THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

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

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Case No.: 2015-CP-07-1343
APPELLATE CASE NO. 2016-000955

John Alden Bauer, III — Appellant

v

Beaufort County School District — Respondent

FINAL BRIEF OF APPELLANT

March 30, 2017

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(B) Statement of Issues on Appeal

I. Errors in the Order of the Court of Common Pleas

II. District imposed 10 months of delays from June 21, 2014 to April 30, 2015

III. False Evidence Knowingly Admitted

IV. Why not Testify? The Case Was Won

V. Additional Violations by District.

(C) Statement of the Case

1. February 5, 2014. John Alden Bauer, III was placed on Paid Administrative Leave.

2. February 5, 2014. Principal McAden was ordered to preserve evidence.

3. February 18, 2014. Childs and Halligan, attorneys receive document(s) from this case indicating that they have been retained.

4. April 14, 2014. Appellant signed new contract contingent on outcome of this case.

5. May 21, 2014. George McMaster wrote Litigation Hold Letter to Preserve Evidence, as final act as pro bono consultant (McMaster was closing his law practice).

6. May 21, 2014. Appellant was now fully pro se.

7. May 29, 2014. Superintendent Moss sent an *email* to Appellant detailing four (4) "bases" for his recommendation for termination, the *only* communication, ever, of any potential charges or accusations. (The first 2 bases became the "charges" on third day of hearing. Never sent)

8. June 5, 2014. Board accepts Superintendent's recommendation for terminating Appellant. No hearing had been held, nor had any "causes" been issued.

9. June 16, 2014. Superintendent confirms termination. Termination officially documented on July 1, 2014.

10. June 21, 2014. Appellant appeals Board action and issues FOIA Request. No response, a misdemeanor.

11. July 1, 2014. Official Termination Documented. (Documents withheld from appellant until June 14, 2016)

12. July 7, 2014. Appellant Petitions Board for Reinstatement based on violation of 15 day requirement for hearing. No Response.

13. August. Board ratifies termination. (Day unknown. Minutes later deleted)

14. September 2, 2014. Board ratification of termination is published on web.

15. October 21. Appellant again petitions Board for hearing. No response.

16. Depositions are held beginning on December 16, 2014 and continuing into February, 2015.

17. April 30-May 2. 2015. Beaufort County Board of Education Hearing.

18. May 19, 2015. Board Order signed.

19. May 29, 2015. Appellant appeals to the Court of Common Pleas

20. July 8, 2015. Attorneys of Record for Superintendent/District/Board Fired. Duff White and Turner retained.

21. August 19, 2015. Hearing in Court of Common Pleas. Considered Motion to Dismiss and to change named Respondent.

22. October 19, 2015. Motion for Summary Judgement Filed

23. January 19, 2016. Hearing in Court of Common Pleas. Considered Motion to Disqualify and Motion for Summary Judgment. Denied.

24. March 1, 2016. Hearing in Court of Common Pleas. Considered three Motions to Compel--Security Camera footage, Caller ID, Forensic Analysis of challenged letter. All denied.

25. March 4, 2016. Final Hearing in Court of Common Pleas.

26. March 16, 2016. Proposed Order submitted by Counsel for Respondent.

27. c. March 21, 2016. Appellant submitted response to proposed order and alleges substantial factual error(s) in the Proposed Order.

28. March 29, 2016. The Honorable Marvin H. Dukes III, signed the Final Order. Not entered.

29. April 25, 2016. The Honorable Marvin H. Dukes III, again signed the Final Order, dated March 29, 2016, filed the Order, and sent a copy via email to Appellant.

30. April 27, 2016. Hard copy of Final Order received by Appellant.

31. May 5, 2016. Appellant filed Notice of Appeal with the Clerk of Court. (Court of Appeals)

(D) Argument

Note: Seventeen "admitted" documents have disappeared. Discussed below, Numbers 47 and 50-53.

I. <u>ERRORS IN COURT OF COMMON PLEAS ORDER</u> dated March 29, 2016.

Subject: Officially Terminated Prior to Hearing, and Ratified.

1. *"...we do not find any provision among those in Chapter 25 of title 59 allowing school districts to veer outside of these provision(s) and establish their own conflicting regulations governing teacher employment. Furthermore, our courts, when presented with situations in which a statute provides a date, have held that the courts do not have the authority to change a date fixed by statute."* Attorney General Henry McMaster to Superintendent of Education Jim Rex, May 8, 2008.

