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Volume II (from S.R. p 461)

**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

APPELLATE CASE NO. 2016-000955

John Alden Bauer, III

Appellant

v

**Beaufort County
School District**

Respondent

SUPPLEMENTAL RECORD ON APPEAL

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only a disputed May 29, 2014 email of "bases".

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1 2014?

2 MR. WILLIAMS: I'd object. You can answer,
3 if you know. He's -- and you can -- you said April
4 1st of 2014?

5 BY MR. BAUER:

6 Q April 1st, yes.

7 A If that was the date of the Board meeting which
8 it was brought up, then yes.

9 Q Why would Dr. Moss issue a non-contract contract
10 after the Board voted not to?

11 A The recommendation and the vote by the Board was
12 conditional, based on the teacher dismissal act.

13 VIDEOGRAPHER: Wrap it up?

14 (Brief recess.)

15 BY MR. BAUER:

16 Q The question that I asked just before we left,
17 are you aware that the Board voted nonrenewal with Mr.
18 Bauer's contract on April 1st, 2014? I believe you said
19 no. And then I asked, why would Dr. Moss issue a
20 non-contract contract after the Board voted not to?

21 MR. WILLIAMS: I have a continuing objection
22 to that question --

23 MR. BAUER: Okay.

24 MR. WILLIAMS: -- just for the record.

25 MR. BAUER: In the red part here -- we're

Witness: Walton
Cross by Bauer

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1 going to submit this as evidence -- it states -- do
2 you have a copy?

3 MR. WILLIAMS: I'd object to the
4 authenticity of the document.

5 MR. BAUER: Look at the front.

6 MR. WILLIAMS: And, again, we're -- we'll --
7 you can't participate, but -- we'll discuss it at the
8 hearing, but --

9 MR. BAUER: Yeah. All right.

10 MR. WILLIAMS: -- I just wanted to have my
11 objection noted for the record.

12 BY MR. BAUER:

13 Q You said the April 1st meeting was conditional, I
14 believe you said, previously. What would be the condition?

15 MR. WILLIAMS: And I'd object to her saying
16 April 1st meeting. She said, to the extent there was
17 a meeting, it would have been a conditional
18 acceptance.

19 THE WITNESS: Um-hum.

20 BY MR. BAUER:

21 Q What would be the condition of the contract?

22 A Subject to your right for a hearing, and I think
23 it says in a motion that it'll be subject to your right.

24 Q So was a hearing offered or the right to have a
25 hearing offered to me?

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**Witness: Walton
Cross by Bauer**

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1 A Yes. We're in the process now of your hearing.

2 Q When was I terminated?

3 A I'm not following your line of questioning.

4 Q I just don't understand how a hearing could be --
5 I would have the right to a hearing if I haven't been
6 terminated yet. This is April.

7 A You would have a right to a hearing once the
8 superintendent makes the recommendation for your
9 conditional termination.

10 Q No hearing was offered.

11 MR. WILLIAMS: And just for the -- again,
12 I'd offer a continuing objection. For clarification,
13 although you've offered minutes from an April meeting,
14 there's no reference to any employee by a specific
15 name, to the extent you're assuming that that is you
16 that is being discussed at that meeting.

17 (LIVE discussion begins.)

18 MR. BAUER: Can I say something to that
19 effect?

20 CHAIRMAN EVANS: Go right ahead, Mr. Bauer.

21 MR. BAUER: Okay. Thank you. What I'm
22 obviously incompetently trying to say here, being pro
23 se for the first time, is that on April 1st, the
24 School Board voted to not renew my contract, yet I
25 received a contract on April 15th from Dr. Moss. I

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Witness: Walton
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1 had not been terminated yet. I was not terminated
2 until June the 5th, I believe. So, if I'm not
3 terminated on -- if I'm terminated on June the 5th,
4 yet they voted for non -- okay. Sorry. They voted
5 for non -- go ahead.

6 MR. WILLIAMS: You finish.

7 MR. BAUER: All right. On nonrenewal on
8 April 1st, that's -- basically, they were terminating
9 me on April 1st, and I was unaware of this. I
10 should've been offered a hearing at that point.

11 MR. WILLIAMS: And the entire basis of my
12 objection was that Mr. Bauer was assuming the employee
13 that was being referred to in April was him, when, in
14 fact, it was not.

15 MR. BAUER: Okay.

16 MR. WILLIAMS: The employee referred to as
17 employee A, he assumed that to be him. It was not
18 him.

19 MR. BAUER: And if that's -- if that's the
20 case, then I stand corrected, but employee A in the
21 next three -- on June the 5th and on August 5th, it
22 was accepted that employee A was Mr. Bauer.

23 MR. WILLIAMS: Just for clarification,
24 "employee A" is sort of a standard name that boards
25 use in lieu of giving the employee's actual name.

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1 Employee A does not remain the same from meeting to
2 meeting.

3 CHAIRMAN EVANS: Exactly.. From any --

4 MR. BAUER: Okay.

5 CHAIRMAN EVANS: In any given year, we may
6 have a number of employee As who are all different
7 employees, but because it's a different meeting, we
8 refer to them as "employee A" for that meeting. Hold
9 on a minute.

10 (Board converses quietly.)

11 CHAIRMAN EVANS: I think one of the things
12 that Mr. Duff and I have discussed over the last two
13 days is our concern that everybody understand the
14 relationship that the Board has to the superintendent;
15 okay? The Board does not hire and fire personnel;
16 okay? We accept or reject recommendations from the
17 superintendent.

18 MR. BAUER: Yeah.

19 CHAIRMAN EVANS: Our charge, at least in
20 this district, is that we hire the superintendent to
21 make those decisions about hiring and firing; okay?
22 Or dismissing. And he makes recommendations to us.
23 Sometimes, they're individuals. I mean, in our last
24 board meeting, we took an individual recommendation
25 from him on a principalship; okay? And sometimes they

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1 are in large groups. The meeting before that, we took
2 his recommendation about several hundred employee
3 contracts for the coming year. So I want you to
4 understand where we are right now is, he made a
5 conditional recommendation that you be dismissed;
6 okay? That condition is based on your right to a
7 hearing, which is where we are right now; okay?

8 MR. BAUER: Okay. And I want to point out
9 that, on April 1st, it was not just employee A. There
10 were a list of teachers. But is he saying that I was
11 not one of A, B, C, D, E, F, G? Is his -- would he be
12 saying --

13 CHAIRMAN EVANS: As I recall April 1st,
14 2014, a year ago --

15 MR. BAUER: Yes.

16 CHAIRMAN EVANS: -- a little over a year
17 ago, I believe we had three employees that were
18 recommended for dismissal; okay?

19 MR. BAUER: And you're saying that Mr. Bauer
20 made --

21 CHAIRMAN EVANS: You were not --

22 MR. BAUER: Okay.

23 CHAIRMAN EVANS: -- any of those, if my
24 recollection is correct.

25 MR. BAUER: I'd take your word for it, then.

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1 MR. WILLIAMS: And just for clarification,
2 Mr. Bauer is not a nonrenewal. He's a recommendation
3 for termination.

4 MR. BAUER: Yes.

5 MR. WILLIAMS: And, certainly, Dr. Moss can
6 clarify that when he testifies, if necessary.

7 MR. BAUER: I understand.

8 MR. WILLIAMS: I'm just -- Mr. Duff and I
9 have been discussing this for probably more than two
10 days, about making sure that it's clear about what the
11 relationship is --

12 MR. BAUER: Sure.

13 CHAIRMAN EVANS: -- and that -- and that, in
14 many cases, Dr. Moss's recommendation requires our
15 action after his recommendation; okay?

16 MR. BAUER: Correct.

17 CHAIRMAN EVANS: And in a case like yours,
18 you are subject to hearing rights, and that's where we
19 are right now.

20 MR. BAUER: I believe it is agreed upon that
21 employee A, when he refers to -- or when the Board
22 refers to "employee A" on June the 5th, that would --
23 that that would be Mr. Bauer. Correct? It's the only
24 one listed, and Dr. Moss refers to his letter to me on
25 June the 6th that the Board voted to accept his

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1 recommendation on June the 5th.

2 CHAIRMAN EVANS: I will tell you that I'm
3 presuming that you're accurate.

4 MR. BAUER: Okay.

5 CHAIRMAN EVANS: Because I can't --

6 MR. BAUER: At least I got something right,
7 maybe.

8 CHAIRMAN EVANS: -- really remember back in
9 June 5th, 2014.

10 MR. BAUER: Okay. And I stand corrected. I
11 assumed that employee A, since it was June the 5th and
12 August 5th, was probably April 1st, but I stand
13 corrected on that.

14 CHAIRMAN EVANS: Okay. Go ahead. Let's
15 continue.

16 (VIDEO testimony resumes.)

17 MR. BAUER: Yes. Employee A is John Alden
18 Bauer, as proclaimed by Dr. Moss on his December 16th
19 deposition.

20 MR. WILLIAMS: Again, we have the same
21 objection.

22 BY MR. BAUER:

23 Q So would you have been the one required to inform
24 me that I had a right to an appeal based --

25 A No.

Witness: Walton
Cross by Bauer

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1 Q -- on the April -- I'm sorry.

2 A No.

3 Q Do you believe that the district handled this
4 properly, based on that law?

5 A Yes.

6 Q Is it true that much the Teacher Employment and
7 Dismissal Act deals with the rights of a teacher?

8 A Yes.

9 Q Does that include the right of a hearing before
10 termination of a contract?

11 MR. WILLIAMS: You may answer to the extent
12 you can. To the extent that you're asking her for a
13 legal conclusion, I would object to that.

14 THE WITNESS: Yeah, I can't. I cannot
15 answer that question.

16 BY MR. BAUER:

17 Q Do you believe that there's a loophole in the
18 employment -- Teacher Employment and Dismissal Act that
19 empowers the superintendent to terminate a contract without
20 a hearing?

21 MR. WILLIAMS: Same objection, but you can
22 answer if you know.

23 THE WITNESS: I can't answer that. I don't
24 know.

25 ///

///

Witness: Walton
Cross by Bauer

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1 BY MR. BAUER:

2 Q And if a teacher is terminated without a hearing,
3 does that violate Brown versus James?

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

5 Q Okay.

6 MR. WILLIAMS: Same objection. Just so
7 we're clear, to the extent you're asking her to form
8 legal conclusions or give a legal analysis, I would
9 have a continuing objection to that.

10 MR. BAUER: Okay. Here we go. Now --

11 MR. WILLIAMS: Are you offering this as --

12 MR. BAUER: Yes.

13 MR. WILLIAMS: -- as an exhibit? Can we
14 have it numbered?

15 (WHEREUPON, a document was marked as
16 Defendant's Exhibit Number 3 for Identification to the
17 Walton Deposition.)

18 BY MR. BAUER:

19 Q Now we go to file -- just a minute -- you were
20 asked if the superintendent can terminate a contract on his
21 own without a hearing. Here's what you said on February
22 5th, 2015. Your answer, "He can." The question, "Under
23 what scenario?" Your answer, "Policies give him that
24 authority." Were you to provide to us copies of those
25 policies?

Witness: Walton
Cross by Bauer

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1 A I don't remember if I were or not.

2 Q Does policy trump law?

3 A No.

4 Q Does the law say that a teacher cannot be
5 terminated without a hearing?

6 MR. WILLIAMS: Again, to the extent you're
7 asking for a legal conclusion, I'd have the same
8 objection I previously made.

9 BY MR. BAUER:

10 Q You can answer.

11 A And your question was?

12 Q Does the law say that a teacher cannot be
13 terminated without a hearing?

14 A I specifically can't answer yes or no to that.

15 Q Okay. You were asked on February 5th, 2015, if
16 Mr. Bauer was terminated by the Board without a hearing,
17 and your answer is -- was, "That is correct." Now, please
18 see file 59. That's --

19 MR. WILLIAMS: Is this the exhibit?

20 MR. BAUER: Yes, 59 -- oh, yeah. I'm sorry.
21 This is a different exhibit coming up.

22 MR. WILLIAMS: Are you offering it as an
23 exhibit?

24 MR. BAUER: Yes. Here we go. It's --
25 sorry. I keep handing it over here. Okay.

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Witness: Walton
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1 MR. WILLIAMS: Do you have a copy?

2 MR. BAUER: Yes. Sorry.

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

6 BY MR. BAUER:

7 Q Now, the specific part I'm looking for, please go
8 to page 5.

9 MR. WILLIAMS: Again, I don't know what your
10 question is going to be, but I'd have a continuing
11 objection to the extent you're asking her to form
12 legal conclusions.

13 (LIVE discussion begins.)

14 CHAIRMAN EVANS: Stop. I don't know what
15 that noise is.

16 COURT REPORTER: Somebody's hitting a
17 microphone.

18 CHAIRMAN EVANS: I think there's a point of
19 clarification here that goes back to what I was trying
20 to say a minute ago. In this district, and in every
21 district that I'm aware of and have worked in,
22 superintendents are vested with the authority by the
23 board to take personnel action, both to hire somebody
24 and dismiss somebody. If the person is eligible for a
25 hearing, such as in your case, Mr. Bauer, that

Witness: Walton
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1. dismissal is conditional on the hearing, which is what
2. we're in right now. If the Board overrules Dr. Moss
3. or if, subsequently, it's overruled, then it is the
4. responsibility, then, that you are brought back and
5. given any missing pay for that period of time. So --

6. MR. BAUER: That's what I've been told. And
7. while I was on administrative leave and throughout the
8. period that I was to have had a hearing, I was being
9. paid, but then it got to August, and I had signed a
10. contract for August.

11. CHAIRMAN EVANS: August of --

12. MR. BAUER: August 1st, 2014. It started
13. the new year.

14. CHAIRMAN EVANS: Got it. Okay.

15. MR. BAUER: Still had not had a hearing, had
16. signed a contract for that next year, and from that
17. point, have not been paid, and have not had a hearing.

18. CHAIRMAN EVANS: But you're having the
19. hearing now.

20. MR. BAUER: I'm having the hearing now, but
21. it was my understanding that the Board cannot
22. terminate, so I would still be getting paid, like --

23. CHAIRMAN EVANS: No.

24. MR. BAUER: -- as they did in Charleston
25. County. So -- but I --

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Witness: Walton
Cross by Bauer

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1 CHAIRMAN EVANS: Well, I have to tell you,
2 it's my experience both here and in every district
3 I've worked in that the superintendent has been vested
4 with the authority to conditionally terminate
5 someone's employment, subject to their rights to a
6 hearing. And if, at that hearing, or subsequent to
7 the hearing in some other legal proceeding, his action
8 is overturned, then the employee is returned, and --

9 MR. BAUER: Okay. Got that.

10 CHAIRMAN EVANS: -- all pay between
11 termination and renewal is -- is made up. I mean,
12 that would be --

13 MR. BAUER: Well, I guess I just don't
14 understand why Charleston County had it -- has done it
15 differently.

16 CHAIRMAN EVANS: Well, I --

17 MR. BAUER: Yeah.

18 CHAIRMAN EVANS: I can't speak for
19 Charleston County. I can speak for this district and
20 the -- one, two, three -- four other school districts
21 in two other states that I've been involved with;
22 okay? And I can only speak to my experience.

23 MR. BAUER: I understand.

24 CHAIRMAN EVANS: I'm sorry, Mr. Bauer.

25 MR. BAUER: Okay.

Witness: Walton
Cross by Bauer

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1 MS. FAWLEY: Mr. Chairman, what Mr. Bauer is
2 failing to understand is, there is a part of the
3 Teacher Employment and Dismissal Act, a section that
4 says, once the Board has approved the suspension of
5 the teacher, that his or her pay may be stopped at
6 that time, and that is what occurred in Mr. Bauer's
7 case.

8 MR. BAUER: I see.

9 MS. FAWLEY: Mr. Duff can explain that
10 further, if he --

11 MR. BAUER: Thank you.

12 MR. DUFF: On what -- on what date was that?

13 MS. FAWLEY: It was in --

14 MR. BAUER: August 5th.

15 MR. FAWLEY: -- August. August. Which is
16 why his pay stopped in August. It continues through
17 the end of the 2013-14 school year.

18 MR. BAUER: And I guess I was thinking -- I
19 stand corrected on that, as well. August 5th. I
20 guess I was thinking suspension was synonymous with
21 suspended, as in administrative leave.

22 CHAIRMAN EVANS: Being fairly familiar with
23 our payroll procedures, I would imagine that August
24 5th, 2014, was the last check you got --

25 MR. BAUER: Yeah.

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Witness: Walton
Cross by Bauer

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1 CHAIRMAN EVANS: -- for the 2013-14 school
2 year, and that you may be thinking --

3 MR. BAUER: I'm assuming that's probably
4 correct.

5 CHAIRMAN EVANS: -- going forward, because
6 you had not been renewed for the 2014-15 school year,
7 which is the one we're in presently.

8 MR. BAUER: They -- yeah.

9 MS. FAWLEY: Mr. Chairman, he had been
10 terminated effective in June. That is why.

11 MR. BAUER: Terminated in --

12 MS. FAWLEY: Conditionally.

13 MR. BAUER: Conditionally.

14 MS. FAWLEY: The Board conditionally
15 accepted the superintendent's recommendation of
16 termination.

17 MR. BAUER: And then suspended -- or the --
18 what was the -- suspended August 5th?

19 CHAIRMAN EVANS: Because you had been
20 conditionally terminated --

21 MR. BAUER: Right.

22 CHAIRMAN EVANS: -- by the superintendent,
23 and we accepted that, your pay stopped.

24 MR. BAUER: Got it. The pay. Yeah.

25 CHAIRMAN EVANS: Your first pay for '14-15

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Witness: Walton
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1 stopped.

2 MR. BAUER: Thank you.

3 CHAIRMAN EVANS: Okay. Go ahead, Ms.

4 Cushingberry.

5 (VIDEO testimony resumes.)

6 BY MR. BAUER:

7 Q Okay. Please read the highlighted area at the
8 bottom of the page.

9 A The pages are not numbered, so I'm assuming --

10 Q Oh, I'm sorry.

11 A -- further, the Board voted to --

12 Q That would be -- do you have a copy? Oh. Here
13 it is. Let's see. One, two -- mine is --

14 (LIVE discussion begins.)

15 CHAIRMAN EVANS: Do we have the document
16 that's being referred to, that Ms. Walton is
17 reviewing?

18 MR. BAUER: We should. Do you remember what
19 number it was?

20 MR. WILLIAMS: I believe it was Number 59,
21 with a case?

22 CHAIRMAN EVANS: Fifty-nine, Mr. Bauer?

23 MR. BAUER: Yes. That's correct. I believe
24 that would be volume 1.

25 CHAIRMAN EVANS: Yep.

Witness: Walton
Cross by Bauer

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1 (VIDEO testimony resumes.)

2 BY MR. BAUER:

3 Q I'm sorry. It's actually page 6. It would be
4 the second page, but it's page 6. All right. We'll come
5 back to that. I'm sorry. I'm a little mixed up here.

6 All right. I think we'll need to come back to
7 this. I'm going to skip over -- now, the so-called charges
8 were sent in an email from Dr. Moss, in prose form, at
9 least four days prematurely. That's four days before the
10 deadline of June the 2nd for Mr. Bauer to comply with your
11 directives. Is that correct?

12 A I'm not -- I can't verify those dates.

13 Q Okay. And I know I asked you this previously,
14 but do you believe that an email is appropriate in
15 seriousness for the ending of a career?

16 MR. WILLIAMS: As you acknowledged, I'd
17 object on the basis that the question has been asked
18 and answered.

19 BY MR. BAUER:

20 Q By law, do the charges come from the school
21 board?

22 MR. WILLIAM: I'd object to the extent
23 you're asking her for a legal conclusion or a legal
24 opinion, but you may answer if you know.

25 THE WITNESS: The charges, in my opinion,

Witness: Walton
Cross by Bauer

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1 comes from Dr. Moss.

2 BY MR. BAUER:

3 Q Okay. Here's the actual statement from the
4 school board as far as -- I'm sorry, from the Teacher
5 Employment and Dismissal Act. "No teacher shall be
6 dismissed unless written notice specifying the cause of
7 dismissal is first given the teacher -- to the teacher by
8 the district board of trustees and an opportunity for a
9 hearing has been afforded the teacher." Do you believe the
10 Board specifically authorized the superintendent to act in
11 their place with the charges, avoiding a hearing, and
12 dismiss Mr. Bauer?

13 MR. WILLIAMS: I object to the question.

14 Again, you can answer to the extent you understand it.

15 THE WITNESS: I don't. I think you're
16 asking me to make an opinion on someone else's
17 actions, and I can't do that.

18 BY MR. BAUER:

19 Q Do you think that a hearing was still available
20 after the Board's actions?

21 A I don't understand that question.

22 Q Okay. I'll go to the next -- 59-A. Okay. Would
23 you please read, on 59-A, the red part out loud?

24 A "As a result of the court's decision in Brown, it
25 is clear that the school boards may no longer make initial

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**Witness: Walton
Cross by Bauer**

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1 decisions to accept or reject a superintendent's nonrenewal
2 recommendation prior to an evidentiary hearing, if such a
3 hearing is requested, or simply the notice of a nonrenewal
4 recommendation and of the opportunity for a hearing is to
5 be given prior to May 15th."

6 Q Notice the words "nonrenewal," the same wording
7 as the April 1st minutes, and, quote, Mr. Chairman -- we
8 need 60-B.

9 (LIVE discussion begins.)

10 MR. BAUER: And if you wish to skip over
11 this, this is exactly what you explained to me.

12 CHAIRMAN EVANS: Yes. Okay.

13 MR. BAUER: And that's fine with me.

14 CHAIRMAN EVANS: Thank you, Mr. Bauer.

15 MR. BAUER: Yes.

16 CHAIRMAN EVANS: Can we go ahead and, with
17 somebody's supervision, skip over this part?

18 MR. WILLIAMS: I have a transcript that may
19 help us move it along.

20 CHAIRMAN EVANS: Okay. Thank you. Why
21 don't we take a quick 10-minute break while we're
22 going through this?

23 (Brief recess.)

24 MR. DUFF: Mr. Williams and Mr. Bauer, will
25 you make it clear by verbalizing your agreement that

Witness: Walton
Cross by Bauer

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1 some portion of the tape can be skipped or fast-
2 forwarded?

3 MR. WILLIAMS: And during the break, Mr.
4 Bauer and I, along with Mr. Duff, were trying to have
5 a discussion, in the interest of efficiency, to fast-
6 forward parts. Mr. Bauer acknowledged some parts that
7 he did not have an objection to us fast-forwarding to
8 prior to the break.

9 But in the break, we also referred to his
10 Exhibits 22 and 23, which related to an out-of-state
11 case, a case out of, I think, the state of Illinois,
12 and as was explained to him, that type of information
13 is not proper to be introduced into evidence. If he
14 wants to ask the Board as part of his closing or his
15 testimony to consider that, that's something that he
16 can do, but we all agree that, in terms of testimony
17 of the witness and including them in the evidence
18 book, that those are not proper documents to be
19 included or referred to by the witness.

20 CHAIRMAN EVANS: And we would agree. Mr.
21 Duff and I had this discussion two days ago, about
22 some of the in limine motion, and that was certainly
23 part of it, introducing case -- cases from other
24 states, that it's not appropriate in this phase, but
25 if he wants to introduce them in his summation --

Witness: Walton
Cross by Bauer

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1 MR. BAUER: Yes.

2 CHAIRMAN EVANS: -- that that would be an
3 appropriate point to do it.

4 MR. BAUER: I understand. I was not clear
5 on that, and you've been --

6 CHAIRMAN EVANS: No, that's fine. We
7 understand.

8 MR. BAUER: I appreciate it, explaining that
9 to me.

10 MR. WILLIAMS: And I believe Ms.
11 Cushingberry has fast-forwarded through a portion and
12 is ready now to proceed.

13 MS. CUSHINGBERRY: You said go to file 225?

14 MR. WILLIAMS: Correct.

15 (VIDEO testimony resumes.)

16 MR. BAUER: Please.

17 (WHEREUPON, a document was marked as
18 Defendant's Exhibit Number 6 for Identification to the
19 Walton Deposition.)

20 CHAIRMAN EVANS (LIVE): What's the number,
21 Robyn?

22 MS. CUSHINGBERRY (LIVE): Two two five.

23 CHAIRMAN EVANS (LIVE): Two two five.

24 BY MR. BAUER:

25 Q Please read the last sentence.

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Witness: Walton
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1 MR. WILLIAMS: Just so we're clear, to the
2 extent these are summaries of emails and not the --
3 not actually copies of emails, I would object to the
4 format, but you can ask.

5 MR. BAUER: These are the actual emails.

6 MR. WILLIAMS: But there appears to be
7 something at the top of it that does not appear to be
8 the actual email, as I --

9 MR. BAUER: Second -- look at the second
10 page.

11 MR. WILLIAMS: I understand. My objection
12 is, there are portions of this document that do not
13 appear to be a copy of an email, but they attempt to
14 be some sort of summary or combining of emails, and so
15 that would be my objection.

16 MR. BAUER: The second page is the original
17 email.

18 BY MR. BAUER:

19 Q Okay. So we'll look at the second page. Page 2
20 and 3. Sorry. These are the actual, original emails.
21 Page -- let's see. Read the last sentence of Dr. Moss's
22 first paragraph, where it begins "I must."

23 A I must now direct you to complete all
24 requirements by Monday, June 2nd, 2014, or I will proceed
25 with a recommendation for termination based upon the facts

Witness: Walton
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1 to date.

2 Q Now, what does that mean?

3 A It means, I must now direct you to complete all
4 requirements by May -- Monday, June 2nd, 2014, or I will
5 proceed with a recommendation for termination based upon
6 the facts to date.

7 Q So I had until June the 2nd to complete all
8 requirements; is that correct?

9 A Yes, according to this date. This would be an
10 extended date. It would move from April, now to June, to
11 complete them -- complete all requirements.

12 Q So, at that point, did I still have time?

13 A Time to do what?

14 Q To complete all the requirements?

15 A Based on? I'm not understanding what you're --

16 Q So I had until -- I still had time from -- on May
17 29th, I had time to complete all requirements?

18 A Until when?

19 Q June the 2nd.

20 A And you had time to do -- complete the
21 requirements before what?

22 Q The June 2nd deadline?

23 A You had until June 2nd, yes.

24 Q Correct. So I was charged on April 29th, or I
25 was given charges on May 29th, but I still had time. So do

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Witness: Walton
Cross by Bauer

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1 you -- do you, in your -- I'm sorry. So I was charged, but
2 still has time (sic)? Is that the way you see it? Do you
3 understand that?

4 A I understand that you had until June 2nd.

5 Q And you understand also that I had been charged,
6 or provided charges, previous to the deadline?

7 A I'm confused about your question.

8 Q Do you believe that I was properly charged?

9 A You were charged. Dr. Moss stated what those
10 concerns were in the email and asked you to complete all
11 requirements by June 2nd.

12 Q So I guess my question is, Dr. Moss provided
13 charges to me four days before the deadline of completing
14 the requirements. Do you believe that is appropriate?

15 A I can't answer the appropriateness of it.

16 MR. WILLIAMS: And to the extent part of
17 that question is a statement, I object, but she can
18 answer it as best she can.

19 BY MR. BAUER:

20 Q All right. I think that she's -- if the Board
21 were to issue the charges, do you believe that Chairman
22 Evans would have issued the charges in an email?

23 A I cannot answer for Mr. Evans.

24 MR. WILLIAMS: I object to the relevance of
25 that question.

Witness: Walton
Cross by Bauer

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1 (LIVE discussion begins.)

2 MR. BAUER: Can I stop it for one second?

3 CHAIRMAN EVANS: Yes.

4 MR. BAUER: I would not object to -- if Mr.
5 Williams would like for us to skip over his objections
6 to fast-forward, I would not object to that, since
7 it's been explained to me now that I may use what -- I
8 do have her video deposition in written form -- use
9 that in my own testimony. I would not object to
10 fast-forwarding, unless he would prefer not to. It
11 would be up to you, but any time you object, I don't
12 mind fast-forwarding.

13 MR. WILLIAMS: I certainly would not object
14 to fast-forwarding, if that was the question.

15 MR. BAUER: And that's fine with me, if -- I
16 was not aware that I could use all this in my own
17 testimony, but -- and I certainly am willing to do
18 that.

19 MR. DUFF: You want to fast-forward to what
20 point?

21 MR. BAUER: No, just when he makes an
22 objection, I have this. I mean, whenever it comes to
23 a point where he makes an objection, I can use that in
24 my own testimony. I'll take that and use it when I,
25 basically, self-cross, or -- okay?

Witness: Walton
Cross by Bauer

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1 CHAIRMAN EVANS: Okay.

2 (VIDEO testimony resumes.)

3 MR. BAUER: I need file 98. Thank you.

4 (WHEREUPON, a document was marked as
5 Defendant's Exhibit Number 7 for Identification to the
6 Walton Deposition.)

7 BY MR. BAUER:

8 Q All right. File 98, is this -- was this a
9 certified letter which was also emailed?

10 A Yes, it was a certified letter.

11 Q Was this the same day as the charges from Dr.
12 Moss?

13 A This was dated May 29th, 2014.

14 Q Sending it certified includes a certain
15 seriousness, does it not?

16 A I guess you could assume that.

17 Q Read the first sentence of the third paragraph.

18 A "Once you present this documentation, we will
19 inform you of all charges against you. At that point, we
20 will move to resolve your suspension."

21 Q What documentation were you writing about?

22 A I stated in the second paragraph, "I requested
23 that you obtain a second opinion form from Mary St. John
24 Gay, M.D.," so that would be the documentation.

25 Q No matter what Dr. Gay wrote, did you say that

Witness: Walton
Cross by Bauer

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1 you would issue the charges?

2 A The letter clearly states I'm waiting for the
3 written statement from Dr. Gay. Once you present that,
4 then we will inform you of all charges against you.

5 Q Does it say based on what Dr. Gay reports, or
6 does it say -- does it say based on what Dr. Gay reports?

7 A It does not say, based on what Dr. Gay reports,
8 we will provide those charges. It does not say that.

9 Q Were you biased?

10 A Biased? Explain to me what you mean, "biased."

11 Q Basically what I'm saying is, based on what Dr.
12 Gay reports, you stated, "We may inform you of all charges
13 against you." Were you --

14 MR. WILLIAMS: I object to the form of the
15 question.

16 BY MR. BAUER:

17 Q Okay. I'll go on. Here's an oddity that I'd
18 like to ask you to comment on. Your email was sent May
19 29th at 4:59 p.m. Dr. Moss's charges arrived at 2:54 p.m.
20 When you were warning me of potential charges for not
21 complying with the deadline, the charges had already
22 arrived. Would you like to comment on that?

23 MR. WILLIAMS: I object to the form of that
24 question. You can answer, if you understood it and
25 know the answer.

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Witness: Walton
Cross by Bauer

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1 THE WITNESS: I'm not sure. If you can
2 clarify that for me, are you --

3 BY MR. BAUER:

4 Q Well, sure. Your email was sent on May 29th at
5 4:59. Dr. Moss's charges arrived a couple hours earlier,
6 2:54, and you were -- when you were warning me of potential
7 charges for not complying with the June 2nd deadline, the
8 charges actually already arrived. Is there any comment
9 you'd like to make of why this is such an oddity of the
10 times?

11 A I don't think it's odd at all because --

12 Q Okay.

13 A -- the charges didn't stem from us requiring you
14 to provide documentation on June 2nd.

15 Q Um-hum.

16 A The charges began on February 5th.

17 Q I see.

18 A So it doesn't -- it's not odd to me at all.

19 Q Okay. Did you take into account my teaching
20 record of 17 years?

21 A No, I did not.

22 Q When you were asked that question at your
23 deposition on February 5th, 2014, was your answer, "No, I
24 did not"?

25 A (Witness nods head; no verbal response.)

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**Witness: Walton
Cross by Bauer**

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1 Q Yes? Is that what you said?

2 A That's what I said.

3 Q All right. How many charges were there in Dr.
4 Moss's email? Have you read --

5 A Are you asking me to reread his email?

6 Q Actually, do I have that? Yeah. Yes, how many
7 charges would you say that he's got there?

8 A His email states, "I've been extremely patient
9 with you while you've been on administrative leave. Leave
10 began on February 5th, 2014, for leaving a special-needs
11 student unattended off campus. This was categorized as
12 negligence and insubordination.

13 "You were requested to have an examination from a
14 psychiatrist and report back. The date of the meeting to
15 discuss the results was scheduled for April 25th, 2014.
16 You refused to attend the scheduled meeting while still
17 receiving pay from Beaufort County School District. I sent
18 you a directive to attend, and you still elected not to
19 meet, which I do consider an act of insubordination.

20 "A letter was then sent to you, describing the
21 additional actions necessary to bring closure. The
22 directive was to meet with the psychiatrist we identified
23 and paid for. This is an -- this is allowable under our
24 policy which was provided. You were to report back to Ms.
25 Walton no later than May 16th, 2014. You have elected to

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1 ignore this directive as well.

2 "All of these directives have occurred while you
3 were still a Beaufort County school employee and receiving
4 pay.

5 "I must now direct you to complete all
6 requirements by May -- by March -- by Monday, June 2nd,
7 2014, or I will proceed with a recommendation for
8 termination based upon the facts to date."

9 Q Thank you. Now, do you see that willful neglect
10 -- I'm sorry, willful negligence was not charged?

11 A Are we talking about the word "willful" now?

12 Q Yeah, partly.

13 A Or are we talking about "neglect," or are we
14 talking about the two of them together?

15 Q The two of them together.

16 A I do not see the adjective "willful" in front of
17 neglect in Dr. Moss's letter.

18 Q Therefore, since "willful" was not included with
19 "negligence" -- was not charged -- why should that
20 accusation continue to damage me?

21 A I don't --

22 MR. WILLIAMS: I object to the extent you're
23 asking her for information that she couldn't possibly
24 know.

25 ///

///

Witness: Walton
Cross by Bauer

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1 BY MR. BAUER:

2 Q Are you at ease that your accusations may
3 severely harm me when they are not charged?

4 MR. WILLIAMS: Same objection.

5 MR. BAUER: You can -- do you want to
6 answer?

7 MR. WILLIAMS: Again, you're asking her to
8 assume facts that are not in evidence, but --

9 THE WITNESS: Right.

10 MR. BAUER: Okay.

11 THE WITNESS: I -- all I can answer is,
12 leaving a child unattended off campus is unacceptable,
13 and that's all this is about for me.

14 BY MR. BAUER:

15 Q Okay. Do the first two charges have to do with
16 the pool event?

17 A Left a student unattended off campus, that would
18 include leaving the child at the rec center.

19 Q Does that have to do with returning to the school
20 without one student?

21 A Yes, it does.

22 Q Was the first charge negligence and the second
23 one insubordination?

24 A That's how it's listed.

25 Q Were those the accusations that brought you into

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Witness: Walton
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1 the case?

2 A Yes, leaving a child unattended off campus
3 brought me to the scene.

4 Q Without those two accusations, the case would
5 have never reached you; is that correct?

6 A It would have -- it wouldn't have been a case had
7 the student not been left off campus.

8 Q Are you aware that Mr. Clendaniel testified that
9 the charge of insubordination during the pool event was not
10 true?

11 A No, I'm not aware, because I wasn't at his
12 deposition.

13 Q Would you recommend to the Board that they drop
14 the pool insubordination charge?

15 MR. WILLIAMS: I object, and more broadly
16 the objection is, although the term "insubordination"
17 has been used, it's about more than the -- relates to
18 more than the pool incident.

19 BY MR. BAUER:

20 Q Was the charge of neglect one count?

21 A I'm not so sure I can answer that. It was a
22 charge.

23 Q How can one accident meet the requirements of the
24 employment and dismissal act, section 430, which states,
25 "Persistent neglect"?

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1 MR. WILLIAMS: You can answer, but to the
2 extent you're asking her for a legal conclusion, I'd
3 have the same objection I raised previously.

4 THE WITNESS: I can answer in my opinion.
5 It only takes one act of negligence to cause harm to a
6 student, and that was my concern.

7 BY MR. BAUER:

8 Q So what you're saying is, you're not taking into
9 account the employment and dismissal act, which
10 specifically states, "persistent neglect," which is state
11 law?

12 A I --

13 MR. WILLIAMS: Same objection.

14 MR. BAUER: Okay.

15 THE WITNESS: Yeah, I can't answer that.

16 BY MR. BAUER:

17 Q Okay. So, since the mistake was not a persistent
18 problem, would you recommend to the Board that they drop
19 the negligence charge?

20 A No, I would not recommend that to the Board.

21 Q Okay. Without those two incorrect charges --

22 MR. WILLIAMS: Objection, to the extent
23 you're testifying.

24 BY MR. BAUER:

25 Q Okay. All right. Now, do you remember that you

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1 approved Dr. Rosenbaum-Bloom's evaluation, where you -- do
2 I have it? Let's see. Quote, whether she believes you are
3 capable -- you actually sent this through an email. I'm
4 sorry. Let me start over.

5 In an email that you sent to me, you stated,
6 "Whether she believes that you are presently capable
7 performing the essential functions of your position with or
8 without reasonable recommendations." Why did you -- why a
9 psychiatrist, and more appropriately, why not an expert in
10 P.E. teaching methods, who is better equipped to interpret
11 the job description?

12 A Because I don't think we were talking about a job
13 description. We were talking about your ability to
14 understand that leaving a child was severe, that it was an
15 egregious act. We were -- I was not talking about your
16 ability as a PE teacher. That was never a question.

17 MR. BAUER: Okay. May I see the PE job
18 description, file 276? All right.

19 MR. WILLIAMS: Is this an exhibit?

20 MR. BAUER: Yes. Oh. I'm sorry.

21 (WHEREUPON, a document was marked as
22 Defendant's Exhibit Number 8 for Identification to the
23 Walton Deposition.)

24 BY MR. BAUER:

25 Q Now, this is the job description you sent me,

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1 and --

2 MR. WILLIAMS: Is that --

3 MR. BAUER: -- to give --

4 MR. WILLIAMS: -- a question?

5 MR. BAUER: Yeah, I'm getting there.

6 BY MR. BAUER:

7 Q Please look at the responsibility section, and
8 it'll take too long to read all of this, so just -- could
9 you just quickly review over a little bit of it, and then
10 choose one at random that you'd like to read out loud? The
11 Board will have the same document.

12 MR. WILLIAMS: I'm not -- so you're asking
13 her to randomly choose --

14 MR. BAUER: Yes.

15 MR. WILLIAMS: -- what now?

16 MR. BAUER: One of the responsibilities.

17 BY MR. BAUER:

18 Q Please read one out loud.

19 A "Maintains professional competence through
20 participation in in-service education workshops and clinics
21 provided by the district and/or in self-selected
22 professional growth activities."

23 Q Okay. Thank you. Is there anything here that
24 suggests a psychiatrist is needed to see if one can fulfill
25 these responsibilities?

Witness: Walton
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1 A If we're talking about your ability to instruct
2 students in physical education, no. That would be
3 determined by an instructional leader.

4 Q Okay.

5 A If we're talking about your ability to manage
6 students, keep up with students, understand that you're
7 responsible for them and actually are their parent in the
8 parent's absence, and you cannot exhibit that you
9 understand that, then, yes, that takes a psychiatrist to
10 determine.

11 Q I guess I'm trying to understand why you sent
12 this to --

13 (LIVE discussion begins.)

14 MR. BAUER: Can I stop that for one minute?
15 Can we stop for just one second?

16 CHAIRMAN EVANS: All right.

17 MR. BAUER: Could I explain something
18 regarding this questioning?

19 CHAIRMAN EVANS: Go ahead, please.

20 MR. BAUER: Basically the point I'm trying
21 to make is, Ms. Walton provided this job description
22 to me to give to the psychiatrist, and she stated
23 that, "Please give this to your psychiatrist and have
24 her look at it and tell me whether you can perform
25 these job functions, with or without accommodations,"

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1 and then all I'm trying to understand is why.

2 Why did she provide me a PE job description
3 to give to a psychiatrist who has know knowledge of
4 this type subject? If she was concerned about whether
5 I didn't understand the scope of, you know, leaving a
6 child behind, that I didn't -- wasn't taking it
7 seriously, or something, I would think that a
8 different document would've been provided to her, but
9 not the PE list of responsibilities. And that was --
10 that's the only thing I'm trying to get across from
11 her.

12 CHAIRMAN EVANS: Okay.. And again I would --

13 MR. BAUER: Yeah.

14 CHAIRMAN EVANS: I would say that I think
15 this is very appropriate for in your own testimony --

16 MR. BAUER: Right.

17 CHAIRMAN EVANS: -- or summation, Mr. Bauer.

18 MR. BAUER: And I'll be glad to do that.

19 MR. WILLIAMS: And if I could add to that,
20 the only way I would be agreeable to him injecting any
21 type of statement, like he just did, would be if we're
22 somehow using that to fast-forward past substantial
23 portions of --

24 MR. BAUER: All right.

25 MR. WILLIAMS: -- Ms. Walton's testimony.

Witness: Walton
Cross by Bauer

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1 But I think, for us to listen to her testimony, stop,
2 and have him testify, we're just extending what is
3 already --

4 MR. BAUER: Okay.

5 MR. WILLIAMS: -- a long day.

6 MR. BAUER: I'll -- I won't do it anymore.
7 I thought that would've been maybe considerate. I --
8 you may continue.

9 (VIDEO testimony resumes.)

10 BY MR. BAUER:

11 Q -- Dr. Bloom, when, really, it didn't matter. I
12 mean, she doesn't -- I'm trying to understand why a
13 psychiatrist would need this form.

14 MR. WILLIAMS: Is there -- is that a
15 question?

16 BY MR. BAUER:

17 Q Yeah, I -- I don't know -- why did you send me
18 this to give to her as a guideline?

19 A Because it's your job duties. It's your function
20 as a PE teacher.

21 Q All right. I guess I'm just having trouble
22 understanding -- I'm sorry -- about why a psychiatrist is
23 needed to answer or to evaluate me. That I can do this?
24 It just does not make any sense to me, but I'll go on to
25 the next.

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1 MR. WILLIAMS: Okay. Just for the record,
2 any time you're making a statement --

3 MR. BAUER: Okay.

4 MR. WILLIAMS: -- that's not a question, I
5 have an objection to that.

6 BY MR. BAUER:

7 Q Was there any documented evidence that I was
8 disabled?

9 A No. No.

10 Q Okay.

11 A Not to my knowledge.

12 Q Was there any documented evidence that I was
13 mentally impaired?

14 A No documented evidence.

15 Q Does federal law require documentation for
16 requiring an employee to go to a psychiatrist?

17 A Our district policy says that we may do that.

18 Q I'm sorry. Say that again?

19 A Our district policy gives us the right to request
20 that.

21 Q Okay. I need file --

22 MR. WILLIAMS: I'm not sure what you're
23 asking, but to the extent you're asking her for any
24 legal opinion or legal conclusion, I have the same
25 objection that I've made in previous -- made two

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1 previous questions along those same lines.

2 MR. BAUER: All right. File 26. This will
3 be presented into evidence.

4 (WHEREUPON, a document was marked as
5 Defendant's Exhibit Number 9 for Identification to the
6 Walton Deposition.)

7 BY MR. BAUER:

8 Q Okay. All right. File 26-A. Are you familiar
9 with the resource called Human Resources Executive Online?

10 A Familiar, yes.

11 MR. WILLIAMS: And just for the record, I
12 have the same objection to the document as I have to
13 the line of questioning --

14 (LIVE discussion begins.)

15 MR. WILLIAMS: Mr. Chair, this is one of
16 those documents that I referred to in my motion in
17 limine, file 26-A, which was some online information
18 that we objected to.

19 MR. BAUER: Okay. That's fine. You can --

20 CHAIRMAN EVANS: So the one titled, "NAFTA
21 Bogus Psychiatric Evaluation"?

22 MR. WILLIAMS: Yes, sir, that's correct.

23 (Board converses quietly.)

24 CHAIRMAN EVANS: I think, again, Mr. Bauer,
25 this might be a good piece for your summation and --

Witness: Walton
Cross by Bauer

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MR. BAUER: I -- that --

CHAIRMAN EVANS: -- ask us to consider this.

MR. BAUER: I have no problem with that.

CHAIRMAN EVANS: Thank you.

MR. BAUER: And you can, if you wish to,
stricken it (sic), but I do have copies.

CHAIRMAN EVANS: Let's go ahead and move
forward from those.

MR. WILLIAMS (VIDEO): -- regarding asking
her for legal conclusions.

MR. WILLIAMS: Can you fast-forward?

(Brief recess to fast-forward video, and
VIDEO testimony resumes.)

BY MR. BAUER:

Q -- the bill for Dr. Rosenbaum-Bloom?

A I did.

Q Did you -- did you pay her?

A No, I did not.

Q When did you reimburse me for the Dr.
Rosenbaum-Bloom evaluation?

A About two -- two weeks ago, maybe.

Q And did you receive the invoice on April 28th,
2014?

A Yes, I did, and that's an admitted oversight.

Q Okay. All right. On February 5th, 2015, at your

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1 deposition, you were asked, "Did she," referring to Dr.
2 Rosenbaum-Bloom, "find Mr. Bauer to be fit for his duties
3 as a teacher?" And your answer, "I don't know if she did
4 or not. I would have to see that letter." You decided to
5 end a man's career and didn't -- why had you not read that
6 letter?

