing in the record that
22 establishes that I stepped out of my role as advice
23 counsel to the Board. I certainly wasn't an
24 adjudicative officer. I wasn't an arbitrator. I
25 wasn't a mediator. The only term that even

1 arguably applies is a third-party neutral. And
2 that, I believe, is virtually synonymous with
3 mediator, someone who tries to resolve the case as a
4 mediator does.

5 I never -- that was never my role or
6 function. I never even suggested to the parties
7 that they should settle this case before the Board
8 hearing. So I don't fall within the rule of 1.12 in
9 any way. And the motion needs to be denied.

10 MR. BAUER: Can I say something?

11 JUDGE DUKES: Yeah, go ahead.

12 MR. BAUER: What about Page 247 where
13 you actually testified on Line 8. Your actual quote
14 was --

15 MR. DUFF: Am I on the stand being
16 sworn in?

17 MR. BAUER: I don't know. Am I
18 allowed to do that?

19 JUDGE DUKES: Well, no.

20 MR. BAUER: Okay.

21 JUDGE DUKES: And you can --

22 MR. DUFF: You know I wasn't.

23 MR. BAUER: He stated it wasn't
24 withheld -- evidence was not withheld. That to me
25 is testifying.

1 MR. BAUER, SR.: When it was.

2 MR. BAUER: When it was withheld, but
3 I -- all of those comments he made I do go into in
4 my summary judgment.

5 MR. DUFF: And they are responded to
6 in the affidavits.

7 JUDGE DUKES: I'm just not seeing
8 that Mr. Duff's conduct falls within 1.12. I mean,
9 it's -- he was not a judge. He was not an
10 adjudicating officer. He wasn't a law clerk. He
11 wasn't an arbitrator. He wasn't a mediator. And I
12 agree that the definition of third-party neutral is
13 synonymous with mediator.

14 I haven't heard anything that would lead
15 me to believe that this rule would cause me to have
16 to issue an order taking him out of the case. So,
17 Mr. Bauer, I appreciate the motion, but I'll deny
18 that one.

19 MR. BAUER: Okay.

20 JUDGE DUKES: So what is next? Your
21 motion for summary judgment; is that correct?

22 MR. BAUER: Yes.

23 JUDGE DUKES: All right.

24 MR. BAUER: Okay. I've actually cut
25 this down quite a bit. For my motion for summary

1 plans or -- not improvement plans. All of my
2 evaluations perfect. And then one incident and then
3 I'm terminated without a hearing and without an
4 improvement plan.

5 I completed an improvement plan, turned it
6 in. Never heard any more about it. And I believe
7 the law states that I have to be given a chance to
8 improve, you know, whatever it is they think I need
9 to improve with.

10 Unfitness was never claimed. That is a
11 big part of this -- the law. And every teacher,
12 every witness stated I was an excellent teacher. So
13 it just does not make sense.

14 Let's see. I think Brown versus James is
15 a big part of this. And Mr. Duff knows this
16 personally. He was involved with that case. And he
17 will say that it was non-renewal, I mean, and mine
18 was termination, but I signed a contract. It was a
19 signed contract for the next year, for the 2014-2015
20 school year.

21 And Dr. Moss basically was terminating
22 that contract, non-renewed it. I mean, that is
23 basically the same thing, right? Yeah. You know,
24 that is non-renewal. That is Brown versus James.

25 So I guess that pretty much covers my

1 motion for summary judgment.

2 JUDGE DUKES: All right.. Thank you
3 very much.

4 MR. BAUER: Okay.

5 JUDGE DUKES: Happy to hear from you,
6 sir.

7 MR. DUFF: Your Honor, first of all
8 every assertion that Mr. Bauer just made about
9 procedure, reasons for termination, what section of
10 the statute this case falls under is as you pointed
11 out is disputed factually and legally.

12 I will -- just to clarify a couple of
13 points, Mr. Bauer was terminated for failure to
14 supervise a student in this incident at the swimming
15 pool. And then for his -- what the administration
16 considered to be his insubordinate recalcitrant
17 behavior in the aftermath of that incident when the
18 District was attempting to work with him and he
19 threw up one roadblock after another when the
20 District was attempting to hear from him, talk to
21 him, and hopefully put him back to work. And this
22 went on for months and months.

23 But -- and the grade book is completely
24 irrelevant to the reasons for termination. And by
25 the same token, an improvement -- this case arises

1 under 59-25-430 which is the section before
2 59-25-440. 440 deals with nonperformance,
3 unsatisfactory performance and it does require an
4 opportunity to improve before the teacher is
5 terminated.

6 This case does not fall under Section 440,
7 but rather under 430. And that is clear from the
8 School Board's order. So the grade book and the
9 lack of an improvement plan is completely irrelevant
10 to the reasons for the dismissal, but more
11 fundamentally as Your Honor has pointed out a motion
12 for summary judgment in an administrative appeal on
13 the record is just procedurally wrong.