The above citation will also apply to the district imposed delays. (II)

2. The proposed Order of the Court of Common Pleas had been written by David Duff, Counsel for Respondent. It allegedly contained multiple errors and Appellant submitted a 27 page document with suggested corrections. (R. pp. 53-76; Document begins on page 49 with general observations, followed by suggested corrections) No corrections were made except for misspelling.

This brief will deal with only one such ternary error-group, next.

3. From the Board Order, (R. p. 44, #3) (Underlinings by Appellant): *"Bauer maintains that he actually was terminated without the opportunity for a hearing, in violation of §§ 59-25-460 and 470, and contrary to the South Carolina Court of Appeals holding in Brown v. James, 389 S.C. 41, 697 S.E.2d 604 (Ct. App. 2010).*[1] *Initially, this issue*

was not supported by Bauer at the School Board's hearing by evidence or argument and was not preserved for appeal because the School Board did not rule on it. Secondly, Bauer's contention is without merit because his employment with the District clearly was not terminated until the Board unanimously voted to uphold the Superintendent's recommendation on May 2, 2015. (R. p. 44 - 45)

Note: Termination documents were executed July 1, 2014, more than nine (9+) months *before* the hearing.

4. The claim that Bauer did not argue the issue (above) is demonstrably false. It was repeatedly argued, (below) and witnesses for the district testified that Appellant was *terminated*, including the Superintendent of Schools and the Human Resources Officer, Alice Walton.

5. Examples of argument.

- Walton Testimony (S.R. p. 471, line 15; see lines 12-17)

"....asked on February 5th, 2015, if Mr. Bauer was terminated by the Board without a hearing," "That is correct."

- (S.R. p. 470, lines 2-4) Walton Q. "...And if a teacher is terminated without a hearing, does that violate Brown versus James?

  A. I'm not familiar with Brown versus James.

- Appellant to superintendent, *"Did you state when I (*appellant*) was terminated that the bases for my termination were based on this May 29th (2014) email.....?*

A Superintendent Moss *"No, you were terminated for....."* (S.R. p. 650, line 13-16)

- *Q "Concerning Mr. Bauer's termination on June 5th..."*

  A (Moss) *"The termination was embedded in two actions....."* (S.R. p. 665, line 15)

- Clearly the board considered the termination final by ratifying the termination in August 2014 and publishing the Ratification beginning September 2, 2014. (Ratification documents from the district were struck)

6. Therefore, the contention that Appellant was terminated without a hearing is undisputed as proved by the district's own witnesses at the Board Hearing, as cited above. The argument that the *"School Board did not rule on it"* was not relevant since it was not debatable. The Minutes of June 5, 2014 (document struck) say that Appellant was terminated, the superintendent confirmed the termination on June 16, 2014, and the district officially documented the termination in the Human Resources Office, dated July 1, 2014 (document struck). Nothing to the contrary, including form letters, can refute the facts.

II. DELAY

Note: Before termination, a hearing is required and the pay for a *'continuing contract teacher'* should have continued until the results of the Board Hearing were known.

7. *"...the statute, (TEDA 460) which for years has required boards to hold hearings within 15 days unless the time period was wived by the employee."* Childs and Halligan, August, 2016.

8. *"Please note that under the act only the teacher can waive the statutory deadline."* Childs and Halligan, July 22, 2014. (Letters from Childs and Halligan were struck)

9. Childs and Halligan represented the district at Appellant's Board Hearing.

10. Appellant never asked for nor agreed to a waiver of the 15 day requirement.

11. Any claim that George McMaster, who was no longer practicing law, had agreed to a waiver, while Appellant was pro se, is irrational. Respondent is well aware of that.

12. *Middleton,* actually agreed to a limited delay, but not to the ensuing 4 month delay; a delay that was considered to be excessive by the court. (R. p. 107) *Middleton v. Charleston County* Case No.: 2013-CP-10-7094, THE STATE OF SOUTH CAROLINA, In The Court of Appeals.