7 MR. WILLIAMS: I'm going to object to the
8 extent you're testifying.

9 MR. BAUER: I'll just --

10 MR. WILLIAMS: I thought you were quoting
11 this --

12 MR. BAUER: I'm sorry..

13 MR. WILLIAMS: -- from the deposition, but
14 it sounds like you --

15 MR. BAUER: I'll rephrase it.

16 BY MR. BAUER:

17 Q Why didn't you read the letter?

18 A I did read the letter.

19 Q Okay. But you stated, "I don't know if she did
20 or not. I would have to see the letter." So are you
21 saying that you read the letter after your deposition on
22 February 5th?

23 A No, I was saying I wasn't going to testify to
24 something that wasn't directly in front of me. I was
25 actually asking you for an exhibit.

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1 Q I understand. All right. Please see file 47.

2 (WHEREUPON, a document was marked as
3 Defendant's Exhibit Number 10 for Identification to
4 the Walton Deposition.)

5 BY MR. BAUER:

6 Q Now, did the doctor find me, quote, capable of
7 performing the essential functions of your position?

8 A Yes, as testified earlier, and I believe I read
9 this letter earlier.

10 Q Okay.

11 A Yes, she did.

12 Q And did she urge, quote, return to all of his
13 duties as soon as possible?

14 A Yes, as I read earlier.

15 Q Why did you not follow Dr. Rosenbaum-Bloom's
16 evaluation?

17 A Because you would -- you refused -- Mr. Bauer
18 refused to come talk to me about this evaluation.

19 Q Okay. Would that have been in a phone call or
20 email?

21 A I don't know what method it was. I know that I
22 wanted you to come meet with me so that we could talk about
23 your status. That has always been my communication with
24 you.

25 Q Now -- so you're saying it was verbal?

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1 A I don't know. I don't remember.

2 Q All right. If you -- okay. Let's see. Was
3 there a problem with, actually, delivery or receiving this
4 evaluation, as far as getting it to you on time?

5 A A problem?

6 Q Yeah. Was there a delay, maybe technical
7 difficulties, getting the evaluation?

8 A Well, it was a delay from the time that I
9 requested it until the time that I got it. What the issues
10 were, I'm not -- I couldn't specifically say.

11 Q Do you think the problem could have been at your
12 end, that you blamed me because -- I'm sorry. Let me --
13 I'll let you finish. Do you think that the technical
14 problem could have been on the end of the school
15 district's?

16 A It's possible it could have been.

17 Q Okay. The fax number provided by human resources
18 -- and let me -- we need that file. Okay. I'll get it.

19 MR. WILLIAMS: It's here if you want it.

20 MR. BAUER: Okay.

21 MR. WILLIAMS: You're welcome to use them.

22 MR. BAUER: Yeah. I'll go --

23 BY MR. BAUER:

24 Q The fax number provided by human resources was
25 833 -- or 843-322-2371, but that number did not work. They

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1 then sent me 843-322-2330, which is Dr. Moss's fax. Why
2 would Dr. Moss not forward it to you?

3 MR. WILLIAMS: I'm going to object to the
4 extent you're testifying, and also to the extent
5 you're asking her about what someone else did or did
6 not do.

7 BY MR. BAUER:

8 Q Did you ever receive it from Dr. Moss?

9 A I don't remember. I know I received it.

10 Q Also, when did you receive the handwritten copy?

11 A I don't know.

12 Q Okay.

13 A It's always time stamped when it comes to my
14 office.

15 Q Okay. Yeah. At my -- at my deposition, the
16 question from Dr. Fawley was, "I just want the handwritten
17 note," and the answer from me was, "I don't have that. Ms.
18 Walton would have it." And then the statement from Dr.
19 Fawley was, "All right. She doesn't have it. Okay." Do
20 you believe that Mr. Bauer, me, had made an effort to get
21 the evaluation to you, at least handwritten, at first?

22 A Do I believe that you made an effort to get --

23 Q Yes.

24 A I do believe you made an effort to get it to me.

25 Q Are you aware of why there was a delay at all?

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1 A I believe I heard something about technical
2 difficulties. I'm not sure.

3 MR. BAUER: All right. I need 94 and 94-A.
4 Can we take a bathroom break? Is it possible? I
5 submit this file for an exhibit.

6 (WHEREUPON, a document was marked as
7 Defendant's Exhibit Number 11 for Identification to
8 the Walton Deposition.)

9 MR. BAUER: All right. And which one do I
10 use?

11 MR. WILLIAMS: Here are the copies.

12 MR. BAUER: All right. Now --

13 MR. WILLIAMS: To the extent this, again, is
14 a summary of emails, we would have the same objection.
15 we had to the previous exhibit that contained emails.

16 MR. BAUER: Yes. These are the actual phone
17 records. Those are -- these are summaries, and here
18 are the -- her exhibit, the original -- I'm sorry,
19 emails -- phone calls, Verizon. All right. Let's --
20 yeah, we just -- I just pulled out the ones that are
21 directly involved here.

22 BY MR. BAUER:

23 Q File 94 lists the calls to Dr. Rosenbaum-Bloom's
24 office from me. Does -- you see all these phone calls
25 here. Does Mr. Bauer -- or was Mr. Bauer, based on these

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1 phone calls, trying to get this report to you?

2 MR. WILLIAMS: And, again, you're referring
3 to yourself as Mr. Bauer?

4 MR. BAUER: Yeah, I'll -- yeah. Would it be
5 better if I just referred in third person?

6 MR. WILLIAMS: It just sounds odd, but if
7 that's your preference.

8 MR. BAUER: Yeah, first person sounds
9 better, probably. Okay.

10 BY MR. BAUER:

11 Q Was I trying to get this report to you?

12 A Yes.

13 Q And I imagine -- did the report matter to you?

14 A Did the report matter to me?

15 Q Well, did the report matter?

16 A Yes, the report mattered.

17 Q Had you already received -- or, I'm sorry, had
18 you already decided to recommend the nonrenewal of my
19 contract at the board meeting on April 1st?

20 MR. WILLIAMS: Object to the form.

21 (LIVE discussion begins.)

22 MR. BAUER: We can skip, if you wish to.

23 CHAIRMAN EVANS: We have already established
24 that April 1st --

25 MR. BAUER: Yes.

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1 CHAIRMAN EVANS: -- is not the date that --

2 MR. BAUER: We can move on.

3 (Brief recess to adjust video location, and
4 VIDEO testimony continues.)

5 BY MR. BAUER:

6 Q Of asking a second opinion? What was the logic
7 of asking a second opinion?

8 A I think I testified, earlier, I could not get you
9 to understand the severity of your actions, and you would
10 not cooperate with me to come in so that we could discuss
11 the first opinion, and instead of doing that, you proceeded
12 to tell me that you were not going to speak with me. I
13 needed to speak with your attorney first.

14 Q And --

15 A So you would not let me get beyond step two.

16 Q You're saying this was during a phone call?

17 A I'm not saying anything was during a phone call.

18 Q I'm just -- okay. So you don't know how this was
19 communicated between us?

20 A What was communicated between us?

21 Q That -- that I was, apparently -- wouldn't come
22 in, or whatever it was you said, that I needed to speak to
23 my attorney. I'm just wondering how this communication was
24 parlayed between us.

25 A It was a letter from me to you dated May 29th, I

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1 believe. It was an exhibit earlier.

2 Q And I -- how did I respond?

3 A You responded in an email, I believe.

4 Q Okay. So there's an email that states that I
5 refused to, what was it, meet with you or --

6 A Yes, you were -- I needed to speak with your
7 attorney, and --

8 Q Okay.

9 A -- if I was not going to meet with you to
10 reinstate you, you were not coming.

11 Q Okay. And that's in an email?

12 A From you to me, yes.

13 Q Okay. All right. Now, back to your reason for
14 rejecting Dr. Rosenbaum-Bloom's evaluation, as you said,
15 because of Mr. Bauer's behavior toward me, did you testify
16 that -- I'm sorry. I'll try to speak in first person. Did
17 you testify that I was not yelling at you by saying, quote,
18 he was talking to me?

19 A That's confusing to me. I don't understand your
20 question.

21 Q Did you say that I was not yelling at your
22 deposition; that, no, Mr. Bauer was not yelling at me? He
23 was talking to me? This would be page --

24 A I can't answer that out of context.

25 Q Okay. Referring to -- it's referring to

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1 rejecting Dr. Bloom's evaluation, you said, because of Mr.
2 Bauer's behavior towards me, and I believe Ms. Martel -- I
3 do not have this, though. But she asked something to the
4 effect of, well, was his behavior -- was he yelling at you?
5 And your answer to the question, which I do not have in
6 front of me at the moment, was, he was talking to me. Do
7 you remember saying something to that effect?

8 A No, I don't, but I remember the conversation that
9 you and I had on the phone.

10 Q On the phone. Okay.

11 A Um-hum.

12 Q Okay. And do you remember the dates of when we
13 talked on the phone?

14 A No, I don't.

15 Q All right. Would that -- if we spoke on the
16 phone, would that have come from your phone number, your
17 office phone number?

18 A If I can remember correctly, it was transferred
19 to me --

20 Q Ah.

21 A -- from one of my assistants.

22 Q I see. Okay.

23 A So I would have been at my desk, yes.

24 Q But if you and I were talking on the phone, would
25 it say in my phone records -- would it have your phone

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1 number there?

2 A It'd probably have the district's number. I'm
3 not sure.

4 Q Okay.

5 A I don't know where you called from.

6 Q Did Mr. Bauer ask you to read the letter from his
7 lawyer before meeting again? I'm sorry. Did I -- that's
8 how I wrote it out.

9 A Yes.

10 Q Did I ask you to read a letter?

11 A Yes, you did.

12 Q Was there evidence that you had already made up
13 your mind?

14 A There was no evidence, because I had not made up
15 my mind.

16 Q Do you -- I need file 49.

17 MR. WILLIAMS: Same objection as the two
18 previous objections regarding the authenticity of the
19 email.

20 BY MR. BAUER:

21 Q Do you remember that on February 5th, 2015, that
22 you read my message of April 30th to you and to Dr. Moss?
23 The one you're holding?

24 A What message? This message?

25 Q Yes.

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1 A I don't remember that, no.

2 Q Okay. Do you remember -- so -- okay. You don't
3 remember the message at all, but I'm going to ask these
4 questions anyway. Do you remember that, in that message, I
5 asked questions in the message about my personal belongings
6 that had been confiscated?

7 A This was a conversation between you and I?

8 Q This is from this --

9 A From this letter?

10 Q Yes. From this email, actually, yes.

11 A I remember this email. Specifically, I'd have to
12 go back through it and read it again, if you're asking me
13 specifics.

14 Q Do you remember then I asked questions about
15 accessing exculpatory evidence from my files?

16 A I remember you asking for access to your email.

17 Q Okay. Why would I be denied access to pertinent
18 cabinet files, personal belongings? Not just computer
19 emails. Why would I be denied that? Is there a legal
20 justification for that?

21 A No, you may have your personal belongings.

22 Q Okay. Do you remember that I commented on the
23 conversation that you called belligerent by reminding you
24 that I had not spoken to you but had relayed the words
25 through your secretary, Andrea Lopatka (sic)? Would Andrea

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1 have called me belligerent?

2 MR. WILLIAMS: Object to the form.

3 BY MR. BAUER:

4 Q I'm sorry. Do you remember that I commented on
5 this conversation that you have called belligerent by
6 reminding you that I had not spoken directly to you but had
7 relayed the words through your secretary, Andrea?

8 A I'm not sure what you're asking me, but I do
9 remember a conversation. You didn't say belligerent. My
10 secretary didn't say belligerent.

11 Q Okay.

12 A You had a conversation with me, because when she
13 asked you to set a scheduled time, you said you were not
14 going to do it. You argued you weren't coming, "find out
15 whether or not she's gotten my letter." And at that point,
16 I said, "Just patch him through to me. I will speak with
17 him," because I didn't think she needed to have that
18 badgering conversation between you.

19 And when you came on the phone, I picked up the
20 phone and said, "Alden, I expect that you're going to come
21 to see me," and you said, "Did you get a letter from my
22 attorney?"

23 Q Um-hum.

24 A I answered at that point, "No, I have not." You
25 proceeded to say, "Well, you will be getting one, because

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

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

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

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

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

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

23 BY MR. BAUER:

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

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**Witness: Walton
Cross by Bauer**

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1 A I believe any question you ask could be valid.

2 Q Okay. Would you please read the emails to
3 yourself, and then I'll ask the question.

4 MR. WILLIAMS: Same objection in terms of
5 the authenticity of the emails. You're asking about
6 emails to Ms. Walton in this -- in this exhibit?

7 MR. BAUER: Actually, this would be the
8 emails to Dr. Moss, if you could scan over these. It
9 would be -- yes. Sorry. Yes.

10 MR. WILLIAMS: So what, specifically, are
11 you asking her to read?

12 MR. BAUER: All -- both pages.

13 THE WITNESS: Both pages, front and back?

14 BY MR. BAUER:

15 Q Yes, please. Just quickly scan them.

16 A So you want me to read it from the top?

17 Q Please.

18 A Starting at the top?

19 Q You don't have to read it out loud.

20 A Okay. (Witness complies.)

21 Q Okay. Now, are those -- would you say those are
22 valid questions, my asking Dr. Moss -- my asking Dr. Moss
23 about citations of the sick leave portion of HRS-16?

24 A Valid questions, yes.

25 Q All right. And did I -- sorry. Then, what I'm

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1 asking is, why did I not receive an answer? Do you believe
2 -- why didn't Dr. Moss or you provide an answer as to why
3 HRS-16 is cited?

4 MR. WILLIAMS: Object, to the extent you're
5 asking her to speak for Dr. Moss, and also to the
6 extent you're assuming a fact that's not in evidence,
7 and testifying.

8 BY MR. BAUER:

9 Q Okay. I'll ask, why do you think -- yeah. Why
10 did -- why do you think Dr. Moss didn't answer me?

11 A I can't answer for Dr. Moss.

12 Q Okay. Why didn't you respond to the HRS-16 --

13 A Honestly?

14 Q -- questions?

15 A Because I don't communicate with employees by
16 email when it is a matter to this magnitude. I wanted you
17 to come in and sit with me so that you and I could have a
18 one-on-one conversation to discuss any questions or
19 concerns you might have had about your employment with
20 Beaufort County School District. That's why I did not
21 respond to your email.

22 Q Okay. And there's no written record -- I mean,
23 is there a written record of you requesting to answer my --
24 or your asking me to meet with you to explain HRS-16? Is
25 there a written record on this?

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

3 Q Okay.

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

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

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

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

14 A Exhibit 13?

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

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

18 THE WITNESS: Exhibit 13.

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

22 BY MR. BAUER:

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

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1 A Sure. "I am in receipt of your letter, and I'm
2 extremely concerned." Do you want me to state, Mr. Bauer,
3 who these -- who's saying this, or do you want me to begin
4 Wednesday, April 30th?

5 Q Yes, it's -- yeah, you can -- you can say it's
6 from me. It's to you and Dr. Moss.

7 A And is this an email?

8 Q Yes, this is an email.

9 A This is a --

10 MR. WILLIAMS: I'm assuming, I objected when
11 it was originally introduced, so I'd have that same
12 continuing objection.

13 MR. BAUER: Okay.

14 MR. WILLIAMS: But you can answer.

15 THE WITNESS: Okay. This is from you to
16 Walton and Moss. "I am in receipt of your letter, and
17 I'm extremely concerned. I have completed everything
18 that you've asked me. I've provided you with a
19 professional improvement plan, which has been ignored.
20 I have been subjected to a psychiatric evaluation, and
21 now this seems to have been discarded as not
22 legitimate. Now you're requiring that I see another
23 psychiatrist for another humiliating evaluation. I
24 have not even been told of the reasons for seeing a
25 psychiatrist.

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1. "You have informed me through an email less
2. than 24 hours before a scheduled meeting without
3. giving me time to talk with counsel. I have not
4. received your certified letter as of this writing as I
5. was told I would receive by your secretary, Andrea.

6. "This is the appearance of a setup. My
7. reputation, integrity, and character are being
8. destroyed. You have essentially ruined my career, and
9. you have not once asked me one question surrounding
10. the circumstances of the pool event.

11. "The disrespect and disdain towards me,
12. after 18 years of teaching -- of teaching a job that I
13. love, with no discipline issues and with a National
14. Board certification, certified teaching certificate,
15. and a master's of art and teaching degree, is
16. inexcusable. You have not provided me with access to
17. my computer emails, personal belongings, cabinet
18. files, or copies of the pictures that the
19. administration took after I was placed on
20. administrative leave.

21. "These email copies will prove and support
22. that I've -- I have said regarding a number
23. accusations made during our initial meeting with the
24. school administration on that Tuesday, February 11th,
25. 2014. You've had -- you had had (sic) also ignored my

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1 request to -- for a copy of the November 1st, 2013,
2 documentation revision.

3 "You stated in the third paragraph toward
4 the middle that I told you that calling your attorney
5 was not necessary because I would agree for you to see
6 the physician of your choosing. You should recall
7 that I did not speak with you. Your secretary,
8 Andrea, relayed the information to me that a local
9 psychiatrist would be acceptable. In the fourth
10 paragraph, you stated in your letter that, when
11 speaking with Andrea, you stated to her that you did
12 not need to meet with me if this meeting was not a
13 meeting of reinstatement.

14 "I did not say that. I asked her if they
15 had received expected letters from my attorney, which
16 should have arrived by now. She said she was not
17 sure, and she asked me to hold on and that she would
18 transfer the call to you.

19 "Due to these inaccuracies, the need for
20 legal counsel is all the more apparent. You have
21 attempted to schedule a meeting with me, you, Dr.
22 Moss, and a psychiatrist, with very little time to
23 consult with people who know a lot more than I do.
24 This is not insubordination, because I will do
25 anything you ask, but I must do so with accurate

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1 notice, information, flexibility, and caution.

2 "After examining HRS-16, I have not been
3 able to locate how this meeting with a psychiatrist is
4 relevant. Please send me a citation from the document
5 supporting this claim. I will be calling Dr. Gay, or
6 someone mutually acceptable, to schedule another
7 humiliating evaluation after seeking advice from my
8 attorney. I will then meet with Dr. Gay, or someone
9 else acceptable to you, and we will go from there.

10 Sincerely."

11 BY MR. BAUER:

12 Q The part where I say "meet with Dr. Gay or
13 someone else acceptable to you," does that sound
14 cooperative?

15 A No, not at this juncture, it didn't to me.

16 Q Okay. Now, again I ask, why did you not respond
17 to this email?

18 A And again I will say because you should have come
19 to meet with me. I do not discuss things like this via
20 email, because it can be forwarded, it can be foyered
21 (sic), and I was trying to protect your individual employee
22 rights.

23 Q Okay. And did you communicate -- did you get in
24 touch with me at some point to say you'd like to speak in
25 private about -- or face to face -- regarding these issues?

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1 A No, I didn't, Mr. Bauer, because I'd already
2 asked you on several occasions to come meet with me.

3 Q You did. Okay. And that was, you say, verbally?

4 A I will testify, again, I do not remember --

5 Q All right.

6 A -- the venue.

7 Q Okay. Did I say that you had ignored my
8 improvement plan?

9 A You did say that in this.

10 Q Do you remember that, in your deposition, you
11 blamed me for your ignoring the improvement plan? You
12 said, quote, Mr. Bauer did not come back. He did not even
13 come back to even discuss the improvement plan. Was I
14 invited back? You said, yes, he was, several times. Then
15 you continued -- and I am getting to a question -- put down
16 what -- what you think you can do to improve, and when we
17 get back together, we will discuss it. He never came back.
18 But did we meet 22 days later on March 5th, 2014?

19 A I don't know if we did.

20 Q Okay.

21 A I can't remember the date, but we did not meet to
22 discuss your plan to return to work.

23 Q Did you ask me on March the 5th -- or do you
24 remember asking to meet regarding these May -- I'm sorry,
25 April 30th issues?

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Witness: Walton
Cross by Bauer

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1 A I don't remember.

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

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

7 MR. BAUER: Here we go. There.

8 BY MR. BAUER:

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

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

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

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1 Q So can you tell me, why did you not discuss the
2 improvement plan 22 days after asking for it?

3 A Because it wasn't a -- you had not convinced me
4 that we needed to be talking about --

5 Q Okay.

6 A -- an improvement plan at that point.

7 Q When you make big mistakes like that -- okay.
8 Let me change this. All right. I'll get back to this.
9 Do you believe that I was concerned that you would not
10 allow -- actually, we're going to go back to file 49. I'm
11 sorry I'm jumping, but please refer to file 49.

12 MR. WILLIAMS: Okay.

13 MR. BAUER: I'm sorry.

14 MR. BAUER: You didn't -- I was going to
15 object to both questions you started to ask, but since
16 you didn't complete either question, I did not object.

17 BY MR. BAUER:

18 Q Please refer back to file -- not file 49. It's
19 file -- Exhibit 13. I have to -- I'm not used to legal
20 jargon, and so on. Was I concerned, in your opinion, that
21 I would not -- that you would not allow me time to consult
22 with an attorney?

23 MR. WILLIAMS: I'm going to object to the
24 extent you ask her any question about what your state
25 of mind is or was.

Witness: Walton
Cross by Bauer

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1 BY MR. BAUER:

2 Q Okay. Do you believe that I was concerned that
3 you were denying me access to emails that might be used for
4 my defense?

5 MR. WILLIAMS: Same objection.

6 BY MR. BAUER:

7 Q Okay. Do you believe that Mr. Bauer, I, was
8 concerned about inaccuracies in the letter from you?

9 MR. WILLIAMS: Let me just state a
10 continuing objection to any question in which he asks
11 her about what she believes he believed.

12 BY MR. BAUER:

13 Q Only two more. Do you believe that I was
14 concerned about the misapplication of HRS-16 sick leave?

15 A (No response.)

16 Q And finally -- finally is, do you believe my
17 instinct of suspecting a setup accurate, in light of the
18 April 1st actions by the Board? Do you want to --

19 A I don't know --

20 MR. WILLIAMS: Continuing objection, and
21 also --

22 THE WITNESS: -- what you believed, Mr.
23 Bauer.

24 MR. BAUER: I did hear her answer, but thank
25 you. Now --

Witness: Walton
Cross by Bauer

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1 VIDEOPHOTOGRAPHER: Y'all have two minutes.

2 MR. BAUER: Oh, two minutes? All right.

3 Now, I want to refer back to the objection to this, is
4 that I told her that I was concerned about these
5 issues, and so I felt that she could answer whether
6 she felt I was concerned, even -- I did say that to
7 her.

8 MR. WILLIAMS: Well, you can ask her if she
9 recalls something you -- that you said.

10 MR. BAUER: Oh, I see. It's the wording.

11 BY MR. BAUER:

12 Q Do you recall that I was concerned that you would
13 not allow time to for me to consult with an attorney?

14 A I am aware of what you stated in your email.

15 VIDEOPHOTOGRAPHER: And we're about there.

16 MR. BAUER: Okay.

17 (LIVE discussion begins.)

18 MS. CUSHINGBERRY: We have two more after
19 this.

20 (Whereupon, a short break was taken.)

21 CHAIRMAN EVANS: Robyn, are we ready?

22 Robyn, are we set up to continue?

23 MS. CUSHINGBERRY: Yes.

24 (VIDEO testimony resumes.)

25 MR. WILLIAMS: What's the actual number?

1 COURT REPORTER: It'll be 15.

2 MR. WILLIAMS: Fifteen?

3 MR. BAUER: I'll have to start doing that.

4 You said 15?

5 THE WITNESS: I have another one. Fifteen.

6 Uh-huh.

7 MR. BAUER: So this is 16.

8 (WHEREUPON, a document was marked as
9 Defendant's Exhibit Number 16 for Identification to
10 the Walton Deposition.)

11 BY MR. BAUER:

12 Q Now, in the first email at the top, the first
13 paragraph, would you please read that out loud?

14 A The email from you to --

15 Q Yes, to Jill --

16 A -- Ms. McAden?

17 Q Yes.

18 A Okay. I believe that some type of communication
19 before the end of the school year must be made to facility
20 -- for faculty and parents regarding my leave. It should
21 state that I did nothing illegal nor anything immoral.
22 Since I was placed on administrative leave on February 5th,
23 I have heard rumors concerning the reasons why I was placed
24 on leave.

25 Q Oh, no, I'm sorry. You don't have to -- you

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1 don't have to read any more. Just that first paragraph.

2 A Okay. All right.

3 Q So you see that -- do you see that I was asking
4 for a communication that I was not accused of anything
5 illegal or immoral?

6 A Yes, I see that.

7 Q Have there been any articles in the paper about
8 misbehavior by teachers who had been put on leave?

9 MR. WILLIAMS: Object to the relevance, but
10 you may answer if you know.

11 THE WITNESS: I don't. I don't know, Mr.
12 Bauer.

13 BY MR. BAUER:

14 Q Was it reasonable for me to wish my name be
15 removed from that suspicion, in your opinion?

16 MR. WILLIAMS: I'd object to the extent he's
17 asking you to explain what his state of mind is or
18 was.

19 BY MR. BAUER:

20 Q Okay. All right. Read the next-to-last sentence
21 of that email, please.

22 A "My silence is difficult"?

23 Q Yes.

24 A "Your silence is damaging."

25 Q Yes. Thank you. Read the very last sentence --

1 I'm sorry, yes, read the last sentence of that email.

2 A "I hope that we have enough respect and goodwill
3 for you to affirm my good character and reputation."

4 Q Was that last sentence reasonable and respectful?

5 A Respectful to whom?

6 Q To the recipients of the email?

7 A To Ms. McAden?

8 Q Yes.

9 A I guess you could say it was reasonable.

10 Q Would you say it was respectful?

11 A Yes.

12 Q To introduce my next questions, I need to point
13 out that the first sentence of Dr. Moss' reply sounds
14 terrible.

15 MR. WILLIAMS: I'm going to object to any
16 testimony you offer. Again, as we've stated before,
17 you may ask questions; however, it's not proper for
18 you to provide testimony at this stage of the
19 proceeding.

20 BY MR. BAUER:

21 Q Let me later -- I'm sorry. I'll start over. To
22 introduce my next questions, I need to point out that the
23 first sentence of Dr. Moss' reply -- how would I say it?

24 MR. BAUER: If I -- if I say it again, do
25 you have to say objection again?

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1 MR. WILLIAMS: I'm going to say continuing
2 objection.

3 BY MR. BAUER:

4 Q Okay. But he later explained that he did not
5 mean it the way it sounded. He wrote, quote, We do not
6 speak to employees who have been placed on administrative
7 leave, unquote. I only include it because Dr. Moss
8 acknowledges that I was on administrative leave.

9 My question involves the second paragraph, and
10 we're looking at the bottom email, from Dr. Moss to Alden
11 Bauer and a number of other recipients. My question
12 involves the second paragraph. Does it say HRS-16?

13 A Are you asking me if the second paragraph begins
14 with HRS-16?

15 Q Does it -- yes, does it include HRS-16? Does it
16 include those three letters and two numbers?

17 A Yes, it does.

18 Q Thank you. And does he include the identifying
19 words "staff leaves and absences"?

20 A Yes.

21 Q Does he also say that it is from section -- from
22 the section on sick leave?

23 A I don't see what you're talking about in this
24 email.

25 Q Does it say anywhere where -- yeah, I mean, does

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1 he -- does he state that HRS-16 is listed anywhere under
2 the subcategory -- or the category of sick leave?

3 A I'm sorry, but I don't see that in this email.

4 Q Okay.

5 A I don't see the words "sick leave," if that's
6 what you're asking me.

7 Q Yes. Thank you. Okay. Now, the third paragraph
8 -- and it says -- I thought it was in blue, but I don't
9 have it in blue.

10 MR. WILLIAMS: Now you're referring to a
11 third paragraph of --

12 MR. BAUER: Oops, I don't have that. I have
13 the wrong version. File -- oh, I need file 51. I
14 don't have that. There we go. We're looking at file
15 51. I'm sorry. I'm confusing you, I know, with this.

16 MR. WILLIAMS: Are you offering this --

17 MR. BAUER: Yes.

18 MR. WILLIAMS: -- as a second exhibit, or
19 another exhibit?

20 MR. BAUER: Another exhibit.

21 (WHEREUPON, a document was marked as
22 Defendant's Exhibit Number 17 for Identification to
23 the Walton Deposition.)

24 BY MR. BAUER:

25 Q Now, please read the third paragraph, which is in

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1 blue. Is it -- I'll let you read it first. Can you please
2 read it out loud?

3 A An employee returning from sick leave may be
4 required to present to the office of human resource
5 services a statement from their attending physician
6 clarifying that employee's ability to return to normal
7 duties.

8 MR. WILLIAMS: And I have an objection. To
9 the extent the top of this document indicates it's
10 HRS-16, the document that you have introduced is not
11 the entire policy, so I would object to this on the
12 basis of an incomplete policy.

13 BY MR. BAUER:

14 Q Okay. Now, is it not clear that this whole
15 section is for sick leave?

16 MR. WILLIAMS: Same objection.

17 THE WITNESS: When you say "whole section"
18 or you're talking about the HRS-16 policy, you're --
19 are you asking me if this is a section from HRS-16?
20 I'm not understanding your question.

21 BY MR. BAUER:

22 Q Yes. Actually, this is section 59-1-400, sick
23 leave for public school employees.

24 A That falls under HRS-16.

25 Q Correct.

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1 A Staff leaves, absences.

2 MR. WILLIAMS. And I would object to this,
3 to the extent we're talking about two different
4 things. One is a state law statute.

5 MR. BAUER: Correct.

6 MR. WILLIAMS: The other is a policy of the
7 school district, of which you have a portion listed as
8 part of this exhibit.

9 MR. BAUER: Do you have the HRS-16?

10 MR. WILLIAMS: It's in the -- for the
11 record, HRS-16 was previously admitted as part of our
12 exhibit notebook --

13 THE WITNESS: Right.

14 MR. BAUER: But I need --

15 MR. WILLIAMS: -- in its entirety. This is
16 -- the entire HRS-16 was previously -- for the record,
17 the entire policy was previously admitted in Ms.
18 Walton's direct testimony.

19 BY MR. BAUER:

20 Q All right. Now, is it not clear that this whole
21 section is under sick leave in this policy?

22 MR. WILLIAMS: Same objection.

23 BY MR. BAUER:

24 Q Is it clear to you that this whole section is
25 under sick leave?

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1 A No, it's not clear to me, because I don't look at
2 the policy in separation. I look at it as a whole HRS-16.

3 Q May I have HRS-16 as it -- okay. Was Mr. Bauer,
4 or was I, on sick leave?

5 A You were on administrative leave, Mr. Bauer.

6 Q Okay. I know that we have HR-16 as it comes from
7 the website here. That's okay. All right. So we're clear
8 that, under HR-16, under the subcategory of sick leave is
9 where it states that an employee can go to a psychiatrist.

10 MR. WILLIAMS: Is that a question?

11 BY MR. BAUER:

12 Q Yeah. Are you aware that it is -- that that
13 section is listed under sick leave, the subcategory of sick
14 leave?

15 A Here again, I'm looking at HRS-16, which is --

16 Q Right.

17 A -- staff leave and absences.

18 Q Okay.

19 A I'm looking at it as a whole document.

20 Q As a whole document?

21 A Um-hum.

22 Q And now there are -- are there subcategories --

23 A There are --

24 Q -- under that whole document?

25 A There are subcategories --

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1 Q All right.

2 A -- that apply to leave and absences.

3 Q All right. And that section on sending an
4 employee to a psychiatrist, are you aware that is under a
5 subcategory called "sick leave"?

6 A I'm aware that it is in the HRS-16 policy.

7 Q All right. Now, let's look back. Let's see.
8 We're on file 51. Look back at the sentence from Dr. Moss
9 about not speaking to employees.

10 MR. WILLIAMS: Same objection. When you're
11 referring to file 51, I assume you're talking about
12 the excerpt from HRS-16, which has been admitted as
13 Number --

14 MR. BAUER: Yes.

15 MR. WILLIAMS: -- 16, 17?

16 MR. BAUER: That would be --

17 MR. WILLIAMS: Seventeen.

18 THE WITNESS: Seventeen.

19 MR. BAUER: Seventeen. All right. Thanks.
20 All right.

21 MR. WILLIAMS: Okay. Not referring to the
22 excerpts --

23 MR. BAUER: Yes. I'm sorry. It's my
24 mistake.

25 MR. WILLIAMS: Exhibit 16?

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1 MR. BAUER: Exhibit.

2 BY MR. BAUER:

3 Q Now, on Exhibit 16, please look back at the
4 sentence from Dr. Moss about not speaking to employees on
5 administrative leave. Now -- well, hold on a second. I'm
6 going to have to come back to this on that. I'm sorry.
7 I'm going to need to come back, because I need to find
8 something on that.

9 I'm going to skip over to -- oh. Ah, here we go.
10 We're still looking at that file. Is the reference to
11 seeing a doctor singular or plural in the --

12 A In what document?

13 Q I'm sorry. In the last sentence from Dr. Moss's
14 -- oh. Yeah.

15 MR. WILLIAMS: Do you understand the
16 question?

17 THE WITNESS: No, I don't understand the
18 question.

19 BY MR. BAUER:

20 Q I'm sorry. The final in the red here.

21 A Oh, okay.

22 Q Okay?

23 A All right.

24 MR. WILLIAMS: So just so we're --

25 THE WITNESS: So it's 17.

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1 MR. WILLIAMS: You're on a different
2 exhibit. What exhibit are you on, currently?

3 MR. BAUER: I am on 16. That's a lie.
4 Seventeen.

5 THE WITNESS: Okay.

6 MR. WILLIAMS: So you're on the excerpt from
7 HRS-16, which --

8 MR. BAUER: Yes.

9 MR. WILLIAMS: -- I've objected to, because
10 it's not the entire policy. Okay.

11 BY MR. BAUER:

12 Q I guess the question is, is it singular or plural
13 when he speaks of his reference to seeing a doctor?

14 A I'm confused. You --

15 Q Okay.

16 A I don't know what you're comparing this portion
17 in red to.

18 Q Well, I'm not really comparing it to anything.
19 I'm just asking, if he -- when he speaks of seeing a
20 psychiatrist, is he speaking of seeing a psychiatrist once
21 or twice? For example, requiring an employee to undergo an
22 examination by a doctor or psychiatrist or psychologist
23 selected by the district, is that singular or plural?

24 A It's --

25 Q Is he asking to see one psychiatrist or two?

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1 A You're asking me to look at the policy, the
2 section in red --

3 Q Um-hum.

4 A -- and tell you if psychologist or psychiatrist
5 is plural?

6 Q Where does it say that I'm supposed to -- where
7 an employee is supposed to see two psychiatrists, instead
8 of one? I see that it says that the superintendent can
9 request an employee to see a psychiatrist. I'm just --
10 where in the policy does it say that a second opinion may
11 be required?

12 MR. WILLIAMS: Same objection to the partial
13 policy.

14 THE WITNESS: Okay. I think I have two
15 questions in front of me. The first one is, are these
16 words plural or singular? They're singular.

17 BY MR. BAUER:

18 Q Okay.

19 A And the second question is?

20 Q Oh. I'm sorry. The second question is, can you
21 tell me where the -- where in school district policy it
22 states that a second opinion may be required for an
23 employee to see a psychiatrist? Is there a place I could
24 find that information?

25 A If you're asking me for the words "second

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1 opinion" in what you provided for me here?

2 Q Uh-huh.

3 A There's not a "second opinion."

4 Q Is there a policy that you're aware of in the
5 school district?

6 A The policy falls under HRS-16. It is at the
7 discretion of the superintendent or the human resource
8 officer to request a second opinion.

9 Q Okay. Are you saying, though, that even though
10 -- asking an employee to see a psychiatrist, even though
11 it's listed under the sick leave section of HRS-16, that it
12 really would -- is more of a general provision, that it
13 applies to -- doesn't have to apply to just sick leave? It
14 can apply to --

15 A It applies --

16 Q -- be applied to --

17 A -- to leave.

18 Q Any types of leave?

19 A Yes.

20 Q Okay. So it's -- and I'm just wondering, if it
21 is considered a general provision rather than just under
22 sick leave, why isn't it listed under general provisions,
23 which are 22 pages long and 8,000 words? That, to me,
24 would -- well, my question is, why isn't it listed under
25 the general provision section of HR, or human resources?

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1 A I can't answer that question.

2 Q Okay. Now, have I met with you and with others
3 at times, on February 5th, 7th, 11th, and March 5th? Do
4 you remember -- I'm sorry. Let me let you finish. Have I
5 met with you on those four days?

6 A You've met with me, yes.

7 Q And do you think -- do you think I sensed
8 hostility?

9 A I don't know if you did or not.

10 MR. WILLIAMS: Continuing objection --
11 although, she's answered -- to the extent you want her
12 to characterize what you sensed.

13 BY MR. BAUER:

14 Q All right. Now, back to the improvement plan,
15 and did I -- did I, Alden Bauer, submit the plan to you?

16 A You submitted strategies to me in an email.

17 Q Was it called a "professional improvement plan"?

18 A It was not.

19 Q It was not. Do you have a copy?

20 A It's not a professional improvement plan until
21 it's put on the correct documents.

22 Q And did I --

23 A I asked you to submit strategies.

24 Q Did I call it that?

25 A You might have called it that..

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1 Q Okay. I know you've answered this in a number of
2 different ways, but I'd like to hear it again. Would no
3 response, no response from you to my professional
4 improvement plan, be a warning signal to me that possibly
5 the Teacher Employment and Dismissal Act requires a
6 response?

7 MR. WILLIAMS: Objection on several bases..
8 You're asking what you would have -- what signal you
9 would have received.

10 MR. BAUER: Uh-huh.

11 MR. WILLIAMS: And also asking for legal
12 conclusions, and also stating --

13 MR. BAUER: That is --

14 MR. WILLIAMS: -- facts not in evidence.

15 MR. BAUER: Okay. And my response to that
16 would be, I would assume that the head of the human
17 resources would know all of the legal aspects of the
18 Teacher Employment and Dismissal Act, as well.

19 BY MR. BAUER:

20 Q But, basically, would no response to a
21 professional improvement plan be a warning signal to me,
22 since the employment and dismissal act requires a response?

23 MR. WILLIAMS: Same objection.

24 MR. BAUER: Okay. You can answer if you
25 wish.

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1 THE WITNESS: So it's all right for me to
2 answer?

3 MR. WILLIAMS: If you can.

4 BY MR. BAUER:

5 Q If you can. If you can.

6 A No, I really can't answer that, but I can tell
7 you what my opinion is. It was not -- we weren't dealing
8 with an employment dismissal act. We were dealing with an
9 employer-employee action, to place an employee on a plan
10 for improvement.

11 Q I see.

12 A So we weren't dealing with anything but placing
13 you in a plan, and until we came to a conclusion as to what
14 that plan would look like, and implemented that plan,
15 officially, on the correct documents, providing a
16 beginning, a middle, and an ending date for that plan, it
17 was not an official improvement plan.

18 Q I see. So you would feel no need to involve
19 attorneys as -- you wouldn't submit this to an attorney
20 right when you received the improve plan?

21 MR. WILLIAMS: Objection to the relevance,
22 but you may answer.

23 MR. BAUER: Well, okay. The relevance is,
24 she admitted this to Childs & Halligan on February
25 18th, two hours after it was delivered to her. And my

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1 question is, why did you feel the need to send it to
2 Connie P. Jackson at Childs & Halligan on February
3 18th?

4 MR. WILLIAMS: And I'd object both to
5 relevance and that you're seeking attorney-client
6 information, and this is a question I would advise you
7 not to answer.

8 THE WITNESS: Okay.

9 BY MR. BAUER:

10 Q All right. Now, this is from the employment and
11 dismissal act, section 440, code of laws title 59, quote,
12 School administrator required to make a reasonable effort
13 to assist teacher in corrective measures. Reasonable time
14 for improvement required. Is it possible that this whole
15 situation of the school losing a good teacher, and a good
16 teacher losing his career, comes down to confusion between
17 the principal and the human resources officer not knowing
18 who was supposed to respond to an improvement plan?

19 MR. WILLIAMS: Objection on a number of
20 bases, including your testifying and assuming facts
21 not in evidence.

22 BY MR. BAUER:

23 Q Okay. Is it -- I'll rephrase that, then. Is it
24 possible that there could have been confusion between the
25 principal and the human resources officer as to who was to

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1 respond to the improvement plan?

2 A I can't answer that.

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

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

10 BY MR. BAUER:

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

14 MR. WILLIAMS: You said page nine?

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

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

18 MR. BAUER: Yours is different?

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

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

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

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1 an extra copy of the exhibit that the witness has?

2 MR. BAUER: Yeah, let me write it down.

3 Okay. Yes, we'll make sure we get it.

4 MR. WILLIAMS: May I look at it?

5 MR. BAUER: Yeah. Sure. Okay.

6 MR. WILLIAMS: Hold on for a second.

7 MR. BAUER: Yeah. Sure.

8 BY MR. BAUER:

9 Q Would you please read out loud section 440, Ms.
10 Walton?

11 A Written notice to teacher of possible dismissal?
12 Is that what you're looking at?

13 Q Yes.

14 A School administrator required to make a
15 reasonable effort to assist teacher in corrective measures.
16 Reasonable time for improvement required.

17 Q Okay. That's -- all right. If Ms. McAden, in
18 her deposition, says that the improvement plan was your
19 responsibility for a response, and you say that it was Ms.
20 McAden's responsibility for a response, and nobody
21 responded, could that be a problem?

22 A No.

23 MR. WILLIAMS: I'd object to, again, stating
24 facts that aren't in evidence, but you can respond if
25 you know.

Witness: Walton
Cross by Bauer

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1 THE WITNESS: Okay. I'm going to say it's
2 not a problem for me, because I tried to respond to
3 you, but you didn't meet with me.

4 BY MR. BAUER:

5 Q Okay. In your deposition, after extensive
6 questioning, did this exchange take place? This is the
7 question from the attorney, Lauren Martel, quote, dot, dot,
8 dot, did the principal change or add to the improvement
9 plan? Your answer, quote, was, I don't know what she did
10 with it. Next question from Lauren Martel, she asked,
11 quote, Would it have been the duty of the district to
12 respond to his attempt to improve himself? Your answer,
13 quote, No, that would have been the duty of the building
14 administrator. Question from Lauren Martel again, quote,
15 Who was the building administrator? Your answer, Ms.
16 McAden. Does that sound like a correct reading?

17 A If you're reading it from my deposition, then
18 I'll -- it has to be correct.

19 Q Now, that was from your deposition. Now let's
20 see what Ms. McAden said. The question was asked who the
21 improvement plan went to, from Lauren Martel, the attorney.
22 She -- her answer -- Ms. McAden's answer was, "It was
23 turned in to Ms. Walton." Was she correct on this? Did
24 she turn it in, or was it turned in to Ms. Walton?

25 A You emailed it to me.

Witness: Walton
Cross by Bauer

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1 Q Okay. So you both received the plan; is that
2 correct?

3 A I will state again, it was not an official plan.

4 Q Okay.

5 A It was the making of a plan. The plan would have
6 been finalized when you met with me.

7 Q Okay. Did you have any consultations concerning
8 the plan?

9 A I don't recall. I didn't have any consultations
10 with you.

11 Q Did you send copies of the plan to anyone for
12 comment or analysis?

13 A No, I did not.

14 Q Did you send a copy of the plan to anyone else
15 for any reason?

16 A Not that I can recall.

17 Q Did you send a copy of -- I'm sorry. Did you
18 send a copy of the plan to Childs & Halligan?

19 MR. WILLIAMS: And, again, I've already
20 objected.

21 MR. BAUER: Okay.

22 MR. WILLIAMS: Not relevant, and seeks
23 attorney-client-privileged information.

24 MR. BAUER: Okay. And I'll just respond to
25 that, that I believe it is relevant, based on

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1 questioning why -- questioning why it would be sent to
2 an attorney 13 days after an employee's been placed on
3 leave.

4 MR. WILLIAMS: And you can --

5 MR. BAUER: Okay. Got it.

6 MR. WILLIAMS: You can clarify, but my
7 advice would be the same, not to answer any questions
8 that would --

9 MR. BAUER: That's fine.

10 MR. WILLIAMS: -- deal with the attorney-
11 client privilege.

12 THE WITNESS: Okay.

13 BY MR. BAUER:

14 Q Okay. Now, when I compare this -- I'm comparing
15 this action -- all right. Timeout. Comparing this action
16 with the haste to charges in your letter of May 29th and
17 the Board action of April 1st, does it appear that you --
18 in your opinion, does it appear that you never had any
19 intention of an unbiased judgment of Mr. Bauer's continued
20 employment?

21 A I don't understand your question. Can you
22 clarify --

23 Q I'll come back --

24 A -- what you want me to answer?

25 Q I'll come back to that. Let me see. All right.

Witness: Walton
Cross by Bauer

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1 Given what happened at the pool, would it not be easy to
2 make a suggestion for improvement?

3 A To make a suggestion to whom?

4 Q To me.

5 A Make a suggestion of improvement versus doing
6 what?

7 Q If I were to submit a plan based on what happened
8 at the pool, and I submitted an improvement plan based on
9 the request from Ms. Walton and Ms. McAden, would it be
10 easy to make a suggestion of things to do to make myself
11 better? Would it not be easy to do that?

12 A It would be very easy, and I think that's what we
13 started out talking about, the improvement plan. You come
14 up with suggestions. We will come up with suggestions.

15 Q Okay. Was this plan that I made -- was this a
16 serious effort to help a teacher, or was it just -- well,
17 let me rephrase that... Do you believe that this was a
18 serious effort to help a teacher improve?

19 MR. WILLIAMS: I'm going to object to the
20 extent you're asking her to characterize whether or
21 not something that you did was a serious effort.