14 A motion for summary judgment under
15 Rule 59 is a pretrial motion before a trial takes
16 place seeking to remove a case from the jury's
17 consideration allowing the court before the case
18 ever gets to the jury to make a ruling based on
19 undisputed facts. And that is not at all applicable
20 to an appeal from an administrative determination
21 with a record already created.

22 The trial in this case took place back on
23 April the 30th and May 1 and 2 when Mr. Bauer was
24 afforded a full evidentiary hearing before the
25 School Board which is the way that the Teacher

1 Employment Dismissal Act sets up the procedure.

2 So we are here in -- and this is what Mr.
3 Bauer just refuses to recognize. This is not a
4 trial de novo. This is not an original action when
5 Rule 59 or Rule 12.B might apply. This is an appeal
6 on the record where as we've said many times the
7 court's review -- scope of review is limited to
8 determining whether there is substantial evidence in
9 the record to support the administrative decision.

10 We are not here in a trial de novo. And
11 we've been over and over this in his first and his
12 second amended notices of appeal. We've tried to
13 make this clear. The court's orders, two orders in
14 September and October, made it clear that this is an
15 appeal on the record. So a summary judgment motion
16 is just procedurally incorrect.

17 Whatever arguments he's attempting to make
18 in support of a motion for summary judgment are the
19 arguments that he will make when the court hears
20 this case as part of its review of an already
21 existing record. And it's a record as I said at the
22 outset that is devoid of evidence on behalf of Mr.
23 Bauer.

24 He presented no witnesses. He refused to
25 take the stand on his own behalf which completely

1 eliminated his opportunity to seek to introduce any
2 of the documents. He brought two or three notebooks
3 of documents. He couldn't introduce any of them
4 because he never created a foundation through his
5 own taking of the stand to admit those documents.

6 So the record in this case is almost
7 entirely the evidence that was put in by the
8 administration. And if you read those excerpts that
9 are attached to the affidavit you will see that the
10 Board Chair and I begged Mr. Bauer to take the stand
11 and be sworn in and at least get something in the
12 record in his defense. And he just steadfastly
13 refused to do it, but the main point here is you
14 don't even have to reach the disputed facts or
15 whether there are or are not disputed facts.

16 This is a procedurally incorrect motion.
17 We are not in an original action here. This is not
18 a case going to a jury. It's an administrative
19 appeal to the court based on an existing record. We
20 would ask that the motion be denied for those
21 reasons.

22 MR. BAUER: May I do a quick respond?

23 JUDGE DUKES: Two minutes. Go ahead.

24 MR. BAUER: Okay. I just want to
25 remind Mr. Duff that Dr. Folley of Childs & Halligan

1 stated this matter is not before a court of law. A
2 summary judgment -- I would not have been able to
3 file a summary judgment before my School Board
4 hearing. This is the first time I'm allowed -- I
5 can file a summary judgment.

6 This is the first place to do it. You
7 can't do it before a School Board hearing. There is
8 no judge. There is no -- there is a judicial
9 officer but there isn't a judge to file it with.
10 I'm going to remind Mr. Duff that when he talks
11 about neglect it states in the Employment and
12 Dismissal Act persistent neglect. This is one case.

13 I want to remind Mr. Duff also that when
14 he talks about begging me to take the stand and
15 present all this evidence, all the evidence was
16 denied. There was no point in me taking the stand
17 or self-testifying because all the evidence I was
18 going to use was not allowed in.

19 I tried to ask Ms. McGadden questions
20 about the grade book and about her letter that is I
21 think completely fake, and they said you can bring
22 this up during your self-testimony. Well, how am I
23 going to ask her questions about it in my own, what
24 do you call it, the self-testimony.

25 All the evidence I intended to use was not

1 allowed in. So I don't -- if it wasn't allowed in,
2 how is it going to be allowed in during my
3 self-testimony.

4 MR. DUFF: It was never offered
5 because you never took the stand.

6 JUDGE DUKES: Let's do this --

7 MR. BAUER: It was, all of the --

8 JUDGE DUKES: Hold on a second. Mr.
9 Bauer, the summary judgment is not an appropriate
10 filing at this stage, but even if it were your
11 entire argument had to do with levels of proof with
12 people who didn't tell the truth allegedly, that
13 sort of thing. I mean, the whole thing is full of
14 factual disputes.

15 And so even if a summary judgment motion
16 were an appropriate thing to file in an
17 administrative appeal such as this one, I would have
18 denied it anyway. So I appreciate the motion, but
19 I'm going to deny that.

20 So I think that moves us to the motion to
21 dismiss or strike pretrial brief and second amended.

22 MR. BAUER: Correct.

23 MR. DUFF: And that's our motion,
24 Your Honor.

25 JUDGE DUKES: Let me see if I can

1 find where that might be.