13. By contrast the imposed delay on Appellant was over 9 months.

14. From Board Hearing, April 30, 2015, (S.R. p. 157, beginning line 21, to S.R. p 158, line 7)

Appellant: *"When the district learned that I had* not *agreed to an extension, why not have the hearing soon, or within 15 days, or a month, or at least a discussion of....dates? I was acting pro se, and yet based on the imposed delay, a motion to reinstate was submitted by me to the School Board on July the 7th, 2014. I did not receive a response.....by October 21st, I was frustrated with no responses and again petitioned the School Board. This petition asked to restart the 15-day calendar."*

15. The requests were ignored and additional delays were imposed.

16. Timeline concerning delays:

June 5, 2014. Appellant terminated without a hearing. (Official Board Minutes were struck October 14, 2016.)

June 16, 2014. Superintendent emails, "You are current [sic] no longer an employee..." (Email struck)

June 21, 2014. Appellant appeals the termination. Fifteen day calendar for hearing begins. (Attorneys for district had been hired and had 5 months to prepare)

July 1, 2014. Official Termination Documentation were executed by the (Documents withheld from appellant until June 14, 2016) (Documents struck October 14, 2016)

July 7, 2014. Appellant asked superintendent if Appellant had been reinstated since no hearing had been held. (Document struck October 14, 2016)

April 30-May 2, 2015. Board Hearing. No evidence either way was presented regarding a delay except for Appellant's statement above, and no charges, by anyone, were ever presented before the hearing.

17. From Order, pages 4-5, Fields-Lary v. Charleston County School Board. Case No.: 2014-CP-10-1480. October 22, 2014.

"The General Assembly established the mode of procedure to be used in the dismissal of public school teachers in Title 59, Chapter 25, Article 5 of the Code of

Laws. See S.C. Code Ann. §§ 59-25-410 through 59-25-860. These statutes provide continuing contract teachers certain specific rights, including:

> *1. Written notice of reasons for dismissal from the School Board (§ 59-25-460)*
>
> *2. The right to a hearing (§ 59-25-460)* (R. p. 285) *and*
>
> *3. Procedural Due Process, including the right to be heard within 15 days (§ 59-25-470)."*

See #1. No written notice of reasons (charges) ever came from the School Board, or from anyone else. Not only was the hearing not scheduled (#3 above) within 15 days of the request, dated June 21, 2014, but, the final termination paper work was completed on day nine (9) of the 15 day window indicating that there was no intention of scheduling a fair hearing during the final six days (6 of 15), or ever. (The Official District Termination Documents were struck on October 14, 2016)

18. A battery of experienced attorneys from Childs and Halligan were already on this case in February 2014 (emails from Human Resources Officer Walton) and this gave them 5 months to prepare. How is it that a pro se PE teacher is willing to go forward and abide by the law, but not the professionals?

19. The Order in *Fields* makes it clear that the language of TEDA is mandatory and not given to interpretation.

"It is a well-established legal principle that where the terms of the statute are clear, courts must apply those terms according to their literal meaning without resort to subtle or forced construction to limit or expand the statute's operation. Moody v. Dairyland..."

Page 8 of *Fields-Lary*

20. *"Twenty years later, in Brown v. James, the Court of Appeals held that the language of TEDA is unambiguous regarding procedure and that 'the observance of the procedural requirements of the Employment and Dismissal Act is* ***mandatory and not a matter of discretion****. Only two years ago our Supreme Court reversed the decision of the Young v. Charleston County School District board for violating teacher rights provided in TEDA."'* Fields-Lary, page 6 (*Brown v. James,* 697 S.E. 2d 604, 389 S.C. 41 (2010) (R. pp. 262-273; see page 267, paragraph 1, last sentence)

21. David Duff, Counsel for the District, in the Court of Common Pleas on March 4, 2016 said, *"Most of the delay quite frankly, was due to Ms. Martel."*
    Lauren Martel was retained by Appellant on November 1, 2015, five (5) months into the delays following the Request for a Hearing, and 10 days after Appellant served his fourth Motion/Petition; all four of which were ignored. (Documents struck)

22. Why would an attorney (Duff) make such an outrageous accusation against a fellow officer (Martel) of the court?

23. See Affidavit of Lauren Martel. (Affidavit struck)

24. Case Law: *"'The plain language of Section 59-25-470 stating that the hearing will be held not less than 10 nor more than 15 days after the hearing is served' is mandatory..."* Shell vs. Richland County School District One 362 S.C. 408, 608 S.E. 2d 428 (2005) quoted in *Fields-Lary v. Charleston County School Board.* Case No.: 2014-CP-10-1480. October 22, 2014.