22 BY MR. BAUER:

23 Q Okay. Did my -- did my instinct or feeling that
24 there had been a setup seem to have been confirmed by the
25 board of action (sic) of April 1st?

Witness: Walton
Cross by Bauer

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1 MR. WILLIAMS: Objecting on a number of
2 reasons, including you're asking her about what --
3 (LIVE discussion begins.)

4 CHAIRMAN EVANS: Yeah, we can -- that's been
5 explained.

6 MR. WILLIAMS: There are several questions
7 here that deal to the -- or relate to the April 1st
8 meeting, where we've already acknowledged the employee
9 A was not Mr. Bauer. So, with Mr. Bauer's agreement,
10 we would --

11 MR. BAUER: Yes, sir.

12 MR. WILLIAMS: We'd like to go past those.

13 CHAIRMAN EVANS: We'll pass over this
14 section, if we can, or speed through it.

15 (Brief recess to adjust video, and
16 LIVE testimony resumes.)

17 BY MR. BAUER:

18 Q A series of questions about procedures that had
19 returned other faculty to the classroom. Did you answer it
20 was individual?

21 A That -- again, that's out of context, so you
22 would have to ask me what -- what the question was.

23 Q Okay. From your deposition, line 18 -- page 18,
24 line 7. Okay. Yep, there we go. All right. The question
25 was from Lauren Martel. She said, "Can you give me

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**Witness: Walton
Cross by Bauer**

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1 examples of a situation that you know of, or have been
2 personally involved in, where somebody was returned to
3 their teaching position?" Your answer, "No, I can't give
4 you the example, because they're all based on individual
5 personnel issues." Her question was, "Individual personnel
6 issues?" And you said, "Individual, each individual
7 employee is different. There is no set one, two, three,
8 four steps for all employees," and so on. That's my main
9 -- the point -- the part I'm referring to is, "There is no
10 set one, two, three, four steps." Are there -- my question
11 to you is, are there not steps for assisting teachers back
12 to the classroom, specific -- yeah.

13 MR. WILLIAMS: Did you complete your
14 question?

15 MR. BAUER: Yes.

16 BY MR. BAUER:

17 Q Are there specific steps? Are there specific
18 steps for assisting teachers back to the classroom after,
19 say, they've been placed on leave; a protocol, maybe or --

20 A Yeah, there --

21 Q -- a policy?

22 A There's a protocol, but it's all based on the
23 individual --

24 Q Individual.

25 A -- teacher and the individual issues that

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1 determines those steps.

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

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

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

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

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

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

14 (LIVE discussion begins.)

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

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

22 MR. WILLIAMS: I am also.

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

24 MR. WILLIAMS: It is not.

25 CHAIRMAN EVANS: Do we know what number it

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1 is, Mr. Bauer?

2 MR. BAUER: Not offhand. I can actually --
3 let's see. Oh. Great. Thanks. I think I have a
4 general idea. I can find it, though.

5 MR. WILLIAMS: I think it's 219. Hold on.

6 MR. BAUER: Two nineteen? And that would be
7 two --

8 MR. WILLIAMS: It's 219.

9 MR. BAUER: Two nineteen. Yeah.

10 MR. DUFF: A discussion by Jackie Hicks on
11 teacher due process?

12 MR. BAUER: Yes.

13 MR. WILLIAMS: All right. Now, hold on,
14 members of the Board.

15 MR. BAUER: I believe.

16 MR. WILLIAMS: There may have been more than
17 one SCEA document. Hold on a moment.

18 CHAIRMAN EVANS: What I've got is -- what I
19 think we have is 219, entitled "Teacher Due Process."
20 It then gives -- lists a website, and it goes -- the
21 title is "Discerning Fact from Fiction on Teacher Due
22 Process" by Jackie B. Hicks, and --

23 MR. WILLIAMS: It's 176. I had the wrong
24 number. It's 176.

25 CHAIRMAN EVANS: One seventy-six?

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1 MR. WILLIAMS: Yes. The heading is
2 "Reasonable Discipline."

3 CHAIRMAN EVANS: Okay. Just to make sure
4 that we're on the same page, I've got under file 176
5 -- it lists the website at the top?

6 MR. BAUER: Yes.

7 CHAIRMAN EVANS: The SCEA Member Rights
8 Handbook April 2012 PDF, and then in bold, it says,
9 "Reasonable Discipline"?

10 MR. WILLIAMS: That's correct.

11 CHAIRMAN EVANS: Are we all on the same
12 thing? Okay. My feeling on this is -- or my ruling
13 on this is, is that this is an opinion. It is
14 certainly, I would think, as we've said with some
15 other documents, appropriate for you to bring this in
16 under your own testimony or your summation for us to
17 consider, Mr. Bauer.

18 MR. BAUER: Yes. Yes.

19 CHAIRMAN EVANS: Okay. And I take it
20 there's a section all about aggressive discipline?

21 MR. BAUER: Yeah. The SCEA, yeah.

22 CHAIRMAN EVANS: Okay. I want to make sure
23 you understand --

24 MR. BAUER: The length, yeah.

25 CHAIRMAN EVANS: -- that we're not saying

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1 this can't be entered.

2 MR. BAUER: Oh, I understand.

3 CHAIRMAN EVANS: We're saying that it's more
4 appropriate that it come in under your testimony or
5 summation.

6 MR. BAUER: I understand. Absolutely, yes,
7 I can --

8 CHAIRMAN EVANS: Or just a request for us to
9 consider it --

10 MR. BAUER: I realize that I can bring it
11 up.

12 CHAIRMAN EVANS: -- when we go into
13 deliberations.

14 MR. BAUER: Right.

15 CHAIRMAN EVANS: Okay?

16 MR. BAUER: I understand that. Thank you.

17 (VIDEO testimony resumes.)

18 BY MR. BAUER:

19 Q On February 5th, 2015, did you agree to 6,000
20 emails, including spam?

21 A Did I agree to what about those emails?

22 Q To send to me 6,000 emails, including spam?

23 A I agreed to send you all emails that were
24 associated with your account.

25 Q Okay. And were you asked during your deposition

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1 about the 2006 amendment to the Federal Rules of Civil
2 Procedure to be able to produce emails during discovery?

3 A Yes.

4 Q Did you say that you were familiar with that?

5 A If you're reading it in my testimony --

6 Q Yes.

7 A -- then that's what I said.

8 Q Okay. Just to be clear, the question to you was,
9 "The 2006 amendment to the Federal Rules of Civil Procedure
10 requires public entities, including school districts, be
11 able to produce electronically stored information from
12 staff members, such as email, during the discovery process.
13 Are you aware of that?" Your answer was, "Yes." Do you
14 remember that exchange between you and Ms. Martel?

15 A Not really, but if you're reading it, then that's
16 what I said.

17 Q And were you asked if you were familiar with the
18 supreme court mandate of schools' archiving emails in order
19 to produce evidence in a case? Did you say that you were
20 familiar with that?

21 A If that's what you're reading, that's what I
22 said.

23 Q Okay. And just to be clear, the question to you
24 about the supreme court mandate concluded with, quote, In
25 the early stage, both parties are required to produce all

Witness: Walton
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1 evidence relevant to the case. Your answer was yes. Now,
2 do you consider 13 months to be a delay in the process
3 after having received the emails on March 24th?

4 A My delay in the supreme court process?

5 Q I'm sorry. Do you consider that to be in the
6 early stages -- okay. Would you say that receiving emails
7 after 13 months would be a delay, based on the supreme
8 court ruling?

9 MR. WILLIAMS: I would object to the extent
10 you're asking her to interpret what is meant by a
11 supreme court ruling.

12 BY MR. BAUER:

13 Q Okay. Before the Board hears your testimony,
14 they will be -- have been informed about Shana Washington-
15 Middleton, whose case was reversed on the grounds of delay.
16 Did you testify that you could make my emails available to
17 me in three minutes at your deposition?

18 MR. WILLIAMS: Object to the extent you're
19 testifying about another case. She can -- she
20 certainly is free to answer any questions related to
21 testimony that she offered at her deposition. So to
22 the extent he asks you about providing --

23 BY MR. BAUER:

24 Q Did you -- did you testify that you could make my
25 emails available to me in three minutes?

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Witness: Walton
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1 A Yes, because all I did was put them on a flash
2 drive, and that was the second time that I provided the
3 requested emails. That wasn't the first time. That was
4 the second.

5 Q Second time?

6 A Yes, it was. I was asked about that during the
7 deposition, but I believe the first time you received the
8 emails, they were all copied, printed, and sent to you.

9 Q Okay. Would you have any idea of how many hours
10 it would have taken somebody -- I think Suda Mirsky (ph) is
11 -- does she work for the school district or --

12 A Which person --

13 MR. BAUER: This thing is Suda Mirsky or --

14 MR. WILLIAMS: I can't --

15 MR. BAUER: Yeah. Okay.

16 MR. WILLIAMS: We can't answer that. I
17 mean, you can ask the witness that, but --

18 BY MR. BAUER:

19 Q I think Justine Suda Mirsky was someone who
20 compiled emails for, I believe, Childs & Halligan, or
21 worked for the school district. I'm not sure who it was,
22 but --

23 A She worked for the school district.

24 Q Oh, she did. Okay. Great. Would you estimate
25 how long it took her to compile all those emails from

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Witness: Walton
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1 March, or I think you said you provided them earlier.

2 A I mean, how many years?

3 Q How many hours --

4 A Three years of emails, I believe, we provided for
5 you?

6 Q Yeah. How long would it take her to compile
7 that?

8 A Between five to eight hours.

9 Q Wow. Okay. All right. Now, how much money
10 would you say was spent on -- or how much money was spent
11 on a fraction of what you said -- all right. Strike that.
12 Does it -- do you know how much money was spent on
13 compiling these emails?

14 MR. WILLIAMS: I'd object to --

15 THE WITNESS: I do not.

16 MR. BAUER: Okay.

17 MR. WILLIAMS: I'd object to relevance, but
18 you've already answered.

19 BY MR. BAUER:

20 Q All right. On February 5th, 2015, at your
21 deposition, you had this exchange with the questioner, and
22 the question from Ms. Lauren Martel was, quote, What
23 advantage would there be for the district to not allow a
24 teacher to receive his emails at home? And your answer
25 was, quote, If a teacher is on administrative leave, we do

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1 not give him the right to our server. Now, does that
2 answer make sense?

3 A You're asking me if that makes sense to me?

4 Q Yes.

5 A It does make sense to me.

6 Q Okay.

7 A Because as an employee, you have rights to our
8 district email, our district server, but when you're placed
9 on administrative leave, those rights are taken from you.
10 That is standard practice. It didn't only affect you. Any
11 teacher that's placed on administrative leave have their
12 rights immediately taken from them.

13 Q What advantage would there be for the district
14 not to allow a teacher to receive his emails at home for a
15 defense?

16 A Secure information. We cannot allow a teacher to
17 have information outside of the school district when they
18 are on administrative leave. The keyword here is
19 "administrative leave."

20 Q So why did that change on March 24th?

21 A Why did it change on March 24th? I'm unaware of
22 the change.

23 Q I received almost all of my emails from 2008.
24 I'm wondering why --

25 MR. WILLIAMS: And I'd --

Witness: Walton
Cross by Bauer

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1 BY MR. BAUER:

2 Q Why did I receive them from a flash drive? What
3 would be the difference between receiving it from a flash
4 drive and being able to have remote access to just the
5 email?

6 MR. WILLIAMS: And my objection would be
7 those are two different things, but you can --

8 MR. BAUER: They are?

9 THE WITNESS: They are two different things,
10 yes.

11 BY MR. BAUER:

12 Q How are they different?

13 A One, I provided them to you, so I controlled the
14 process. If I'd given you access, you would've controlled
15 the process. You would've had access to more than just the
16 emails.

17 Q What would I have had access to?

18 A Everything you would have had access to as a bona
19 fide teacher in a classroom.

20 Q I see. I was never aware of that. Okay. So
21 what you're saying is, when you go online to the website
22 and you sign in and you get your emails, you can also have
23 access to other things, as well? Is there a way that you
24 could let the employee just get their emails?

25 A No.

Witness: Walton
Cross by Bauer

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1 Q There isn't?

2 A No.

3 Q Okay. So it was really over control. I see. Is
4 that what it was over, who was in control there?

5 A It was over rights.

6 Q Rights?

7 A Yes.

8 Q So I lost all my rights?

9 A Yes.

10 Q I see. Okay. All right. Let's see. Let's go
11 down to -- now, when you know, in general, that a policy
12 conflicts with federal law -- "FED-er-al" (ph) -- federal
13 law, would you stick with that policy?

14 A If I knew it was in conflict with a federal law,
15 federal law would trump the policy.

16 Q Okay. At one time, did you say that, quote, If I
17 knew that the district was in violation of the law -- would
18 I make a recommendation to Dr. Moss if I knew we were in
19 violation? I would not. I know I have asked you this
20 before, but it --

21 A You have asked me that question.

22 Q Yes.

23 A Yes.

24 Q I am aware of that. Did you change your mind
25 later?

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**Witness: Walton
Cross by Bauer**

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1 A No.

2 Q Okay. Since you understood the legal
3 requirements to produce evidence for Mr. Bauer's defense,
4 why has it been such a battle for over a year?

5 MR. WILLIAMS: I'd object to the extent
6 you're characterizing a request for documents as a,
7 quote-unquote, battle. That's a subjective opinion.

8 BY MR. BAUER:

9 Q Did Mr. Bauer, or did I, ask for these emails in
10 February of 2014?

11 A I don't remember you asking in February. Maybe
12 you did. I just can't testify that I remember that date.

13 Q When did you say I received the bulk of my
14 requested emails?

15 A I didn't say.

16 Q When -- do you know when?

17 A No, I don't, not date-wise.

18 Q If I were to say it was 13 months after I
19 requested them, would you believe this is complying with
20 federal law?

21 A I believe that we provided you --

22 MR. WILLIAMS: Same -- same objection --

23 MR. BAUER: Okay.

24 MR. WILLIAMS: -- that I've been making to
25 any request about compliance with federal law.

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1 THE WITNESS: Okay.

2 BY MR. BAUER:

3 Q What would a reasonable, commonsense person think
4 of 13 months to provide what is required by law, quote,
5 early in discovery? File 35.

6 A I can't answer that.

7 MR. WILLIAMS: Same objection.

8 MR. BAUER: Ah, yes. Let's put this in --

9 MR. WILLIAMS: I'm not certain of what this
10 is, but to the extent it's not a district policy, I
11 would object on the basis of relevance.

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

15 (LIVE discussion begins.)

16 MR. WILLIAMS: This is another document that
17 appears to be some kind of excerpt. The heading is --
18 it's file 35. The heading says "district
19 administration." It talks about a federal law
20 mandating email archiving, and it's some sort of case
21 summary, so the same objection that was referred to in
22 our motion in limine.

23 MR. BAUER: You said 35?

24 MR. WILLIAMS: Yes.

25 MR. BAUER: Or 35-D or --

Witness: Walton
Cross by Bauer

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1 MR. WILLIAMS: Thirty-five. I just see 35.

2 MR. BAUER: Oh, in -- okay. Yeah, it's
3 actually a series of emails, but yes.

4 MR. WILLIAMS: That's not what I have for
5 35.

6 MR. BAUER: Oh. It starts with "district
7 administration"?

8 MR. WILLIAMS: Correct.

9 MR. BAUER: Oh, I see. Then it's got, like,
10 35-B, 35-C, I think, and so on. So it's sort of --
11 yeah, that's fine.

12 MR. WILLIAMS: All right. We would
13 basically object to all parts of 35.

14 MR. BAUER: Okay.

15 CHAIRMAN EVANS: I have a 35-D.

16 MR. BAUER: And the four -- there ought to
17 be, like, a 35-C, B, and then 35.

18 MR. WILLIAMS: It's a little bit confusing.

19 CHAIRMAN EVANS: Okay. I've got 35-C but --

20 MR. BAUER: Yeah, it is confusing.

21 CHAIRMAN EVANS: -- but it says rule 34.

22 Got it. Okay.

23 MR. BAUER: Yeah.

24 CHAIRMAN EVANS: Here we go.

25 MR. BAUER (VIDEO): On June the 9th --

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1 MR. WILLIAMS: Just so we're clear, we
2 object to all parts of 35.

3 CHAIRMAN EVANS: Yeah. And I will sustain
4 that. I think it goes back to other rulings that
5 you're familiar with, Mr. Bauer, that this is
6 appropriate in your own testimony or in your
7 summation, but --

8 MR. BAUER: Yes. Yes, sir, I understand.

9 CHAIRMAN EVANS: Okay. Because it reflects
10 an opinion.

11 (VIDEO testimony resumes.)

12 BY MR. BAUER:

13 Q Did I ask, based on these emails, if you were
14 able to unblock my home computer in order to for me to
15 retrieve evidence in this case?

16 A Yeah, according to what you have here. There
17 seems to be a bit of confusion regarding access to your
18 work emails. "Are you able to unblock my home computer so
19 that I can retrieve any emails?" Is this the complete
20 email?

21 Q Yes. These are all complete. They have been
22 compiled, but I do have all of the original emails.

23 A Okay.

24 Q But nothing has been changed.

25 A Okay.

Witness: Walton
Cross by Bauer

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1 Q Okay. After the first time that I asked the
2 question, did you respond?

3 A I don't know, Mr. Bauer.

4 Q Did I ask you again on June the 10th?

5 A What are you asking me?

6 Q I'm asking, on June the 9th, I asked if you were
7 unable to unblock my computer. And did you answer?

8 A My response on June 10th? Is that what you're
9 asking me? Which one of these emails --

10 Q At any point.

11 A -- are you referring to?

12 Q Is there an email there? Do you remember
13 responding by telephone, anything, to answer --

14 A There's an email from me to you on June 10th;--

15 Q Yeah.

16 A -- 2014, at 1:32 p.m., where I said to you -- in
17 an effort to try to assist you to get what you were looking
18 for, I told you at that point, "I will enable your network
19 login for your school computer," if that is what you're
20 referring to, because I have no control of your home
21 computer. And I also asked you to drop by the district
22 office, and I would provide you a room so that you could
23 access your login.

24 Q Okay. And so, basically, instead of answering
25 the question, you instructed me to make an appointment, I

Witness: Walton
Cross by Bauer

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

2 A To make arrangements --

3 Q Right.

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

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

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

13 BY MR. BAUER:

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

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

22 Q Okay.

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

25 Q But did I make an attempt --

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1 A On August 3rd, you made an attempt.

2 Q August the 3rd. That's correct.

3 A After I made an attempt on June 10th.

4 Q Now, I obviously tried to make an appointment,
5 but there was no response. Why was there no response to
6 this?

7 A I can't answer that, Mr. Bauer.

8 Q Okay.

9 A Did you ask me on August the 3rd that -- to give
10 you access because you didn't get any response?

11 Q I'm basing this on your asking me to contact --

12 A Here again, when I offered that --

13 Q -- Ms. Lopatka.

14 A Okay. Here again, when I offered you that option
15 in June to provide you access to your email --

16 Q Um-hum.

17 A -- I didn't hear -- or I don't even -- this went
18 to Ms. Lopatka, not me. So the sense of urgency couldn't
19 have been too great.

20 Q So since --

21 A From June to August --

22 Q So what you're --

23 A -- is not any urgency.

24 Q -- saying is, since it didn't seem urgent, you
25 wouldn't respond? Is that what you're saying?

Witness: Walton
Cross by Bauer

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1 A This email is not to me, so I couldn't respond to
2 an email that was not sent to me.

3 Q Did you ask that I contact Ms. Lopatka?

4 A I did, and that's --

5 Q And did I --

6 A -- what you did..

7 Q -- contact Ms. Lopatka?

8 A And that's exactly what you did.

9 Q But since it was late, she didn't have to
10 respond? Is that what you're saying?

11 A I can't answer for Ms. Lopatka.

12 Q Okay. All right. So did I follow your
13 instructions, and then did you change the rules on this?

14 MR. WILLIAMS: Object to the form.

15 BY MR. BAUER:

16 Q Okay. I'll go to the next -- on February 5th,
17 2015, you were asked if I had received or retrieved my
18 emails, obeying the rules that you made, and was your
19 answer, "He has not"? Does that sound about right?

20 A I don't -- I can't tell you if it's about right.
21 It's -- here again, it's out of context.

22 Q During your deposition on February 5th, 2015, do
23 you remember stating that those emails belong to us?

24 A If that's what's in the transcript, that's what I
25 stated.

Witness: Walton
Cross by Bauer

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1 Q Fair enough. Does so-called email ownership of
2 -- I'm sorry. Does so-called ownership of email refer to
3 accountability for maintaining email addresses, authorized
4 access by employees, and site ownership?

5 A (No response.)

6 Q Do you wish to answer the question?

7 A I didn't hear a question.

8 Q Oh, I'm sorry. Does so-called ownership of email
9 refer to accountability for maintaining email addresses,
10 authorized access by employees, and site ownership?

11 MR. WILLIAMS: You can answer if you know.
12 I'm going to object to --

13 THE WITNESS: I don't know.

14 MR. WILLIAMS: -- to continuing questions
15 about email ownership on the basis of relevance, in
16 terms of your hearing. But, again, if you know, you
17 can answer.

18 THE WITNESS: I can't answer that question.

19 MR. BAUER: And my response is, email delay
20 has -- is part of this whole deal here. So I think
21 that the emails are part of this, is a major part of
22 this entire hearing, but I will go on to next the
23 question.

24 BY MR. BAUER:

25 Q Who owns the contents of the emails of the school

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Cross by Bauer

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1 district? Would that be the school district itself owns
2 the contents?

3 A It would be the school district.

4 Q Yes. Okay.

5 (LIVE discussion begins.)

6 CHAIRMAN EVANS: Wait a second.

7 MR. BAUER (VIDEO): Are you aware of any
8 court decisions --

9 CHAIRMAN EVANS: Stop, please.

10 (Board converses quietly.)

11 MR. BAUER: I'm sorry. You could have
12 continued. I was just grabbing this sheet here.

13 MR. WILLIAMS: Just so the Board is aware,
14 about 20 minutes left on this particular DVD.

15 CHAIRMAN EVANS: And how much on the last
16 one?

17 MR. WILLIAMS: About an hour and 24 minutes,
18 or an hour and 21 minutes.

19 CHAIRMAN EVANS: Thank you.

20 MR. BAUER: May I request -- I have an hour
21 drive and would like to prepare for tomorrow. I would
22 not object if you would like to continue, or I can
23 stay. I just would like to go home and prepare for
24 tomorrow, if possible.

25 (Board converses quietly.)

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1 CHAIRMAN EVANS: I believe we're going to go
2 ahead and get through these DVDs tonight, or this
3 video testimony tonight. I think that's --

4 MR. BAUER: Am I -- do you need me to be
5 here for that?

6 CHAIRMAN EVANS: We can't conduct the
7 hearing without your presence.

8 MR. BAUER: Oh, I understand. Then I'll
9 stay. Then I'll be glad to stay. That's fine.

10 CHAIRMAN EVANS: Let's go ahead.

11 (VIDEO testimony resumes.)

12 BY MR. BAUER:

13 Q -- on that question?

14 A No, I'm not.

15 Q Do teachers have accessibility to their work
16 emails from home? I assume you did answer that question,
17 but I'd like to hear it again. Do they have accessibility
18 to their work emails from home?

19 A In normal circumstances, they do. If they're on
20 administrative leave, they don't.

21 Q Right. Okay. And you said earlier that that
22 access provides them access to other things besides emails?

23 A That's correct.

24 Q Okay. All right. Let's see. I'm going to skip
25 down to, are school -- so what you're saying is, school

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Cross by Bauer

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1 emails are public documents? Is that -- would I be correct
2 in saying that?

3 A I know the school emails are forwarded --

4 MR. WILLIAMS: I'd object to that question
5 on the basis of it's overly broad.

6 BY MR. BAUER:

7 Q All right. Does destroying, hiding, or making
8 evidence unavailable violate the South Carolina spoliation
9 law?

10 MR. WILLIAMS: Objection on the basis that
11 you're asking her for a legal conclusion about a legal
12 concept.

13 MR. BAUER: And my response is, human
14 resources director should be able to answer these
15 questions, should be knowledgeable, but I will go on.

16 BY MR. BAUER:

17 Q Can I have file 245, though, to place -- thank
18 you. All right. We're going to go now to the
19 investigation part, and my first question is, why was there
20 no investigation report, an actual, physical document? Was
21 there an actual investigation report? Because I haven't
22 seen it.

23 A No.

24 Q Okay. Do you know why?

25 A There was none.

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Cross by Bauer

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1 Q There was none. Okay. Do you think that there
2 should have been a written report for clarity?

3 A No.

4 Q Was the investigation team, according to you, Ms.
5 McAden, Mr. Clendaniel, and you?

6 A That is correct.

7 Q Okay.

8 A The administrative team in the building along
9 with me.

10 Q Now, according to Dr. Moss, the team was Ms.
11 Walton, Ms. McAden, and Dr. Moss himself. Why is it so
12 ambiguous?

13 A I can't answer that question.

14 Q Did you say that you did not think that Dr. Moss
15 was part of the investigation?

16 A Dr. Moss was not in the building with me when I
17 came to do the investigation.

18 Q Okay. When you were asked who the lead
19 investigator was, what was your answer from your
20 deposition?

21 A I believe I said it was a collaborative effort.
22 It was a team. There was the school team, and I was the
23 representative from the district office.

24 Q And I know that you weren't there, but do you
25 believe that Dr. Moss said that you were the lead

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1 investigator? I guess -- would you think that he would say
2 that?

3 MR. WILLIAMS: Again, I'd --

4 THE WITNESS: I can't answer for Dr. Moss.

5 MR. WILLIAMS: She answered -- she answered
6 what I was going to object on, so that's fine.

7 BY MR. BAUER:

8 Q Yeah. All right. When the attorney, Lauren
9 Martel, told you that Dr. Moss called you the lead
10 investigator, were you surprised to hear that?

11 A Surprised that he told me that?

12 Q Yeah. Or were you surprised that he said that?

13 A I don't know if I'd be surprised. There's
14 nothing to be surprised about.

15 Q Okay. And if you were the lead investigator, why
16 did you not know that?

17 A I'm -- really, I'm not following this line of
18 questioning.

19 Q Well, basically, there's some contradictions
20 here, and I --

21 A Okay. What would you like for me to answer?

22 Q Dr. Moss called you the lead invest -- or he
23 called you the lead investigator.

24 A Okay.

25 Q And, apparently, you stated that, "I don't think

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1 I would -- I could say I was the lead. It was a team
2 effort." So what it appears to me is, you're saying that
3 you -- you're saying you're not the team leader, and Dr.
4 Moss is saying you are. If you were actually the team lead
5 investigator, why would you not have known that?

6 A Well, Mr. Bauer, as human resource officer --

7 Q Uh-huh.

8 A -- in theory, I am the team leader in all
9 investigations, but I can't very well do a comprehensive
10 investigation without the school-level administration. So,
11 therefore, it is a team effort. They're on site. They
12 deal with the staff, and in this instance, they dealt with
13 you. I did not. So that's why it was a collaborative
14 effort.

15 Q Okay. Right. Yeah. All right. Now we'll go on
16 to the pool. During the several depositions -- I'm sorry,
17 during -- yeah, we asked all of the investigators what they
18 investigated. So, all of the people that were involved in
19 a deposition, Ms. Martel asked them what they investigated,
20 and you will remember, probably, most of these questions, I
21 think. Number one was, was there a child who did not
22 return with his class from the pool on February 5th, 2014?
23 That's -- that's my question. Was there a child who did
24 not return to his class from the pool on February 5th,
25 2014?

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1 A That's what you told me.

2 Q Okay.

3 A You told me you left the child at the pool.

4 Q Did Dr. Moss call the child "special needs"?

5 A I don't know what Dr. Moss -- I wasn't at his
6 deposition.

7 Q All right. And do you -- okay. And then did --
8 do you think that Ms. Brockway called him "gifted and
9 talented" in her deposition?

10 A I don't know what was in --

11 Q You don't know. So, if it were true, and this is
12 -- you don't know for sure, and I can't verify it. But if
13 it were true that he were special needs and gifted and
14 talented, would it be fair to say a person that is special
15 needs and gifted and talented is intelligent, but possibly
16 troubled?

17 A Oh, I can't make that call.

18 Q Okay. Now, the child in question here, and we'll
19 -- I'm going to refer to him as "student E." Did you
20 happen to ask student E yourself or did anyone that you're
21 aware of ask him why he was tardy to school that day?

22 A Are you asking me if I asked him, or if anyone
23 else asked him?

24 Q Do you know if anyone, you or anyone, asked him
25 why he was tardy to school that day?

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1 A I can only answer for myself.

2 Q All right.

3 A I did not ask him.

4 Q And were you aware that he was -- he did come to
5 school tardy, but it was an unexcused tardy?

6 A I was not aware of that.

7 Q Okay. And I assume that you're not aware -- are
8 you aware that -- the time of arrival that he came to
9 school that day?

10 A I'm not aware of that.

11 Q I assume that, after he came to school, that you
12 don't know where -- where he actually went, what class or
13 -- you know, since you're not aware that he came to school
14 late that day, you wouldn't know his schedule?

15 A Are you asking me --

16 Q Yes. Do you --

17 A -- if I knew his schedule?

18 Q -- happen to know where he went --

19 A No, I don't.

20 Q -- when he got to -- okay.

21 MR. BAUER: I know this. May I have file
22 260? You're ahead of me. We're going to place this
23 as an exhibit and --

24 MR. WILLIAMS: Thank you.

25 MR. BAUER: Sure.

Witness: Walton
Cross by Bauer

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

4 BY MR. BAUER:

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

8 A How do I determine that?

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

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

13 MR. BAUER: Yes.

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

16 MR. BAUER: Yeah.

17 (Brief recess.)

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

20 (Brief recess.)

21 BY MR. BAUER:

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

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1 meetings. So do you see that teacher A had failed to take
2 roll or had failed to submit it by 10:00 a.m. -- or 10:03
3 a.m.?

4 A It -- for this?

5 Q Yeah.

6 A No attendance for meetings.

7 Q Yeah.

8 A Does that mean attendance?

9 Q Yeah. Basically, up here, she says, "Please take
10 attendance in homeroom and submit when you have a moment.
11 Please remember this is a safety issue."

12 A Okay.

13 Q And the teacher, teacher A, was the teacher of
14 that class that day.

15 A Okay. All right.

16 Q And so, basically, it just shows that either --
17 either she had not taken attendance, or she hadn't
18 submitted it, as of that time period.

19 A Okay.

20 Q How many teachers --

21 MR. WILLIAMS: And, again, you're free to
22 ask a question, but I'd object to the extent you're
23 testifying and not asking questions.

24 BY MR. BAUER:

25 Q How many teachers are at Hilton Head Island

Witness: Walton
Cross by Bauer

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1 Elementary, an estimate?

2 A I don't know. Maybe 50.

3 Q Okay. So, if it were 50 -- and it actually is, I
4 believe, 86, pretty close -- but, anyway, would it be fair
5 to say that fewer than five percent of the teachers failed
6 to take roll or submit it by 10:00 a.m.? And I'm just sort
7 of estimating it.

8 A Based on that analogy, yes.

9 Q All right. Now -- cross that out. All right.
10 Now, do you happen to know what time the class started at
11 the pool?

12 A No, I don't.

13 Q Actually, it was 12:00. So it's more than two
14 hours, after student E came to school, he was brought late
15 to the pool. Would you have any idea why?

16 MR. WILLIAMS: And just so I'm clear, did
17 you say if? To the extent you're testifying that that
18 is a fact, I would object to your offering testimony
19 and not asking a question.

20 MR. BAUER: All right. I guess my question
21 is --

22 MR. WILLIAMS: Are you asking her what she
23 knew?

24 BY MR. BAUER:

25 Q Yeah. Two hour hours after student E came to

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Witness: Walton
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1 school in -- well, if he was brought late to the pool,
2 would you know why that would be? Cross it. I'll have to
3 come back to it. All right. So I'm just taking it to
4 assume that, as lead investigator, you were not aware of
5 any of this, as far as student late to -- you're not aware
6 that he was late to the pool, or late to school, or any of
7 -- or where he went to class after he was brought late to
8 school? Now that can be verified. You're just not aware
9 of these facts; is that correct?

10 A That is correct, Mr. Bauer.

11 Q Okay.

12 A And I'm not aware because I was not trying to
13 prove that you left a student at the rec center. You
14 admitted to leaving the student at the rec center, so I did
15 not need to prove that you did that. That was your own
16 admission.

17 Q Okay. So, if you're investigating the possible
18 ending to the career of a 15-year-old veteran teacher that
19 you testified has a reputation for being an excellent
20 teacher, I would still think -- would you -- don't you
21 think you should have had a diligent -- more diligent
22 investigation?

23 A Mr. Bauer, you admitted to leaving the student at
24 the rec center.

25 Q That's all you -- is that all you want to know

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1 about it?

2 A That's what I want to know about --

3 Q Okay.

4 A -- because that was the dereliction of duty that
5 concerned me. That was it.

6 Q Okay. When the students in my class left the
7 pool area, was student E with the children? Was he in line
8 with the class?

9 A And who is student E? Is that the student --

10 Q Student E --

11 A -- that you left?

12 Q -- would be the student that was supposedly left
13 behind, yes. Was the student in line with the children?

14 A I can't answer that question.

15 Q We don't know that?

16 A No, we don't.

17 Q Okay. And as lead investigator, did you ask?

18 A No, Mr. Bauer, because you told me you left him
19 unattended at the rec center.

20 Q Was student E in the group outside the locker
21 room after the swim class?

22 A I don't know.

23 Q And as lead investigator, did you ask?

24 A No, because you told me you left him at the rec
25 center.

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1 Q Okay. And when Mr. Bauer made a check of the
2 locker room, where did student E go?

3 A I don't know, Mr. Bauer. That was your
4 responsibility.

5 Q Did any investigator ask student E where he was
6 hiding?

7 A No, Mr. Bauer, because you were the teacher. You
8 were the responsible party. We don't depend on students to
9 keep up with themselves.

10 Q If it is lightning -- okay. I'll come back to
11 that. Did anyone ask student E -- I already asked that.
12 Should any of these questions have been part of an
13 investigation?

14 A No, Mr. Bauer, because --

15 Q If you're the lead investigator --

16 A -- we're not investigating student E.

17 Q Okay. Did any investigator --

18 MR. WILLIAMS: Hold on. You need to make
19 sure she is allowed to --

20 MR. BAUER: Okay.

21 MR. WILLIAMS: -- compete her response. I
22 think you started by saying you weren't investigating
23 student E?

24 THE WITNESS: No, we were not investigating
25 student E.

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Witness: Walton
Cross by Bauer

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1 BY MR. BAUER:

2 Q Did any investigator ask student E why he was
3 avoiding returning to class?

4 MR. WILLIAMS: Object --

5 THE WITNESS: I can't answer for the other
6 investigators.

7 BY MR. BAUER:

8 Q Okay. Might some questions have been answered if
9 the surveillance footage had been preserved, as promised by
10 the school administration?

11 A What surveillance footage?

12 Q Cameras are set up all over the school, including
13 the rec center. They -- some of these are digitized.

14 A And what would we determine? Whether or not the
15 student was in the building or the rec center?

16 Q Both. Might some of these questions have been
17 answered if the surveillance footage had been preserved, as
18 was promised by the school administration?

19 A There was not a question.

20 MR. WILLIAMS: And I would object to the
21 extent the question --

22 MR. BAUER: Okay.

23 MR. WILLIAMS: -- supposes that the school
24 district did something improper as it relates to the
25 maintenance of video recordings.

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Witness: Walton
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1 MR. BAUER: Okay.

2 MR. WILLIAMS: But you can answer the
3 question if you know.

4 BY MR. BAUER:

5 Q Do you know if any of these cameras are digitized
6 with data that can be viewed almost indefinitely?

7 A No, I don't know that.

8 Q As lead investigator, did you ask which cameras
9 are digitized?

10 A No, I did not ask that question.

11 Q When the children returned to school from the
12 pool, where did they go?

13 A I don't know, Mr. Bauer. You're the teacher.

14 Q Did the children meet teacher A at the front of
15 the school?

16 A I don't know who teacher A is.

17 Q Teacher A is the teacher of -- is the teacher of
18 the class that was at the pool.

19 A That was you?

20 Q No, we're talking about the classroom, regular
21 classroom teacher. When the class was returned, we
22 exchanged students.

23 A Okay.

24 Q All right. Did the children meet teacher A at
25 the front of the school?

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1 A I don't know. I wasn't there.

2 Q Did teacher A then do a headcount?

3 A I don't know, Mr. Bauer.

4 Q Did teacher A notice that student E was missing?

5 A I don't know.

6 Q If student E -- I'm sorry. If teacher A had
7 counted, would she or he have noticed that student E was
8 missing?

9 A I can't answer that question.

10 Q Okay. Did you ask student -- did you ask teacher
11 A why he or she did not miss student E when they returned?

12 A No, I did not.

13 Q Okay. Did you ask student -- or teacher A,
14 sorry, I keep -- did you ask teacher A why she or he did
15 not adjust the headcount from 23 to 24?

16 A No.

17 Q And, finally, does teacher A still have a job?
18 And that would be the person -- the teacher of the class
19 that we referred to earlier. Does she still have a job?

20 A I can't answer that question because I don't know
21 who teacher A is.

22 Q All right. Are we down to --

23 (LIVE discussion begins.)

24 CHAIRMAN EVANS: Okay. We'll take a quick
25 break while we change over the disk.

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1 (Brief recess to change DVDs.)

2 CHAIRMAN EVANS: Is everybody ready now?

3 MR. WILLIAMS: Yes.

4 CHAIRMAN EVANS: Okay. Mr. Bauer? You all
5 set?

6 MR. BAUER: Yes.

7 CHAIRMAN EVANS: Okay.

8 (VIDEO testimony resumes.)

9 BY MR. BAUER:

10 Q I asked a number of questions that you were not
11 able to answer. All of these --

12 A I did answer, I believe.

13 Q Well, that you were -- you were unaware of. For
14 example, did any investigator ask student E where he was
15 hiding, I think your response was, well, you weren't -- I'm
16 not sure. What was your response?

17 A My response was, I can't answer for other the
18 investigators.

19 Q Right. Exactly. Now --

20 A But the questions you asked me, specifically, I
21 did answer.

22 Q Correct. All of these questions that I just
23 asked you were also asked by the other deposed
24 investigators, and they couldn't really answer those
25 questions either.

Witness: Walton
Cross by Bauer

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1 MR. WILLIAMS: Again, to the extent you're
2 testifying, you can ask her what she knows, but I
3 would object to any testimony you're offering.

4 BY MR. BAUER:

5 Q If no one can answer these questions, was it a
6 good investigation? If none of the investigators could ask
7 -- or answer these questions, was it a good investigation?

8 A I think you're asking me to answer a question
9 based on someone else's actions.

10 Q Okay. All right. At the deposition of Ms.
11 McAden in December, she referred to me as an excellent
12 teacher, a good coach, an excellent mentor, and that I was
13 liked by the children. You, Ms. Walton, testified that I
14 had an excellent reputation. Others called me courteous
15 and quick to volunteer. On -- and this is the lead up.
16 Would you agree -- I'm sorry. Where's the question?

17 MR. WILLIAMS: That's what I was thinking.

18 BY MR. BAUER:

19 Q I'm sorry. It's like, where's the question? I
20 forgot what the question was. I didn't write it down.
21 I'll get back to this. My apologies. It's getting to be a
22 late, long day. On February 5th, 2015, were you asked what
23 happens if a teacher becomes sick at school? And this was
24 at your deposition.

25 A I don't remember being asked that question.

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

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

7 Q Okay.

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

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

12 A I was not aware of that.

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

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

16 Thank you.

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

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

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

23 MR. BAUER: Student Health and Fitness Act?

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

25 MR. BAUER: Oh, I see.

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1 MR. WILLIAMS: -- appear on several emails
2 that are also attached.

3 MR. BAUER: Yeah, it's a collection. Okay.
4 And basically what -- we have originals that, I guess,
5 you want us to put -- what I've done is, I've compiled
6 them to make it easier to read, but I do have the
7 originals of all these documents. Do you wish that I
8 put them into evidence, as well? We're going to put
9 this and the original, as well?

10 MR. WILLIAMS: If we have -- if you have
11 originals, I would want them to be offered into
12 evidence, but so I also would object to -- I
13 understand submitting documents.

14 MR. BAUER: Okay.

15 MR. WILLIAMS: But to the extent you have
16 also added your comments to those documents, I would
17 object to that. You have, for example --

18 MR. BAUER: Okay. Right. Right.

19 MR. WILLIAMS: So you have, in my -- and the
20 word I use is "editorialized."

21 MR. BAUER: Right. Right.

22 MR. WILLIAMS: So it's not just a document.
23 It's a document with your comments attached, and I
24 would object to your comments being included --

25 MR. BAUER: Right.

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1 MR. WILLIAMS: -- as part of an exhibit.

2 MR. BAUER: Correct. Okay. So we'll submit
3 the actual originals. Okay. All right.

4 BY MR. BAUER:

5 Q Now, does this page, the first page, report on
6 the Student Health and Fitness Act of 2005? Where's my
7 copy? Yeah. There we go. Does this first page report on
8 the Student Health and Fitness Act of 2005?

9 A The first page is titled South Carolina --

10 Q Okay.

11 A -- Student Health and Fitness Act.

12 Q Do you see that the legal limit as of 2008-2009,
13 according to this, is 500 PE students; 500-to-1?

14 MR. WILLIAMS: And I'd also object to the
15 incompleteness of the document. Although, you refer
16 to the act --

17 MR. BAUER: Okay.

18 MR. WILLIAMS: -- you have --

19 MR. BAUER: I have the statute.

20 MR. WILLIAMS: Hold on for a second.

21 MR. BAUER: Okay.

22 MR. BAUER: You have a C listed, which would
23 suggest to me there must be, at a minimum, a section A
24 and B also, but we're only -- we only have a portion
25 of the act.

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1 MR. BAUER: We'll switch.

2 MR. WILLIAMS: So we're substituting now --
3 what had previously been item 24, we're making it item
4 25? And this offered in addition to item 24?

5 MR. BAUER: Yes, but we'll --

6 MR. WILLIAMS: Okay.

7 MR. BAUER: We'll read it, Student Health
8 and Fitness Act.

9 MR. WILLIAMS: So this is Number 25? Thank
10 you.

11 (WHEREUPON, a document was marked as
12 Defendant's Exhibit Number 25 for Identification to
13 the Walton Deposition.)

14 BY MR. BAUER:

15 Q Now -- therefore -- all right. So do you see
16 that the legal limit is 500 students?

17 A I see what you have on Exhibit 24. I have not
18 located that --

19 Q Okay.

20 A -- in Exhibit 25.

21 MR. WILLIAMS: And just for the record, you
22 may have a better copy of Exhibit 25. The copy of
23 Exhibit 25 that I have, some of the language is very
24 difficult to read.

25 MR. BAUER: Yes.

Witness: Walton
Cross by Bauer

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1 MR. WILLIAMS: Particularly the language on
2 section C. Is that what y'all have also?

3 MR. BAUER: Yes, it's faded, but at the
4 bottom, yeah, it would be -- it would be C.

5 THE WITNESS: Yes, I can't read that part.

6 BY MR. BAUER:

7 Q Yeah. You can almost make out a five at the very
8 -- on the left-hand side.

9 A I can't make that out on my document. Can you?

10 Q Okay. Let's see if you can make it out on that
11 one.

12 A And where would it be?

13 Q The C?

14 A No, I can't --

15 Q Well, you can see the -- can you see the five?
16 You can almost see a five there. Well --

17 A No. Hum-um.

18 Q All right. We'll get a better copy of that.
19 Assuming that that's 500, were you aware that I had more
20 than 900 students and had an enrollment at the time of my
21 leave of the 923 students? Were you aware of that?

22 A No, I was not aware.

23 Q All right. So my -- so with -- so, if my ratio
24 was 923-to-1, and as of the 2008-2009 year, we're assuming
25 500-to-1, would that be legal, according to the Student

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1 Health and Fitness Act?

2 MR. WILLIAMS: I object to the
3 characterization of "would it be legal."

4 THE WITNESS: Yeah.

5 BY MR. BAUER:

6 Q Does it -- all right. Does it -- is it complying
7 with the Student Health and Fitness Act, 923-to-1?

8 A (No response.)

9 Q Or 500-to-1? I'm sorry.

10 A I would have to know for certain that you
11 actually had 923 students --

12 Q Okay.

13 A -- before I could give you an answer for that
14 one.

15 Q All right. Fair enough. Do you happen to know
16 the -- by law, what the PE-to-teacher ratio in class is,
17 not total, but total number of students at a time that a PE
18 teacher is supposed to have no more than? Sorry. It's --

19 A No, I couldn't give you a specific numbers.

20 Q Okay.

21 A Not for a PE class.

22 Q By law, according to -- okay. I'll -- that would
23 be testifying. Is it possible it could be 28-to-1?

24 A It could be possible, but I'm not sure.

25 Q Okay. I have -- I need the email from Cassidy.

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1 I don't know that. You need to hand me -- I'm going to
2 provide you with an email. I need the document, the
3 evidence. Oh. I guess we don't have it.

4 All right. Were you aware that on November 1st,
5 2013, that I was sick and was told I had to stay because no
6 substitute was available?

7 A I was not aware.

8 Q Okay. Two assistant principals had no problem
9 during depositions with not being able to provide a
10 substitute. What if these assistant principals testified
11 that in their plan A was to combine classes?