2 MR. BAUER: It's right here.

3 MR. DUFF: That is the second amended
4 appeal and the pretrial brief which is now the
5 subject of our renewed motion to dismiss and strike.

6 And, Your Honor, if you will notice the
7 second amended appeal itself arguably at least
8 complies with the court's earlier two orders in this
9 case, one in September and one in October. And they
10 are here.

11 JUDGE DUKES: Thank you.

12 MR. DUFF: Unfortunately for Mr.
13 Bauer, the pretrial brief is in no way consistent
14 with the notice of second amended appeal. It, in
15 fact, reverts right back to the same original causes
16 of action, alligate new allegations based on
17 evidence that was never admitted. The same problems
18 that we found in the original notice of appeal and
19 in the first amended notice of appeal.

20 And this is -- that is the problem again.
21 Mr. Bauer just refuses to recognize that this is an
22 appeal under 59-25-480 based on a record that was
23 created before the School Board. And it's a record
24 that by his own choice is devoid of any evidence on
25 his behalf despite the fact that the Chair and I

1 implored him to take the stand and at least put
2 something in, something.

3 And, Your Honor, so we are at a point here
4 where we have spent countless hours and many
5 resources of the District to say nothing of the
6 hours that Your Honor has spent dealing with now a
7 third effort to expand an appeal on the record into
8 some original action which has everything but the
9 kitchen sink thrown into it.

10 In this pretrial brief you will see once
11 again, references to Title 7 of the Civil Rights
12 Act, to the Americans With Disabilities Act, to the
13 Equal Pay Act. If you look on Page 9 you will see
14 that he just continuous to treat this as an original
15 action which it is not.

16 And I point out in your September order,
17 Your Honor, you said that any memorandum -- when you
18 gave Mr. Bauer a chance to refile his notice that
19 any memorandum should bear in mind the scope of an
20 appeal under 480.

21 And then he filed again and he did not
22 correct the problems. And then we moved on. We
23 filed another motion to dismiss which resulted in
24 your October 16 order in which you say, and I'm
25 quoting from the order, if the second amended appeal

1 fails to comply in any manner with the court's prior
2 directives upon motion by Respondent, the appeal
3 will be dismissed with prejudice and without further
4 hearing.

5 You go on to say, quote, Appellant is
6 again admonished that any memorandum as well as the
7 further notice of appeal may only address issues
8 properly raised before the Respondent Board and
9 preserved for review.

10 So Mr. Bauer -- and I know he's pro se.
11 And I know the court gives pro se litigants ample
12 leeway and doesn't hold them to every specific of
13 every procedural rule, but this is the third attempt
14 by Mr. Bauer to file a proper appeal under section
15 480.

16 And while his most recent notice perhaps
17 complies with your September and October orders, the
18 pretrial brief reverts right back to the original in
19 the first amendment appeal by bringing up all of the
20 FOIA, Title 7, and all of these claims and issues
21 that were never presented, never preserved for
22 review, and which are outside the scope of 480.

23 And we keep going around and around with
24 Mr. Bauer. And based on your orders in September
25 and October, Your Honor, we are at a point where you

1 are completely within your discretion to dismiss
2 this appeal with prejudice.

3 If Mr. Bauer wants to sue under Title 7 or
4 the Americans With Disabilities Act, he can pursue
5 those claims in an original action that he persists
6 in trying to bring into this appeal of an
7 administrative ruling based on a regard that has
8 already been created.

9 And it's time to stop the expenditure of
10 resources and time on the part of the Respondent as
11 well as Mr. Bauer and as well as the court and
12 dismiss this appeal which clearly is contemplated by
13 a further failure of Mr. Bauer in the second amended
14 appeal to comply with the court's earlier two
15 orders.

16 So we ask that this appeal be dismissed
17 with prejudice. Let him go on and file his other
18 original causes of action in whatever court he feels
19 he's entitled to file them in, but this case should
20 be ended.

21 JUDGE DUKES: All right. Mr. Bauer,
22 happy to hear from you, sir.

23 MR. BAUER: Okay. I believe Mr. Duff
24 did say that the second amended appeal was arguably
25 in compliance, correct?

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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MAR 21 2017

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

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,

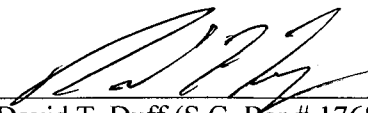
Respondent.

CERTIFICATE OF SECOND SUPPLEMENT TO THE RECORD ON APPEAL

I certify that the Second Supplement to the Record On Appeal contains all material proposed to be included by the Respondent and not any other material, except as ordered by the Court.

March 21, 2017

SEE SIGNATURE NEXT PAGE



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