25. Appellant signed new contract on April 14, 2014, see next for importance.

26. ARTICLE 5. EMPLOYMENT AND DISMISSAL

SECTION 59-25-410. *"Notification of employment for ensuing year; notification of assignment."*

"...Notices of intent not to renew an employment contract shall be given in writing no later than April fifteenth of each year." also *Fields-Lary v. Charleston County School District.* 2014-CP-10-1480, pages 6-7.

27. Therefore, the hearing would have been required to be either before April 15, 2014 or within 15 days, thereafter, as acknowledged by Respondent's Counsel on his website and which was Quoted verbatim on page 43 of the Board Hearing (S.R. p. 162 lines 5-15; Note quotation-punctuation ["-"] not in transcript. Complete article, S.R. pp. 837-838)

28. Case law iterates the mandatory nature of the law making it clear that no delays are permitted. In practical terms one could argue that an *agreement* to delay might be

legitimate, but not if either side objects. Below are examples of such case law as cited in *Fields-Lary v. Charleston County School District.* 2014-CP-10-1480.

Moody vs. Dairyland Ins. Co., 354 S.C. 28, 30-31, 579 S.E.2d 527, 529 (Ct. App. 2003)

Hodges v. Rainey, 341 S.C. 79, 85, 454 S.E.2d 578, 582 (2000)

Brown v. James, 697 S.E. 2d 604, 389 S.C. 41 (2010) (R. pp. 262-273)

29. Whether one wishes to consider this a case of non-renewal, termination, (or suspension after termination!? (Yes, suspension after termination really happened), or any of the above, TEDA is clear on the requirement for a timely hearing, if requested. This is emphasized on page 6 in *Fields-Lary* so that teachers *"have ample time to secure employment prior to the commencement of a new school year."*

30. If the superintendent thought that he had a reason (though non-stated) for suspension under TEDA 59-25-450 (R. p. 275) he was nevertheless required to abide by the hearing timeline requirement.

31. There is no legitimate excuse for making no effort to comply with the law. *Middleton* was reversed on the basis of a 4 month delay. Respondent's imposed Delays of 9+ months is even more egregious. Middleton v. Charleston County Case No. 13-CP-10-7094, THE STATE OF SOUTH CAROLINA, In The Court of Appeals. (R. p. 107)

32. *"Unless expressly given, administrative agencies do not have authority to waive statutory requirements."* Ray Bell Construction Co, Inc. v. School District of Greenville County, 331 S.C. 19, 501 S.E.2d 725 (1998)(24790)

III. False Evidence

33. The attorneys and Mr. Duff knowingly allowed a false roll book, or attendance book, to be presented. All attorneys had been informed before the hearing that the true attendance book had been confiscated and withheld. (S.R. p. 305, lines 8-10, S.R. p. 307, lines 5-16)

34. Appellant anticipated the ploy of the false attendance book in his Opening Statement, Board Hearing, (S.R. p. 148, lines 1-4) *"...some of the evidence that the opposing counsel will use is misrepresented. Pay particular attention to what they claim is my class record book."*

35. The false attendance book, with its empty pages, (R. p. 290; one page out of 102 pages included) comprised 81% by volume of the district's exhibits. The withheld true attendance/grade book was sent inadvertently to Dr. John Bauer, of Columbia, along with a set of master keys (!) to the Beaufort County School District Offices. (Also enclosed were 13 un-redacted confidential student files, a violation of the Family Educational Rights and Privacy Act ("FERPA")

36. The principal who had hidden the true attendance/grade book also swore that she wrote a letter on her office computer, critical of Appellant, on a day in which she was not in the office. Internal evidence raised suspicions about the authenticity of the

letter, also noted during the hearing by a member of the Board, (S.R. p. 382, line 15, to S.R. p. 383, line 6). The letter, dated December 10, 1013 [sic] was never delivered. It was only presented, not delivered, by attorneys for the district as evidence. (District exhibit #17; S.R. p. 776)

37. Respondent has refused to authenticate the December 10, 1013 [sic] letter, a one minute operation, at no cost. In fact they could simply take a screen shot of the computer showing the creation date and modification dates of the letter. Appellant even offered to provide an independent person at no cost to Respondent. A Motion to Compel the authentication was denied by the Honorable Marvin H. Dukes, III, an alleged error by the court.