12 MR. WILLIAMS: Again, no objection to the
13 question, to the extent you're asking a question. I
14 would object to any testifying.

15 BY MR. BAUER:

16 Q If a teacher -- here we go. All right. I'm
17 going to skip that. All right. Do we have copies -- oh,
18 this is -- this is page -- please find the email from Ms.
19 Lori Cassidy. It's in this --

20 MR. WILLIAMS: Is this Exhibit 24?

21 BY MR. BAUER:

22 Q Yeah, it's in this one here, and it would be --
23 let's see.

24 A November 14th, 2012?

25 Q This isn't the right one. No.

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1 A That's the only one I see.

2 Q I'm confusing you again. I'm sorry. I don't
3 have the correct one, it appears. I might have put the
4 wrong one in. My apologies. I put the wrong document in.
5 This is the way it goes. Okay. So we're going to skip
6 that. I'm sorry. Now, I guess I was back to my original
7 question with the assistant principals. I'll change the
8 wording. What would -- all right. We'll come back to it.
9 Remind me.

10 What if -- if a teacher is asking for a sub and
11 they cannot find a sub, what is normal protocol for that?
12 I mean, is there supposed to be a substitute, always, for a
13 sick teacher at school? A teacher's throwing up. Should
14 there always be a sub, someone that they can call in?

15 A We would like for -- in a perfect world?

16 Q Yeah.

17 A There's always a sub wait -- standing on -- on
18 call.

19 Q Okay.

20 A Sometimes we have no fills, and that's, no subs
21 are available. We don't have permanent subs in the
22 building.

23 Q Would you -- would it be acceptable if a teacher,
24 a PE teacher, as in Lori Cassidy, who is a fitness teacher,
25 who had called for a sub prior, several days before she

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1 knew she was going to be out, and -- hold on to it for me
2 -- and said -- and they had a substitute for her, and then
3 suddenly there's no sub there that day, and they're short
4 on subs -- would it be appropriate to combine two classes
5 of kids with, say, 45 kids in a gym class with safety
6 intense -- would that be considered accept -- one teacher-
7 to-45 kids, maybe, ratio?

8 A Well, that decision would be left up to the
9 building administrator.

10 Q Building administrator. Okay.

11 MR. WILLIAMS: And you've answered it. I
12 was going to object on relevance, but you've answered
13 it.

14 MR. BAUER: Okay. I just think the
15 relevance could be related to a highly safety-intense
16 swimming class, where kids come from different -- for
17 mainstream, then where you've got more kids than,
18 normally, a class has, a regular classroom has. But
19 I'll go to the next one.

20 BY MR. BAUER:

21 Q Did Mr. McMaster, George McMaster, who was my
22 attorney for a short period of time -- although, he was an
23 unpaid attorney -- did he write a litigation hold letter?

24 A I do remember that.

25 Q Okay. Did the attorneys for the school district

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1 say that the staff, the administrative staff, had agreed to
2 preserve data?

3 A That's standard.

4 Q Okay. And should -- if none of the staff members
5 remembered that they were told to preserve data, what would
6 that mean? What I'm talking about is the assistant
7 principals -- well, two of the assistant principals stated
8 that they don't remember hearing, in their deposition,
9 about preserving data. Do you have any thoughts on what
10 that could mean?

11 A No, I don't.

12 Q Who -- who would be responsible for informing the
13 staff at Hilton Head Island Elementary and assuring the
14 attorneys that the staff was preserving the data? Or I'm
15 sorry. Let me reread that. Who would be responsible for
16 informing the staff, as well as the attorneys, that the
17 staff were preserving the data, the administrative staff?
18 Would that be Ms. McAden? Would she be in charge of --

19 A It would --

20 MR. WILLIAMS: Just before you answer that,
21 are you asking -- did you include in that who would be
22 responsible for telling the attorneys?

23 MR. BAUER: Yeah. Who would be -- well, I'm
24 sorry, assuring the attorneys -- I guess I did say
25 that. All right. Who would be --

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1 MR. WILLIAMS: I was just asking for
2 clarification. I wasn't sure I followed you.

3 MR. BAUER: You're right, and, actually,
4 there's just some typos here.

5 BY MR. BAUER:

6 Q Who would be responsible for informing the staff,
7 period, of preserving data?

8 A If I'm not mistaken, the litigation hold would go
9 to our attorneys, and it would filter down from there.

10 Q And it would filter. Okay. So you didn't have
11 any -- did you have any input as far as asking the staff to
12 preserve the data? I mean, did you communicate with them,
13 say, "Make sure -- hey, Ms. McAden, make sure you keep all
14 the emails, because Mr. Bauer might use it"?

15 A Well, I think that's standard practice, so we all
16 keep -- we keep emails. Our emails are not destroyed.

17 Q Okay. So they're all --

18 A So that would always -- that would always be
19 intact.

20 Q Now, were telephone records preserved?

21 A I'm sure they were. To the best of our ability,
22 they would be, because we don't destroy telephone records.

23 Q Now, this is from page 279 of your deposition,
24 and in this file 248-L. Okay. When Mr. Bauer took phone
25 calls or sent phone calls out -- this is the question from

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1 Ms. Martel. I'm sorry. When Mr. --

2 MR. WILLIAMS: Can you give me those page
3 numbers again, please?

4 MR. BAUER: Yeah, 248-L.

5 MR. WILLIAMS: I mean the page of the
6 transcript. Is that --

7 MR. BAUER: Oh, I'm sorry. Yes.

8 MR. WILLIAMS: Okay. You seem to be
9 referring to --

10 MR. BAUER: Page 279 of the deposition, yes.

11 BY MR. BAUER:

12 Q The question was, quote, dot, dot, dot, when Mr.
13 Bauer took phone calls or sent phone calls out, was that
14 data preserved? And you stated it should have been, yes.
15 Excellent. All right. Were surveillance --

16 MR. WILLIAMS: Just so we're clear, there
17 are occasions when you will say, "quote, dot, dot,
18 dot."

19 MR. BAUER: Um-hum. Does that confuse you?

20 MR. WILLIAMS: Well, it's not -- I just want
21 to make sure the record understands that, when you say
22 "quote, dot, dot, dot," what you intend to indicate is
23 you're leaving out part of the language.

24 MR. BAUER: Yes.

25 MR. WILLIAMS: So it's not that "quote, dot,

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1 dot, dot" is literally written on the page. That is
2 your shorthand way of indicating you're omitting some
3 language.

4 MR. BAUER: Yes.

5 BY MR. BAUER:

6 Q Do you happen to know if surveillance camera data
7 was preserved?

8 MR. WILLIAMS: I think that's been asked and
9 answered.

10 MR. BAUER: Yeah, it has.

11 THE WITNESS: Yes. Yes..

12 BY MR. BAUER:

13 Q And you're not --

14 A Yes.

15 Q Okay. Now, imagine -- and this is the setup to
16 the question. Give this some thought here. A person is
17 charged with something that can cost them their job.
18 Electronic data might clear you. The data was not
19 preserved. Should you lose your job?

20 MR. WILLIAMS: And I'm objecting to the
21 extent you're assuming facts that are not in evidence.

22 BY MR. BAUER:

23 Q Okay. Well, that's true, but let me ask you this
24 way. Imagine that student E, hypothetically, was with the
25 group when they started across the street, but he bolted

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

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

6 Q Both. The rec center --

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

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

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

16 BY MR. BAUER:

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

19 A Okay.

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

22 A This is an email from you --

23 Q Yes.

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

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1 my health benefits remain intact through the hearing and
2 beyond if an appeal becomes necessary. Am I correct?"

3 Q So is that a yes or no answer?

4 A Answer to?

5 Q To my -- I mean --

6 MR. WILLIAMS: I'd object to --

7 MR. BAUER: Well, basically --

8 MR. WILLIAMS: I'd object to the form --

9 hold on --

10 MR. BAUER: Okay.

11 MR. WILLIAMS: -- to the extent you're
12 asking her if that's a yes or no answer.

13 BY MR. BAUER:

14 Q Okay. Are you able to answer that question yes
15 or no?

16 MR. WILLIAMS: And on based of relevance,
17 but you can answer if you know.

18 THE WITNESS: Are you asking me this
19 question?

20 BY MR. BAUER:

21 Q Yes, I am.

22 A Or am I reading this email?

23 Q You read the email, and then I'm asking if you
24 can answer that right now.

25 A I think I did answer that for you --

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1 Q Right.

2 A -- in an email from me that you have on the
3 second page dated March 9th.

4 Q So, my -- what you're saying, again, just to
5 refresh, to be clear, is that my benefits will remain
6 through the hearing and beyond, if I appeal? I mean, not
7 if I appeal, but beyond, if I appeal a -- at the district
8 of courts, or whatever.

9 A Here's my response to you.

10 MR. WILLIAMS: You can respond, but same
11 objection to relevance.

12 THE WITNESS: Okay. Your health benefits
13 continue as it is through Beaufort County School
14 District until one of the following occurs: one, after
15 a hearing, the Board of Education reinstates you to
16 your teaching position, or, two, after a hearing, the
17 Board of Education issues a written decision affirming
18 the superintendent's recommendation that your
19 employment be terminated.

20 If the former, then the following month, you
21 would go back to being responsible for the employee's
22 portion of your health insurance, and the district
23 will be -- will be responsible for the employer's
24 portion of the premium. If the latter, then, at the
25 conclusion of the month in which the decision is

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1 issued, you would be responsible, in full, for any
2 personal healthcare insurance; example, through the
3 Consolidated Omnibus Budget Reconciliation Act, or
4 some other insurance option.

5 BY MR. BAUER:

6 Q So are you saying it does not -- that still
7 doesn't answer my question. Are you saying that it does
8 not go beyond -- if the hearing does not go my way, like I
9 think it will, but if it does not and I decide to appeal
10 that to the courts, am I covered -- okay. Am I covered if
11 the final decision is delayed by reason of appeal?

12 A No, I think it's clear here.

13 Q Okay. That's what I -- okay. Sorry.

14 A It's very clear. Once the decision is made, it
15 ends that month.

16 Q All right.

17 A At the conclusion of that month.

18 Q And I asked that. Let's see. All right. So it
19 will not continue if I lose the appeal. All right. Let's
20 see.

21 MR. WILLIAMS: Is that Number 26?

22 THE WITNESS: Yes.

23 BY MR. BAUER:

24 Q All right. Now, the district has a number of
25 employees and access to many attorneys; is that correct?

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1 A The district has approximately 1,500 certified
2 staff and another 800 support staff.

3 Q If legal documents arrive at district offices,
4 are you set up -- is the school district set up to deal
5 with them efficiently?

6 MR. WILLIAMS: I object on relevance, but if
7 you know, you can answer.

8 BY MR. BAUER:

9 Q Okay. This is dealing with FOIA, F-O-I-A. Is
10 the school district efficient in dealing with FOIA
11 documents, in your opinion, I guess?

12 A In my opinion, yes.

13 Q Okay. If legal documents arrive for both the
14 district administration and the school board -- all right.
15 I'm going to skip that. Did I submit three legal documents
16 that were designed by counsel and submitted properly pro
17 se? I was pro se.

18 MR. WILLIAMS: I'd object to the extent
19 you're asking her about whether or not something you
20 submitted was designed by counsel or -- yeah, or
21 legal.

22 BY MR. BAUER:

23 Q This was -- all right. Let's start with FOIA, a
24 FOIA request. Was a FOIA request submitted to the school
25 district by John Alden Bauer, III, on June 18th, 2014?

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1 A I couldn't affirm that.

2 Q Okay. Now, in your deposition, did you say that
3 a FOIA request would go to Jennifer Staton, Dr. Moss, and
4 the attorneys?

5 A Yes.

6 Q And since Dr. Moss said that the FOIA request,
7 quote, would have gone through Jennifer Staton, can we
8 assume that Jennifer Staton handled it?

9 A You can assume that. She does handle FOIA
10 requests.

11 Q Excellent. All right. Are you aware that the
12 law requires some sort of response within 15 days and that
13 failure to do is a misdemeanor? This is file -- do you
14 want these files?

15 MR. WILLIAMS: Object to the form, but you
16 can answer if you know.

17 THE WITNESS: No, I can't reply to 15 days.

18 BY MR. BAUER:

19 Q Okay. If Ms. Staton testified on March 26th,
20 2015, that she never saw the FOIA request, what -- I'm
21 trying to think of a way to ask this. Ms. Staton testified
22 on March 26th, 2015, that she never saw the FOIA request.
23 Do you believe that is true?

24 A I can't answer for Ms. Staton.

25 Q Okay. By June, I had asked for my emails for

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1 four months, and then came a FOIA request, and then another
2 nine months. Did you testify that you could get these
3 emails to Mr. Bauer in three months? I realized you've
4 asked -- answered this before.

5 A I've answered that question.

6 Q Yes. Okay. And when you -- do we have file 248?
7 Okay. Actually, I think we've -- these questions have been
8 -- oh, yes. Why would it take 412 days to produce
9 something that the supreme court says should be made
10 available early?

11 MR. WILLIAMS: I object in that he's
12 assuming facts that are not in evidence, but you can
13 answer if you know.

14 THE WITNESS: I don't know. I can't answer
15 that.

16 BY MR. BAUER:

17 Q Okay. We're getting towards the end. All right.
18 Am I correct in imagining -- now we're going through some
19 truck emails. Am I imagine --

20 MR. WILLIAMS: I'm sorry. You said some
21 what?

22 MR. BAUER: I'm sorry. Truck. Truck
23 emails. These are referring to truck.

24 MR. WILLIAMS: T-r-u-c-k?

25 MR. BAUER: T-r-u-c-k, yes, believe it or

1 not.

2 MR. WILLIAMS: Based on what you've said,
3 I'm going to object on the basis of relevance, but you
4 can ask the questions.

5 BY MR. BAUER:

6 Q Okay. Am I correct in imagining that the Board
7 might wonder why --

8 (LIVE discussion begins.)

9 CHAIRMAN EVANS: Pause for a second.

10 MR. BAUER: Yeah, because he -- I know he
11 objects a lot to this, and these are based on truck,
12 and it's not, I guess, relevant to her -- her
13 testimony here. So I would not object to that,
14 skipping through the truck.

15 CHAIRMAN EVANS: Thank you.

16 MR. BAUER: Because I plan to cover that.

17 (Brief recess to adjust video position, and
18 VIDEO testimony resumes.)

19 BY MR. BAUER:

20 Q Emails?

21 A I can't delete emails. I don't have that
22 authority, and I don't have that power.

23 Q You're not directing the cover-up; is that
24 correct?

25 A No.

1 MR. WILLIAMS: And I'll object to the extent
2 -- if I heard you correctly, you said you're not
3 directing "the" cover-up?

4 MR. BAUER: A cover-up.

5 MR. WILLIAMS: Okay.

6 MR. BAUER: Yes. Sorry. Okay.

7 THE WITNESS: And for your -- and for your
8 knowledge, Mr. Bauer, had I deleted an email,
9 technology could recover it.

10 BY MR. BAUER:

11 Q That's true.

12 A So I don't -- I can't delete emails, even if I
13 wanted to. But then you must remember, in June, I offered
14 you the right to come in and have full access to your email
15 account.

16 Q And did I --

17 A You didn't reply until August.

18 Q So -- okay. So you set a deadline? Is that what
19 it was? It was a deadline that I could come in?

20 A No, I don't think --

21 Q Okay.

22 A -- the email set a deadline. It says to come in..

23 Q And did I ask Ms. Lopatka for an appointment?

24 A In August, you did. That's what I was referring
25 to.

Witness: Walton
Cross by Bauer

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

3 A No.

4 Q Okay.

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

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

10 A I can't answer that question.

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

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

20 MR. BAUER: Yes.

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

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

Witness: Walton
Cross by Bauer

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1 MR. WILLIAMS: What number is this?

2 THE WITNESS: Twenty-eight. You can have
3 that one.

4 MR. BAUER: Oh. I've got it.

5 MR. WILLIAMS: And, again, my objection
6 would be, this appears to be some type of a -- hold on
7 for a second. My objection would be, this appears to
8 be some type of compilation of various emails and
9 documents --

10 MR. BAUER: Yes.

11 MR. WILLIAMS: -- including some emails
12 which do not appear to be originals. So I would have
13 the same objection to these that I've had for every
14 other email that was not the email in its original
15 format.

16 BY MR. BAUER:

17 Q Okay. Now, as I said, the background was, I
18 asked Ms. McAden at her deposition -- or, I'm sorry, Ms.
19 Martel -- do you have surveillance cameras in the gym. She
20 said no. And are you able to tell if there are cameras in
21 plain sight from the pictures?

22 A I don't see any pictures.

23 MR. WILLIAMS: I'd object to the extent that
24 the document I have been given as Exhibit 28 --

25 MR. BAUER: Sorry.

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**Witness: Walton
Cross by Bauer**

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

3 THE WITNESS: Neither does mine.

4 MR. BAUER: Okay.

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

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

12 BY MR. BAUER:

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

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

21 MR. BAUER: I understand.

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

1 some other witness thinks or knew.

2 BY MR. BAUER:

3 Q Would you -- okay. Well, then, would you read
4 page -- let's see -- the email from David Earnest dated May
5 23rd, 2013, to Jill McAden.

6 MR. WILLIAMS: Where is that?

7 THE WITNESS: Where is that?

8 MR. BAUER: That would be -- oh, it's the
9 very last page. Is it? No, it's not.

10 MR. WILLIAMS: The last page of Exhibit 28?

11 MR. BAUER: It would be -- it would be the
12 one -- the only one, I think, that starts with David
13 Earnest. Yeah, this --

14 THE WITNESS: May 23rd, 2013?

15 BY MR. BAUER:

16 Q Yes. That's it.

17 A At 9:50?

18 Q Right. And please read the paragraph starting
19 with the word "funding."

20 A Funding for the installation of access control,
21 cameras, and other control measures to allow outside use of
22 the gym was identified. The work is starting and will be
23 done after school hours.

24 Q And who was this sent to?

25 A To McAden.

Witness: Walton
Cross by Bauer

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1 MR. BAUER: Okay. All right. Now, thank
2 you. Let's see here. Now -- not really. Okay. I
3 think we are, believe it or not, done. I don't have
4 anything else.

5 MR. WILLIAMS: Okay. I have a few things in
6 followup.

7 MR. BAUER: Okay.

8 REDIRECT EXAMINATION

9 BY MR. WILLIAMS:

10 Q Ms. Walton, to start with, if I could get you to
11 look again at our Exhibit Number 12 in the notebook, which
12 I believe is a letter from you to Mr. Bauer dated May 29,
13 2014?

14 A Yes.

15 MR. BAUER: Can you speak up? I'm hard to
16 hear.

17 MR. WILLIAMS: Okay.

18 BY MR. WILLIAMS:

19 Q Do you have that document in front of you?

20 A I do.

21 Q In that document, you talk about -- near the end,
22 you said, "If you do not appear for a meeting with me on
23 Monday with your documentation, Dr. Moss will proceed with
24 a recommendation for your termination." Do you see that?

25 A Yes.

Witness: Walton
Redirect by Williams

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1 Q And that's dated May 29th, 2014?

2 A That's correct.

3 Q There was quite a bit of questions from Mr. Bauer
4 directed to you about a recommendation for nonrenewal in
5 April of 2014.

6 A Okay.

7 Q Does it seem to you from your experience as an HR
8 director that, if that April 2014 recommendation for
9 nonrenewal was about Mr. Bauer, that you would still be
10 talking about a recommendation for his termination in May
11 of 2014?

12 A No, we would not have been.

13 Q So does it stand to reason, then, that the April
14 2014 recommendation for nonrenewal was not about to Mr.
15 Bauer?

16 A That is correct.

17 Q All right. So you wouldn't recommend the
18 termination of an employee who you had already approved
19 their nonrenewal, would you?

20 A No, I would not.

21 Q Okay.

22 A Because, in essence, they would have already been
23 terminated.

24 Q Okay. Just so it's clear, there's been so much
25 questioning of you, there was a lot of questioning of you

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1 about the February 5th incident with the student being left
2 at the rec center. I'm sure you recall all that testimony.

3 A Yes.

4 Q Was that the only incident, or was that the only
5 conduct, that led you to recommend to Dr. Moss that Mr.
6 Bauer be terminated?

7 A No.

8 Q Tell us what all factored into that
9 recommendation from you.

10 A The incident, number one; Mr. Bauer's general,
11 overall lackadaisicalness, and his inability to understand
12 the severity of leaving the child; and then his refusal to
13 be cooperative with me as I was trying to get him back in
14 the building.

15 MR. BAUER: Objection. Not charged.

16 THE WITNESS: And to constant --

17 MR. WILLIAMS: Okay. Continue.

18 MR. BAUER: Yeah.

19 THE WITNESS: And to constantly be back and
20 forth with I'm not coming, I'm not going to meet with
21 you, I need to see an attorney. All of that says, if
22 I can't get you in here to meet with me, how am I ever
23 going to get you to understand why I was so concerned
24 about your --

25 MR. BAUER: Same objection.

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1 THE WITNESS: -- ability to manage students?

2 BY MR. WILLIAMS:

3 Q Okay. Do you feel like Mr. Bauer cooperated with
4 you after he was placed on administrative leave as you were
5 trying to bring the situation to a conclusion?

6 A He did not. I asked him to do some things. Yes,
7 he cooperated to an extent, and then, after several tries,
8 all cooperation seemed to cease, and I believe it begun
9 when he said, "I'm not talking to you anymore. You're
10 going to get a letter from my attorney, and read that
11 before I will talk to you."

12 MR. BAUER: Objection. Not charged.

13 THE WITNESS: He just drew a line in the
14 sand.

15 BY MR. WILLIAMS:

16 Q Okay. And the conversation that you were just
17 referring to, when he said he wasn't talking to you, was
18 that a conversation he had with you, or did someone else
19 relay that conversation to you?

20 A He had that conversation with me.

21 Q Okay. Mr. Bauer when he was asking you questions
22 asked about several possible scenarios with student E and
23 why -- he talked about student E maybe hiding, or student E
24 running back across the street. Do you recall him asking
25 you about that?

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1 A I do.

2 Q In any of your meetings with Mr. Bauer to discuss
3 the February 5th, 2014, incident where the student was left
4 at the rec center --

5 A Uh-huh.

6 Q -- did he provide you with any of those possible
7 scenarios as to why the student was left at the rec center?

8 A He did not. In fact, he was, I thought, pretty
9 honest when he said, "Yes, I left him over there, but I
10 don't see what the big deal is." He did not tell me the
11 student turned to run from him, the student was late coming
12 to class. I never heard any of that. And that's one of
13 the reasons I said to Mr. Bauer, earlier, I wasn't trying
14 to prove that you left that student, because you admitted
15 that. That was the first thing you admitted to me, or one
16 of the first things you admitted, "Yes, I did it," and you
17 couldn't understand why I was so adamant about it was the
18 wrong thing to do.

19 MR. WILLIAMS: All right. Just a second.

20 That's all I have.

21 RE CROSS-EXAMINATION

22 BY MR. BAUER:

23 Q Are there any records or -- I'm sorry --
24 committee meeting minutes from April 1st that would have
25 the names of any of the teachers that are recommended for

Witness: Walton
Redirect by Williams
Recross by Bauer

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1 nonrenewal, or is it just referred to as teacher A, B?

2 A Teacher A, B, C.

3 Q Okay. They don't actually say the names --

4 A No.

5 Q -- in the meeting?

6 A To protect the right of the individual, yeah.

7 MR. BAUER: Okay. That's really -- oh, I'm
8 sorry. I can't read that. Oh, yeah. Just for the
9 record, can I state that, in the deposition, that Dr.
10 Moss stated that employee A was --

11 MR. WILLIAMS: You can ask her a question,
12 if she knows.

13 BY MR. BAUER:

14 Q Are you aware that Dr. Moss in his deposition on
15 December 17th stated that employee A is John Bauer, John
16 Alden Bauer?

17 A No.

18 Q Are you aware --

19 A I'm not aware of that.

20 MR. BAUER: Okay. Now we're off.

21 (VIDEO testimony concludes.)

22 CHAIRMAN EVANS: Okay. Anything more that
23 we need to know? Because I'm about to recess us.

24 MR. WILLIAMS: Nothing further from the
25 administration.

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Recross by Bauer**

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1 CHAIRMAN EVANS: If there -- if there's any
2 -- Mr. Bauer, anything more about Ms. Walton's
3 testimony?

4 MR. BAUER: No. I'm sure you're glad to
5 hear that.

6 CHAIRMAN EVANS: Mr. Williams? Ms. Fawley?

7 MR. WILLIAMS: No, nothing further.

8 CHAIRMAN EVANS: Okay. Then I am going to
9 ask that we all be back here at 9:30 tomorrow morning.

10 (WHEREUPON, this hearing was adjourned
11 Friday, May 1st, 2015, at approximately 9:30 p.m., and
12 reconvened Saturday, May 2nd, 2015, at approximately
13 9:40 a.m.)

14 MR. EVANS: The media has been properly
15 notified. I would remind everybody that this is a
16 special-called meeting of the Board for a personnel
17 hearing. We are still, I believe, receiving the case
18 from the plaintiff, and if you all are ready, let's go
19 ahead, please.

20 MS. FAWLEY: The administration calls Jeff
21 Moss.

22 CHAIRMAN EVANS: Dr. Moss, would you please
23 be sworn in?

24 (WHEREUPON, JEFFREY C. MOSS, having been
25 first duly sworn, was examined and testified as follows:)

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DIRECT EXAMINATION

BY MS. FAWLEY:

Q Would you please state your full name for the record?

A Jeffrey Charles Moss.

Q And Dr. Moss, what position do you hold in Beaufort County schools?

A I'm the superintendent of schools.

Q And how long have you served as superintendent of the school system?

A Since July 2013.

Q And would you tell the Board how many total years you've worked in education and in what capacities?

A Started in 1983, so it's been quite a while, 32 years. I began as a junior high teacher, then, obviously, worked up through the ranks, through assistant, associate superintendent, and then superintendent in 2000, and I've been a superintendent -- this is my sixteenth year -- in Stanly County, Beaufort County, Lee County, and here.

Q And what educational degrees do you hold?

A I have a bachelor's in accounting, a master's in educational administration, an EDS, or a specialist's degree, and a doctorate degree in educational leadership.

Q Generally, what are your overall duties as superintendent?

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1 A To oversee the day-to-day operations of the
2 district. We have over 21,000 students, over 2,300
3 employees. I'm in charge of the budget, in charge of
4 supervising our principals, and I make recommendations to
5 the Board of Education on multiple issues.

6 Q And is one of those duties to make
7 recommendations to the Board about the continued employment
8 of teachers?

9 A It is.

10 Q Please tell the Board how you came to know Alden
11 Bauer.

12 A I was made aware of Mr. Bauer in February of 2014
13 due to an incident of him leaving a student at a parks and
14 rec facility on Hilton Head Island while he was an employee
15 of Hilton Head IB Elementary.

16 Q And in front of you you have the complainant's
17 exhibit notebook. If you will turn to Complainant's
18 Exhibit 23 and identify this document and its attachments?

19 A This is a letter that I wrote to Mr. Bauer on
20 April 2nd, 2014, and the attachment is his continuing GBE
21 contract.

22 Q And would you point out anything significant in
23 that letter that you feel important for the Board to know?

24 A Yes. The first sentence identifies that I placed
25 Mr. Bauer on administrative leave beginning February 5th,

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Witness: Moss
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1 2014, and he was on -- he was placed on leave as a direct
2 result of investigations into allegations of neglect and
3 student -- neglect of a student and unprofessional
4 behavior; also in this outline, that he was provided a
5 conditional contract.

6 As he Board knows, we have contract law that says
7 contracts must go out in April of each month -- of each
8 year. So this is a letter letting Mr. Bauer know that,
9 although he is receiving a contract, it is conditional,
10 based upon the outcome of the final disposition of the
11 investigation and the determination as to whether or not he
12 would be recommended for continued employment in Beaufort
13 County.

14 Q Would you identify Complainant's Exhibit 24 for
15 the Board?

16 A Yes, this is an email from myself to Ms. Walton,
17 copied to Mr. Bauer, dated April 28th, 2014. Within this
18 letter, I'm letting Mr. Bauer know that Ms. Walton was
19 correct in letting him know, while he was on administrative
20 leave; he is like any other employee. We are still
21 covering his salary. We expect him during the normal work
22 hours, if we request his appearance at any of our
23 locations, for him to appear, unless there are extenuating
24 circumstances, meaning if he was sick or in the hospital,
25 or any of those things, and we'd make arrangements.

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1 I also let him know that this is not only our
2 policy, but our administrative rule. Employees do not get
3 to decide the topics. They can enter into discussions and
4 conversations during that meeting, but any time your
5 supervisor requests that you show up, then you're expected
6 to show up..

7 Q I ask that you identify Complainant's Exhibit 25.

8 A This is an email from myself to Ms. Walton and
9 Mr. Bauer. The subject line is "Personnel action," and
10 this is letting Mr. Bauer know that, as his employer, that
11 I expect him to show up for a meeting at 9:00 the next day
12 with Ms. Walton, and also informing him that he can bring
13 whomever he'd like to bring. We don't dictate to the
14 employees who they can bring to a meeting. They're free to
15 bring anyone to the meeting that they desire to bring, and
16 this is just letting him know that, if he does not follow
17 through, that I will consider this an act of
18 insubordination, as it is a directive from his employer.

19 Q Dr. Moss --

20 MS. CUSHINGBERRY: Let me turn your mic on.

21 THE WITNESS: It was on.

22 MS. CUSHINGBERRY: It was? They can't hear
23 you. Let me try to turn the volume up.

24 THE WITNESS: I don't think I can get it any
25 closer.

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Direct by Fawley

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1 BY MS. FAWLEY:

2 Q If you will now turn to Complainant's Exhibit 26,
3 and I believe this is another email on that same day, April
4 28th, as the prior two. What is this?

5 A And I'd also like to point out, on the previous
6 exhibit, the time on that is 8:24 p.m. on the 28th. This
7 is 8:31 the same day -- so, essentially, seven minutes
8 later -- from Mr. Bauer to me, telling me he doesn't wish
9 to be insubordinate, but he wanted his attorney to
10 accompany him and that he would be contacting his attorney.

11 Q And did he say anything about showing up the next
12 day, or what did he ask?

13 A He asked us to reschedule.

14 Q If you will turn to Complainant's Exhibit 27,
15 what is this document?

16 A This is on the same day, essentially, 17 minutes
17 later, and it's an email from myself to Mr. Bauer,
18 identifying -- again, reminding him of the meeting tomorrow
19 at 9:00, and I'll direct Ms. Walton to send him an email in
20 writing on what we were planning to meet on, and that I
21 expected him to follow the directives within the letter,
22 within the time identified, and failure to follow through
23 with the written directives, I would consider that an act
24 of insubordination.

25 Q Please turn to Complainant's Exhibit 28, and what

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1 is this?

2 A This is a letter from Mr. Bauer's attorney,
3 George McMaster, letting me know that his firm is
4 representing John Alden Bauer, and he's essentially putting
5 a hold on all information pertaining to Mr. Bauer.

6 Q And what is --

7 A Dated --

8 Q -- the date of that --

9 A Dated -- dated May 21st, 2014.

10 Q Did the district comply with the litigation hold
11 request?

12 A We did.

13 Q And how did you all comply?

14 A Any time we receive a litigation hold, it's sent
15 directly to Jennifer Staton, who then informs all parties.
16 We secure all technology devices, any other electronic or
17 written communications, and it is essentially set aside to
18 ensure that nothing happens to it from that time forward.

19 Q Now if you would please go to Complainant's
20 Exhibit 29 and identify this document for the record?

21 A This is a letter from myself to Mr. Bauer dated
22 May 22nd. In the letter, I'm informing Mr. Bauer that I've
23 received the letter from his attorney and also letting him
24 know that there have been no conversations, to that date,
25 concerning termination, that every request we have made of

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1 him was to try to bring him in to discuss his employment
2 status, and each one of those requests have -- he has
3 failed to follow through on.

4 He's failed to meet with me. He refused to
5 follow directives. He refused to follow the directive from
6 Ms. Walton in meeting, refused to follow my directive in
7 meeting, and was just completely refusing, in my opinion,
8 to do anything he was asked to do by his employer.

9 Q Please turn to Complainant's Exhibit 30. What is
10 this writing?

11 A This is from myself to Mr. Bauer and copied to
12 Ms. Walton, letting him know that I am still waiting on the
13 report from Dr. J., which was due on May 16th. This letter
14 to him was dated May 22nd. He again is refusing to follow
15 through with the directive. And I'm also letting him know
16 that, once I receive the report, we can bring closure, and
17 I'm asking him when can I expect to receive the report.

18 Q And was the report overdue already?

19 A It was already overdue.

20 Q Complainant's Exhibit 31, please identify this to
21 the Board.

22 A This is a response back from Mr. Bauer. My email
23 to Mr. Bauer was at 3:07 p.m. on the 22nd. This was at
24 4:35 on the 22nd, and in this, Mr. Bauer is telling me he
25 thought that we were talking about a teacher evaluation.

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1 We were never talking about a teacher evaluation. Every
2 conversation was about the psychological evaluation, not a
3 teacher evaluation.

4 He's telling me he's already submitted to one
5 psychiatric appointment. That is accurate, but I was
6 requesting him to see a doctor in which we identified and
7 we paid for. He's saying that there was no reason given
8 for the first evaluation.

9 He's also saying that he asked Ms. Walton about
10 her reference to HRS-16. In HRS-16, it clearly identifies
11 that the supervisor of the school district may request an
12 evaluation by a physician of their choosing and they pay
13 for the cost of that evaluation.

14 Q If you will turn the page to Complainant's
15 Exhibit 32, what is this writing?

16 A This is a response to Mr. Bauer the same day,
17 letting him know that I understand his position, and Ms.
18 Walton's position is based and embedded in our policy and
19 our procedures, and in order to bring closure to him being
20 placed on administrative leave, I need him to follow
21 through with the directives in which he was provided, and
22 then his response, whether positive or negative, would end
23 up driving the decision I would have to make, from a
24 personnel perspective.

25 Q Please refer to Complainant's Exhibit 33 and

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1 identify this for the Board.

2 A This is from Mr. Bauer to myself the next day --
3 or a few days later, on the 25th of May, in which his first
4 sentence was a little confusing. He said; "Thank you for
5 understanding my position, and I believe I understand your
6 position, as well." I don't think he understood my
7 position, because my position was for him to follow through
8 with the directives, and if he understood my position, as
9 well, he would have followed through with the directives.

10 He goes on to say that my stating that there had
11 been no conversation toward termination -- so he recognizes
12 we've not discussed his termination at that point -- gave
13 him hope. Then he goes on to say he's had some
14 conversations with an employment education lawyer online.
15 He goes on to say a couple other things in there.

16 Q Does he ever tell you when you might expect the
17 overdue second opinion regarding his fitness to teach?

18 A He does not, and if he understood my position, as
19 well, in the previous email, or the previous correspondence
20 with Mr. Bauer, it identified exactly what I expected him
21 to do. So, if he understood my position, he would know he
22 was already overdue with the report he should have
23 delivered, and if he understood my position, he would
24 schedule an appointment and take care of the matter at
25 hand.

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1 Q I'd ask that you look at Complainant's Exhibit
2 34. What is this document, please?

3 A This is from Mr. Bauer to Jill McAden, copied to
4 myself, Ms. Walton, Ms. Brockway, and Mr. Clendaniel. And
5 he's requesting Ms. McAden to somehow communicate before
6 the end of the school year to the faculty and staff
7 regarding his leave status and for her to -- he's
8 essentially asking her to violate personnel confidentiality
9 in which he's asking her to say why he was placed on
10 administrative leave. We don't do that. We don't talk
11 about someone's personnel action. But that is, in essence,
12 what he's asking in this information.. He's saying that
13 folks are beginning to spread rumors about why he's placed
14 on leave, and he wants Ms. McAden to violate
15 confidentiality and expose why he's been placed on
16 administrative leave.

17 Q If you will turn the page and identify
18 Complainant's Exhibit 35?

19 A This is an email from myself to Mr. Bauer, copied
20 to the same individuals, and this is in response to his
21 email to me. I will say that there is a word or two
22 missing out of the first sentence, but what I'm telling --
23 and it is straightened up very quickly in the next
24 correspondence -- is that we don't explain to the public
25 why we place employees on administrative leave. That's not

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1 what we do. That's a violation of confidentiality.

2 I also identify again that we are following
3 HRS-16. I also talk about his delay. Any rumors -- I
4 truly believe any rumors that may be out there are his
5 doing. He could have easily followed through with the
6 directive and brought closure to this much quickly (sic),
7 but he decided not to follow through with any of the
8 directives from administration. I let him know what HRS-16
9 says and states so that, if there is again any
10 misunderstanding, he has another copy of what it is we're
11 asking him to do.

12 This is May 28th, and this has been going on now
13 for months, and there is still no movement on Mr. Bauer's
14 part to follow through on the directive.

15 Q Please identify Complainant's Exhibit 36 for the
16 Board.

17 A This is the same day, just a few minutes later,
18 saying he did not understand. We do not speak to
19 employees, which is the sentence in which I said that there
20 were some words missing. So he's asking for clarification,
21 which I clarify very shortly.

22 Q And is that in Complainant's Exhibit 37?

23 A It is. I wrote back to him very quickly that
24 what it was to say is, we do not speak about employees. So
25 a word there was missed out of my typing.

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1 Q And I believe Mr. Bauer responded back to you.
2 Please identify Complainant's Exhibit 38.

3 A It is. It's his response saying, "No problem.
4 Thanks." So he's recognizing that there was a typo in that
5 first sentence, and all of this happened within a matter of
6 a few hours.

7 Q Please turn to Complainant's Exhibit 39. What is
8 this writing?

9 A This is an email from Mr. Bauer to myself, asking
10 my email citation for a singular examination under what he
11 believes is the sick leave policy, for returning to work
12 from sick leave, and his argumentative manner in which he
13 doesn't agree with the directive that was provided.

14 Q If you would now identify Complainant's Exhibit
15 40 for the record?

16 A Forty is my letter to Mr. Bauer dated May 29th.
17 The subject line is, "Personnel action." I tried to
18 explain to Mr. Bauer that I believe I've been extremely
19 patient in this situation. It's been going on for months
20 now, restating the fact that he'd been placed on
21 administrative leave since February for leaving a special-
22 needs student off campus. That was never in dispute. He
23 admitted it. He just was failing to follow through with
24 the directives that was provided. I do categorize that as
25 neglect.

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1 Insubordination, I feel he was extremely
2 insubordinate to me, extremely insubordinate and ignoring
3 -- continually ignoring the directives provided. I had
4 requested for him to have an examination and report back.
5 Those were supposed to have occurred and reported back by
6 April 25th. We're now more than a month away from that
7 deadline. As I testified earlier, there were multiple
8 times that I reminded him of those dates and extended the
9 dates. He continued to refuse to attend meetings while he
10 was still receiving pay.

11 I will tell you that, in 32 years, this is my
12 first experience of having an employee refuse to come to a
13 meeting when they were placed on leave with pay. I've
14 never experienced that before, in 32 years, because we do
15 allow them to bring whomever they want to bring, and
16 especially if they have an attorney, an attorney usually
17 advises their client that, yes, you're on leave. You
18 should appear. If you want me to appear with you, I'll be
19 happy to appear with you.

20 The rest of the email lets him know that he was
21 supposed to report back to Ms. Walton on May 16th. He
22 refused to report back to Ms. Walton, and I'm giving him
23 one more opportunity to satisfy the directive before I have
24 to take personnel action, and that one more opportunity is
25 asking him to -- I'm actually compelling him to satisfy the

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1 directive by June 2nd.

2 This is giving an employee multiple opportunities
3 to satisfy the directive, and I'm letting him know that, if
4 he does not satisfy that directive by June 2nd, that I will
5 have to proceed with recommending his termination from the
6 Beaufort County School District, based upon the facts.
7 It's impossible to do anything else when an employee
8 refuses to meet with you, refuses to discuss the situation,
9 and refuses to follow through with your directive.

10 Q So, Dr. Moss, just to make certain, after that
11 email and the letter, did Mr. Bauer ever submit the second
12 medical opinion, and did he ever meet with Ms. Walton, as
13 she had requested over and over again?

14 A To date, he has never sent in the second
15 evaluation, and to date, he's never met with Ms. Walton or
16 myself.

17 Q Kindly turn to Complainant's Exhibit 41. What is
18 this document?

19 A This is from myself to Mr. Bauer dated June 6th,
20 and the purpose of this letter is -- was to let him know
21 that, on June 5th, that the Board of Education
22 conditionally accepted my recommendation that he be
23 suspended from his contract of employment with the Beaufort
24 County School District. Again, that's essentially what I
25 reminded him of back in April when we gave him the

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1 conditional contract, that there could be other action that
2 would take place at a later date, and that his termination
3 was subject to the Board's duty to review the matter on its
4 merits, subject to South Carolina Code 59-25-470, in which
5 he was entitled to a hearing, and he has requested the
6 hearing, obviously. That's why we're here today. Also
7 letting him know that the Board at that time had not
8 reviewed the information from the case because that is not
9 their role until we decide -- until the employee decides
10 whether or not they would like to have a hearing.

11 It also outlines the bases for the
12 recommendation, referring back to earlier correspondence
13 with him, and also identifying South Carolina Code
14 59-25-430 and 59-25-450. These were again on neglect of
15 duty and insubordination. Also outlining for him that he
16 has the right to a hearing and I needed to hear from him
17 within 15 days.

18 Q And Dr. Moss, you just said that the bases for
19 your recommendation of immediate termination from employ
20 were negligence and insubordination. What specific type of
21 negligence were you referring to in your email?

22 A During -- after I was made aware of the situation
23 that occurred February with Mr. Bauer leaving the student
24 at the recreational center, that investigation also brings
25 to light other activities. So then I was also made aware

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1 during that investigation of the situation back in November
2 where Mr. Bauer lost a student. The student was,
3 fortunately, not off campus, but he did not know where the
4 student was at the time.

5 And then there were some other issues that came
6 to light during the investigation which caused me to
7 believe that there were some concerns, and I had some
8 concerns. Those concerns grew during the time in which Mr.
9 Bauer continually was insubordinate to my directives, to my
10 questions, refusing to come in and meet with me. Those
11 concerns just continually grew, and he essentially left me
12 no other alternative but to recommend his termination.

13 Q And so you believe that Mr. Bauer was
14 insubordinate, as well?

15 A I -- I don't believe, I know he was insubordinate
16 to my directives.

17 Q Dr. Moss, does the length of time that a teacher
18 has been in the district or the length of time that a
19 teacher has actually been an educator impact on your
20 decisions regarding continued employment?

21 A No. No, the only thing that impacts my decision
22 on continued employment is whether or not that employee is
23 a quality person that I would want teaching your child, my
24 child, my neighbor's child, or any child we have in the
25 district.

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1 Q And, sir, is it still your recommendation today
2 that Mr. Bauer's employment with Beaufort County School
3 District be terminated, as originally recommended to the
4 Board on June 5th, 2014?

5 A It is.

6 MS. FAWLEY: Thank you, Dr. Moss, if you
7 will now answer any questions Mr. Bauer may have for
8 you?

9 MR. BAUER: Mr. Chairman, may I offer a
10 motion for the consideration of the School Board?

11 CHAIRMAN EVANS: Yes.

12 MR. BAUER: Thank you. My plan of proving
13 my case through opposing witnesses has been initially
14 -- or has been rejected, respectfully. I thought that
15 my approach would give continuity to the subject
16 matter through most -- through the most appropriate
17 witness. I have heard new allegations against me. I
18 cannot organize a narrative of logical context while
19 sitting here all day and working all night.

20 If you will allow it, we can continue while
21 I gather my thoughts for my testimony and closing. My
22 questions for Dr. Moss are written out. I would like
23 someone to read my questions and be able to ask
24 follow-ups who is familiar with my case. My father,
25 who has no ambition at 82 to practice law, could

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1 nonetheless ask my questions and give me time to
2 prepare. Instead of cross-examination, maybe you'd
3 refer to it as questioning of the witness. Here is my
4 motion, Mr. Chairman. I move that the questioning of
5 Dr. Moss be conducted by Dr. John Bauer.

6 CHAIRMAN EVANS: Dr. Fawley?

7 MS. FAWLEY: Mr. Chairman, we respectfully
8 request that the Board deny this motion. First of
9 all, the Board never rejected Mr. Bauer's ability to
10 cross-examine any witness. All the Board indicated to
11 him is that, at times, because the witnesses were not
12 substantiating what his position is, he ought to
13 consider making certain that he covers it in his
14 presentation when it is his time to present every fact
15 that he believes occurred.

16 Secondly, to have a non-lawyer participate
17 in an administrative hearing is the unauthorized
18 practice of law. The only reason Mr. Bauer is able to
19 ask questions and proceed in such a hearing is that he
20 is acting pro se, and under South Carolina Law, he is
21 permitted to do that. But for someone else to
22 practice law who is not a licensed attorney, it is
23 against the law.

24 And thirdly and most importantly -- I think
25 your own legal counsel can attest to this -- this

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1 matter was decided long before this hearing. We
2 agreed that his father could sit at the table with him
3 and pass him documents. We also agreed, and Mr. Bauer
4 affirmed it, that his father would not participate in
5 any way in this hearing, other than assisting with
6 documents. And so I think it would not only be a
7 travesty, but, again, I caution Dr. Bauer about
8 practicing law without a license.

9 (Board discusses quietly.)

10 CHAIRMAN EVANS: Mr. Bauer, I'm going to
11 deny your motion. I believe that, at the very
12 beginning of this hearing, I read a statement that
13 everybody had agreed to that Dr. Bauer would have a
14 certain role in this, and I think it would be
15 inappropriate to change that role in the -- in the
16 middle of the process here. So I would ask you to
17 please go on with your --

18 MR. BAUER: Yes, sir.

19 CHAIRMAN EVANS: -- any cross-examination
20 you have of this witness.

21 MR. BAUER: Thank you.

22 MR. DUFF: And Mr. Chair, if I could add
23 that, based on my knowledge -- and I've dealt with
24 this before on practicing law without a license in the
25 State of South Carolina -- that, in fact, if Dr. Bauer

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1 did engage in conduct here in the examination of the
2 witness that that would be considered the unlawful
3 practice of law. So your denial of the motion is
4 really removing a serious legal cloud that would fall
5 upon Dr. Bauer, if the -- if the motion were allowed.

6 MR. BAUER: Thank you. I understand.

7 CROSS-EXAMINATION

8 BY MR. BAUER:

9 Q Dr. Moss, how many charges are there against Mr.
10 Bauer?

11 A There are two charges: neglect of duty and
12 insubordination.

13 Q How did you send these charges?

14 A They were communicated to you in written format.

15 Q Was that email?

16 A Both email and written.

17 Q It is in written form? Was it through a letter?

18 A The last letter I identified, June 6th,
19 identifies, again, bringing everything forward on the
20 statutes that were involved, and that you were being term
21 -- conditionally terminated based upon those allegations.

22 Q So you say -- okay. There were two charges. Is
23 that what you're saying?

24 A Two charges.

25 Q May I -- can we refer to file 225, 225-A?

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1 A Do you know which notebook it would be in?

2 Q It would be in the second volume.

3 A Two twenty-five A?

4 Q Yes. The first page will say, "Assumed charges."

5 A Okay.

6 MS. FAWLEY: Objection, Mr. Chairman.

7 CHAIRMAN EVANS: Just a second. Let me get
8 to it. Okay. What I have is 225 and 225-A, and the
9 opening title is, "Assumed Charges." Ms. Fawley?

10 MS. FAWLEY: If you will -- if you will
11 notice, members of the Board, this is a document that
12 Mr. Bauer is attempting to introduce that is a
13 piecemeal document, where he pieces together bits of
14 information, and he summarizes his own position, so
15 he's trying to testify through a document. So we
16 object to the entrance of this exhibit onto the record
17 and in the Board's consideration.

18 MR. BAUER: Okay. That first page is a
19 summary; correct? The original is page 2 and 3.
20 Those are the originals of the charges. The first is
21 an extrapolation.

22 MS. FAWLEY: And again, Mr. Chairman, if you
23 will look at the large, bold letters, he is
24 interjecting his own thoughts onto these exhibits.

25 MR. DUFF: Mr. Bauer, you're --

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1 MR. BAUER: I'm only referring to page 2 and
2 3 now, which are the originals.

3 MR. DUFF: Which is the same as the
4 complainant's exhibit --

5 MR. BAUER: Correct.

6 MR. DUFF: -- 40, which is the email of May
7 29, 2014, from Dr. Moss to you, without -- as Dr.
8 Fawley is saying, without your characterizations or --

9 MR. BAUER: Correct.

10 MR. DUFF: -- comments. So could you not
11 work from --

12 MR. BAUER: We can refer to --

13 MR. DUFF: -- Complainant's Exhibit 40?

14 MR. BAUER: -- Dr. Fawley's.

15 CHAIRMAN EVANS: Okay. We are --

16 MR. BAUER: Yes, sir.

17 CHAIRMAN EVANS: -- going to request that
18 you please work from the one that's titled "original
19 for 225-A." The date has been left off, I believe,
20 but it's --

21 MR. BAUER: No, the date -- I'm sorry -- is
22 right -- is the page before it. It actually printed
23 on two pages, but they're together.

24 CHAIRMAN EVANS: Okay. But this is the
25 email from Dr. Moss to you on April -- or May 29th --

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1 MS. BUSH: May 29th.

2 MR. BAUER: Correct.

3 CHAIRMAN EVANS: -- 2014. Are we in
4 agreement?

5 MR. BAUER: Yes.

6 CHAIRMAN EVANS: Okay. Would you please
7 work from this document, please?

8 MR. BAUER: Yes.

9 CHAIRMAN EVANS: Thank you.

10 BY MR. BAUER:

11 Q Am I correct, Dr. Moss, in stating that the first
12 charge is left a student unattended off campus? This is
13 characterized -- this is actually one and two. Left a
14 student unattended off campus. This was characterized as
15 negligence and insubordination. Am I correct in saying
16 that those are two charges?

17 A No, you're not correct.

18 Q Am I correct that when you say, "You were
19 requested to have a second examination for a psych -- from
20 a psychiatrist and report back" -- am I correct in stating
21 that that is a charge?

22 A No, that -- that was a directive to you.

23 Q Okay. And, finally, am I correct in stating that
24 one of the charges is when you state, "The date of the
25 meeting to discuss the results was scheduled for April

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1 25th, 2014. I sent you a directive to attend"?

2 A As that leads to insubordination, yes, that is --

3 Q Okay.

4 A Insubordination is a charge.

5 Q All right. I just wanted to be clear on that.

6 So we're look -- what you're saying is two charges. Is

7 that -- am I --

8 A Two charges.

9 Q Thank you. Now, originally, did you state in
10 that email that the negligence was based on the pool event?

11 A No, I did -- the negligence, yes, was based --

12 Q On --

13 A Not on the pool event. The pool event triggered
14 you being placed on administrative leave.

15 Q I see. Then --

16 A And that -- that was -- that began February 5th.

17 The negligence was a compilation of what I had found out
18 during the investigation.

19 Q I see. In that May 25th email --

20 A May 29th?

21 Q Or 29th. Sorry. You stated that, "You left a
22 special needs student unattended off campus. This is
23 characterized as negligence and insubordination?"

24 A No, what I said was, "Your leave began -- your
25 administrative leave began on February 5th for leaving a

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1 special needs student off campus." That's one sentence.

2 Q This was categorized as negligence and
3 insubordination?

4 A Everything leading up to May 29th.

5 Q Okay.

6 A We're now months down the road. Everything
7 leading up to May 29th is now falling under two categories,
8 negligence and insubordination.

9 Q Okay. Is it possible that that student you're
10 referring to was special needs and gifted and talented?

11 A It is possible.

12 Q Okay. When did insubordination occur during the
13 pool event?

14 A That's not what I'm testifying to. I'm
15 testifying you were insubordinate to each directive I gave
16 you, beginning in April.

17 Q I'm sorry, but I'm having trouble understanding
18 this, and I'm going to need to ask you, please read the
19 first three sentences of your May 29th email again for us.

20 A "I've been extremely patient with you while
21 you've been placed on administrative leave," the first
22 sentence.

23 Q Right.

24 A "Your leave began on February 5th, 2014, for
25 leaving a special needs student unattended off campus,"

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1 second sentence. "This is categorized as negligence and
2 insubordination," third sentence. "You were requested to
3 have an examination from a psychiatrist and report back,"
4 next sentence. "The date of the meeting to discuss the
5 results was scheduled for April 25th." Next sentence, "You
6 refused to attend --

7 Q That's fine.

8 A "-- the scheduled meeting while still receiving
9 pay from Beaufort County schools."

10 Q That's fine.

11 A Do you want me to continue?

12 Q Thank you. I just -- you stated -- I'm sorry.
13 Did you state when I was terminated that the bases for my
14 termination were based on this May 29th email, that the
15 charges were in this?

16 A No, you were terminated for two charges, neglect
17 of duty and insubordination.

18 Q And where --

19 A Those --

20 Q -- are the charges --

21 A Those are the two charges.

22 Q So the charges are based on this email; is that
23 correct?

24 A Negligence and insubordination are the two
25 charges.

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1 Q And so this is the -- this is the document that
2 we are referring to; is that correct?

3 A No, the -- the negligence, obviously, occurs when
4 you are not properly supervising students. The
5 insubordination occurred at the multiple times that I made
6 directives toward you to follow through and you refused to
7 follow through.

8 Q I am just looking for the document.

9 MS. FAWLEY: Objection.

10 MR. BAUER: I understand.

11 MS. FAWLEY: Objection, Mr. Chairman. This
12 witness has been asked and has answered the same
13 question repeatedly. He has referred Mr. Bauer to
14 both a letter and his email, and it won't change if
15 you keep asking the same question. I just think it's
16 repetitive.

17 CHAIRMAN EVANS: There is a -- as you're
18 aware, Mr. Bauer, there is a June 6 (sic), 2014,
19 letter that spells out the grounds of the action --

20 MR. BAUER: That was June 26th?

21 MR. RIVERS: He didn't say that.

22 CHAIRMAN EVANS: June 6th. I --

23 MR. BAUER: June 6th.

24 CHAIRMAN EVANS: I apologize.

25 MR. RIVERS: He did say six.

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1 MR. BAUER: I do not believe it does, sir.
2 May we --

3 MR. DUFF: Mr. Bauer, in looking at
4 Complainant's 41, which is the June 6 letter --

5 MR. BAUER: Yes.

6 MR. DUFF: -- do you not see the reference
7 to the May 29 --

8 MR. BAUER: Yes.

9 MR. DUFF: -- email?

10 MR. BAUER: Yes, that's exactly right.

11 MR. DUFF: So I think the point here is that
12 the statement of charges is the combination of the
13 June twenty -- the June 6th letter and the May 29
14 email.

15 MR. BAUER: Correct. That's exactly right.
16 And in that, what I'm trying to establish is that it's
17 based on the pool event only. He says that I left the
18 student unattended, a special-needs student
19 unattended, off campus. This, speaking of only that,
20 was categorized as negligence and insubordination, and
21 then the other two points, items he has as part of
22 negligence and insubordination, are my supposed
23 refusal for a psychiatrist.

24 MS. FAWLEY: Again, Mr. Chairman, Mr. Bauer
25 is testifying. The witness has already testified as

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1 to what led to his belief of negligent supervision,
2 including things uncovered in the investigation. He
3 testified to that in his direct. Mr. Bauer will have
4 a full opportunity to testify to the confusion he has
5 or to any position that he may want to offer. This is
6 cross-examination, where he asks the witness
7 questions, not make grandiose statements.

8 CHAIRMAN EVANS: Well, I --

9 MR. BAUER: I will move on.

10 CHAIRMAN EVANS: I will sustain your
11 objection, and, Mr. Bauer, I think you ought to move
12 on. This witness has answered your --

13 MR. BAUER: I'll move on.

14 CHAIRMAN EVANS: -- question several times.

15 MR. BAUER: Yes.

16 BY MR. BAUER:

17 Q You stated -- or, I'm sorry, in your -- one of
18 your emails, you were request -- you stated that you were
19 requested to have an examination from a psychiatrist and
20 report back. My question is, were you aware that Mr. Bauer
21 had complied with that request in March?

22 A You never followed through with my request for
23 you to have an examination by the psychiatrist that we
24 identified.

25 Q Were you aware that Ms. Walton approved of the

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1 psychiatrist that I went to?

2 A No, I'm aware that I requested you go have an
3 examination by Dr. Gay, and you continually refused.

4 Q So that would have been the second time; is that
5 correct?

6 A I'm aware that I gave you a directive to have an
7 evaluation by Dr. Gay and you refused to do so.

8 Q Do you know why Ms. Walton would have rejected
9 the evaluation from the initial psychiatrist?

10 MS. FAWLEY: Objection --

11 THE WITNESS: No, I do not.

12 MS. FAWLEY: -- Mr. Chairman. That question
13 is not appropriate for this witness. He is not Ms.
14 Walton. He had that full opportunity to ask Ms.
15 Walton that question.

16 CHAIRMAN EVANS: I will sustain that. I
17 don't believe that there was ever a time that we have
18 established that she rejected the first evaluation.

19 BY MR. BAUER:

20 Q After Ms. Walton required that Mr. Bauer have a
21 second evaluation, are you aware that Mr. Bauer asked if he
22 could have another choice of doctor?

23 A I'm not aware of any conversation you had with
24 Ms. Walton.

25 Q Please refer to file 49, last paragraph.

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1 A Which -- which book?

2 Q That would be volume 1.

3 CHAIRMAN EVANS: Did you say 49, Mr. Bauer?

4 MR. BAUER: Yes, sir.

5 BY MR. BAUER:

6 Q Ready? Okay.

7 A Yes.

8 Q Would you please read the last paragraph?

9 A "I will be calling Dr. Gay or someone mutually
10 acceptable to schedule another humiliating evaluation after
11 seeking advice from my attorney. I will then meet with Dr.
12 Gay or someone else acceptable to you, and we will go from
13 there."

14 Q Did both you and Ms. Walton cite HRS-16 as your
15 authority for demanding a second psychiatric evaluation?

16 A We cited HRS-16 as the basis to require you to
17 have an evaluation as a directive of administration.

18 Q Okay. If Mr. Bauer had complied with that in
19 March, would that have satisfied HRS-16 at this point?

20 A Satisfying HRS-16 would have been for Mr. Bauer
21 to follow through with my directive.

22 Q Okay. Do you understand, Dr. Moss, why someone
23 under attack might wonder why the administration is using
24 sick leave to apply to administrative leave?

25 A I don't understand who was under attack.

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1 Q If Mr. Bauer had complied with the citation that
2 Dr. Moss cited in his email regarding HRS-16 and it was
3 listed under sick leave, and when it was requested again,
4 would he -- do you understand why he would feel somewhat
5 under attack?

6 MS. FAWLEY: Objection, Mr. Chairman. He's
7 asking this witness to testify as to his perceptions
8 and feelings.

9 CHAIRMAN EVANS: I'll sustain that. Go
10 ahead, Mr. Bauer.

11 BY MR. BAUER:

12 Q When you cited HRS-16, does it address requiring
13 a second opinion?

14 A HRS-16 addresses what we can -- what the
15 expectations are for leave and returning back from any
16 leave.

17 Q When Mr. Bauer asked about why you were citing
18 from HRS-16 under sick leave, why would you not give him an
19 answer?

20 A HRS-16 is any type of leave. Administrative
21 leave is a type of leave.

22 Q Why is the citation that you cited listed under
23 the subcategory of sick leave?

24 A The entire HRS-16 speaks to leave, all types of
25 leave.

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1 Q Was the April 25th meeting that we were talking
2 about earlier in your testimony with Dr. Fawley -- was the
3 April 25th meeting actually to have been held on April
4 29th?

5 A I'm not exactly sure of the dates. I just know
6 that you've missed every meeting that you were requested to
7 attend.

8 Q And are you aware that the problem was whether or
9 not Mr. Bauer could bring a witness with him?

10 A I informed Mr. Bauer he could bring anyone with
11 him he'd like to bring.

12 Q If after four meetings -- if Mr. Bauer had
13 already met with Ms. Walton four times previously -- I --
14 strike that. If, after four meetings, someone believes
15 that hostility is getting worse, might one wish to have a
16 friend who is also an attorney attend with him?

17 A We --

18 MS. FAWLEY: Objection. Mr. Bauer, I don't
19 mean to be rude --

20 MR. BAUER: All right.

21 MS. FAWLEY: -- but, truly, you're asking
22 the witness again for his opinion of your perception
23 or your feelings. You may ask him about his position.
24 Mr. Chairman, that would be the administration's --

25 CHAIRMAN EVANS: Right. I --

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1 MS. FAWLEY: -- request.

2 CHAIRMAN EVANS: Your objection is
3 sustained, Ms. Fawley.

4 BY MR. BAUER:

5 Q I do want to go back to one question I had
6 earlier. I just would like to know why there was no
7 response to my question about HRS-16.

8 A Can you show me a document?

9 Q Yes. That would be -- let's find file 51, I
10 believe it is -- oh, forty -- I'm sorry, 49. We were on
11 that originally. Yeah, it's the April 30th letter.

12 MR. DUFF: It looks like the file --

13 MR. BAUER: Email.

14 MR. DUFF: File 51 is the policy itself.

15 MR. BAUER: Right..

16 BY MR. BAUER:

17 Q It's file 49, and it's line -- is the last
18 paragraph. Actually, the next-to-the-last paragraph.

19 A "After examining HRS-16, I have not been able to
20 locate how this meeting with the psychiatrist is relevant.
21 Please send me a citation from the document supporting this
22 claim." You were provided HRS-16 multiple times and,
23 again, in an email to me where I actually lifted the
24 language from HRS-16 in May, in an email I sent to you, and
25 that's Exhibit 35 from Ms. Fawley.

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1 Q And when was that sent to Mr. Bauer?

2 A The date --

3 Q Your response?

4 A Now, I'm not saying that's my response. I'm
5 saying you were provided HRS-16 multiple times and the
6 reasoning for it, but, again, I have it right here in front
7 of me, May 28th.

8 Q Now, if an attorney made himself available later
9 the same day of April 29th and Ms. Walton refused to speak
10 to an attorney about rescheduling, what would a reasonable
11 person think?

12 MS. FAWLEY: (Stands.)

13 MR. BAUER: I will withdraw.

14 CHAIRMAN EVANS: Thank you.

15 BY MR. BAUER:

16 Q What if Ms. Walton testified that she did not
17 like communicating by email, but preferred to meet one on
18 one, to discuss issues without witnesses?

19 A Mr. Bauer, I'm not going to play what-if games.
20 If you have a document you would like to show me, I'd be
21 happy to address the document.

22 Q Sure. Please refer to file 225-A.

23 A In which notebook?

24 Q That would be volume 2? It's actually the
25 document, May 29th.

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1 A You're on --

2 Q It's the May 29th --

3 A You're on file 49? Is that the one you're
4 talking about?

5 Q I'm sorry. It's May twenty -- it's the one that
6 you --

7 MS. ORISCHAK: Forty.

8 BY MR. BAUER:

9 Q Forty of the -- yes.

10 A This is an email from me to you

11 Q Okay. Would it be reasonable, if Ms. Walton were
12 to write, "We are paying you, so you must be" -- sorry.
13 I'm in the wrong place. Please refer to paragraph one,
14 next-to-the-last sentence.

15 A "All of these directives have occurred while you
16 were still a Beaufort County school employee and receiving
17 pay."

18 Q All right. I'm going to come back to this.

19 A Are we through with this exhibit?

20 Q For -- for now, yes. At your deposition on
21 December 16th --

22 MS. FAWLEY: Objection, Mr. Chair.

23 MR. BAUER: Okay. I'll --

24 BY MR. BAUER:

25 Q Were you asked at any time if you had met with

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1 Mr. Bauer?

2 MS. FAWLEY: Again, Mr. Chairman, he can't
3 use the deposition, asking questions of --

4 CHAIRMAN EVANS: Will you --

5 MS. FAWLEY: If he asks --

6 CHAIRMAN EVANS: Let me -- let me rule. We
7 discussed this previously, that you cannot introduce
8 the transcript from the deposition. You need to ask a
9 question and then contrast it with the deposition.

10 BY MR. BAUER:

11 Q Did you meet with Mr. Bauer?

12 A No, I've not met with Mr. Bauer. He refused to
13 meet with -- with anyone in administration from all -- each
14 of my directives.

15 Q Did you -- how did you ask Mr. Bauer to meet with
16 you?

17 A I gave directives to Mr. Bauer to meet with Ms.
18 Walton, continually, through the process.

19 Q So you're stating -- what you're stating is, is
20 that it wasn't you, personally? Mr. Bauer didn't refuse to
21 meet with you, personally? He refused to meet with Ms.
22 Walton; is that correct?

23 A Mr. Bauer refused every directive provided by his
24 employer.

25 MR. BAUER: May I, Mr. Chairman, refer to

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1 Dr. Moss's deposition, referring to that question?

2 CHAIRMAN EVANS: All right. I believe you
3 can at this time, because you've asked him --

4 MR. BAUER: Okay.

5 CHAIRMAN EVANS: If there's a contrast, then
6 present it to us.

7 MR. BAUER: Yes. Page 93, line 5 through 9.

8 MS. FAWLEY: May we find it, Mr. Chairman?

9 CHAIRMAN EVANS: Okay. Yeah, can the -- can
10 the witness and the opposing attorneys see this?

11 BY MR. BAUER:

12 Q Are you ready?

13 A No, I don't have it.

14 Q Oh. (Tenders to Court Reporter.)

15 COURT REPORTER: I think it goes to them.

16 MR. JOHN BAUER: You need to give it to him.

17 CHAIRMAN EVANS: No, we don't need to see
18 it.

19 MR. BAUER: Oh, I thought you said he was
20 supposed to get it.

21 CHAIRMAN EVANS: That should go to the
22 witness, please.

23 COURT REPORTER: Sorry. I'm used to them
24 unsealing it.

25 MR. BAUER: Okay.

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1 CHAIRMAN EVANS: Would you instruct him
2 again what page you're on?

3 BY MR. BAUER:

4 Q Page 93, line 5 through 9.

5 A Do you want me to read it?

6 Q Yes, please.

7 A "He refused to meet with me on one occasion, on
8 any occasion. He would not meet with me, as superintendent
9 of the schools. I have never in my 30-plus years had a
10 teacher refuse to meet with me."

11 Q Thank you. So does it say that he refused to
12 meet with you, as superintendent of schools?

13 A No, in that context, meeting with me is meeting
14 with Beaufort County School District. What I said, as
15 superintendent, that in my 30 years, I've never had a
16 teacher refuse to meet with me.

17 Q Did you say that you would provide emails,
18 referring to this quote?

19 A I've provided everything requested.

20 Q You did? So you provided emails -- am I correct
21 in stating that you provided emails showing where you asked
22 Mr. Bauer to meet with you as superintendent of education?

23 A What I'm saying is, I've provided everything, to
24 my knowledge, requested.

25 Q Please read page 39 of your deposition, line 21;

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1 page 40, line 11.

2 CHAIRMAN EVANS: Let's do it one at a time,
3 please.

4 BY MR. BAUER:

5 Q I'm sorry. Page 39 --

6 A Page 39.

7 Q -- starting with line 21.

8 A He refused to meet with me. Okay. What is the
9 date that he refused to meet with me -- with you? Multiple
10 dates. Can you give me dates? I need dates. In April --

11 Q I'm sorry. That's not the correct one. This
12 would be -- are we on page 39?

13 A That's where I started.

14 Q Hmm. Well, it starts, "How would you demonstrate
15 that you officially asked someone to attend a meeting?"

16 A Not on my page 39.

17 Q Line -- are you on line 21?

18 A Yes.

19 Q Hmm. Okay. We'll come back to that. Please --
20 okay. We will come back to this. I want to move on. Did
21 you tell -- did you tell me through your attorneys that you
22 invited me, Mr. Bauer, by telephone, to meet with you,
23 individually, as the superintendent of schools?

24 A Did I tell the attorneys and the attorneys tell
25 you something? I have --

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1 Q Yes.

2 A -- no idea what the attorneys told you.

3 Q Did you call Mr. Bauer and speak to him on the
4 phone?

5 A I don't recall if I spoke to Mr. Bauer on the
6 phone. I know I spoke to Mr. McMasters (sic) on the phone
7 one time.

8 Q Concerning Mr. Bauer's termination on June 5th,
9 did you say -- I'm going to -- I'm going to rephrase this.
10 I have a question first. Did you say -- did you reach a
11 conclusion to terminate Mr. Bauer because he refused to
12 meet with you, or was that the culminating event -- the
13 refusal to meet with you, was that the culminating event to
14 the termination?

15 A The termination was embedded in two actions,
16 neglect of duty and insubordination.

17 Q Okay. Was there a written report based on the
18 February 5th pool event, a written investigation report?

19 A I don't recall receiving a written investigation
20 report because there was never a dispute as to whether or
21 not Mr. Bauer left the student. Mr. Bauer voluntarily
22 admitted leaving the student.

23 Q Is there a Beaufort County School District swim
24 policy regarding protocol in monitoring procedures?

25 A I'll be happy to look at a document if you'd like

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1 to show me one.

2 Q Did you promise to provide a Beaufort County
3 School District swim policy?

4 A Again, anything that we were supposed to provide,
5 to my knowledge, we've provided.

6 Q All right. As part of your determining action in
7 this case, did you read the testimonials that were sent to
8 you and the School Board by Mr. Bauer? These were
9 testimonials from parents.

10 A I'll be happy to look at something and identify
11 it, if you'd like to show me.

12 Q Sure. File 148.

13 A In which book?

14 Q That would be volume 1. I'm not going to ask you
15 to read them out loud, just to glance quickly. Actually,
16 would you read the first one, when you get there, just --

17 A File what?

18 Q File 148.

19 A It appears it was -- it starts out, "Dear Bill."
20 I don't know who Bill might be.

21 MR. JOHN BAUER: Bill.

22 MR. BAUER: Oh, that would be Mr. Evans.

23 I'm sorry.

24 MR. JOHN BAUER: No. No, that's not who
25 this is.

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1 MR. BAUER: That's not? Would it be --

2 THE WITNESS: There are multiple 148s.

3 BY MR. BAUER:

4 Q Yes. I'm sorry. I'm confusing you on that, too.

5 A Okay.

6 Q Yeah, it's the very first one.

7 A From Tammy Downing?

8 Q Yes, if you'd please read that one first?

9 A Dr. Moss, Mr. Evans, I'm writing this letter --
10 you want me to read the entire letter?

11 Q Yes, please.

12 A I'm writing this letter to both with a heavy
13 heart. I've spent most of my last year and the previous
14 one within the Hilton Island (sic) Elementary IB School as
15 a parent volunteer in the classroom and co-president for
16 the PTO.

17 During this time, in the last four years of my --
18 child has been at IB (sic), I've had the opportunity to
19 meet with some amazing teachers and staff. I understand
20 the time that each spends with our students and gets to
21 know each of them through the year. Many times, no matter
22 how hard two working parents try, our children spend most
23 -- more time during the school year being taught by our
24 teachers and in school, with after-school events, than time
25 spent at home.

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1 With this being said, I, as a parent, realize
2 that this is -- it is my responsibility to make sure my
3 daughter understands how to act in school, obey the rules
4 set forth, and stay focused, listening to each teacher, as
5 each teacher has something to teach and she, my daughter,
6 will gain something very valuable from each one.

7 On many nights, our family sits down to dinner
8 and discusses the things she has learned, what teachers
9 mentioned in instruction -- in instruction and some of her
10 favorite activities for the week. One name that has come
11 back -- that has come up about as many times as her own
12 homeroom teacher's over the past four years has been her PE
13 teacher, Mr. Bauer.

14 Our child thinks he has some pretty amazing
15 qualities for a PE teacher -- funny, makes everyone laugh,
16 includes everyone, can tell when something is upset -- when
17 someone is upset, sad. He knows their names, creates new
18 fun activities, and always makes them feel like trying new
19 things.

20 Once Mr. Bauer left the school, I can tell you
21 how many -- I can tell you how many and how often many
22 different students asked and wanted to know where he was
23 and when he would be back. His being away affected many
24 students at our school. I have yet, in dealing with many
25 students on a weekly basis, to find a student who doesn't

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1 miss him and want him back.

2 I have had the pleasure to get to know Mr. Bauer,
3 and we worked together on a PTO standpoint and also as a
4 parent in talking about my daughter. Mr. Bauer is one of
5 the kindest, gentlest persons to students, caring about
6 their feelings and needs, a very hard worker, always a
7 smile on his face and willing to help with everything, a
8 can-do attitude, and a true asset to IB. I know that I am
9 not the only parent who feels this way.

10 I also know that, if someone asks the entire
11 school of students, Mr. Bauer would be an all-time
12 favorite, and they would have positive comments as to his
13 character. He truly is an amazing teacher, a positive role
14 model to our students, and provides an environment for our
15 children to learn from and be productive. I am hoping that
16 Mr. Bauer is back at IB in September, or sooner. The
17 students would be overcome with excitement. Many parents
18 would be, as well.

19 I know that I can not, as one parent, stop a
20 freight train that has already left the station without a
21 decision made. I can do my part, and get other parents
22 involved, as well, to show support -- to show a support
23 group of parents that feel he is better off back in school,
24 teaching our students, children, every seven days, PE.
25 Hopefully, the train decision hasn't been made, and he will

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1 receive a fair and adequate hearing so that a majority can
2 rule in bringing him back to IB.

3 No one teacher, student, parent, faculty member,
4 school board member, et cetera, is perfect or has perfect
5 days. Life happens, and I would hope that any or all of
6 us, looking the mirror, would give Mr. Bauer another chance
7 to come back to IB, if not for anyone's self-gain, but for
8 the students whom adore his fantastic -- whom adore this
9 fantastic teacher.

10 I did some reading over the past year, since you
11 took on superintendent. I value the words that the
12 Beaufort County School Board used upon selecting you, Dr.
13 Moss: "Repeatedly heard of his ability to get the most out
14 of people and his ability to put the right staff in place
15 to make the biggest difference in the lives of kids." I
16 also see one of your five components from your first 90
17 days on the job is providing quality professional
18 development programs. I'm entrusting the school board's
19 decision to bring you on as superintendent still holds
20 these words to be true.

21 I know a big part of this is in your hands, and I
22 hope you know that Mr. Bauer is part of that right staff to
23 make a difference. I would also -- I would also like to
24 hope -- know that any and all development programs would be
25 fully exercised and offered to someone if he feels a staff

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1 member or teacher could use extra enrichment or development
2 to reach their full potential as a teacher.

3 I hope this letter finds you well. I am hoping
4 that the time it took me to write this letter and send less
5 -- to write this letter and spend less minutes this evening
6 being a parent, getting to bed early, finishing POs for my
7 business -- I hope you understand I did this all for a
8 teacher I do respect and a teacher that is admired by so
9 many students at our school. For that reason, I believe in
10 a teacher, a teacher that needs to know that he is
11 appreciated and an asset. For that reason, I stay up late
12 to write a letter to you.

13 I am hoping these words, this letter, the content
14 within it, finds its way to Dr. Moss and Mr. Evans and the
15 School Board members seeking to review Mr. Bauer. Wishing
16 for the best outcome, thanks for your time.

17 Q Thank you. Now, in that file, are there other
18 letters from parents?

19 A I don't know that they're relevant, but there are
20 other letters.

21 Q There are other testimonials?

22 A (No response.)

23 Q Did the School Board see any of these before
24 today?

25 A I have no idea. I would imagine the only

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1 individuals that received them are those that they're
2 written to.

3 Q Okay. Now --

4 CHAIRMAN EVANS: Mr. Bauer, before we move
5 on, I'm going to ask that we take a personal break --

6 MR. BAUER: Sure.

7 CHAIRMAN EVANS: -- for about five, ten
8 minutes, please.

9 (Brief recess.)

10 CHAIRMAN EVANS: Okay. Let's go ahead and
11 resume, if we could, please..

12 BY MR. BAUER:

13 Q Now, Dr. Moss, in file 148, will you please turn
14 to page 5 and read only the last paragraph of the colonel's
15 letter?

16 MS. FAWLEY: Mr. Chairman?

17 CHAIRMAN EVANS: Go ahead, Ms. Fawley.

18 MS. FAWLEY: We would like to object to
19 having Dr. Moss read letters or testimonials from 148.
20 Mr. Bauer has a full opportunity to present that as a
21 part of his case. If there are questions for Dr.
22 Moss, that's one thing, but to read is another.

23 MR. BAUER: I will not ask Dr. Moss to read
24 the entire letter. I'm asking one paragraph, and this
25 is the first time the School Board has heard it.

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1 CHAIRMAN EVANS: Okay. Let's -- let's agree
2 to this, Mr. Bauer, if we would. I will permit Dr.
3 Moss to read this one section of this letter that you
4 want, but we will recognize that all these letters are
5 in the booklet you gave us, so we can take them under
6 advisement when we deliberate.

7 MR. BAUER: Sure.

8 CHAIRMAN EVANS: So let's -- let's go from
9 there.

10 MR. BAUER: Thank you.

11 CHAIRMAN EVANS: But it's -- it's fine if
12 Dr. Moss reads this one piece of this one letter that
13 you're interested in.

14 MR. BAUER: Thank you.

15 THE WITNESS: Can I also say that I don't
16 know who the originator of the letter is? It's not my
17 testimony, and it -- I have no idea of the individual
18 or what role they play in this hearing.

19 MR. DUFF: Well, which letter are we looking
20 at here?

21 MR. BAUER: It's on page 5.

22 CHAIRMAN EVANS: You're referring to the
23 letter that's headed Dr. Gregory Hall, USN retired?

24 MR. BAUER: Yes.

25 CHAIRMAN EVANS: Thank you.

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1 THE WITNESS: The last paragraph says, "If
2 Mr. Bauer has been accused of disrespectful or
3 disruptive behavior, that is certainly contrary to my
4 own experience. I absolutely believe he has been a
5 positive influence on my three children and their
6 attitudes toward physical education and school in
7 general. I will be happy to discuss my own
8 experiences regarding this matter over the telephone
9 or in person, if necessary. Thank you."

10 BY MR. BAUER:

11 Q Thank you. Will you please identify file 153?

12 MS. FAWLEY: Mr. Chairman, the witness is
13 going to be asked to identify a document that he
14 didn't write or didn't receive. Again, we
15 respectfully ask that Mr. Bauer refrain from
16 introducing such exhibits until his presentation.

17 CHAIRMAN EVANS: Yeah, I'm going to sustain
18 that. You'll have plenty of opportunity during your
19 testimony to introduce this.

20 MR. BAUER: Okay. And just -- am I allowed,
21 at least, to say what it is the file is referring to,
22 the subjects -- the subject?

23 CHAIRMAN EVANS: I think that will all be
24 part of your testimony, Mr. Bauer.

25 MR. BAUER: All right. Okay. May I ask,

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1 Mr. Chairman --

2 CHAIRMAN EVANS: Let me just clarify that I
3 only say that because this is not a product of Dr.
4 Moss's --

5 MR. BAUER: I see.

6 CHAIRMAN EVANS: -- nor was it sent to Dr.
7 Moss, you know, or that he responded to any of this.
8 So I think it's appropriate under your testimony, but
9 I don't know how Dr. Moss would have any knowledge of
10 any of this.

11 BY MR. BAUER:

12 Q Dr. Moss, is it true that only the teacher can
13 ask for a hearing delay?

14 A Are you referring to a dismissal hearing?

15 Q Yes, sir. Yes.

16 A A dismissal hearing can be requested by the
17 employee or the agent of the employee, who typically is an
18 attorney.

19 Q If your -- if your attorneys copied that
20 information to you -- okay. Strike. Will you please refer
21 to file 229?

22 A Again the big book?

23 Q Volume 2, I believe. I'm sorry. Strike that.
24 We don't need to go to 229. Okay. It only -- Dr. Moss, if
25 only the teacher can -- all right. I'm going to strike

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1 that, too.

2 MR. BAUER: Based on -- Mr. Chairman, based
3 on what you have told me, much of my -- unfortunately,
4 much of my evidence is definitely relevant to this,
5 but cannot be used, obviously, because Dr. Moss has
6 not received a copy. Therefore, my questioning will
7 have to stop at this point.

8 CHAIRMAN EVANS: Okay. I want to make sure
9 you understand that there is certainly going to be
10 adequate time in your own testimony, Mr. Bauer, to
11 bring out any of this that you want. We are only --
12 we are only rejecting at this time the fact that
13 you're asking Dr. Moss to comment on material that he
14 has neither seen nor authored nor received from
15 somebody else, and I -- I don't know how we could ask
16 a witness to do that.

17 MR. BAUER: I understand.

18 MS. FAWLEY: We have no --

19 CHAIRMAN EVANS: But in no way -- excuse me,
20 Ms. Fawley. But in no way does that mean that you
21 can't bring it up under your own testimony or in your
22 summation.

23 MR. BAUER: I understand. I have not been
24 able to clearly develop a plan, based on all the
25 events, for my own testimony, so I'm going to propose

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Witness: Moss

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1 that we go on to closing statements.

2 CHAIRMAN EVANS: You don't plan to take the
3 stand and --

4 MR. BAUER: Not at this moment.

5 CHAIRMAN EVANS: -- give testimony?

6 MR. BAUER: No, I do not. I did not have
7 time to gather my thoughts on this, and so I would
8 prefer to go on to closing statements.

9 CHAIRMAN EVANS: Ms. Fawley? Mr. Williams?

10 MS. FAWLEY: Mr. Chairman, first of all, we
11 have no questions on redirect. Could this witness be
12 allowed to go back to his seat?

13 CHAIRMAN EVANS: Yes.

14 MS. FAWLEY: Thank you. I would
15 respectfully ask that the Board's legal counsel share
16 with Mr. Bauer the importance of and make certain he
17 understands that he is being given an opportunity to
18 present and that the record reflect that he has
19 declined.

20 CHAIRMAN EVANS: I would ask Mr. Duff if he
21 would think that would be appropriate at this time.

22 MR. DUFF: Mr. Bauer, I would strongly urge
23 you to not waive your right to take the stand on your
24 behalf. You gave a fairly detailed opening statement
25 which did provide a good bit of information that the

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1 Board might consider, but the problem is, you were --
2 you were not -- you had not been sworn. So all that
3 information has not been provided under oath, and it
4 is -- it really cannot be fully considered by the
5 Board because it's not in the form of sworn testimony.

6 And even if you feel you're not fully
7 organized and you're -- you know, you don't have what
8 you want to say together in a logical, concise manner,
9 I think that, surely, there are -- I mean, we've
10 indicated over the last couple of days at various
11 points that information or documents are certainly
12 available to you to bring forth in your own -- during
13 your own testimony, and waiving -- essentially, if you
14 waive your right to take the stand on your own behalf,
15 then there is very little evidence on your side of the
16 case. There's no -- there's no legally competent
17 evidence, because you haven't given information under
18 oath.

19 So, even if you think you're going to be
20 rambling and disjointed and disorganized and you may
21 leave out some points, you're probably going to be
22 able to make certain points that you clearly have in
23 mind, because you've attempted to address them in
24 various stages of this hearing.

25 And, you know, I'm not your counsel, but I

1 think it would be a big mistake for you not to take
2 the stand and offer whatever it is that just comes to
3 your mind, looking at your documents, even -- even
4 what you said during your opening statement. If that
5 was said under oath, it could be considered by the
6 Board as testimony. At this point, what you said in
7 your opening really cannot be considered as testimony
8 and, therefore, is really not evidence in the case.
9 It's an introductory statement.

10 So, again, I urge you to take the stand on
11 your own behalf. Even if, in your mind, you're not
12 going to do a very good job with it, I think it will
13 be of some use to the Board, and it will, at least, at
14 that point, be evidence, as opposed to an opening
15 statement, that the Board can consider when it
16 deliberates, and I would say that if -- you know,
17 could the Board even take its lunch break now to give
18 you an hour --

19 MR. BAUER: That's what I was going to ask.

20 Yes.

21 MR. DUFF: -- an hour to further work on
22 your own testimony?

23 MR. BAUER: Or even just a little bit of
24 time to speak with my --

25 MR. DUFF: Or 30 minutes?

1 MR. BAUER: -- father.

2 (Board discusses quietly.)

3 CHAIRMAN EVANS: Mr. Bauer, we would like to
4 suggest that we recess until 12:15; okay? During that
5 time, we're expecting some lunch, in about five, ten
6 minutes, and we will --

7 MR. BAUER: Yes, sir.

8 CHAIRMAN EVANS: We will eat lunch. And I
9 want to say -- and I think I can say this on behalf of
10 the Board; okay? We recognize you're representing
11 yourself, which was certainly your right, and so you
12 may not have been fully aware of all the legal process
13 and rules, and stuff, and we have tried to -- and I
14 hope you accept that we've tried to be open and, I
15 guess I would use the word, "lenient."

16 And I know that Mr. Duff, on a couple of
17 occasions, has suggested a style or a format that you
18 might present something in. And although you may not
19 have been able to present things in the -- in the
20 format or at the time that you were hoping to, I hope
21 you understand that, during your testimony, you have a
22 full ability to do that, and I'm -- I --

23 MR. BAUER: I -- yes. Yes, sir.

24 CHAIRMAN EVANS: While it might be
25 expedient, I think the Board might have some concern

1 if we went into deliberations without our having a
2 presentation of your view of the -- of the documents
3 or your perception of the timeline, and those types of
4 things. So I hope that, with the plaintiff's
5 attorney's acceptance, that we can recess until 12:15,
6 and at that time, if you would like to take your
7 testimony before we go into -- then we'll hear the
8 final arguments, final statements, and then we'll go
9 into deliberations.

10 I will tell you that, when we go into
11 deliberations, we would be happy to take phone numbers
12 and stuff, because I can't tell you how long it's
13 going to take.

14 MR. BAUER: Okay. Yeah.

15 CHAIRMAN EVANS: And I would hate to have
16 everyone just sit here, waiting for us, when I can't
17 tell you whether it's going to be an hour or three
18 hours for us to deliberate; okay? And I assure you
19 that, as soon -- if we make a decision today, which I
20 would expect we will make a decision of some kind, we
21 would inform you and the plaintiff's attorneys,
22 immediately, of that decision.

23 MR. BAUER: Thank you. I -- you have been
24 very clear on this, and I understand completely, and I
25 appreciate it, and I think, yes, a little bit of time

1 to consider what you have said would be helpful.

2 CHAIRMAN EVANS: Okay. Do you have any
3 issue with this, Ms. Fawley or Mr. Williams?

4 MS. FAWLEY: No objection from the
5 administration.

6 CHAIRMAN EVANS: Okay.

7 MR. DUFF: If I could make a further
8 suggestion, Mr. Bauer, whatever you were planning to
9 say, honestly, in your closing argument, which
10 apparently you're ready to give, turn that into your
11 testimony. Use that as the basis for testimony, and
12 it may end up allowing you to shorten your closing.
13 Surely you have an outline for your closing.

14 MR. BAUER: Um-hum.

15 MR. DUFF: Use that as an outline for your
16 testimony.

17 CHAIRMAN EVANS: If everyone's all set, then
18 we will recess until 12:15.

19 (Brief recess.)

20 CHAIRMAN EVANS: Okay. We are back from recess.
21 We've taken recess for lunch, but also to give Mr. Bauer an
22 opportunity, if he chose, to develop an outline for his own
23 testimony. So where are we at this time, Mr. Bauer?

24 MR. BAUER: Yes, sir. I have reviewed my opening
25 statement, and I believe that all of the main points in my

1 opening statement have been reinforced through the
2 witnesses' testimony. Therefore, I believe it can be
3 considered and respectfully request that we move to closing
4 statements.

5 CHAIRMAN EVANS: Okay. I will only say this, and
6 I don't mean to be purposely redundant. I just want to
7 make sure that you understand that you're giving up your
8 right to testimony.

9 MR. BAUER: Yes, I do.

10 CHAIRMAN EVANS: And are we --

11 MR. BAUER: You've been very clear on that.

12 Thank you.

13 CHAIRMAN EVANS: Okay. Anything from you, Ms.
14 Fawley?

15 MS. FAWLEY: Yes, Mr. Chairman. At this time,
16 the administration would move that all of the exhibits in
17 Mr. Bauer's notebooks, except for the ones previously
18 entered onto the record, be removed and not considered.
19 Because they were not offered as a part of testimony,
20 there's no foundation for them.

21 MR. BAUER: And I would like to respond to that,
22 that the evidence that was turned in to Dr. Fawley and Mr.
23 Williams didn't -- are you speaking of new evidence? I'm
24 just wondering if she's talking about new evidence that was
25 added within the last --

1 MR. JOHN BAUER: No.

2 MR. BAUER: -- week, or what?

3 MR. JOHN BAUER: She's talking about new
4 testimony. You're not testifying.

5 MR. BAUER: Oh, I understand. Then strike that.
6 Okay.

7 MR. DUFF: Well, first of all --

8 MR. BAUER: I misunderstood.

9 MR. DUFF: -- do the parties agree on what
10 portions of Mr. Bauer's notebooks have been entered? Does
11 the court reporter having a listing of that, because I --

12 MR. JOHN BAUER: I can give him a list.

13 MR. BAUER: Yes, I do have a list. Yes. Sorry.

14 MS. FAWLEY: Mr. Chairman, the exhibits that we
15 did not -- in other words, Mr. Bauer presented to every
16 witness certain exhibits. You've heard us request that a
17 particular exhibit or exhibits be removed. Those were
18 done. The court reporter has on the record the very few
19 exhibits that we did not object to. Everything else, we
20 object to, because there is no foundation, no testimony, to
21 introduce those documents onto the record.

22 MR. BAUER: That's agreeable.

23 MR. DUFF: As long as the transcript will
24 indicate clearly what you describe as the relatively few
25 pages or filed files that were entered into the -- without

1 objection, without any objection -- as long as we can
2 figure it out from the transcript, then that will become
3 the record. And again, you know, Mr. Bauer, if you waive
4 your testimony, then the only testimonial evidence in
5 support of your position will be whatever concessions you
6 were able to -- to get on cross-examination.

7 MR. BAUER: I understand, and that is agreeable.
8 Thank you.

9 CHAIRMAN EVANS: Does anybody have anything?

10 MS. ANDERSON: Can I ask a question --

11 CHAIRMAN EVANS: Yes. Please go ahead.

12 MS. ANDERSON: -- so I understand? So does that
13 mean, anything that Mr. Bauer has said, like, in his
14 opening statements and stuff, we cannot consider?

15 MR. DUFF: Well, technically, that is true. I
16 mean, you know, you've heard things, and you can't erase it
17 from your memory. But, legally, it's not competent legal
18 evidence in the record. The opening statement from either
19 side is not evidence.