38. One other document exhibited by the District was finally conceded, during vigorous cross examination, to have been falsely, i.e., "*incorrectly*" dated! (S.R. p. 281, lines 2-20)

IV. Why Not Testify?
The Case Was Won

39. It was obvious that there was considerable sympathy from the Board for Appellant. Appellant counted at least 4 votes seemingly favoring Appellant before the deliberations. Why risk a long brutal cross examination that multiple attorneys had had months to prepare?

40. During breaks Chairman Evans repeatedly told Appellant's father things, such as, *"Your son is doing great. The opening statement was brilliant. Everyone is impressed."*

41. Mr. Duff, the Board's Advice attorney at the Hearing, and now Counsel for Respondent, repeatedly urged Appellant to testify near the end of the hearing. That was strange considering that Mr. Duff had emailed Appellant, before the hearing that since Appellant had not put himself on the witness list, it might be a problem for him to testify. Duff continued that he would probably approve Appellant's testifying, but that he did not know how the other attorneys would react. Therefore Appellant prepared to present his evidence only through the district's witnesses. (S.R. p. 641, lines 12-19) (Email from Duff was struck)

42. Appellant re-considered his decision not to testify and asked for a way to get time to prepare. Attorneys objected and Appellant decided not to pursue the idea. (S.R. p. 641, line 20 to S.R. p. 642, line 8

43. From Board Hearing, (S.R. p. 673, lines 4-7)

Chairman Evans said, "*...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, there.*"

MR. BAUER: "Sure."

44. And on Board Hearing (S.R. p. 686, line 11-16)

"*...particularly in Mr. Bauer's booklets, that were not introduced, and just in my simple way of categorizing, I mean, I circled documents that were discussed and----*"

MS. FAWLEY (for the district): "*We're comfortable with that*"

45. Appellant, therefore, believed that items in the "*booklet*" i.e. "*notebook*", would be considered, along with cross examination evidence given under oath, during deliberations.

46. In addition on Board Hearing (S.R. p. 688, line 17---also see lines 11-22)

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.*

MR. RIVERS: *Okay.*

CHAIRMAN EVANS: *Okay.*

MR. BAUER: *Thank you.*

47. Seventeen of these "admitted" documents have disappeared and may be in the envelope that the Reporter used for documents "in limbo" i.e., he had entered them, but due to confusion at the end of the hearing did not know if they were to be included as exhibits in the index.

48. Appellant believes that he would have won the vote if Mr. Duff had not attended the deliberations. Duff's, and General Counsel for the District--Drew Davis'-- attending the deliberations was a violation of Gonzales v. McEuen, 435 F. Supp. 460 (C.D. Cal. 1977) U.S. District Court for the Central District of California - 435 F. Supp. 460 (C.D. Cal. 1977)

49. Mr. McEuen was "*advisor to the Board"* and attended deliberations for 45 minutes.

Here is what the court ruled:

"*The plaintiffs contend that their due process rights were violated by this involvement of Mr. McEuen with the Board. This court agrees.*

"Whether he (McEuen) did or did not participate, his presence to some extent might operate as an inhibiting restraint upon the freedom of action and expression of the Board."

50. **Note:**

Again, Seventeen (17) exhibits that were numbered, and accepted without objection, disappeared from the Index of Exhibits. One example: S.R. p. 524, lines 4-6.

"Thank you. (WHEREUPON, a document was marked as Defendant's Exhibit Number 15 for Identification to the Walton Deposition.)"

51. Exhibit 15 documented that the Human Resources Officer had testified falsely. How could that exhibit disappear? How about the other sixteen exhibits, from just one witness, that are missing from the Index?

52. The Court Reporter, amidst the chaos near the end of the hearing, was confused by motions concerning exhibits which is why he made a separate envelope for the exhibits that seemed to be in limbo.

53. That envelope is included with the district's official transcript and should be made available by the district for the court to consider as being preserved.