20 MS. ANDERSON: Okay.

21 MR. DUFF: The only evidence will be -- as I
22 said, the testimonial evidence would be whatever Mr. Bauer
23 has been able to accomplish through his cross-examination
24 sessions, in other words, and the few documents that were
25 admitted without objection, which I think is a very few

1 documents. So that -- Mr. Bauer, that's going to be the
2 evidentiary record in this case.

3 MR. BAUER: I understand.

4 MR. DUFF: Okay.

5 CHAIRMAN EVANS: And to follow up to Ms. Fawley,
6 as we went through all three of these books, whether it was
7 your book or Mr. -- I marked documents that were either
8 entered into evidence by you all on direct or by Mr. Bauer
9 on cross, so I hope you accept that as a record of what's
10 come in, because there are literally, I think, dozens of
11 documents in here, particularly in Mr. Bauer's booklets,
12 that were not introduced, and just in my simple way of
13 categorizing, I mean, I circled documents that were
14 discussed and --

15 MS. FAWLEY: We're comfortable with that, Mr.
16 Chairman.

17 CHAIRMAN EVANS: Okay. Thank you, Ms. Fawley.

18 MR. DUFF: And you are, too, Mr. Bauer?

19 MR. BAUER: Yes, sir, I am.

20 MR. DUFF: You're comfortable with the -- with
21 the Chair's, the presiding officer's, notes as to what was
22 admitted and what was not?

23 MR. BAUER: Yes, I certainly am.

24 MR. DUFF: Okay.

25 CHAIRMAN EVANS: Ms. Bush, you had a question?

1 MS. BUSH: Just for clarification, so his closing
2 statement, just like his opening statement, which is not
3 done under oath, is not to be considered, I mean, in terms
4 -- we'll hear it, but it's not evidence in -- what am I
5 saying?

6 MR. DUFF: It's not evidence.

7 MS. BUSH: It's not evidence because it's not
8 taken under oath? It's just information?

9 MR. DUFF: Right. It's --

10 MS. BUSH: Both his opening and his closing
11 statement?

12 MR. DUFF: (Nods head; no verbal response.)

13 MS. BUSH: All right. I understand, then.

14 CHAIRMAN EVANS: Okay.. Does anybody --

15 MR. RIVERS: I have a question.

16 CHAIRMAN EVANS: Go ahead, Mr. Rivers.

17 MR. RIVERS: Can I ask Mr. Bauer --

18 CHAIRMAN EVANS: Sure.

19 MR. RIVERS: -- a couple of questions?

20 CHAIRMAN EVANS: Go ahead.

21 MR. RIVERS: Mr. Bauer?

22 MR. BAUER: Yes.

23 MR. RIVERS: You know, it's your desire to -- it
24 is your hope to get a successful outcome from the Board in
25 this process?

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1 MR. BAUER: I believe so, yes.

2 MR. RIVERS: So, if we don't have anything to
3 consider, how can we -- what will we have to -- you know,
4 to deliberate on, if there isn't anything --

5 MR. JOHN BAUER: Deliberate on the cross-exams.

6 MR. BAUER: Yes, the witness testimony that --

7 MR. JOHN BAUER: From the witnesses.

8 MR. BAUER: -- from the five witnesses can be
9 considered, I believe, if I'm correct.

10 MR. DUFF: You are correct.

11 MR. BAUER: And I note that there were a number
12 of exhibits that were not presented due to my inexperience
13 in questioning, but I feel that what has been presented is
14 -- has merits to it, basically.

15 MR. DUFF: Okay.

16 MR. BAUER: Okay.

17 CHAIRMAN EVANS: And there was a substantial
18 amount of --

19 MR. BAUER: Yes.

20 CHAIRMAN EVANS: --- evidence put into the record
21 under cross-examination.

22 MR. BAUER: Exactly.

23 MR. RIVERS: Okay.

24 CHAIRMAN EVANS: Okay.

25 MR. BAUER: Thanks.

1 CHAIRMAN EVANS: Any other questions from the
2 Board of where we are right now?

3 THE BOARD: (No response.)

4 CHAIRMAN EVANS: Okay. Well, then, we -- I think
5 we're all in agreement as to closing statements, and we
6 will start with the administration.

7 MR. WILLIAMS: And Mr. Chair, we waived opening.
8 Under the law, we reserve the right to close after Mr.
9 Bauer, since we have the burden of proof.

10 CHAIRMAN EVANS: Okay. Mr. Bauer, you've got the
11 floor for your closing statement.

12 MR. BAUER: If the School Board were only to
13 consider the four charges, then I believe I am in good
14 shape.

15 Number one, negligence, one count, not
16 persistent; the employment and dismissal act, 59-25-430.

17 Number two, insubordination regarding the pool
18 event only, one count, denied by the author of the
19 supporting document.

20 Number three, this is a quote in that document,
21 "You were requested to have" -- or I'm sorry. Yes, this is
22 a quote from that document. "You were requested to have an
23 examination from the psychiatrist and report back." This
24 was complied with in March 2014. It was an excellent
25 evaluation.

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1 Number four, the fourth charge, "The date of the
2 meeting to discuss the results of the psychiatrist was
3 scheduled for April 25th, 2014. I sent you a directive to
4 attend." I requested a schedule change of a few hours to
5 allow a witness who was in Rock Hill on an attorney case at
6 the time (sic). Ms. Walton refused.

7 If the Teacher Employment and Dismissal Act had
8 followed the lesser accusations -- I'm sorry. If the
9 Teacher Employment and Dismissal Act had been followed, the
10 lesser accusations would not have been admitted.
11 Complainants to, quote, give -- I'm sorry, to give, quote,
12 evidence in support of the charges, unquote. This is from
13 TEDA, the employment and dismissal act, 59-25-470.

14 Still, I had to explain that a child at an
15 assigned place is not hiding, and that while trying to
16 explain a rest wall, I was not being discourteous. I
17 interrupted the assistant principal not to be discourteous,
18 but to protect a child being yelled at. If I was this
19 parent's -- this child's parent, I would hope that another
20 teacher, or someone, would come to his or her defense.

21 It was not my policy that children change in the
22 public locker room, and the solution of shower curtains
23 seems ineffective. The children don't shower, and the
24 adults don't change in the shower. Administration sets
25 policy.

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1 My only goal is to be returned to the job that
2 had brought me so much happiness. I do not hold grudges.
3 I just want to prove that my first 17 years of success was
4 not by accident. I look forward to supporting the
5 administration at Hilton Head Island Elementary, and I hope
6 that they will understand and assist in my return.

7 Representing oneself is obviously a distinct
8 disadvantage, both in practicality and the psychological
9 impact, not to mention my basic stage fright. Were there
10 only four charges against me -- I'm sorry. That's the
11 stage fright.

12 While there are only four charges against me, the
13 greatest damage to me were the accusations not contained in
14 the charges. Those accusations made it impossible for me
15 to find another job, and I cannot collect unemployment
16 compensation.

17 I believe that my case is very good, that at
18 least there should be some reasonable doubt about the
19 validity of the charges. If you have that reasonable
20 doubt, I believe that you should not give my career the
21 death penalty. Thank you.

22 CHAIRMAN EVANS: Thank you, Mr. Bauer.

23 MR. BAUER: Thank you.

24 CHAIRMAN EVANS: Mr. Williams?

25 MR. WILLIAMS: Thank you, Mr. Chair, members of

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1 the Board, Mr. Duff. On behalf of Dr. Fawley and the
2 administration, we appreciate your time and attention
3 during what we know has been a fairly lengthy proceeding.
4 I was paying attention, believe it or not, when Reverend
5 Rivers gave the invocation this morning, and he made
6 reference to how beautiful it is outside, and I interpreted
7 that as a hint to us that maybe he didn't want to be here
8 all day.

9 So, having said that, I'm going to do my best to
10 be brief while, at the same time, making the points that I
11 believe are necessary for the Board to consider as part of
12 your deliberations.

13 Let me say at the outset, these are always
14 difficult cases. I can tell you that Dr. Fawley doesn't
15 look forward to them. I don't look forward to them. Our
16 witnesses didn't look forward to this process. But under
17 the law, there comes a time -- or there come times when
18 good and sufficient reasons present themselves to recommend
19 the termination of a teacher, and I believe the evidence in
20 this case has shown this is one of those, one such
21 occasion.

22 You have many documents, many exhibits that have
23 been -- that we've discussed with you over the past several
24 days. The first one I will refer to, just to frame the
25 discussion for this case, is the letter that Dr. Moss sent

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1 in June of 2014, advising of the termination recommendation
2 -- I think that's Number 41 -- because it sort of gives the
3 background for this case, holding the reasons that the
4 recommendation was being made, and it specifically says the
5 bases for the recommendation include the grounds provided
6 to you in my email dated May 29th, which there has been a
7 lot of discussion about.

8 You've heard testimony from Dr. Moss on the
9 witness stand as to everything he took into consideration
10 as part of that recommendation, which was partially the
11 incident that happened in February, which has had a lot of
12 discussion. There was also some other earlier incidents
13 related to Mr. Bauer's supervision.

14 And so, as your counsel will advise you, this is
15 the kind of situation that's governed by 59-25-430, which
16 deals with misconduct. And 59-25-430 gives a list of the
17 kinds of things that constitute misconduct. It says that's
18 not an all-inclusive list, but these are the kinds of
19 things that you're looking for. I will say that out the
20 outset.

21 But the other thing that I will say is, as part
22 of the discovery process, Dr. Fawley and I have been
23 dealing with this case for a long time, and the thought
24 that just keeps coming back to me is that this whole thing
25 could've been avoided. These past three days could've all

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1 been avoided, and there's one person sitting in this room,
2 in all due respect to him -- he's been very courteous to
3 me, not been unkind to me through this process at all. But
4 Mr. Bauer is the one person that could've changed the
5 course of this entire thing, and let me explain to you what
6 I mean by that.

7 You've heard over and over about this pool
8 incident on February 5th. The undisputed evidence is --
9 Mr. Bauer didn't dispute this in his cross-examination of
10 our witnesses. It's never been disputed -- is that a
11 student was left unattended for 30 minutes at the Island
12 Recreation Center, which is not a school district facility.
13 There's nothing in the record to dispute that.

14 What I think you would expect one of your
15 teachers to do in that situation is, at the point at which
16 the administration says to them, "You have done this. You
17 have left -- you have admittedly left this student
18 unattended for 30 minutes" -- imagine all the things that
19 would go through your mind as a parent, and as a teacher,
20 and as a board member, what could've happened. Thankfully,
21 those things didn't happen. But what I would think the
22 attitude that you would expect from a teacher would be one
23 of remorse. "Oh, my God, I can't believe that this
24 happened."

25 Instead of remorse, you got, "Ridiculous. This

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1 is ridiculous. I can't believe you're making such a big
2 deal about this."

3 Folks, you know, I say this because it's true. I
4 mean, I'm from the country, so I don't like to overthink
5 things. Sometimes it just comes down to simple things that
6 I think we make too complicated. These past three days
7 would've been avoided if, on day one, Mr. Bauer had owned
8 it, just absolutely owned it and said, "You know what? I
9 made a mistake. I'm sorry. It will never happen again."

10 I have three sons, and I'm frequently giving them
11 a glassy -- they've gotten to the point they get a glassed-
12 over look in their eyes when I start talking to them. But
13 one thing that I will say to them is, "We all make
14 mistakes," and I probably make a mistake every day of my
15 life. It's part of being a person. We make mistakes.

16 When you make mistakes, you have to own up to it,
17 realize what you did wrong, and commit to trying to do
18 better. If Mr. Bauer had done that on February 5th, we
19 would not be here today, but the testimony you heard from
20 witness after witness on that witness stand is, he didn't
21 do that. He never did that. He may have tried to offer
22 some remorse in his opening statement, but that was not
23 what he said when he went -- when he met with the assistant
24 principal, when he met with the principal. He never did
25 that. It was all, "You're blowing this out of proportion,"

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1 and witness after witness said the term that they kept
2 hearing was, "This is ridiculous." So you would expect,
3 you would hope for, remorse. But, instead, you got,
4 "Ridiculous. This is ridiculous."

5 The other thing that occurred to me as I was
6 thinking about this case is, Mr. Bauer represented himself,
7 and in my opinion, I know -- you know, I've been doing this
8 for 20 years, and there are days when I still feel like I'm
9 a new lawyer. That's a difficult thing. So I have no
10 criticism of the job he did in representing himself as a
11 lawyer.

12 But I think part of the problem was, on February
13 5th, what Ms. McAden and Mr. Clendaniel and Ms. Brockway
14 wanted was a PE teacher, and I think, at some point, in his
15 head, Mr. Bauer shifted into lawyer mode on February 5th,
16 and so, instead of acting like a PE teacher and owning up
17 to his responsibility to being -- watching your students,
18 he went into lawyer mode.

19 Well, what do I mean by that? If you look at all
20 the things and all the correspondence and everything in
21 your exhibits, I think you have an example of a teacher
22 acting as lawyer instead of acting as teacher. So, when he
23 gets this directive from the administration to have an
24 evaluation, instead of doing what I think you would expect
25 your teachers to do when the administration makes a

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1 reasonable directive of them, and following that, he
2 lawyers it to death.

3 "Well, that's under sick leave. I'm not on sick
4 leave. I'm on administrative -- I'm on administrative
5 leave." That might be okay for a lawyer, but I think you
6 would expect your teachers to follow a reasonable directive
7 that has been given to them by their supervisor. And he
8 looks at the policy again and says, "Well, you're asking
9 for a second opinion, and the policy doesn't say second
10 opinion. It just says opinion." It might be okay for a
11 lawyer to try to, quote-unquote, lawyer that -- I'm turning
12 "lawyer" into a verb -- but I think you would expect your
13 teachers to follow a reasonable directive.

14 And I'd also say the record is very clear that
15 the administration had a legitimate reason to ask that Mr.
16 Bauer get a second evaluation, because he still didn't seem
17 to get it. You've heard testimony from Ms. Walton, and
18 it's very clear to me from our witnesses, their thought
19 process was that, fairly soon after February 5th, Mr. Bauer
20 was going to be back in the classroom.

21 I mean, I can submit to you, when this first
22 started, when this incident initially happened, that was
23 their thought process, and all he had to do to make that
24 happen was show a little remorse, and then, after he didn't
25 show remorse, cooperate with them.

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1 Those things never happened. He continued to try
2 to lawyer and engage in semantics the entire time, instead
3 of cooperating with the process that would've probably
4 resulted in him being back in the classroom. Ms. Walton
5 said, you know, 90 percent of the time, when they would
6 refer folks for a second opinion, they get the evaluation
7 done, and they're back in the classroom. If Mr. Bauer had
8 done that, these past three days would've not been
9 necessary, but the record clearly shows he failed to do
10 that, for whatever reason.

11 I'll give another example of Mr. Bauer being
12 lawyer instead of being PE teacher. "Well, was there a
13 written investigation done of the pool incident? There's
14 no written report."

15 My question to you is, what exactly would a
16 written report say that's in dispute? All the written
17 report would say is that Mr. Bauer left a student
18 unattended at the rec center for 30 minutes. Whether
19 that's in writing or not, it's not in dispute, so I'd say
20 it's irrelevant whether or not there was a written report
21 done.

22 Here's another example of Mr. Bauer being lawyer
23 as opposed to being PE teacher. "Do you have a swim
24 policy? Is there something in writing that talks about the
25 supervision of students at the swim class?"

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1 My question to you is, do you need a policy? You
2 have them. You actually have -- not a swim policy, but you
3 have broad policies that talk about the supervision of
4 students. But does a teacher need a policy to say, when a
5 student is in a swimming class that you're supervising,
6 "Oh, by the way, when you go back to the building, you need
7 to have all of your students"? You know, there are some
8 things that are just common sense. You don't need to have
9 a policy for everything.

10 So I think it's clear from the record that,
11 again, Mr. Bauer is more focused on being a lawyer and
12 engaging in games of semantics with the administration than
13 just following their simple directives. Show some remorse.
14 Come meet with us. Get this second opinion. They said,
15 you know, initially, "We want it by May 16th." That wasn't
16 complied with. "We'll give you to June the 2nd. Get the
17 second opinion. Come meet with Ms. Walton. You can bring
18 whoever you want, but you need to meet with us, and you
19 need to comply with our reasonable directive," and that
20 just never happened.

21 I'll point out a few other exhibits. Again, I'm
22 mindful of the invocation, and I don't want to belabor the
23 point, but look at Exhibit 41. Look at Exhibit 40 that
24 talked about the negligent supervision. It talked about
25 the insubordination.

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1 It's all been testified to by our witnesses, and
2 our witnesses all took the stand, got sworn in, and you
3 heard their testimony, and they were cross-examined. Mr.
4 Bauer has been sitting here since Thursday. You've bent
5 over backwards to give him that opportunity to tell his
6 side of the story, and for whatever reason, he chose not to
7 do that. So, as you're deliberating, I wish you would
8 consider that, and I think that's fair grounds for you to
9 consider. He could've very easily walked over, been sworn
10 in by the court reporter, and told you whatever he wanted
11 to tell you, and he chose not to do that. So it's up to
12 you as to what you make of that.

13 One exhibit I want to spend a little bit of time
14 on, because there may have been some confusion, is this
15 Exhibit 22, because part of Mr. Bauer's theory -- and I'll
16 submit to you that, when he was doing those initial
17 meetings, when he had those initial meetings with the
18 administration back in February, this didn't come up, as
19 far as the student being late to class as being the reason
20 why the student was left behind.

21 And prior to my discussing Exhibit 22, let me
22 submit this to you also. Let's assume that was the case.
23 Let's assume a student was brought to the pool after class
24 has started. Does that mean it's okay to leave him? I
25 mean, I would hope that the message that this Board -- this

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1 Board doesn't want to send the message that, "Late
2 arrivers, if you arrive to a class late, you're on your
3 own." I would submit to you, if the student was brought at
4 12:30, it's still the teacher's responsibility to get the
5 student back to school with the rest of the students. Now,
6 the record doesn't show that the student was there -- the
7 student got there at 12:30, but I'm saying to you even if
8 that were the case.

9 But if you look at Exhibit 22, which Ms. McAden
10 testified to, as of 10:03 -- and I want to make sure I find
11 that exhibit -- the student was already marked with an
12 unexcused tardy. So what that says to me is, as of 10:03,
13 the student was in school and recorded as being tardy, and
14 it was unexcused. Ms. McAden also testified to you that
15 the classes, the specials swim class that Mr. Bauer was
16 teaching, didn't start until noon. So, approximately two
17 hours before that class, the records indicate the student
18 is already in school and marked with an unexcused tardy.

19 So the two points I would make there are, one,
20 the evidence doesn't support the question of Mr. Bauer's
21 position as he tried to explain through his questioning of
22 the witnesses, and, two, it doesn't matter. If the student
23 was brought to the pool at any point, I would hope it would
24 be your expectation that your teachers would get that
25 student back to school safely, just like they got all the

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1 other students back to school.

2 A few closing points. On several occasions, Mr.
3 Bauer has asked witnesses questions about -- you could tell
4 he's reviewed documents exclusive -- or extensively. I
5 think, at one point, he said something about some policy
6 being 22 pages and 8,000 words. So somebody, I guess, at
7 some point, counted every word. So numbers, apparently,
8 are very important to him.

9 I'm going to offer two numbers: one and thirty,
10 as in one student left behind and thirty minutes. Those
11 are numbers that were important to me, and I think those
12 are numbers that should be important to this Board. Not
13 how many words are in a policy, not how many pages are in a
14 policy, but one student left behind unattended.

15 There is nothing in the record to contradict
16 that. If Mr. Bauer had testified to you, based on the
17 questions that he asked, I would -- he would've had to have
18 acknowledged that. It's never been a dispute. So all this
19 stuff about "what about an investigation report" and what
20 wasn't done, the bottom line is, a student was left
21 unsupervised. That's inexcusable. Mr. Bauer should've
22 owned that from day one. He should've displayed remorse
23 from day one, and if he had done that, none of us would be
24 here right now.

25 It's very difficult for the administration to

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1 have made this recommendation. I promise you, Dr. Moss,
2 there are things he would like to be doing today. Ms.
3 McAden, the same. I'm sure Mr. Clendaniel and Ms. Brockway
4 and Ms. Walton, they had better things to do than come in
5 and testify, but once you employed them to those -- to the
6 positions that you employed them, they have a duty, and
7 part of that duty, as I explained, is to make
8 recommendations for terminations when the facts warrant it,
9 and this is such a case.

10 I'm going to come back to that term Mr. Bauer
11 used, "ridiculous." On this set of facts, where you have a
12 teacher who engaged in misconduct and would not acknowledge
13 it, did not own the fact that they had done wrong, did not
14 show remorse, and then when you try to help them and say,
15 "You need to get this evaluation, and you need to meet with
16 us," they again refuse to do that -- and you have all the
17 letters, all the back-and-forth, just trying to get Mr.
18 Bauer to do the things that the administration had asked
19 him to do. For the administration not to have recommended
20 his termination, that would have been ridiculous, and so
21 the administration has done what they believe you asked
22 them to do, and your decision will then convey to the
23 administration what your expectations are. So we would
24 respectfully ask that, in this case, you support the
25 administration's recommendation that Mr. Bauer be

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1 terminated. Thank you.

2 CHAIRMAN EVANS: First, let me thank everybody
3 for their participation in the hearing. I want to review
4 what's going to be the rest of the process here.

5 The Board is going to adjourn, deliberate the
6 information we've been presented for the last three days..
7 I expect that we are going to make a determination today,
8 but I'm not certain. If we do make a determination today,
9 we will return here and take a vote in public, as we're
10 required to do.

11 If any of the parties choose to leave, which
12 you're free to do, please make sure that you give contact
13 information to Ms. Cushingberry so that, if you're gone
14 when we return, we can contact you and make sure you're
15 aware of the results of our deliberation. If there aren't
16 any questions from the Board members, then I'm going to ask
17 that we adjourn to conference room E to deliberate. We
18 need a motion to go into executive session. I'm sorry.

19 MS. ANDERSON: I move that we move into executive
20 session for the purpose of deliberations in the Bauer case.

21 MR. PAYNE: I second, Mr. Chair.

22 CHAIRMAN EVANS: Okay. We have a motion by Ms.
23 Anderson, a second by Mr. Payne. Any further discussion?

24 THE BOARD: (No response.)

25 CHAIRMAN EVANS: All in favor of the motion?

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1 THE BOARD: (All indicate.)

2 CHAIRMAN EVANS: Eight-zero. Thank you. We are
3 in executive session.

4 (WHEREUPON, the Board adjourned to
5 deliberate and later sent the following email:)

6 Subject: Motion from Executive Session from BOE Board

7 Date: Sat, 2 May 2015 19:23:19 +0000

8 From: Cushingberry, Robyn L

9 <Robyn.Cushingberry@beaufort.k12.sc.us>

10 To: mhazen@anderson-reporting.com

11 <mhazen@anderson-reporting.com>

12 Hi Matthew,

13 Here is the motion.

14 The Board came out of Executive Session at 2:30. The
15 following motion was made:

16 Laura Bush made the motion: "Upon our deliberation of this
17 matter, I move that the Board uphold the Superintendent's
18 recommendation that Mr. John Alden Bauer be dismissed from
19 employment as a teacher with the Beaufort County School
20 District, effective May 2, 2015, based upon the testimony
21 and evidence presented to the Board during its hearing in
22 this matter. I further move that the Board direct its
23 attorney to assist in the preparation of a written Order
24 reflecting the Board's reasoning. The motion was seconded
25 by Mr. Earl Campbell. The motion passed unanimously.

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1 The meeting adjourned at 2:40.

2 Robyn L. Cushingberry

3 Executive Assistant to the Board

4 Beaufort County School District

5 2900 Mink Point Blvd

6 Post Office Box 309

7 Beaufort, South Carolina 29901

8 robyn.cushingberry@beaufort.k12.sc.us

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Bettye Anderson & Associates

Beaufort, South Carolina

843.525.0791 800.543.5506

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FEB 06 2014

Documentation
re: Friday, November 1, 2013

BCSD HUMAN RESOURCES

Ms. Sampson, grade 4 teacher, called the office and reported a child hiding in his pajamas outside of the school/gym. She reported the student appeared to have "snuck away" from his gym class. She placed the call after repeatedly checking through a window for any other children or teachers in sight. Due to her concern, she notified the front office. Protocol was followed, for unlikely situations when students are reported missing or sighted outside of the school. Administration was notified.

I, Michelle Brockway, was designated to investigate, to ensure this student was safe. After verifying that Mrs. Boswell-Smith's 2nd grade class was having "pajama day" and confirming the number of students that should be in her class, I performed a head count upon my arrival at the gym and counted 19 students. One student was at the nurse's office. I stated to Mr. Bauer that I was responding to a report of a student "hiding" outside of the gym. At the time, Mr. Bauer stated that he was not aware of anyone missing from his class.

I walked outside with Mr. Bauer and his class. We did not find any students hiding. Mrs. Sampson, the reporting teacher, then identified the student that was previously sighted hiding. He was in line with his class.

I pulled the student to speak with him. The student explained that he was upset and left his PE station. The student showed me where he chose to stand outside because he was upset. (He had been leaning against an exterior wall against a pipe). This area was around the corner from his PE "station" but not within sight of the teacher. The student reported he was the only student standing in that area except for a girl that was sitting in a seat at the doorway.

I explained (to the child) that the next time he becomes upset, he needs to tell the teacher and find a safe place inside to sit down. Mr. Bauer interrupted the conversation saying the student did nothing wrong and that I did not understand how things worked in his class. Mr. Bauer explained that his students were in centers (two outside of the gym and two inside) and that students were able to move from center to center without permission. In our conversation, Mr. Bauer stated that he knew the child's location. I reminded him that when I first came to the gym, he was not aware of any student that was "hiding" or missing.

We agreed to disagree.

Complainant's

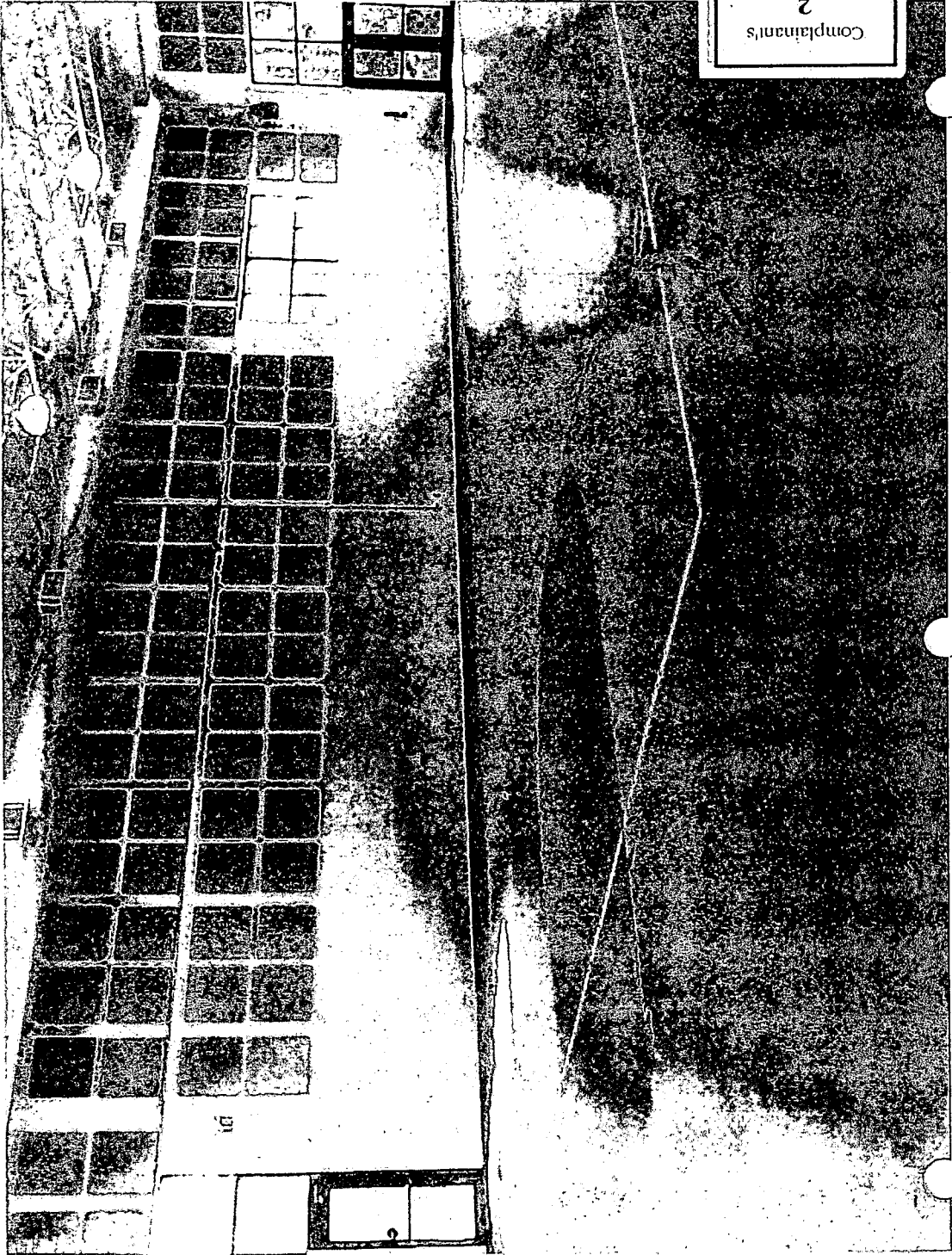
1

According to school and district policy, exterior doors may not be propped open. The teacher needs to be able to see all students in order to supervise adequately. Therefore, the gym doors may not be propped open to accommodate indoor and outdoor stations. In an effort to make sure safety comes first, stations will need to either be held inside or outside. If stations or classes are held outside, the office must be notified.

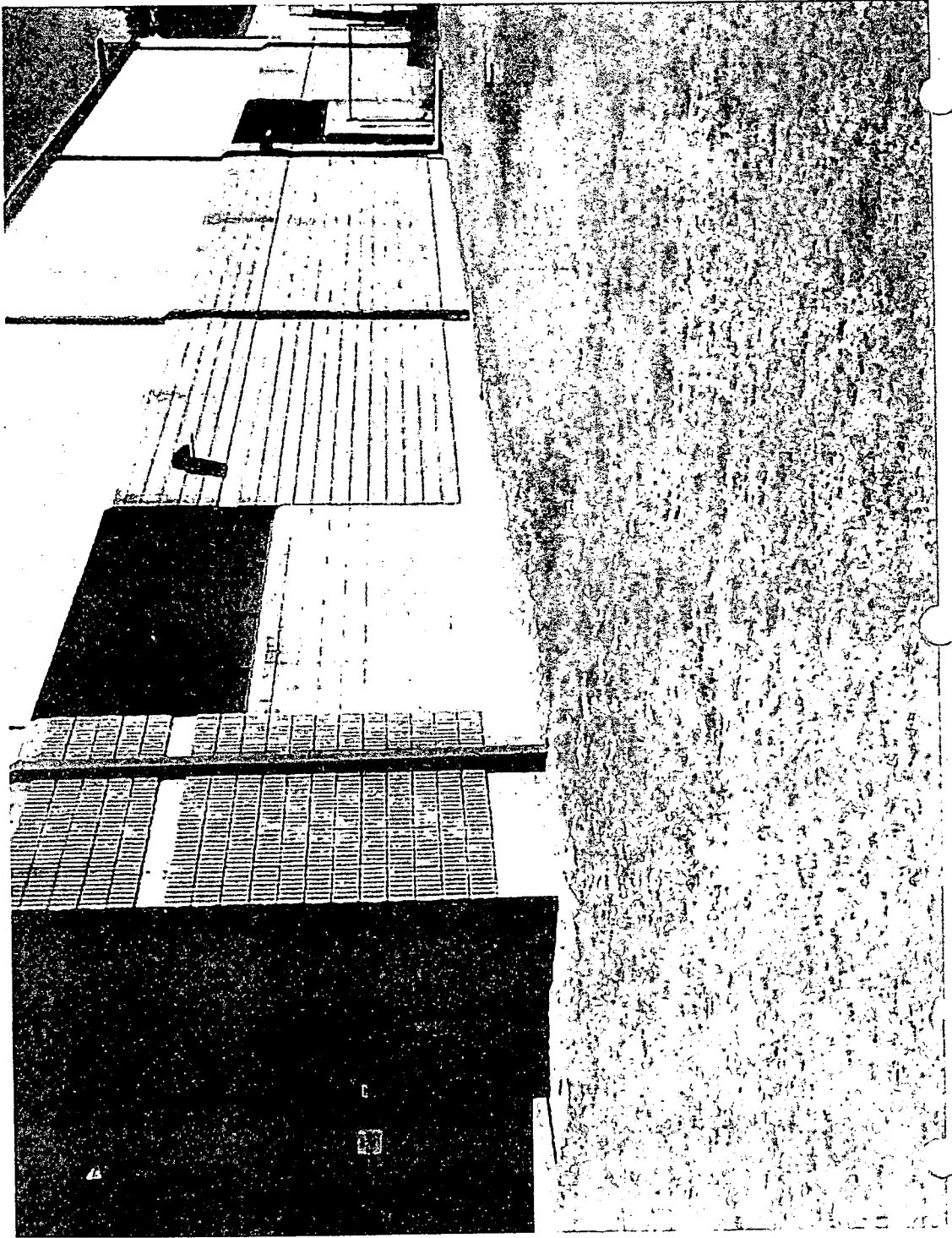
M. Brockway
Michelle Brockway, Assistant Principal

11/8/13
Date

Complainant's
2







Where Today's Learners...



Where Tomorrow's Leaders...

HILTON HEAD ISLAND ELEMENTARY
an authorized IB School
30 SCHOOL ROAD, HILTON HEAD ISLAND, SC 29926
Phone: (843) 342-4100 | Fax: (843) 342-4299

This signature verifies that I have received a copy of documentation in regards to the incident of
November 1, 2013:

William Brown
Name

11/8/13
Date

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FEB 06 2014

BCSD HUMAN RESOURCES

Complainant's

3

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

Complainant's

4

- 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

HRS - 4 Staff Conduct

Purpose: To establish the board's vision for appropriate staff conduct.

One of the best methods of instruction is that of setting a good example. District employees are expected to set the kind of example for students which will serve students well in their own conduct and which subsequently contributes to an appropriate school atmosphere. Towards that end, in dress, conduct and interpersonal relationships, employees are expected to act professionally at all times.

The personal life of a district employee will be the concern of the administration if it impairs the employee's ability to be an effective teacher, administrator or support staff member; violates local, state or federal laws and/or district policies; and in the case of a certified employee, goes against the provisions of his/her employment contract.

No employee will engage in immoral or criminal conduct or commit or attempt to induce students or others to commit an act or acts of immoral conduct or criminal conduct. If it appears an employee may have violated the law, the district will cooperate with law enforcement agencies.

All employees will maintain a professional relationship with students at all times, both inside and outside of school. No employee may engage in inappropriate conduct of a sexual nature with a student at any time. This includes any action or conduct communicated or performed in person, in writing or electronically through telephones, cellular telephones or other telecommunication devices; through computers, laptops, personal data assistants or other mobile computing devices; and through email, text messaging, instant messaging, etc.

While on duty and in the presence of students, employees will not use profanity, tobacco in any form and/or consume or be under the influence of intoxicating beverages. They will also not be involved in drug abuse or drug trafficking.

Violations of this policy will be grounds for placing an employee on administrative leave, with or without pay, pending an investigation and possible recommendation for termination of employment consistent with district policy and state law.

Arrest of an employee:

The superintendent or his/her designee will take appropriate employment action with regard to an employee who has been arrested. Should a district employee be arrested, he/she must promptly notify his/her principal and the chief administrative and human resource services officer of the arrest and keep both apprised of the continued status of the criminal case against him/her.

Adopted 8/10

Legal references:

South Carolina Code of Laws, 1976 as amended:

Section 16-23-420 and 430 - Concealed weapons, school property exception.

Section 16-3-755 - Sexual battery with a student.

Beaufort County Schools

Complainant's

5

SS - 1 Student Goals And Priority Objectives

7/10

Purpose: To establish the board's vision for the goals and priority objectives of the district's policies pertinent to students.

Through its policies that affect the lives of students, the board seeks to advance the following goals.

- to enhance equal educational opportunity for all students
- to promote faithful attendance as a key factor in student achievement
- to ensure that the constitutional rights of all students as citizens in a democracy have practical meaning and application.
- to develop in students a deep sense of personal responsibility for their actions
- to attend vigorously to matters of student safety, health and welfare
- to deal justly and constructively with all students in matters of discipline
- to help all students feel that they are valued as individual persons in the school environment

Adopted 7/18/01; Revised 7/10

Beaufort County Schools

Complainant's
6

http://policy.microscribepub.com/cgi-bin/om_isapi.dll?clientID=755335094&depth=2&inf... 4/20/2015

McAden, Jill M

From: Brockway, Michelle M
Sent: Wednesday, February 05, 2014 9:58 PM
To: Walton, Alice W
Cc: Clendaniel, Donald O; McAden, Jill M
Subject: Documentation of today's meeting

After school today, Mr. Clendaniel and I met with Alden Bauer to discuss the following:

- 1) The locker rooms at the Rec Center during swim lessons.
- 2) The student left behind at the Rec Center.

Mr. Bauer was asked to meet with us at 3:45pm. Although he had previously been waiting in the office, he couldn't be found at 3:45 when it was time to meet. He finally arrived at 4:00. Apparently, he had gone to get a soda across the street.

As Mr. Clendaniel spoke about a parent concern regarding the locker rooms, it was obvious that Mr. Bauer wanted him to get to what had happened today. He didn't appreciate that a parent had called administration and not him. He seemed to think everything was under control at the Rec Center and what was happening "came with the territory." Instead of wanting to brainstorm how to improve time spent in the locker rooms, he seemed more concerned about "these parents that call administration before him." (However, I would like to point out the father's concern came to administration today after his wife had talked to Mr. Bauer the day before.)

When Mr. Clendaniel spoke of today's incident and shared the letter he had written, Alden couldn't believe we were taking a "silly mistake" so serious. He was offended (and surprised) that Mr. Clendaniel was handling the incident the way he was. Alden explained that he does so much for the school and has put so much time into the place and couldn't believe he was being treated the way he was. Mr. Clendaniel clarified that the reason he wrote the letter was because of the way Mr. Bauer had handled the incident earlier in the day. (He had become defensive over the phone with Mr. Clendaniel and thought it was "ridiculous" to meet after school. He insisted on talking about it over the phone; although, it was time for him to teach a class.) Mr. Clendaniel and I further explained we just wanted to meet to follow-up on what had happened and how it could be prevented from happening again. Mr. Bauer couldn't understand that.

Mr. Bauer signed the letter and declined to take a copy of the letter. He said he would sign the letter but was done discussing the incident any further. He said the letter was going to make him think twice about returning to our school. He claimed he was mad and hurt before leaving the office.

Please let me know if I can be of further assistance. Michelle

Michelle Brockway, Assistant Principal

Complainant's

7

McAden, Jill M

From: Brockway, Michelle M
Sent: Thursday, February 13, 2014 3:20 PM
To: McAden, Jill M
Subject: Tuesday's Meeting (A.B.)

Having had time to reflect on the incident that occurred on Nov. 1st with Alden, I remembered something I wish I had the opportunity to share at the meeting on Tuesday. When I was speaking with the child that had decided to go off and hide, Alden kept interrupting saying "He did nothing wrong!". I tried to explain to Alden that a child cannot go off and hide when he or she becomes upset or frustrated....that the child always needs to be visible to the teacher. As the child and I tried to discuss what he could do if he becomes upset or frustrated, Alden continued to say "He did nothing wrong. He is allowed to do that. You don't understand my class."

I apologize for not conveying this information during the meeting, but it was difficult to gather my thoughts and the details of the incident last minute. Please let me know if you need anything else from me. Thanks, Michelle

Michelle Brockway, Assistant Principal
Hilton Head Island Elementary, an authorized IB school since 2001
30 School Road
Hilton Head Island, SC 29926
Email: michelle.brockway@beaufort.k12.sc.us
Phone: (843) 342-4222

Complainant's

8

From: Clendaniel, Donald O
Sent: Tuesday, January 28, 2014 2:46 PM
To: HHIBE
Subject: SPECIALS Rotation
Importance: High

Since our year is already mapped out, whenever we return to school, specials rotation will continue as if we were here on the days missed. As an example, Ms. Campbell's class had ART today (Day 2) ...if we return Thursday, Ms. Campbell's class will have P.E. (Day 3).

Hope this makes sense,

Donald O. Clendaniel III
Assistant Principal
Hilton Head Island Elementary
An Authorized IB School
30 School Road
Hilton Head Island, SC 29926
843.342.4100

Complainant's

9

From: Bauer, John A
Sent: Tuesday, January 28, 2014 3:25 PM
To: Clendaniel, Donald O
Cc: McAden, Jill M; Brockway, Michelle M
Subject: RE: SPECIALS Rotation

Cy. We have never done it this way before. I know that my classes that have swimming for tomorrow think they are coming on Thursday instead. There may be a lot of problems with kids knowing where to go.

From: Clendaniel, Donald O
Sent: Tuesday, January 28, 2014 4:27 PM
To: Bauer, John A
Cc: McAden, Jill M; Brockway, Michelle M
Subject: RE: SPECIALS Rotation

My goal in sending the Specials Rotation email was to eliminate confusion. I'm not sure what students were told, but this is the schedule we will follow. If we return Thursday, further discussion can surround the possibility of making up the missed day.

Donald O. Clendaniel III
Assistant Principal
Hilton Head Island Elementary
An Authorized IB School
30 School Road
Hilton Head Island, SC 29926
843.342.4100

Tuesday, February 4, 2014

Received a late afternoon call from Mr. [REDACTED] requesting a return phone call; I contacted Mr. [REDACTED] the next morning and he had issue with a conversation that was brought to his attention from both his son and wife. His son indicated that 'a naked old man' was staring at the students after swim class at the Island Recreation Pool. Dad also stated that his wife had approached Mr. Bauer about the 'naked old man'. Dad indicated that Mr. Bauer minimized the incident as 'part of the territory' of students attending a public facility where patrons shower and change in the same locker room. Dad was not satisfied with this response and felt it necessary to further communicate with administration. I assured dad, that this is not something that 9 year old students should be exposed to. I apologized on behalf of Mr. Bauer's reaction and promised to have further dialog with Rec. Center Staff about the concern.

I contacted [REDACTED] of Island Recreation expressing the concerns of Mr. [REDACTED]. I personally suggested that partitions/curtains be erected for the purpose of separating shower, locker room and bathroom facilities at Rec. Center. I then visited Island Recreation facilities on Wednesday, February 5th to discover that shower curtains had been erected. I also informally discussed my conversation with Mr. Bauer and asked that him to 'ramp up' his vigilance prior to students entering the changing facility after exiting the pool. I stated that a simple sweep of the changing areas would help with determining who - or who is not - present.

I too have been vigilant at Island Recreation Center since the 4th of February to ensure consistency is taking place.

This statement is written to the best of my knowledge and belief,

Donald O. Clendaniel III
Assistant Principal - Hilton Head Island Elementary

Complainant's
10

From: Brammer, Allison
Sent: Wednesday, February 05, 2014 1:20 PM
To: Bauer, John A; Baker, Mary A
Subject: [REDACTED] rec swimming

[REDACTED] was left at Rec. The employees brought [REDACTED] over

EEKs not good

Allison Brammer
Hilton Head Island Elementary
Front Office Receptionist

Complainant's

11

From: Bauer, John A
Sent: Wednesday, February 05, 2014 1:21 PM
To: Brammer, Allison
Subject: RE: [REDACTED] - rec swimming

Thanks. It was pouring down raining and we were in a rush to get back.

Begin forwarded message:

From: "Brammer, Allison" <Allison.Brammer@beaufort.k12.sc.us>
Date: February 5, 2014 at 1:22:15 PM EST
To: "Clendaniel, Donald O" <Donald.Clendaniel@beaufort.k12.sc.us>
Subject: FW: [REDACTED] rec swimming

From: Clendaniel, Donald O
Sent: Wednesday, February 05, 2014 1:35 PM
To: McAden, Jill M; Brockway, Michelle M
Subject: Fwd: [REDACTED] rec swimming

I am handling this now...Ironically, [REDACTED]'s mom was coming through the door as [REDACTED] was coming back from rec. with an employee there.

Sent from my iPad

Complainant's
12

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Clendaniel, Donald O

FEB 06 2014

From: Clendaniel, Donald O
Sent: Wednesday, February 06, 2014 1:37 PM
To: Bauer, John A
Subject: Rec. Center debrief today @ 3:45

BCSD-HUMAN RESOURCES

Showers - my conversation with rec center employees [REDACTED] - my conversation with mom

Sent from my iPad

Complainant's

13

Subject: FW: Rec. Center Debrief
Location: Mr. Clendaniel's Office

Start: Wed 2/5/2014 3:45 PM
End: Wed 2/5/2014 4:00 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Clendaniel, Donald O

Importance: High

-----Original Appointment-----

From: Clendaniel, Donald O

Sent: Wednesday, February 05, 2014 2:10 PM

To: Bauer, John A

Subject: Rec. Center Debrief

When: Wednesday, February 05, 2014 3:45 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: Mr. Clendaniel's Office

Importance: High

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FEB 06 2014

Wednesday, February 5, 2014

BCSD HUMAN RESOURCES

Describe the problem:

Today a fifth grade male student was left at the Island Rec Center after a swim class at 12:50. When the student came out of the locker room to discover that his entire class including his teacher had left, and walked across the street, he went inside the building and found an adult. This employee walked the student over to the school and said, "This student was left behind in the locker room." He arrived on campus at 1:20. (30 minutes, student unaccounted for.) The mother of the student just happened to be coming into the office to drop something off for her son, she saw me with the student and I brought her into my office with her son to tell her what happened today. I phrased the situation as positively as possible by saying, "I am so glad you are here. He did a great job communicating today."

During Mr. Bauer's first grade specials rotation at 1:36, I sent him an e-mail titled "Rec center debrief today at 3:45." (see documentation) At 2:10, I sent an "Outlook" invite to Mr. Bauer to discuss the events that occurred today and my dealings with parents who had complaints while their students were under his supervision. I received a call from Mr. Bauer at 2:18 while students were in his gym, and said with a tone, "Is this something we can talk about on the phone? This is ridiculous, I have something after school today. Can't we talk about this over the phone? This is ridiculous, this is absolutely ridiculous." I said, "If you think this issue is ridiculous, then I'll document that you feel as if it's ridiculous, but I am asking you to meet me in my office at 3:45 this afternoon and so we can discuss this in person."

3:44

After dismissal, Mrs. Brockway and I discussed the infractions that occurred today and prepared for the meeting. It was reported that Mr. Bauer came to the front office, checked his mail and then vanished.

3:49

I contacted the front desk as to Mr. Bauer's appointment. It was reported that he was there, but had left.

3:50

Front desk confirmed Mr. Bauer left the office without notice. Mr. Bauer was then paged over the Intercom system. No response.

3:59

Mr. Bauer returned to front office having left campus. He stated he went to get a soda. It was obvious he had been to the pantry because his soda was in a Styrofoam cup from the pantry.

Complainant's

15

4:00

Meeting began. Body language was extreme -- slumped in the chair, no eye contact, baseball cap on, red in the face, stating "this is silly, why these parents still come to you with problems? They need to come to us we their problems. This is unnecessary." I went on with the explanation that the meeting request was twofold; first, to discuss the continuing parent phone calls that are coming to our office related to students being subjected to adults that are unclothed and unsupervised in Island Recreation Center locker room after swim class. Mr. Bauer's rebuttal was that, "this is something students are going to deal with". I indicated that my phone call this morning was from a dad of whom Mr. Bauer had spoken to his wife the day before. The dad indicated that Mr. Bauer was very flippant with his wife about his [redacted] being subjected to a naked old man in the Rec. Center locker room. The dad stated that this is not something that any 8 year boy should be exposed to...never mind the fact that Mr. Bauer indicated 'this is something the kids are going to have to deal with'; Second, to discuss the issue of leaving a 5th grade student behind at the rec center, in the locker room. The student was found by a rec center employee who walked him over to the school. Mr. Clendaniel indicated that the incident surrounding a fifth grade student being left at the Rec. Center was being documented, as was the repeated comments that this was all 'ridiculous'. In this class there are 26 students. Mr. Bauer continued to act angry and seem to be bothered by the meeting stating he was 'disappointed in me and this is just not I expected from you.' He stated that he would sign the acknowledgement letter and then wished to leave Mr. Clendaniel's office having not read the documented write-up and again stating, 'this is ridiculous...I made a simple little mistake.' Mr. Clendaniel indicated that he would read the write-up to Mr. Bauer of which he did. Mr. Bauer stated that, 'this is not something I expected from you...I don't feel supported at all...this is not something that needs to be documented.'

Mr. Clendaniel indicated that this meeting took on an entirely different feel when Mr. Bauer stated on the phone that this whole issue was ridiculous. Mr. Clendaniel stated, "my initial intent in meeting you this afternoon, was to respectfully discuss the issues surrounding my parent phone call and our 5th grade student. Our job as administrators is to protect our staff and students. Communication is critical, especially in situations such as these. Documentation became necessary after you indicated my request to meet was 'ridiculous'". Mr. Bauer again indicated that he disagreed with the write-up, would need to 'search other avenues' and proceeded to leave the office. Mr. Clendaniel stated that the written document was for him to keep; he refused to take the document stating, 'I don't want a copy...it will make me to mad.'

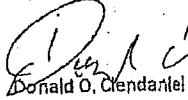
4:15 Meeting concluded.

4:30 Mr. Bauer was called back to the office on his cell phone to meet with Mrs. McAden, and connect via phone with Alice Walton, Director of Human Resources.

Mr. Bauer came into the office and the phone conference took place. Mrs. McAden said "I have been told about what occurred today and your response, "this is ridiculous." Mr. Bauer once again said, yes, I think it is ridiculous.

Mr. Bauer's body language was a bit calmer than earlier, but was still "miffed" at being in the office, being spoken to about this incident. Ms. Walton addressed the severity of the situation, reviewed the conference that had taken place, indicated the Mr. Bauer would be placed on administrative leave and a meeting was scheduled for 9:00 AM w/Ms. Walton in Beaufort on Friday, February 7, 2014.

This statement is written to the best of my knowledge and belief


Donald O. Crenshaw

Assistant Principal

Hilton Head Elementary School

Hilton Head Island Elementary School

RECEIVED

FEB 06 2014

To: Alden Bauer

From: Donald Clendaniel, Assistant Principal

BCSD HUMAN RESOURCES

Date: February 5, 2014

Re: Accounting for PE Students

Mr. Bauer,

It has come to our attention that [REDACTED] was left in the Island Recreation Center locker room at the conclusion of 5th grade PE specials. A member of Island Recreation staff discovered [REDACTED] and safely escorted him across School Road to the school's front office.

I then received a phone call from your desk after inviting you, via outlook, to a 'Rec. Center Debrief'. It was stated that you had an afterschool obligation and wished to discuss any details about the incident on the phone. Since this was during 1st grade specials where children were in your care, I indicated that the meeting needed to take place in person at days end, to which you repeatedly stated was, 'ridiculous'.

Please ensure that every precaution is made when taking attendance prior to and at the conclusion of both off-site swimming and in-house physical education classes. This is the second documented occurrence this school year in which administration was contacted for a student that was not accounted for during your physical education class. You must remain vigilant when it comes to the safety of your students at all times.

This will serve as documentation in your personnel file.

Complainant's
16

Where Today's Learning...



...are Tomorrow's Leaders!

HILTON HEAD ISLAND ELEMENTARY
an authorized HS SCHOOL
30 SCHOOL ROAD, HILTON HEAD ISLAND, SC 29925
Phone: (843) 342-4100 | Fax: (843) 342-4299

This signature verifies that I have received a copy of Accounting for PH Students - February 5, 2014;

Name

John Alden Bass

Date

2/5/14

RECEIVED

FEB 06 2014

BCSD HUMAN RESOURCES

December 10, 2013

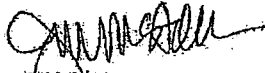
Dear Alden,

When I met with Mrs. Perdue to ask how her regularly scheduled meetings with staff members were going. She shared that you did not come to the specialist meeting last week, and furthermore, when a specialist came to get you in your office, you seemed shocked and said, "I got the invitation, but it was just an invitation. I didn't think I needed to come."

Alden, these Outlook invitations are used throughout the building to invite faculty and staff members to important scheduled meetings. They are used for literacy and math meetings, PYP meetings and IEP meetings. If you are having any difficulty with Outlook, please submit a help ticket for assistance.

On another note, Mrs. Brockway has shared that you have lost or misplaced at least three 504 plans. Alden, as you well know, these are confidential documents that need your signature, but should always be stored in a secured location. Your three drawer file cabinet is suited for this. Please make sure that these documents are secure and when you receive a 504 plan, it is critically important to read it, sign it and get the top copy back to Mrs. Brockway. The 504 plan that she provides you with is for your files.

Thank you,


Jill McAllen

Complainant's
17

185888
Johnson, Andrea

From: Walton, Alice W
Sent: Thursday, February 06, 2014 10:46 AM
To: Johnson, Andrea
Subject: Fwd: Confidential / Alden Bauer

RECEIVED

FEB 06 2014

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

BCSD HUMAN RESOURCES

Sent from my iPhone

Begin forwarded message:

From: "McAden, Jill M" <jill.mcaden@beaufort.k12.sc.us>
Date: February 6, 2014 at 10:42:35 AM EST
To: "Walton, Alice W" <Alice.Walton@beaufort.k12.sc.us>
Cc: "McAden, Jill M" <jill.mcaden@beaufort.k12.sc.us>
Subject: Confidential / Alden Bauer

Alice,

Alden has been an integral member of the staff here for years.

I was shocked at his lackadaisical behavior in Mr. Clendaniel's office yesterday. His demeanor was defensive, as if he was bothered by this "silly" mistake, he acted put off by being spoken to and did not apologize for this grave mistake - leaving a student behind in the locker room. He said it was ridiculous, the way he was being treated. I must say, he was treated like a professional, but was being held responsible for the safety of his students.

He was slouched in the chair, and was sighing as if this was being blown out of proportion. His face was red and he was clearly bothered/mad. He did not and would not make a connection to the safety of students. He showed no remorse, regret and did not accept responsibility. Nor did he come up with a plan for accountability for the future. I have concerns on so many levels. This behavior of becoming defensive was also seen by Mrs. Brockway earlier in the year when a student was outside of the building, unaccounted for.

Jill McAden
Principal
Hilton Head Island Elementary, an authorized IB school since 2001.

Complainant's

18

Judy A. Venters

Subject: FW: Documentation, Bauer
Attachments: photo.JPG; ATT00001.txt

-----Original Message-----

From: McAden, Jill M
Sent: Thursday, February 06, 2014 3:49 PM
To: Walton, Alice W
Subject: Documentation, Bauer

Alice,

.Re: Alden Bauer

There were no emergency sub plans, the schedule rotation reflected in this picture is from last year, the phone roster is from 2010-11.

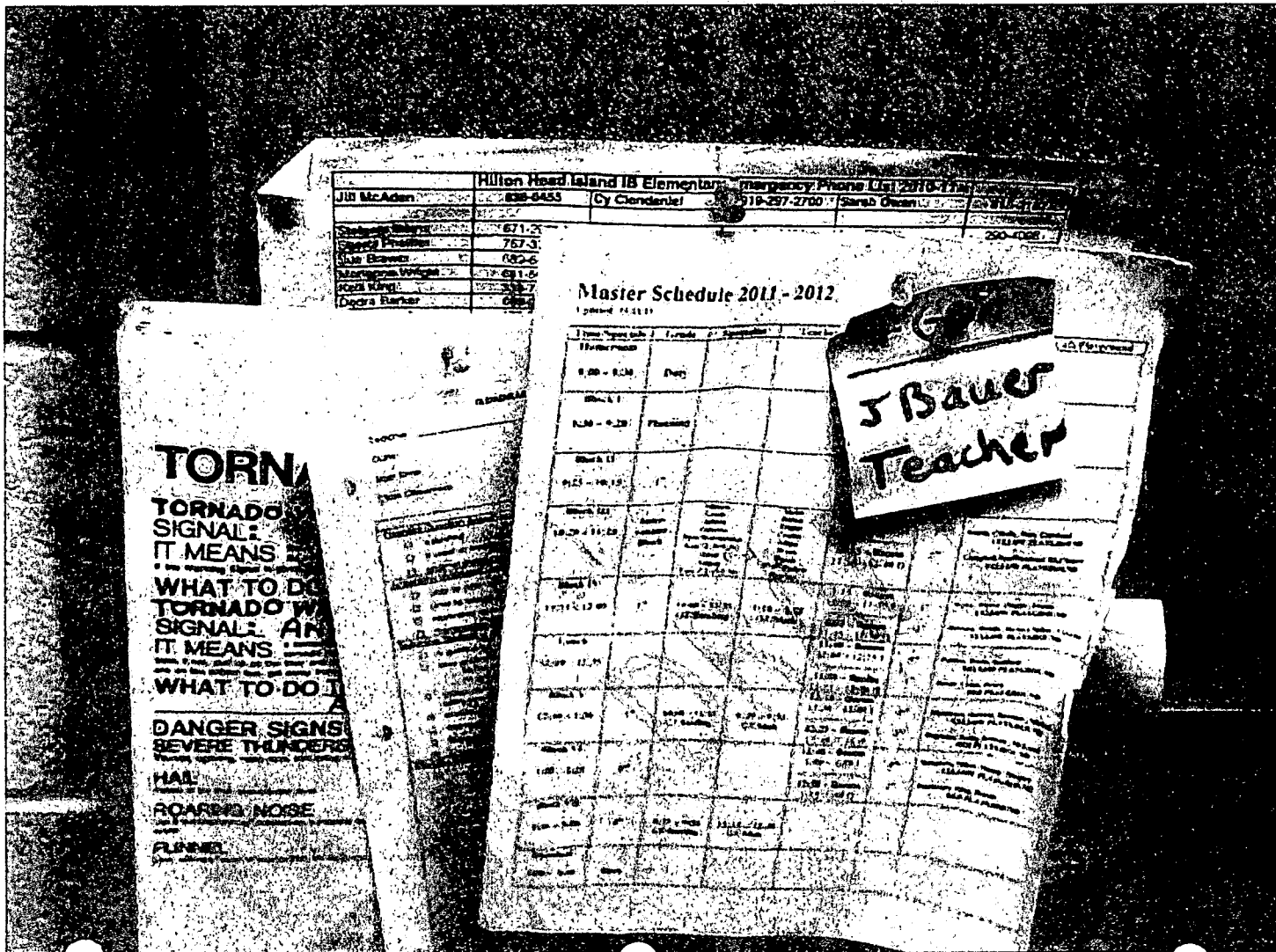
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*** Barracuda Networks scanned this email for viruses, vandals, and malicious content. ***

1

Complainant's
19



Judy A. Venters

Subject: FW: Last photo
Attachments: photo.JPG; ATT00001.txt

-----Original Message-----

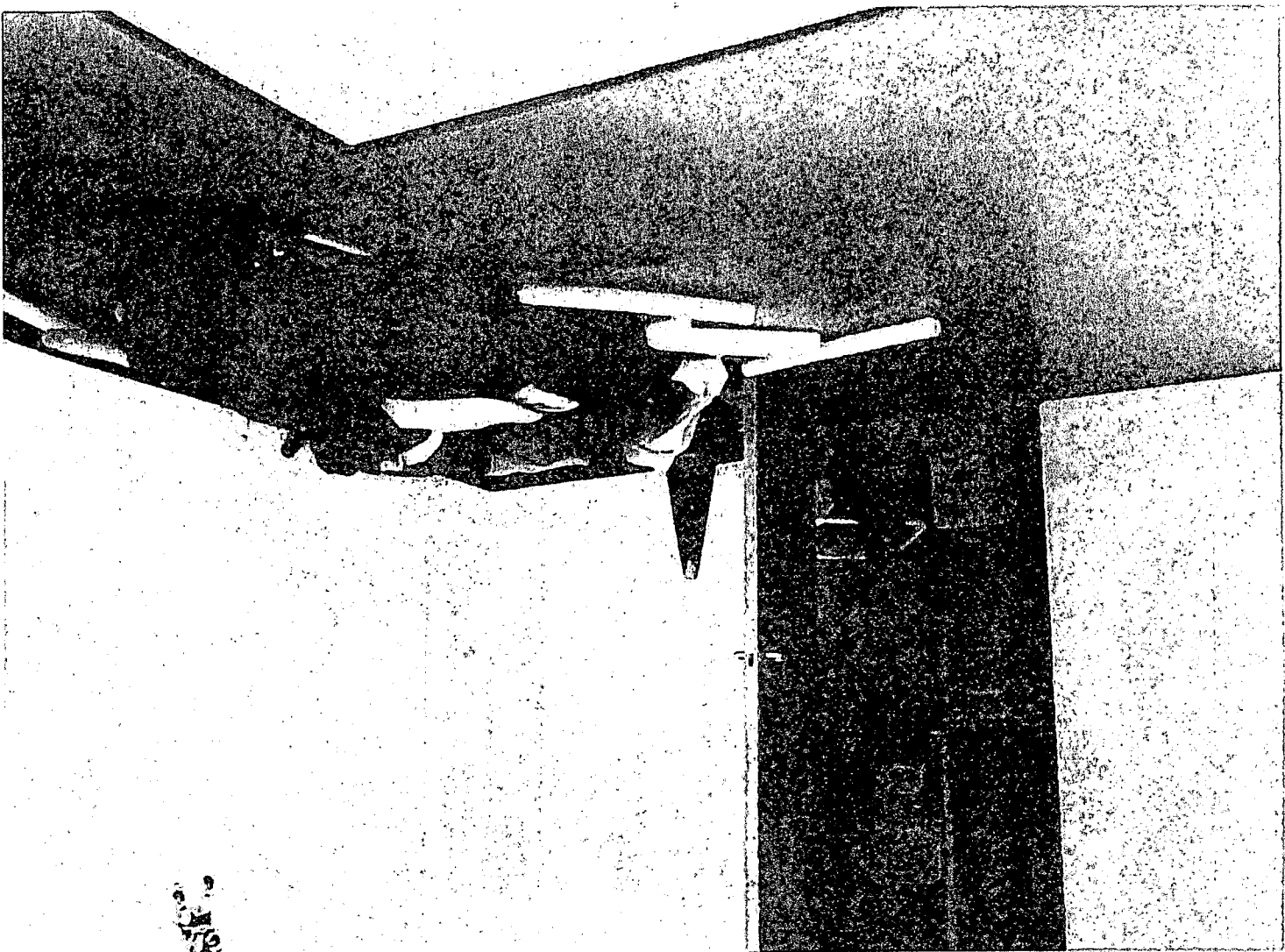
From: McAden, Jill M.
Sent: Thursday, February 06, 2014 3:59 PM
To: Walton, Alice W
Subject: Last photo

Alice, the storage closets with gym equipment are a total wreck. Total wreck....

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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.

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Judy A. Venters

Subject: FW: Bauer

From: McAden, Jill M
Sent: Wednesday, March 19, 2014 2:13 PM
To: Walton, Alice W
Subject: Bauer

Alice,

As Information, I have three 504 student accommodation plans, and four "Regular Education Teacher Involvement in the IEP forms as well as one "Accommodations/ Modifications/ Supplementary Aides for Students with IEPs" form that were scattered around Alden's office. All are confidential, none were secure.

Thank you.

Jill M. McAden

Principal
Hilton Head Island Elementary
An authorized International Baccalaureate School
843-342-4100



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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.
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Judy A. Venters

Subject:

FW: Hello

From: McAden, Jill M
Sent: Monday, March 17, 2014 9:15 AM
To: John Bauer
Cc: Walton, Alice W
Subject: RE: Hello

Hi Alden,

I am forwarding this request along to Alice Walton.

Jill M. McAden

Principal

Hilton Head Island Elementary

An authorized International Baccalaureate School

843-342-4100



International
Baccalaureate

From: John Bauer [mailto:jabbe23@gmail.com]
Sent: Sunday, March 16, 2014 9:05 PM
To: McAden, Jill M
Subject: Hello

Hello. I hope all is going well. I have a couple of requests:

1. May I get access to my e-mails from school. I can do that through my home computer so I do not need to come in personally.
2. Would you be able to send me a copy of the pictures you took of the equipment in the gym?
3. I would like to schedule a date I may be able to gain access to the files in my filing cabinet.

Look forward to hearing from you.

IMPORTANT: The contents of this email and any attachments are confidential. They are intended for the named recipient(s) only.
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Complainant's

20

To: Jill McAden

I am trying to follow Dr. Moss' instructions. From his email:

My Question: When may I gain access to these emails?

Dr. Moss' Answer: Once you schedule an appointment with the principal,

I do not need the laptop. I just need to access emails.

Thank you,

Alden Bauer

Mon June 9, 2014 4:58PM

From: Jill McAden

To: Alden Bauer

Alden,

For your computer and email access, please call Alice Walton. The computer is district property and I don't have access to it. Email access can only be granted by Alice Walton.

I will coordinate with you when you want to get your personal items from the gym.

Thank you,

Mon June 9 2014 9:04 PM

From: Alden Bauer

To: Alice Walton

There seems to be a little bit of confusion regarding access to my work emails.
Are you able to unblock my home computer so that I can retrieve my emails?

Tues June 10 2014 1:32PM

From: Alice Walton

To: Alden Bauer

Alden,

I will enable your network login for your school computer if that is what you are referring to. If you can drop by the DO at some point, I will provide you a room and access to your login in order for you to retrieve any personal data as well as your emails from your laptop.

You may call Angie Lopatka 322-2381 and she will make the arrangements.

Regards,

<<https://mail.google.com/mail/u/0/?ui=2&ik=c3a05574d0&view=att&th=1467dee2fd7d6ac8&attid=0.1.1&disp=safe&zw>>

Thurs June 10 2014 1:46PM

From: Alden Bauer

To: Alice Walton

I dislike being so persistent but my question is: "Are you able to unblock my home computer so that I can retrieve my emails? I used to be able to login from the BCSD website." <<https://mail.google.com/mail/u/0/?ui=2&ik=c3a05574d0&view=att&th=1467dee2fd7d6ac8&attid=0.1.1&disp=safe&zw>>

No Response

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Master Schedule 2013 - 2014

Updated: 4/10/14

Time/Specials	Balanced Literacy in the PYP	Math in the PYP	Social Studies/ Science in the PYP	Time/Lunch	Grade	Classes in Caf�/Playground
Homeroom 8:00 – 8:30	Duty			Breakfast 8:00 – 8:30		
Block I ~~8:40 – 10:20~~ (100 minutes)	Balanced Literacy 1 st	Math 2 nd , 3 rd , 4 th	Social Studies/ Science 5 th			As a reminder, recess locations for 3 rd , 4 th and 5 th grade will shift on January 6 th . 1 st graders remain on Yellow Playground & 2 nd graders remain on RED Playground
Block II ~~10:20 – 12:00~~ (100 minutes) 3 rd Specials 10:10-11:00 4 th Specials 11:05-11:55	Balanced Literacy 5 th	Math 1 st	Social Studies/ Science 4 th (10:20-11:00) 2 nd (10:20-11:30)	11:00 – 11:25 I 11:15 – 11:40 II 11:30 – 11:55 I 11:45 – 12:10 II	3 rd 3 rd 2 nd 2 nd	Walton, Mehle, Stephens, Metz, Borisuk RED PLAYGROUND (1:40-2:00) McLoud, Cibula, Cooke, Jefferson YELLOW PLAYGROUND (1:40-2:00) Weber, Halpin, Miller, Tuttle, Hamby RED PLAYGROUND (11:05-25) Campbell, VanWicklen, CBS, Chen RED PLAYGROUND (11:25-45)
Block III ~~12:00 – 1:40~~ (100 minutes) 5 th Specials 12:00-12:50	Balanced Literacy 2 nd & 3 rd		Social Studies/ Science 4 th (1:10-1:40) 1 st (12:40-1:30)	12:00 – 12:25 I 12:15 – 12:40 II 12:30 – 12:55 I 12:45 -1:10 II 1:00 – 1:25 I 1:15 -1:40 II	1 st 1 st 4 th 4 th 5 th 5 th	Ziegler, Coulter, Foy, Roberts, Wynn, YELLOW PLAYGROUND (times below) Trolan, Penale, Barker, Taylor YELLOW PLAYGROUND (times below) Slaughter, Smith, Schupp, Banks YELLOW PLAYGROUND (12:05-25) Rombauer, Sampson, Vaccaro RED PLAYGROUND (12:25-45) Baker, Jordan, D'Angelo, Eisele RED PLAYGROUND (1:25-1:45) Polites, Quigley, Seelbach, Hurley YELLOW PLAYGROUND (12:50-1:10)
Block IV ~~1:40 – 3:20~~ (100 minutes) 1 st Specials 1:30-2:20 2 nd Specials 2:25-3:15	Balanced Literacy 4 th	Math 5 th	Social Studies/ Science 3 rd	FREE FRIDAY <u>Coverage:</u> 11:00 – 11:40 11:40 – 12:20 12:20 – 1:00 1:00 – 1:40		FREE FRIDAY <u>Staffing:</u> Perdue, Lofton Howard, Soergel/Kecmer Friday, Sheeran Hady, Cristaldi
Dismissal 3:25					1 st Recess	Ziegler, Wynn, Coulter (12:25-12:40) Barker, Foy, Roberts (12:40-1:00) Penale, Trolan (2:20-2:40) Taylor (2:40-3:00) Highlight teachers TEAM LEADERS

Begin forwarded message:

From: Pfeiffer, Sherol

Sent: Wednesday, February 05, 2014 10:03 AM

To: Bauer, John A; Brammer, Allston; Brockway, Michelle M; Caudy, Carol; Clendaniel, Donald O; Ford, Michelle R; Friday, Denise D; Hady, Mary M; Howard, Jessica M; Jorgensen, Diane M; Kacmer, Maureen S; McAden, Jill M; Murphy, Stella E; Osborne, Karen A; Sheeran, Maria Viviana; Soukup, Halley; Warco, Karen R; Williams, Gail; Baker, Mary A; Banks, Miranda J; Barker, Dedra; Borisuk, Kristen; Boswell-Smith, Connie J; Bouvier, Stephen L; Campbell, Afrika L; Chen, Xinfang; Cibula, Tara L; Cooke, Margaret; Coulter, Brantley P; D'angelo, Jennie C; Eisele, Jean P; Foy, Terri; Halpin, Carmen D; Hamby, Theresa C; Hurley, Cynthia J; Hutchins, Nancy R; Jefferson, Bryan M; Jordan, Lindsey M; King, Kelli E; McCloud, Diana; Mehle, Abby P; Metz, Allana B; Miller, Rachelle M; Mullen, Della; Penale, Karen; Polites, Denise; Quigley, Michele; Roberts, Katelyn M; Rombauer, Donna J; Sampson, Anna E; Seelbach, Katherine C; Shupp, Rebecca H; Slaughter, John H; Smith, Debra L; Stephens, Katie L; Taylor, Michelle; Trolan, Michele; Tuttle, Ari; Vaccaro, Lauren S; Van Wicken, Jeanne; Walton, Peggy; Weber, Roygena R; Wyinn, Colleen T; Ziegler, Jason

Subject: attendance 02/05/2014

Good Morning,

Please take attendance (in homeroom and submit) when you have a moment. Please remember this is a safety issue.

U—Unexcused Abs

Z—Unexcused Tdy

T—Excused Tdy

G—Sick

The List:

Teacher No Attendance For Meeting(s)

1.	Baker, Mary A	(A)
3.		(A)
4.		(A)
6.		(A)

Meeting Attendance

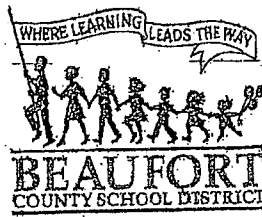
Codes: B,D,E,F,G,H,I,J,K,L,M,N,O,P,Q,R,S,T,U,V,W,X,Z

Student	Grade	Phone	0
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	3		T



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April 2, 2014

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

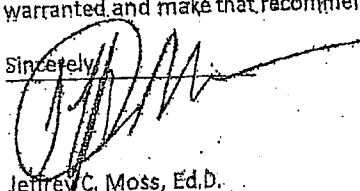
John A. Bauer
5 Gumtree Road E-11
Hilton Head, SC 29926

Dear Mr. Bauer:

As you know, you have been on administrative leave from your employment with the District since February 5, 2014. You were placed on administrative leave as a result of the District's investigation into allegations of negligent actions with a student and unprofessional behavior with Administration.

The District is in the process of making employment decisions for the 2014-2015 school year. At this time, the District has not fully completed its investigation in this matter and has not made a decision as to the appropriate resolution of your employment status. Accordingly, you are being issued a contract for the 2014-2015 school year. However, please understand this contract will be rescinded should the District determine the termination of your employment is warranted and make that recommendation to the Board.

Sincerely,


Jeffrey C. Moss, Ed.D.
Superintendent

Enclosure

c: Personnel File
Alice W. Walton
Jill McAden

Complainant's

23

Post Office Drawer 309

CONTRACT FOR PROFESSIONAL SERVICES
FOR THE 2014-2015 SCHOOL YEAR

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

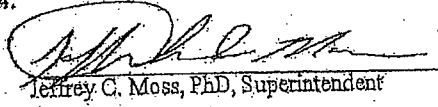
NAME OF EMPLOYEE: JOHN BAUER
TENTATIVE ASSIGNMENT: PHYSICAL EDUCATION
CONTRACT LEVEL: CONTINUING - GBE

This is to notify you of your appointment to a position in Beaufort County School District. This agreement, by and between the Board of Education and the Employee, is a/an **PHYSICAL EDUCATION** contract as defined in Section 59-26-40, as amended, of the Code of Laws of South Carolina. The following conditions of employment are hereby a part of this contract:

1. The Board agrees to employ the Employee in a professional position for 190 days during the 2014-2015 school year. The assignment indicated above is tentative and may be changed by the administration upon notice to, and consultation with, the Employee in accordance with applicable laws and policies.
2. The District agrees to pay the Employee according to the salary schedule adopted by the Board. This salary schedule will be made available as soon as practicable. Loss or reduction in any amount of anticipated or appropriated state, local or federal funding may, at the discretion of the District, require a pro-rata reduction of salary, a reduction in the term of this contract and pro-rata reduction in salary, i.e., a furlough, a reduction in contract days in accord with state law, or a termination of this agreement. Furthermore, any decline in student enrollment, elimination or change in course programming, financial emergency, or temporary closing of school or District operations because of emergency circumstances may require a pro-rata reduction in salary. Any such reduction will take place only upon the recommendation of the Superintendent and approval by the Board after reasonable notice has been provided to the affected parties. Any position eliminations will be handled in accordance with Policy HRS-30: Professional Staff Reduction in Force.
3. The Employee shall maintain throughout the life of this contract the required qualifications of a teacher, including a valid South Carolina teaching credential, as well as the "highly qualified" certification to perform his/her teaching assignment as that term is defined in the No Child Left Behind Act and all State Board of Education implementing rules and regulations. Failure to maintain such professional qualifications during the contractual period shall constitute grounds for termination of this contract.
4. The Employee agrees to render acceptable service, perform all assigned duties, and comply with all Board and District policies, rules, and regulations, including attendance at required school or District meetings and activities. The administration may assign reasonable extracurricular activities to the Employee.
5. An initial offer of employment is subject to receipt of a criminal record history report from the South Carolina Law Enforcement Division, which reveals no good or just cause for its withdrawal.
6. This agreement is not valid unless authorized by the Board and signed by the Superintendent. If, during the term of this agreement, it is found that any part of this contract is illegal under federal or state law, the remainder of the agreement not affected by such ruling shall remain in force and effect.

Please indicate your acceptance of this agreement by signing below and returning the original to the Superintendent or her agent on or before **APRIL 25, 2014**.

Employee


Jeffrey C. Moss, PhD, Superintendent

Date

Sent from my iPad

Begin forwarded message:

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

Complainant's

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From: Moss, Jeffrey
Sent: Monday, April 28, 2014 8:24 PM
To: Walton, Alice W; Bauer, John A
Cc: John Bauer; Moss, Jeffrey
Subject: Personnel Action

Bauer,

As your employer and your status as paid leave I expect you to appear tomorrow at 9:00am to meet with Ms. Walton. You may bring whoever you would like with you. If you fail to appear I will consider your action as an act of insubordination.

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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Complainant's
25

On Apr 28, 2014, at 8:31 PM, "John Bauer" <jabpe23@gmail.com> wrote:

I do not wish to be insubordinate, but I feel that I need my attorney George McMaster with me. He is currently in Rock Hill on a case and I will be contacting him immediately. Please reschedule.

Complainant's
26

From: Moss, Jeffrey
Sent: Monday, April 28, 2014 8:48 PM
To: John Bauer; Walton, Alica W
Cc: Moss, Jeffrey
Subject: Re: Personnel Action

Mr. Bauer,

It appears you are unwilling to meet at the time which has been scheduled for tomorrow at 9:00am. I will direct Ms. Walton to email you the letter in which we were planning to meet on. I will expect you to follow the directive in the letter within the time identified. Failure to do so will be considered an act of insubordination.

We will schedule a meeting after your completion of the directive.

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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Complainant's

27

TOMPKINS AND McMASTER, LLP

ATTORNEYS AND COUNSELORS AT LAW
1701 RICHLAND SQUARE (29201)

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COLUMBIA, SOUTH CAROLINA 29209

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WWW.TOMPKINSANDMCMASTER.COM

ESTABLISHED 1898

JOHN GREGG McMASTER
GEORGE HUNTER McMASTER **
FRANK HARNWELL McMASTER

** ALSO ADMITTED IN TEXAS

Complainant's

28

FRANK G. TOMPKINS
1874-1968

FRANK G. TOMPKINS, JR.
1908-1975

KATHARINE ELDRIDGE
1894-1975

May 21, 2014

RECEIVED

MAY 22 2014

Via Courier

Ms Alice Walton
Chief Administrative and Human Resources Officer
2900 Mink Point Blvd
Beaufort, South Carolina 29902

BCSD HUMAN RESOURCES

RE: John Alden Bauer

Dear Ms. Walton

This Firm represents John Alden Bauer.

We have been involved in this matter for some time so I am fully aware of those efforts to create a file and a cause, as one does not exist, for the termination of Mr. Bauer.

This letter is to serve notice, as this matter should now be considered an issue arising related to pending or threatened litigation, and that all documentation or recordings of any nature, as set out herein below, should be preserved by the you, your office and those persons at the Hilton Head Island Elementary School or any other person with whom there has been any communication referring or relating to Mr. Bauer

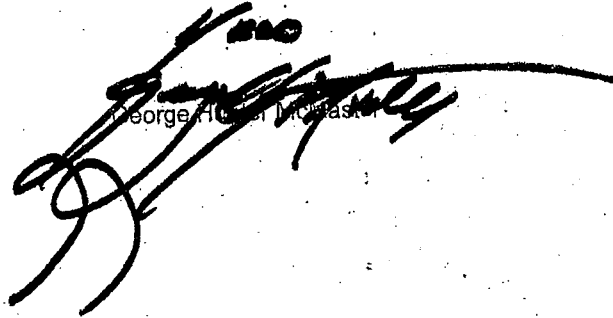
We advise, specifically, and put you on notice as to the preservation of, *inter alia*, all data, electronic data, including an not limited to archived electronic mail, documentation, wherever found, including but not limited to:

- a. Personal computers or those provided by the Beaufort County School District or Hilton Head Island Elementary School, servers, social media, storage media, laptops or personal data assistants: such as PalmPilot, Blackberry, or other Windows CE-based or Pocket PC devices or mobile phones, in whatever form (word processing documents, e-mail, text messages and voice mail);
- b. that, further, all such data should be preserved, and not deleted or destroyed, or should any attempt be made to destroy or delete any part of that data above described and, further, that those persons in your office or at the Hilton Head Island Elementary School, should maintain those devices, as applicable to this matter, which shall be regularly charged and, further, cease the regular use and rotation or reuse of those devices as described above until all relevant data can be copied from that form of storage available in the device now used by the you,

COMPKINS AND McMASTER, LLP

your office, or the Hilton Head Island Elementary School, and, further,
you are to preserve a complete and verified copy of the files on back-up
tape, via printouts or pictures of texts of all electronic data as described
above.

I remain,


George H. McMaster

Cc;
John Alden Bauer
Via Courier
Jeffery C. Moss, Superintendent
Ms. Jill McAden, Principal

2008-01-10 10:10:10 AM

From: Moss, Jeffrey
Sent: Thursday, May 22, 2014 9:07 AM
To: Alden Bauer
Cc: Walton, Alice W
Subject: RE: from George McMaster

Mr. Bauer:

I have received your letter from your attorney. Please note there has been NO conversation or direction toward termination. The request of you has been made in accordance with our policies and the meeting to follow would have been to discuss the report and the appropriate time to report back to work. You have made a personal decision NOT to follow this process, and as such have placed yourself in this position. I am still awaiting the report so we can meet and bring closure to this issue.

Jeffrey C. Moss, Ed.D.
Superintendent
Beaufort County School District
2900 Mink Point Blvd
Beaufort, South Carolina 29901
843-322-2328

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Complainant's
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From: Moss, Jeffrey
Sent: Thursday, May 22, 2014 3:07 PM
To: Alden Bauer
Cc: Walton, Alice W
Subject: RE: Good Afternoon

Mr. Bauer,

The report I am awaiting is from Dr. Gay which was due on May 16, 2014. Once I receive that report we can bring closure to your suspension. Do you know when I can expect the report?

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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Complainant's
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From: Alden Bauer [mailto:aldenbauer706@gmail.com]
Sent: Thursday, May 22, 2014 4:35 PM
~~To: Moss, Jeffrey~~
Subject: Hello

Dr. Moss,

I thought that you were talking about a teacher evaluation and not a psychiatric evaluation. I have already submitted to one humbling psychiatric appointment, with positive results.

No reason was given for the first evaluation; no reason was given for rejecting that appraisal, and no reason was stated for an additional session.

I also asked for a citation response from Ms. Walton regarding her reference to HRS 16 (April 30 and May 8). There was no response.

Dr. Rosenbaum-Bloom wrote "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.

I should be where I can serve the children that I love.

Thank you

Complainant's
31

From: Moss, Jeffrey
~~Sent: Thursday, May 22, 2014 4:54 PM~~
To: Alden Bauer
: Walton, Alice W
Subject: RE: Hello

Mr. Bauer:

I understand your position and Ms. Walton's position is based on policy. To bring closure to your administrative leave I need you to decide and inform me of your intent to follow through on the directive provided. Your response will then drive the action I will be forced to pursue.

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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Complainant's
32

From: Alden Bauer [mailto:aldenbauer706@gmail.com]
Sent: Sunday, May 25, 2014 5:51 PM
To: Moss, Jeffrey
Subject: Hello

Thank you for understanding my position and I believe that I understand your position, as well.

From your email: "Please note there has been NO conversation or direction toward termination."

That statement gave me hope.

I asked an employment education lawyer online about my rights. His answer: "You have a right to understand their reasoning and seek to refute. Of all of their accusations, given long track record, the charges are excessive and you should consider appeal." Therefore, I would appreciate an explanation regarding the policy towards the requirement of the second psychiatric opinion, and an explanation regarding the concerns that led to this decision.

I was shocked when Ms. McAden and Ms. Walton asked me to see a psychiatrist. Ms. Walton further wrote that she 'may' (implied 'may not') consider the results of the second appraisal.

My misstep: I correctly counted the students in my class (23 going, 23 returning) but left a late-arrival unattended in the locker room. He walked back unharmed, and I took full responsibility. I objected to a written reprimand being placed in my personnel file by stating that "this is ridiculous, absolutely ridiculous".

I then complied with Mr. Clendaniel's instructions.

You are spending a lot of your valuable time on my case, and I am mindful of that.

When this is over I will do my best, and I will prove my worth.

Thank you

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Complainant's
33

From: Alden Bauer [mailto:aldenbauer706@gmail.com]

Sent: Tuesday, May 27, 2014 9:06 PM

To: jill.mcaden@beaufort.k12.sc.us

C: Moss, Jeffrey; Walton, Alice W; Brockway, Michelle M; Clendaniel, Donald O

Subject: Hello

I believe that some type of communication before the end of the school year must be made to faculty and parents regarding my leave. It should state that I did nothing illegal, nor anything immoral.

Since I was placed on administrative leave on February 5, I have heard rumors concerning the reasons why I was placed on paid leave, but I cannot defend myself. This has been embarrassing in view of recent articles in the local paper about Beaufort County teachers accused of immoral behavior.

Many people know us on the Island. It is awkward to see students and parents who want to know what is going on, and why I am not at school.

My silence is difficult; your silence is damaging.

I hope that we have enough respect and good will for you to affirm my good character and reputation.

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Complainant's

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~~From: Moss, Jeffrey~~
Sent: Wednesday, May 28, 2014 5:29 PM
To: Alden Bauer; jill.mcaden@beaufort.k12.sc.us
Cc: Walton, Alice W; Brockway, Michelle M; Clendaniel, Donald O
Subject: RE: Hello

Mr. Bauer:

We do not speak to employees who have been placed on administrative leave. Below is the language from HRS-16. Again, the delay has been on your part. This delay may be adding to rumors but can be put to rest by you following through on the directive given weeks ago. I will state that if you continue to delay it will force other employment decisions. I am ready to resolve, but you must do your part in arriving at the resolution. I expect to hear back from you by tomorrow with definite dates.

HRS-16 (Staff Leaves and Absences) states "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."

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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Complainant's

35

From: Alden Bauer [mailto:aldenbauer706@gmail.com]
Sent: Wednesday, May 28, 2014 6:47 PM
To: Moss, Jeffrey
Subject: Hello

I do not understand the statement "We do not speak to employees who have been placed on administrative leave."

Does *speak* refer to all communication? Is this a common policy?

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Complainant's
36

On Wednesday, May 28, 2014, Moss, Jeffrey <Jeffrey.Moss@beaufort.k12.sc.us> wrote:

I am sorry, it was to say: we do not speak about employees who have been placed on administrative leave. Yes this is my practice not to discuss personnel issues in the public.

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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Complainant's

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On Wed, May 28, 2014 at 7:22 PM, Alden Bauer <aldenbauer706@gmail.com> wrote:

No prob thanks

Complainant's

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From: Alden Bauer [mailto:aldenbauer706@gmail.com]

Sent: Wednesday, May 28, 2014 7:36 PM

To: Moss, Jeffrey

Subject: Re: Hello

Dr. Moss,

Your email citation was for a singular examination under "Use of Sick Leave" for "...returning from sick leave." Not my case.

Requiring additional psychiatrists on unsure authority, with no indication of acceptance of the appraisals, appears to be a set-up.

What was the documentation for requiring any examination, or the reason for the rejection of Dr. Rosenbaum-Bloom's letter?

I know that this whole mess was not your doing, and I am sorry about that. I am a dedicated and a skilled teacher, who loves the school. I look forward to proving it to you.

Complainant's

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From: Moss, Jeffrey
Sent: Thursday, May 29, 2014 2:55 PM
To: Alden Bauer
Cc: Walton, Alice W
Subject: Personnel Action

Mr. Bauer:

I have been extremely patient with you while you have been on administrative leave. Your leave began on February 5, 2014 for leaving a special needs student unattended off campus. This was categorized as Negligence and Insubordination. You were requested to have an examination from a psychiatrist and report back. The date of the meeting to discuss the results was scheduled for April 25, 2014. You refused to attend the scheduled meeting while still receiving pay from Beaufort County Schools. I sent you a directive to attend and you still elected not to meet, which I do consider an act of insubordination. A letter was then sent to you describing the additional action necessary to bring closure. The directive was to meet with a psychiatrist we identified and paid for. This is allowable under our policy which was provided. You were report back to Ms. Walton no later than May 16, 2014. You have elected to ignore this directive as well. All of these directive have occurred while you are still a Beaufort County School Employee and receiving pay. I must now direct you to complete all requirements by Monday, June 2, 2014 or I will proceed with a recommendation for termination based upon the facts to date.

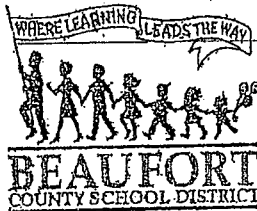
Ms. Walton will follow up with a certified letter and an email copy outlining the process from this point. It is disappointing you have continually refused to cooperate to bring about a resolution to your suspension.

cc: Personnel File

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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Complainant's
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June 6, 2014

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

John Alden Bauer
5 Gumtree Road - E-11
Hilton Head, SC 29926

Dear Mr. Bauer:

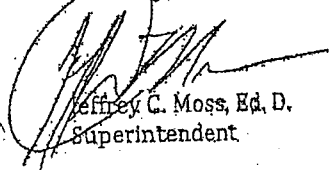
The purpose of this letter is to advise you that at its meeting on June 5, 2014, the Beaufort County Board of Education conditionally accepted my recommendation that you be suspended and that your contract of employment with the Beaufort County School District (District) be terminated subject to the Board's duty to review the matter on the merits in a hearing pursuant to S.C. Code Ann. § 59-25-470, should you request such a hearing. Please understand that the Board has not at this time reviewed or considered the merits of the recommendation, so this action is not a final decision of the Board.

The bases for the recommendation include the grounds provided to you in my email dated May 29, 2014. It is the administration's position that your conduct justifies the immediate suspension and termination of your employment with the District pursuant to S.C. Code Ann. § 59-25-430 and § 59-25-450.

Please be advised that, pursuant to S.C. Code Ann. § 59-25-470, you have the right to request a hearing on this matter before the Board, provided that you request the hearing in writing within 15 days of your receipt of this letter. Your request should be addressed to me, as Superintendent, or to Bill Evans, Board Chairperson.

If you have any questions about the substance of this letter, feel free to contact Alice Walton or me. In the alternative, you may have your attorney contact the District's legal counsel.

Sincerely,



Jeffrey C. Moss, Ed. D.
Superintendent

c: Alice Walton

Complainant's

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Tuesday, February 4, 2014

Received a late afternoon call from Mr. Topping requesting a return phone call; I contacted Mr. Topping the next morning and he had issue with a conversation that was brought to his attention from both his son and wife. His son indicated that 'a naked old man' was staring at the students after swim class at the Island Recreation Pool. Dad also stated that his wife had approached Mr. Bauer about the 'naked old man'. Dad indicated that Mr. Bauer minimized the incident as 'part of the territory' of students attending a public facility where patrons shower and change in the same locker room. Dad was not satisfied with this response and felt it necessary to further communicate with administration. I assured dad, that this is not something that 9 year old students should be exposed to. I apologized on behalf of Mr. Bauer's reaction and promised to have further dialog with Rec. Center Staff about the concern.