V. Additional Violations

54. Applying TEDA 430 requires a "pattern of neglect".

One incident where one student sneaks into one class and hides, in a 17 year teacher's career is not a *pattern.*

55. Improvement Plan. Asked for and then ignored. (TEDA 440) (S.R. p 543, lines 9-10)

SECTION 59-25-440 (R. p. 274) ***"...school administrator required to make reasonable effort to assist teacher in corrective measures; reasonable time for improvement required."***

56. **NOTE**: Appellant asked witnesses during cross examination (administrators) about what was required under TEDA. Attorneys for the district objected ten (10) times on the grounds that it called for a legal conclusion. (S.R. p. 469, lines 11-13, 21-22; S.R. p 470, line 6; S.R. p 471, lines 6-8; S.R. p 478, lines 22-24; S.R. p. 506, lines 3-6, inter alia)

    MR. WILLIAMS: *"... To the extent that you're asking her for a legal conclusion, I would object to that."* (S.R. p. 469, lines 11-13)

57. Respondent has a propensity for accusing Appellant of technical violations. Perhaps the court should have considered the technical violation of the District not filing the Board Hearing Transcript in the time frame required by TEDA 480 (R. p. 276) *"Notice of the appeal and the grounds thereof shall be filed with the district board of trustees. The district board shall, within thirty days thereafter, file a certified copy of the transcript record with the clerk of such court."*

- Appellant filed his Appeal on May 29, 2015.
- Respondent filed the transcript of the hearing on September 9, 2015, four (4) months late, and filed only after being ordered to do so by the court.

58. No Charges were ever issued by the Board, or anyone. (TEDA 460) (R. p. 275)

59. No district witness claimed unfitness and, in fact, they praised the teaching of the Appellant. Example: Donald O. Clendaniel, Assistant Principal, *"Well, he was a good teacher. He seemed to love what he did, love children."* (S.R. p. 245, line 17)

60. District acting as Prosecutor and Jury: (Constitutional issue, Section 22)

"... Board or the District which legally are one in the same." Duff, in Court of Common Pleas, August 19, 2016, page 27, lines 6-7.

61. Published termination Ratification before the hearing.

62. Drew Davis Counsel for the District was actively involved in this case during depositions, despite not being licensed to practice law in S.C.

63. District failed to preserve exculpatory evidence in spite of agreements to do so.

64. District withheld exculpatory evidence, contained in 11,000 emails.

65. District failed to meet its own deadline for Discovery.

66. District failed to respond to hundreds of requests for information.

67. Perjurious testimony by the superintendent: testified that he would produce 3 months of email invitations to meet with him, or his administration. He did not produce the emails, but when questioned why, he affirmed that he "had provided everything." (S.R. p. 663, line 23)

68. Documents, petitions, motions, and requests were ignored, a misdemeanor.

(E) Conclusion

The Record indicates that the district imposed delays, failed to follow due process, knowingly allowing false evidence to be admitted, withheld the true evidence until after the Board Hearing, cannot explain how exhibits disappeared after being admitted, nor how the Beaufort County School District *(typo correction)* can continue to withhold other exculpatory evidence.

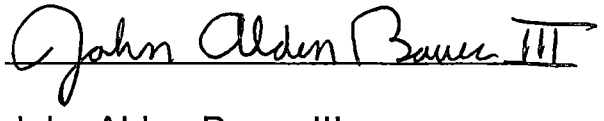
In an early edition of the Beaufort Gazette August 10, 2016, a member of the Board was quoted as: *"I have seen a PE Teacher's Board Termination Hearing colored with inaccuracies."*

How can a court ignore such things as a 10 month imposed delay, a trial without charges, contradictory rulings by de facto co-judicial officers, failure to easily authenticate disputed evidence, violations of federal law (FERPA, ADA), and other misconduct?

The principal antagonist in this case, Superintendent Jeffrey C. Moss, a few days before this writing pleaded guilty to Ethics Violations.

The irony is that the school administrators are on the record as being willing to work with Appellant again *("excellent mentor")* but lawyers for the embattled superintendent wanted no part of that.

Respectfully Submitted,



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CERTIFICATE THAT FINAL APPEAL COMPORTS WITH RULE 211(B)

The undersigned hereby certifies that this Final Brief is identical to the Brief filed August 22, 2016, and served under Rule 208, except for references to the Record on Appeal and correction of typographical errors.

March 30, 2017

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