I contacted Leah Arnold of Island Recreation expressing the concerns of Mr. Topping. I personally suggested that partitions/curtains be erected for the purpose of separating shower, locker room and bathroom facilities at Rec. Center. I then visited Island Recreation facilities on Wednesday, February 5th to discover that shower curtains had been erected. I also informally discussed my conversation with Mr. Bauer and asked that him to 'ramp up' his vigilance prior to students entering the changing facility after exiting the pool. I stated that a simple sweep of the changing areas would help with determining who - or who is not - present.

I too have been vigilant at Island Recreation Center since the 4th of February to ensure consistency is taking place.

This statement is written to the best of my knowledge and belief,

Donald O. Clendaniel III
Assistant Principal - Hilton Head Island Elementary

Respondent's

2

ACCOMPANIES FILE 2

RECEIVED

Clendaniel, Donald O

FEB 06 2014

From: Clendaniel, Donald O
Sent: Wednesday, February 05, 2014 1:37 PM
To: Bauer, John A
Subject: Rec. Center debrief today @ 3:45

BCSD HUMAN RESOURCES

Showers - my conversation with rec center employees ~~and~~ my conversation with mom

Sent from my iPad

Where Today's Learners...



...are Tomorrow's Leaders!

ACCOMPANIES FILE 19

HILTON HEAD ISLAND ELEMENTARY
an authorized IB School
30 SCHOOL ROAD, HILTON HEAD ISLAND, SC 29926
Phone: (843) 342-4100 | fax: (843) 342-4299

This signature verifies that I have received a copy of documentation in regards to the incident of November 1, 2013:

Alden Baum 11/8/13
Name Date

RECEIVED

FEB 06 2014

BCSD HUMAN RESOURCES

Respondent's

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RECEIVED

FEB 06 2014

Documentation
re: Friday, November 1, 2013

BCSD HUMAN RESOURCES

Ms. Sampson, grade 4 teacher, called the office and reported a child hiding in his pajamas outside of the school/gym. She reported the student appeared to have "snuck away" from his gym class. She placed the call after repeatedly checking through a window for any other children or teachers in sight. Due to her concern, she notified the front office. Protocol was followed, for unlikely situations when students are reported missing or sighted outside of the school. Administration was notified.

I, Michelle Brockway, was designated to investigate, to ensure this student was safe. After verifying that Mrs. Boswell-Smith's 2nd grade class was having "pajama day" and confirming the number of students that should be in her class, I performed a head count upon my arrival at the gym and counted 19 students. One student was at the nurse's office. I stated to Mr. Bauer that I was responding to a report of a student "hiding" outside of the gym. At the time, Mr. Bauer stated that he was not aware of anyone missing from his class.

I walked outside with Mr. Bauer and his class. We did not find any students hiding. Mrs. Sampson, the reporting teacher, then identified the student that was previously sighted hiding. He was in line with his class.

I pulled the student to speak with him. The student explained that he was upset and left his PE station. The student showed me where he chose to stand outside because he was upset. (He had been leaning against an exterior wall against a pipe). This area was around the corner from his PE "station" but not within sight of the teacher. The student reported he was the only student standing in that area except for a girl that was sitting in a seat at the doorway.

I explained (to the child) that the next time he becomes upset, he needs to tell the teacher and find a safe place inside to sit down. Mr. Bauer interrupted the conversation saying the student did nothing wrong and that I did not understand how things worked in his class. Mr. Bauer explained that his students were in centers (two outside of the gym and two inside) and that students were able to move from center to center without permission. In our conversation, Mr. Bauer stated that he knew the child's location. I reminded him that when I first came to the gym, he was not aware of any student that was "hiding" or missing.

We agreed to disagree.

Respondent's
19-A

According to school and district policy, exterior doors may not be propped open. The teacher needs to be able to see all students in order to supervise adequately. Therefore, the gym doors may not be propped open to accommodate indoor and outdoor stations. In an effort to make sure safety comes first, stations will need to either be held inside or outside. If stations or classes are held outside, the office must be notified.

Michelle Brockway, Assistant Principal
Date 11/8/13

File 42a

Part of File 42

SC Code 59 Chapter 25

<http://www.scstatehouse.gov/code/t59c025.php>

SECTION 59-25-430. Dismissal of teachers; grounds; opportunity for hearing; suspension pending resolution of charges:

Any teacher may be dismissed at any time who shall fail, or who may be incompetent, to give instruction in accordance with the directions of the superintendent, or who shall otherwise manifest an evident unfitness for teaching; provided, however, that notice and an opportunity shall be afforded for a hearing prior to any dismissal. Evident unfitness for teaching is manifested by conduct such as, but not limited to, the following: persistent neglect of duty, willful violation of rules and regulations of district board of trustees, drunkenness, conviction of a violation of the law of this State or the United States, gross immorality, dishonesty, illegal use, sale or possession of drugs or narcotics.

Notwithstanding the provisions of Section 59-25-450, when any teacher is charged with a violation of the law of this State or the United States which upon conviction may lead to, or be cited as a reason for, dismissal, such teacher may be suspended pending resolution of the charges and receive his usual compensation during the suspension period, such compensation not to exceed the term of his teaching contract. If the teacher is convicted, including pleading guilty or nolo contendere to the charges, he may then be subject to dismissal proceedings. If no conviction results, his suspension shall be terminated.

HISTORY: 1962 Code Section 21-363, 1974 (58) 2343; 1976 Act No. 634, Section 2.

SECTION 59-25-440. Written notice to teacher of possible dismissal; school administrator required to make reasonable effort to assist teacher in corrective measures; reasonable time for improvement required.

Whenever a superior, principal, where applicable, or supervisor charged with the supervision of a teacher finds it necessary to admonish a teacher for a reason that he believes may lead to, or be cited as a reason for, dismissal or cause the teacher not to be reemployed he shall: (1) bring the matter in writing to the attention of the teacher involved and make a reasonable effort to assist the teacher to correct whatever appears

Respondent's

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to be the cause of potential dismissal or failure to be reemployed and, (2) except as provided in Section 59-25-450, allow reasonable time for improvement.

HISTORY: 1962 Code Section 21-364; 1974 (58) 2343; 1976 Act No. 634, Section 3.

SECTION 59-25-450. Suspension of teachers; reinstatement.

Whenever a superintendent has reason to believe that cause exists for the dismissal of a teacher and when he is of the opinion that the immediate suspension of the teacher is necessary to protect the well-being of the children of the district or is necessary to remove substantial and material disruptive influences in the educational process, in the best interest of the children in the district, the superintendent may suspend the teacher without notice or without a hearing. The superintendent shall notify the teacher in writing of the suspension. Such written notice shall include the cause for suspension and the fact that a hearing before the board is available to the teacher upon request provided such request is made in writing within fifteen days as prescribed by Section 59-25-470.

The salary of a suspended teacher shall cease as of the date the board sustains the suspension. If sufficient grounds for suspension are not subsequently found, the teacher shall be reinstated without loss of compensation.

HISTORY: 1962 Code Section 21-365; 1974 (58) 2343; 1976 Act No. 634, Section 4.

SECTION 59-25-460. Notice of dismissal; conduct of hearing.

No teacher shall be dismissed unless written notice specifying the cause of dismissal is first given the teacher by the **District Board of Trustees** and an opportunity for a hearing has been afforded the teacher. Such written notice shall include the fact that a hearing before the board is available to the teacher upon request provided, such request is made in writing within fifteen days as prescribed by Section 59-25-470. Any such hearing shall be public unless the teacher requests in writing that it be private. The District Board of Trustees may issue subpoenas requiring the attendance of witnesses at any hearing and, at the request of the teacher against whom a charge is made, shall issue such subpoenas, but it may limit the number of witnesses to be subpoenaed in behalf of the teacher to not more than ten. All testimony at any hearing shall be taken under oath. Any member of the board may administer oaths to witnesses. The board shall cause a record of the proceedings to be kept and shall employ a competent reporter to take stenographic or stenotype notes of all of the testimony. If the board's decision is favorable to the teacher, the board shall pay the cost of the reporter's attendance and services at the hearing. If the decision is unfavorable to the teacher, one-half of the cost of the reporter's attendance and services shall be borne by the teacher. Either party desiring a transcript of the hearing shall pay for the costs thereof.

HISTORY: 1962 Code Section 21-366; 1974 (58) 2343; 1976 Act No. 634, Section 5.

42a

SECTION 59-25-470. Request for hearing; time and place of hearing; rights of teacher; determination by board.

Within fifteen days after receipt of notice of suspension or dismissal, a teacher may serve upon the chairman of the board or the superintendent a written request for a hearing before the board. If the teacher fails to make such a request, or after a hearing as herein provided for, the District Board of Trustees shall take such action and shall enter such order as it deems lawful and appropriate. The hearing shall be held by the board not less than ten nor more than fifteen days after the request is served, and a notice of the time and place of the hearing shall be given the teacher not less than five days prior to the date of the hearing. The teacher has the privilege of being present at the hearing with counsel and of cross-examining witnesses and may offer evidence and witnesses and present any and all defenses to the charges. The board shall order the appearance of any witness requested by the teacher. The complainants shall initiate the introduction of evidence in substantiation of the charges. Within ten days following the hearing, the board shall determine whether the evidence showed good and just cause for the notice of suspension or dismissal and shall render its decision accordingly, either affirming or withdrawing the notice of suspension or dismissal.

HISTORY: 1962 Code Section 21-367; 1974 (58) 2343; 1976 Act No. 634, Section 6.

SECTION 59-25-480. Appeals; costs and damages.

The decision of the district board of trustees shall be final, unless within thirty days thereafter an appeal is made to the court of common pleas of any county in which the major portion of such district lies.

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. Any appeal from the order of the circuit court shall be taken in the manner provided by the South Carolina Appellate Court Rules. If the decision of the board is reversed on appeal, on a motion of either party the trial court shall order reinstatement and shall determine the amount for which the board shall be liable for actual damages and court costs. In no event shall any liability extend beyond two years from the effective date of dismissal. Amounts earned or amounts earnable with reasonable diligence by the person wrongfully suspended shall be deducted from any back pay.

HISTORY: 1962 Code Section 21-368; 1974 (58) 2343; 1999 Act No. 55, Section 54.

SECTION 59-25-490. Depositions.

Any party to such proceedings may cause to be taken the depositions of witnesses within or without the State and either by commission or de bene esse. Such depositions shall be taken in accordance with and subject to the same provisions, conditions and

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restrictions as apply to the taking of like depositions in civil actions at law in the court of common pleas; and the same rules with respect to the giving of notice to the opposite party, the taking and transcribing of testimony, the transmission and certification thereof and matters of practice relating thereto shall apply.

HISTORY: 1962 Code Section 21-369; 1974 (58) 2343.

SECTION 59-25-500. Service of subpoenas; witness fees.

The county sheriffs and their respective deputies shall serve all subpoenas of the district board and shall receive the same fees as are now provided by law for like service. Each witness who appears in obedience to such subpoenas shall receive for attendance the fees and mileage of witnesses in civil cases in courts of the county in which the hearing is held.

HISTORY: 1962 Code Section 21-370; 1974 (58) 2343.

SECTION 59-25-510. Service of notices:

All notices to be given under this article by the district board shall be given to both parties and the notices herein required to be given by a party shall be served upon the opposite party prior to the filing thereof. All such notices may be served by registered mail.

HISTORY: 1962 Code Section 21-370.1; 1974 (58) 2343.

SECTION 59-25-520. Powers and duties of court of common pleas; warrant for production of witnesses.

The court of common pleas shall, on application of the district board, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and records and shall have the power to punish as for contempt of court, by a fine or imprisonment or both, the unexcused failure or refusal to attend and give testimony or produce books, papers and records as may have been required in any subpoena issued by the district board. The district board may issue to the sheriff of the county in which any hearing is held a warrant requiring him to produce at the hearing any witness who shall have ignored or failed to comply with any subpoena issued by the district board and duly served upon such witness. Such a warrant shall authorize the sheriff to arrest and produce at the hearing such witness, and it shall be his duty to do so; but the failure of a witness so to appear in response to any such subpoena may be excused on the same grounds as provided by law in the courts of this State as to the attendance of witnesses and jurors.

HISTORY: 1962 Code Section 21-370.2; 1974 (58) 2343.

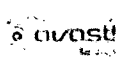
SECTION 59-25-530. Unprofessional conduct; breach of contract.

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Any teacher who fails to comply with the provisions of his contract without the written consent of the school board shall be deemed guilty of unprofessional conduct. A breach of contract resulting from the execution of an employment contract with another board within the State without the consent of the board first employing the teacher makes void any subsequent contract with any other school district in South Carolina for the same employment period. Upon the formal complaint of the school board, substantiated by conclusive evidence, the State board shall suspend or revoke the teacher's certificate, for a period not to exceed one calendar year. State education agencies in other states with reciprocal certification agreements shall be notified of the revocation of the certificate.

HISTORY: 1962 Code Section 21-370.3; 1974 (58) 2343.

From: "John Alden Bauer" <ajb23@gsn.com>
Sent: Friday, July 12, 2014 3:29 PM EDT
To: <ajb23@gsn.com>
Subject: 1 Attachment, 431 KB

 This email is free from viruses and malware because avast! Ant virus protection is active.

On Friday, July 12, 2014,

Dear Alden,

When I met with Mrs. Purdue to ask how the regular scheduled meetings with staff members were going. She shared that you had been late to the special meeting last week, and furthermore, when a specialist came to get you on your time, you seemed shocked and said, "I got the invitation, but it was just an invitation. I didn't think I needed to come."

Alders, these Outlook invitations are used throughout the building to invite faculty and staff members to important scheduled meetings. They are used for faculty and math meetings, PYP meetings and EP meetings. If you are having trouble with Outlook, please let me know so I can help with any issues.

On another note, Mrs. Broccoli has shared that you have lost or misplaced at least three 504 plans. Alden, as you well know, these are confidential documents that need your signature, but should always be stored in a secured location. Your three 504 plans are not to be used for this. Please make sure that these documents are secure and when you receive a 504 plan, it is critically important to read it, sign and get the top copy back to Mrs. Broccoli. The 504 plan form she provides you with is for your files.

Respondent's

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Main Street
Psychiatry &
Psychotherapy
Laura Rosenbaum-Bloom, MD, P.C.
Child, Adolescent & Adult Psychiatry
Board Certified in Psychiatry

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

4101 Main Street, Suite C • Hilton Head Island, SC 29926 • 843-342-6000 • fax: 843-342-6001 • dr@laurab.com

Respondent's
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Wed April 30 9:17pm

From: *Alden Bauer*

To: *Alice Walton, Jeffrey Moss*

Good Evening,

I am in receipt of your letter and I am extremely concerned.

I have completed everything you have asked of me. I have provided you with a *Professional Improvement Plan*, which has been ignored.

I have been subjected to a *psychiatrist evaluation*, and now this seems to have been discarded as not legitimate. Now, you are requiring that I see another psychiatrist for another humiliating evaluation. I have not even been told of the reasons for seeing a psychiatrist. You have informed me through an email less than 24 hours before a scheduled meeting without giving me time to talk with counsel. I have not received your certified letter as of this writing, as I was told I would receive by your secretary, Andrea.

This has the appearance of a set-up.

My reputation, integrity, and character are being destroyed. You have essentially ruined my career, and you have not once asked me one question surrounding the circumstances of the pool event. The disrespect and disdain towards me, after 18 years of teaching a job that I love with no discipline issues and with a national board certified teaching certificate and a Masters of Arts in Teaching degree is inexcusable.

You have not provided me with access to my *computer emails, personal belongings, cabinet files, or copies of the pictures that administration took* after I was placed on administrative leave.

The email copies will prove and support what I have said regarding a number of accusations made during our initial meeting with school administration on that Tuesday, February 11 2014.

You've have also ignored my request for a copy of the November 1, 2013 documentation revision.

Respondent's

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You stated in the third paragraph towards the middle that "I told you that calling your attorney was not necessary because I would agree for you to see the physician of your choosing." You should recall that I did not speak with you. Your secretary, Andrea, relayed the information to me that a local psychiatrist would be acceptable.

In the fourth paragraph you stated in your letter that when speaking with Andrea "You stated to her, that you did not need to meet with me if this meeting was not a meeting of reinstatement." I did not say that. I asked her if they had received the expected letter from my attorney which should have arrived by now. She said she was not sure, and she asked me to hold on and that she would transfer the call to you.

Due to these inaccuracies, the need for legal counsel is all the more apparent.

You have attempted to schedule meeting with me, you, Dr. Moss and a psychiatrist with very little time to consult with people who know a lot more than I do. This is not insubordination because I will do anything you ask, but I must do so with adequate notice, information, flexibility, and caution.

After examining HRS 16, I have not been able to locate how this meeting with the psychiatrist is relevant. Please send me a citation from the document supporting this claim.

I will be calling Dr. Gay, or someone mutually acceptable, to schedule another humiliating evaluation after seeking advice from my attorney. I will then meet with Dr. Gay, or someone else acceptable to you, and we will go from there.

Sincerely,

Alden Bauer

51 complete

HRS - 16 Staff Leaves And Absences

7/12

Respondent's

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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 leaveAccrual

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, 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-161.

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

Section 5-400 - Sick leave for public school district employees.

Beaufort County Schools



LINK:

[http://www.judicial.state.sc.us/opinions/displayOpinion.cfm?](http://www.judicial.state.sc.us/opinions/displayOpinion.cfm?caseNo=4674)
caseNo=4674

South Carolina
JUDICIAL DEPARTMENT

4674 - Brown v. James^P

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Sharon Brown, Appellant, v.

William B. James, Superintendent for Cherokee County School District, Respondent.

Appeal From Cherokee County
J. Derham Cole, Circuit Court Judge

Opinion No. 4674
Heard October 13, 2010 – Filed April 12, 2010
Withdrawn, Substituted and Refiled July 21, 2010

REVERSED AND REMANDED

Respondent's
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Fletcher Smith, Jr., of Greenville, for Appellant;

M. Jane Turner, David Duff and Kiosha A. Hammond, all of Columbia, for Respondent.

GEATHERS, J.: Sharon Brown (Brown) appeals the circuit court's decision granting District Superintendent William B. James' (James) motion for summary judgment in the matter she brought against him alleging a violation of her rights under the South Carolina Teacher Employment and Dismissal Act (Employment and Dismissal Act). [1] Brown asserts that (1) the circuit court abused its discretion when concluding she had not exhausted her administrative remedies; (2) the circuit court misinterpreted the Employment and Dismissal Act; (3) she had a legal right to appeal directly to the circuit court because the Board of Trustees (Board) had already reached a final decision regarding the nonrenewal of her contract; and (4) the circuit court abused its discretion when concluding that her motion to amend her complaint to add parties was moot. We reverse and remand.

FACTS

Brown was a teacher, assigned to Limestone Central Elementary School (Limestone) in Cherokee County, South Carolina, for the 2006-2007 school year. Brown had been a teacher at Limestone for eight years before she filed this action. On April 10, 2007, Brown was called to the Cherokee County School District (District) office to meet with Mr. William A. Jones (Jones), Chief Administrative Officer/Director of Personnel for the District. Jones and Brown discussed an "improvement letter" Brown had received from Limestone's Principal, Sharon Jefferies (Jefferies), and the fact that Brown had filed a sexual harassment complaint with the

Equal Employment Opportunity Commission against Jefferies.[2] Brown informed Jones that she had planned to file the sexual harassment complaint even before she received the improvement letter.[3] Jones told Brown she could either go back to work or take leave under the Family Medical Leave Act due to the "hostile/threatening" work environment. Brown chose to take the leave because Jones told her she would be paid until the end of her contract year, which was July 2007. Jones then informed Brown that he was going to recommend that her teaching contract not be renewed and advised her to resign.

Subsequently, Brown received a letter dated April 12, 2007, from James, stating that at Jefferies' recommendation, her contract for the upcoming year would not be renewed. Brown retained attorney Theo W. Mitchell (Attorney Mitchell), and within fifteen days of the April 12, 2007 notice, she submitted a written request for an opportunity to be heard under the Employment and Dismissal Act. The Board received Brown's request on April 27, 2007. However, on April 24, 2007, the Board took up James' April 12th "notice of intent not to renew" letter and voted to terminate Brown's contract that same day. The Board did not inform Brown of its decision.

Even though the Board had already made its final determination regarding Brown's contract, the Board asked Attorney Mitchell if Brown would waive the fifteen-day requirement for scheduling the hearing to give it an opportunity to discuss the matter. Brown agreed to the waiver. The Board then notified Attorney Mitchell that it wanted to depose Brown before the hearing.

Subsequently, Attorney Mitchell informed the Board that Brown would not be available for a deposition prior to a hearing. Thereafter, on two separate occasions, the Board informed Attorney Mitchell that if it did not receive a response from either Brown or him regarding the scheduling of a deposition, it would consider Brown's noncooperation as a voluntary withdrawal of her request for a hearing, and the case would be closed. Brown did not participate in a deposition. On November 27, 2007, an attorney for the Board sent Attorney Mitchell a letter stating, "As I have had no contact from you since September 25, 2007, the District now considers the request [for a hearing] to be withdrawn and the matter closed." The Board did not schedule or give notice of a hearing. Consequently, on November 29, 2007, Brown filed an action in the circuit court against James for violation of the Employment and Dismissal Act.

PROCEDURAL HISTORY

Brown filed her initial complaint in circuit court because she believed her due process rights were violated under the Employment and Dismissal Act in that her contract was not renewed and she was never afforded an opportunity to be heard. Specifically, in her complaint against James, Brown alleged breach of contract, fraud, breach of contract accompanied by a fraudulent act, negligence and/or negligent misrepresentation, breach of duty of good faith and fair dealing, and intentional infliction of emotional distress. In the case before us, Brown asserts the Board made a final decision regarding her employment before she was afforded an opportunity to be heard as required by the Employment and Dismissal Act. Brown also asserts that she could not comply with the Employment and Dismissal Act's thirty-day appeal process regarding the Board's final determination as she did not have knowledge of the Board's final determination until eleven months after the decision.[4] James did not file a formal answer that addressed any of the issues Brown raised in her complaint. Instead, on January 18, 2008, fifty days after the complaint was filed and served, James filed a motion to dismiss under Rule 12(b)(6), SCRPC, or in the alternative, a motion for summary judgment under Rule 56, SCRPC.

On February 13, 2008, Brown filed a motion to add the Board as a defendant. On March 7, 2008, James renewed his motion, stating only that Brown had not exhausted her administrative remedies. During February and March 2008, Brown filed a request for production of documents and requests to admit. During March and April, James answered the requests. After Brown received the responses to the request for production, she sought to amend her complaint to add the Board's attorneys as defendants predicated on their knowledge of and involvement in what she perceived to be a fraudulent act.

On April 28, 2008, the circuit court heard Brown's motion to amend and James' motion to dismiss. On May 5, 2008, the circuit court issued an order granting James' motion to dismiss,[5] concluding that Brown had not exhausted her administrative remedies. The court also concluded that based on the dismissal, Brown's motion to amend was rendered moot. On May 12, 2008, Brown filed a motion for reconsideration, which included a request that if the court upheld the dismissal, that it be without prejudice. On June 20, 2008, the circuit court issued an order denying Brown's motion. This appeal followed.

ISSUE ON APPEAL

The issue presented in this case is whether the circuit court erred in granting James' motion for summary judgment because it concluded that Brown failed to exhaust her administrative remedies.

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, an appellate court applies the same standard of review as the circuit court under Rule 56, SCRPC. *Wogan v. Kunze*, 379 S.C. 581, 585, 666 S.E.2d 901, 903 (2008). The circuit court should grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC; *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 334 (2003); *Knox v. Greenville Hosp. Sys.*, 362 S.C. 566, 569-70, 608 S.E.2d 459, 461 (Cl. App. 2005); *B & B Liquors, Inc. v. O'Neil*, 361 S.C. 267, 270, 603 S.E.2d 629, 631 (Cl. App. 2004).

LAW/ANALYSIS

I. Exhaustion of Administrative Remedies

Brown argues the circuit court erred in concluding that her claims were not properly before it due to her failure to exhaust her exclusive statutory remedy under the Employment and Dismissal Act. We agree.

Initially, we address the applicability of the doctrine of exhaustion of administrative remedies to local school boards. Whether under the Administrative Procedures Act (APA),^[6] general administrative law standards, or the fundamental principles of administrative law, Brown was required to exhaust her administrative remedies before seeking judicial review. Moreover, the Board was also subject to the limitations and exceptions to the exhaustion doctrine.

The doctrine of exhaustion of administrative remedies requires that where a remedy before an administrative agency is provided, relief must be sought by exhausting this remedy before the courts will act. This doctrine is well established, is a cardinal principle of practically universal application, and must be borne in mind by the courts in construing a statute providing for review of administrative action.

2 Am. Jur. 2d Administrative Law § 595 (1962) (citing *Bustos-Oyalle v. Landon*, 225 F.2d 878 (9th Cir. 1955); *James v. Consol. Steel Corp.*, 195 S.W.2d 955 (Tex. Civ. App. 1946); *Bowen v. Dep't of Soc. Sec.*, 127 P.2d 682 (Wash. 1942)) (footnotes omitted);^[7] see also 2 Kenneth Culp Davis & Richard J. Pierce, Jr., *Administrative Law Treatise* § 15 (3rd ed. 1994) (quoting *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50-51 (1938)) ("[I]t is the long-settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted.").

Under the APA, section 1-23-380 specifically states, "A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1." Our courts have applied the APA standards to certain local school board administrative decisions. In *Lee County School District Board of Trustees v. MLD Charter School Academy Planning Committee*, a case involving a local school board's decision regarding a charter school application, our Supreme Court established that the standard of judicial review was the APA standard of review. 371 S.C. 561, 565, 641 S.E.2d 24, 26 (2007). Also, and more notably, the Court referred to its analysis in *Porter v. South Carolina Public Service Commission*, 333 S.C. 12, 507 S.E.2d 328 (1998), as establishing the requirements for administrative agencies when presenting their findings. The Court stated: "[a]lthough Porter addresses the Public Service Commission, we find it applicable to all administrative agencies, including local school boards." *Lee County Sch. Dist.*, 371 S.C. at 567, 641 S.E.2d at 28. (emphasis added).

Further, in *McWhirter v. Cherokee County School District No. 1*, 274 S.C. 66, 261 S.E.2d 157 (1979), our Supreme Court referred to the actions of a local school board in language that indicates that the board is held to the standards of an "agency" as defined in the APA. In *McWhirter*, similar to the case at hand, an elementary school teacher sought to enjoin the school district from terminating her under the Employment and Dismissal Act. The Court stated:

In *Law v. Richland County School District No. 1*, 270 S.C. 493, 243 S.E.2d 192 (1978), we held that if any of the charges against a teacher are supported by substantial evidence, the school board's decision to dismiss must be sustained. We defined "substantial evidence" as "evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action." (citation omitted).

McWhirter, 274 S.C. at 68-69, 261 S.E.2d at 158 (emphasis added).

Additionally, there has also been a decision from this Court interpreting the power of the circuit court under the APA when dealing with a local school board's discretion in teacher terminations under the Employment and Dismissal Act. In *Adamson v. Richland County School District One*, this Court stated: "S.C. Code Ann. § 1-23-380(6) (Supp. 1997) [an APA provision] gives the circuit court authority to reverse an agency decision 'made upon unlawful procedure' or in excess of 'statutory authority.'" 332 S.C. 121, 128, 503 S.E.2d 752, 755-56 (Ct. App. 1998) (emphasis added).

Hence, the aforementioned authorities militate the conclusion that the parties in the instant action are subject to the exhaustion of administrative remedies doctrine of the APA. And although the standards of the APA apply in this case, the application of the Employment and Dismissal Act primarily informs the analysis and renders its outcome.

In this case, Brown received notice that her teaching contract was recommended for nonrenewal.^[8] In order to fully exhaust her administrative remedies, Brown was required to request a hearing before the Board within the time frame prescribed by the Employment and Dismissal Act. Section 59-25-420 of the South Carolina Code (2004) states, "Any teacher, receiving a notice that he will not be reemployed for the ensuing year, shall have the same notice and opportunity for a hearing provided in subsequent sections for teachers dismissed for cause during the school year."

In order to secure her opportunity for a hearing, Brown was required to make a written request to the Board within fifteen days of the notice of nonrenewal pursuant to section 59-25-460 of the South Carolina Code (2004). Here, there is no dispute that Brown timely requested a hearing after receiving the Board's April 12, 2007 notice. The analysis of this matter is convoluted for two reasons: (1) the Board officially voted to terminate Brown's contract on April 24, 2007 (unknownst to Brown) prior to affording her the opportunity for a hearing, and (2) the Board dismissed her appeal on November 27, 2007, because she refused to submit to a deposition. We will address each of these issues in turn.

A. Finality of an Agency Action

Brown asserts that the April 24, 2007 vote by the Board constituted a final action. We agree. The minutes of the April 24, 2007, Board meeting show a final decision regarding the termination of Brown's contract was made even before her fifteen-day period to request a hearing had expired.^[9] On appeal, James admits a final determination regarding Brown's contract was made on April 24, 2007, but argues that the Board accepted the recommendation "subject to the [Employment and Dismissal] Act's procedural protections, particularly [Brown's] right to a Board hearing."^[10] Yet, there is no language in the Employment and Dismissal Act that states a final decision of the Board is subject to a teacher's right to a hearing after the fact.

Our Supreme Court has expounded upon the exhaustion of administrative remedies with regard to an agency's final decision. In *South Carolina Baptist Hospital v. South Carolina Department of Health & Environmental Control*, the Court held:

An agency decision which does not decide the merits of a contested case . . . is not a final agency decision subject to judicial review . . . It would be premature for a court to decide the merits of a dispute when the agency responsible for making the decision has not yet had an opportunity to decide the merits of the case.

291 S.C. 267, 270, 353 S.E.2d 277, 279 (1987).

In that case, the Court did not find judicial review of an interlocutory decision to be appropriate. *Id.* Conversely, judicial review would have been appropriate if an evidentiary hearing was conducted and a final decision was made regarding the merits of the case. *Id.* ^[11] Additionally, in *Canteen v. McLeod Regional Medical Center*, 384 S.C. 617, 624, 682 S.E.2d 504, 507 (Ct. App. 2009), the Appellate Panel of the Workers' Compensation Commission reversed the findings of the single commissioner regarding a brain injury and remanded the case for a determination of permanency to body parts other than the claimant's brain. The claimant immediately sought judicial review and the employer filed a motion to dismiss, arguing the Appellant Panel's decision was interlocutory because it had remanded the case for further proceedings. *Id.* However, this Court held, "because the appellate panel ruled on [the only issue before it], there was a final agency decision on the merits in this case and [the claimant] exhausted all of her administrative remedies." *Id.*

In the case at hand, whether or not to terminate Brown was the only issue to be determined, and when the Board unanimously voted to terminate Brown, it reached a final decision on the merits. Section 59-25-480 of the South Carolina Code (2004) specifically states, "The decision of the district board of trustees shall be final, unless within thirty days thereafter an appeal is made to the court of common pleas of any county in which the major portion of such district lies."

Further, when the Board voted to accept James' recommendation for the nonrenewal of Brown's teaching contract prior to conducting a hearing, its decision had an immediate effect on Brown's legal rights.^[12] Sections 59-25-460 and 59-25-470 of the South Carolina Code (2004) make it expressly clear that before the Board makes a final decision regarding the acceptance or rejection of a recommendation for nonrenewal of a teacher's contract, the teacher must be afforded the opportunity to be heard. The observance of the procedural requirements of the Employment and Dismissal Act is mandatory and not a matter of discretion.

With regard to what Board action constituted a final agency decision, James inaccurately interprets the procedure outlined in section 59-25-470 and improperly conflates the requirements of section 59-25-410 with those of section 59-25-470.^[13]

Section 59-25-410 of the Employment and Dismissal Act instructs the Board to decide and notify the teachers "in their employment concerning their employment for the ensuing year." According to the statute, by April 15th of each year, the Board or its designee, ^[14] must notify the teachers in writing of the recommendations for non-renewal. James notified Brown with an April 12th letter of his intent not to renew her contract for the ensuing year. This satisfied the April 15th notice requirement of section 59-25-410. Thereafter, pursuant to section 59-25-470, the Board must afford the adversely affected teachers a hearing based on the notice of dismissal that was recommended by the superintendent. After the hearing is completed, the Board is required to either affirm or withdraw the notice and that action will translate into its final decision. See S.C. Code Ann. § 59-25-470 (2004); see also *Adamson*, 332 S.C. at 128, 503 S.E.2d at 756 (explaining the Board is free to reject the superintendent's recommendation, and, until then, there is no final board action).

Contrary to James' argument, there are no inconsistencies or conflicts between section 59-25-410 and 59-25-470. When the Board voted unanimously on April 24th to terminate Brown's contract, it clearly affirmed the notice of dismissal and this constituted a final decision. Consequently, there was nothing left procedurally under the Employment and Dismissal Act for Brown to do except appeal to the court of common pleas pursuant to section 59-25-480. The fact that an administrative hearing was not conducted below rests

with the Board's failure to follow procedure as prescribed in the Employment and Dismissal Act, and not in any failure of Brown to exhaust her administrative remedies.

B. Exceptions to the Requirement of Exhaustion

Brown asserts that even if she failed to exhaust her administrative remedies before the Board, exhaustion was not required because her case satisfied one of the exceptions to the exhaustion requirement. We agree.

South Carolina, like most jurisdictions, recognizes exceptions to the exhaustion of administrative remedies requirement. The general rule is that administrative remedies must be exhausted absent circumstances supporting an exception to application of the general rule. *Andrews Bearing Corp. v. Brady*, 261 S.C. 533, 536, 201 S.E.2d 241, 243 (1973); *Ex parte Allstate Ins. Co.*, 248 S.C. 550, 567, 151 S.E.2d 849, 855 (1966). A commonly recognized exception to the requirement of exhaustion of administrative remedies exists when a party demonstrates that pursuit of administrative remedies would be a vain or futile act. *Moore v. Sumter County Council*, 300 S.C. 270, 273, 387 S.E.2d 455, 458 (1990); *Ward v. State*, 343 S.C. 14, 19, 538 S.E.2d 245, 247 (2000); *Video Gaming Consultants, Inc. v. S.C. Dept. of Revenue*, 342 S.C. 34, 39, 535 S.E.2d 642, 645 (2000). "Futility, however, must be demonstrated by a showing comparable to the administrative agency taking 'a hard and fast position that makes an adverse ruling a certainty.'" *Law v. S.C. Dept. of Corr.*, 368 S.C. 424, 438, 629 S.E.2d 642, 650 (2006) (citing *Thetford Props. IV, Ltd. P'ship v. U.S. Dept. of Hous. & Urban Dev.*, 907 F.2d 445, 450 (4th Cir. 1990)). Another exception to the exhaustion requirement is recognized when an agency has acted outside of its authority. *Responsible Econ. Dev. v. S.C. Dept. of Health & Envtl. Control*, 371 S.C. 547, 553, 641 S.E.2d 425, 428 (2007).

Brown argues she was not required to participate in a hearing after a final determination had already been made regarding the nonrenewal of her teaching contract, as such a pursuit would constitute a futile act. Consequently, she asserts that she was within her legal right to appeal directly to the circuit court. We agree.

Article 1, section 22, of the South Carolina State Constitution states:

No person shall be finally bound by a judicial or quasijudicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard . . . and he shall have in all such instances the right to judicial review.

Further, section 59-25-470 states that after the hearing has taken place and the Board has had the opportunity to determine "whether the evidence showed good and just cause for the notice of suspension or dismissal," or in this case, nonrenewal of Brown's teaching contract, the Board "shall render its decision accordingly, either affirming or withdrawing the notice of suspension or dismissal." In his brief, James cites this section of the Code and admits "recommendations, when adverse to a teacher, are subject to the [Employment and Dismissal] Act's procedural protections, particularly the right to a Board hearing pursuant to § 59-25-470." [15]

Plaintiff, the procedure is set in place to afford the teacher a meaningful review of the evidence prior to the Board making a final determination, as a review of the evidence after the fact would be futile. "The elementary and cardinal rule of statutory construction is that the Court ascertain and effectuate the actual intent of the legislature." *Horn v. Davis Elec. Constructors, Inc.*, 307 S.C. 559, 563, 416 S.E.2d 634, 636 (1992). Where, as here, the terms are clear and unambiguous, "the Court must apply them according to [their] literal meaning." *Anders v. S.C. Parole & Cmty. Corr. Bd.*, 279 S.C. 206, 209, 305 S.E.2d 229, 230 (1983).

Our research has not revealed any specific South Carolina case law addressing whether a teacher must participate in a hearing after the Board has made a final determination regarding the nonrenewal of her contract. However, courts in other jurisdictions have analyzed issues similar to the case at bar. Specifically, the Indiana Court of Appeals has held:

[T]he notice by the school corporation to the tenure [sic] teacher's was not sufficient, as it did not comply with the statutory requirements for the dismissal of a tenure teacher and such failure to comply with the statutory requirements did not require a tenure teacher to go forth with the burden of requesting a hearing for cause.

Joyce v. Hanover Cmty. Sch. Corp., 276 N.E.2d 549, 564 (Ind. Ct. App. 1971) (finding that the school board's action was arbitrary and capricious as it pertained to tenured teachers), overruled on other grounds by *Myers v. Greater Clark County Sch. Corp.*, 464 N.E.2d 1323 (Ind. Ct. App. 1984); see also *Tippecanoe Valley Sch. Corp. v. Leachman*, 261 N.E.2d 880, 887 (Ind. Ct. App. 1970) (holding that "evidence . . . was sufficient to sustain an implied finding by the trial court that the procedure provided by the contract for the removal of the plaintiff from his position as teacher was not followed and that failure to follow it was a gross abuse of discretion").

The statutes interpreted in the Pennsylvania case of *In re Swink*, 200 A. 200 (1938), are very similar to South Carolina law in that they afford a teacher who has been notified that her contract has been recommended for nonrenewal an opportunity to present her case to the local school board before a final decision on termination is made. [16] In that case, the Pennsylvania Superior Court held the Board of School Directors failed to comply with the statutory requirements and reversed the board's actions, stating that the

observance of the prescribed procedure "is not a matter of discretion." *Id.* at 203. The court further held, "[T]he purpose of the procedure prescribed by the act for the dismissal of a teacher . . . is to prevent arbitrary action by the board, to afford a fair hearing to the teacher . . . before dismissal, and to provide for full, impartial, and unbiased consideration by the board of the testimony produced." *Id.* (emphasis added).

Similarly, the North Dakota Supreme Court has held that in order for a teacher to benefit from a hearing, she must be allowed to present her case in an atmosphere where even though there exists a contemplated recommendation for nonrenewal, the ultimate decision of termination has yet to be made. *Henley v. Fingal Pub. Sch. Dist. #54*, 219 N.W.2d 106, 110 (N.D. 1974). Furthermore, the Supreme Court of Connecticut has explained:

X Notice before termination and notice after termination are not two sides of the same coin. Once the board has committed itself by its action to a particular result it may be too late in the day to suggest a change of direction; at that stage the urge to proceed along its committed course is compelling. But before the die is cast it is still possible for persuasion to affect the result.

Petrovich v. New Canaan Bd. of Educ., 457 A.2d 315, 318 (Conn. 1983).

Analogous to the cases cited above, in the present case, a hearing after the fact would have likely proven futile. Sections 59-25-420 and 59-25-430 of the South Carolina Code (2004) provide for a hearing prior to a final decision of the Board to avoid futility and allow for a meaningful and fair administrative hearing. Section 1-23-380 of the South Carolina Code (2005 & Supp. 2009) states in part, "A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy." *Id.*, see also Jean Hoefler Toal, et al., *Appellate Practice in South Carolina* 49 (2d ed. 2002).

Brown did all that was required of her under the Employment and Dismissal Act. Consequently, as a matter of law, Brown was entitled to have her case proceed before the circuit court, and the granting of James' motion for summary judgment was improper.

C. Procedures for Compelling Participation in a Deposition

Brown argues the circuit court incorrectly concluded that because she did not participate in a deposition as requested by the Board, she essentially abandoned her right to a hearing and the Board was justified in dismissing her case. We agree.

James argues Brown was required to participate in a deposition prior to a hearing and uses section 59-25-490 of the South Carolina Code (2004) to support his position. Section 59-25-490, in pertinent part, states, "Any party to such proceedings may cause to be taken the depositions of witnesses . . ." (emphasis added).

However, the Employment and Dismissal Act does not authorize the Board to dismiss actions for lack of participation in a deposition. Instead, it outlines the procedure the Board should have taken. Specifically, the pertinent portion of section 59-25-490 states:

Such depositions shall be taken in accordance with and subject to the same provisions, conditions and restrictions as apply to the taking of like depositions in civil actions at law in the court of common pleas, and the same rules with respect to the giving of notice to the opposite party, the taking and transcribing of testimony, the transmission and certification thereof and matters of practice relating thereto shall apply.

(emphasis added).

Here, when the Board did not receive any response from Brown or her attorney regarding her participation in the requested deposition, it should have served Brown with a subpoena in an effort to compel her attendance at a deposition pursuant to section 59-25-500 of the South Carolina Code (2004). Moreover, the Board could have moved before the circuit court to enforce such a subpoena under section 59-25-520.

The record does not indicate, nor was it asserted at oral argument, that the Board issued a subpoena or that one was served on Brown in an effort to compel her attendance at the requested deposition. Further, the record does not indicate that Brown was ever served with notice of the deposition or notice of a hearing before the Board. Section 59-25-520 of the Employment and Dismissal Act does not vest the Board with authority to dismiss Brown's request for a hearing based on her nonparticipation in a deposition; [17] rather, it prescribes procedural mechanisms including seeking sanctions from the circuit court to compel participation in a deposition. However, the Board did not avail itself of this; instead, it presupposed to dismiss her case, which is not sanctioned under South Carolina law.

II. Dismissal of the Motion to Amend

Brown argues the circuit court abused its discretion when it dismissed her motion to amend her complaint to add parties on the grounds that her motion was moot in light of the fact that the court granted James' motion for summary judgment. We agree.

Rule 15(a), SCRCP, states in part, "[A] party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party." Rule 15(c), SCRCP, further states, "Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading."

"It is well established that a motion to amend is addressed to the sound discretion of the trial judge, and that the party opposing the motion has the burden of establishing prejudice." *City of N. Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 232, 599 S.E.2d 462, 465 (Cl. App. 2004). "Courts have wide latitude in amending pleadings and '[w]hile this power should not be used indiscriminately or to prejudice or surprise another party, the decision to allow an amendment is within the sound discretion of the trial court and will rarely be disturbed on appeal.'" *Berry v. McLeod*, 328 S.C. 435, 450, 492 S.E.2d 794, 792 (Cl. App. 1997). "The trial judge's finding will not be overturned without an abuse of discretion or unless manifest injustice has occurred." *Id.*

Here, Brown attempted to add the Board's attorneys as defendants based on responses she received from discovery requests. Brown asserted the alleged improper conduct of the attorneys arose out of the same transaction or occurrence set forth in her original pleading. Because the circuit court erred in concluding that Brown had not exhausted her administrative remedies and in granting James' motion for summary judgment, Brown's motion to amend her complaint should have been considered. We, however, do not address the merits of her motion to amend her complaint and we remand the issue of whether Brown should be allowed to amend her complaint to the circuit court.

III. Automatic Renewal of Contract

Brown contends that because the Board did not recommend the nonrenewal of her contract before the April 15th deadline, her termination was illegal and her contract was automatically renewed. James argues the Board complied with the Employment and Dismissal Act's April 15th deadline as prescribed in section 59-25-410 of the South Carolina Code (2004) in that Brown received a letter on April 12, 2007, notifying her of his intention to recommend nonrenewal of her contract to the Board. Brown did not raise the issue of automatic renewal to the circuit court; thus, this issue is not preserved for our review. *Staubes v. City of Edley Beach*, 339 S.C. 406, 412, 592 S.E.2d 543, 546 (2000).

CONCLUSION

The wording of the Employment and Dismissal Act is unambiguous regarding procedure, and the record fails to show the Board complied with its requirements. As a result, the circuit court erred in concluding Brown did not exhaust her administrative remedies. The circuit court also erred in interpreting the Employment and Dismissal Act, as Brown was not required to request a hearing of the Board after a final decision had been made regarding the nonrenewal of her contract; and, as a matter of law, Brown was entitled to appeal directly to the circuit court. Accordingly, the circuit court erred when it granted James' motion for summary judgment and when it concluded that Brown's motion to amend her complaint to add parties was moot.

Based on the foregoing, the circuit court's order is

REVERSED AND REMANDED.

SHORT and WILLIAMS, JJ., concur.

[1] S.C. Code Ann. §§ 59-25-410 to -530 (2004).

[2] The record does not explain what an improvement letter is, but it can be inferred that it is a letter outlining a plan to improve the teacher's performance. Section 59-25-440 of the South Carolina Code (2004) states:

Whenever a superior, principal, where applicable, or supervisor charged with the supervision of a teacher finds it necessary to admonish a teacher for a reason that he believes may lead to, or be cited as a reason for, dismissal or cause the teacher not to be reemployed he shall: (1) bring the matter in writing to the attention of the teacher involved and make a reasonable effort to assist the teacher to correct whatever appears to be the cause of potential dismissal or failure to be reemployed and, (2) except as provided in section 59-25-450, allow reasonable time for improvement.

[3] Brown's initial pro se complaint and her sworn affidavit make reference to her EEOC complaint, which she filed based on claims of sexual harassment, racial discrimination, and retaliation.

[4] The Board never sent Brown a formal notification of its final decision regarding her termination. She became aware of the date of the final decision through the Board's discovery responses to the case before the circuit court.

[5] James filed a motion to dismiss the complaint pursuant to Rule 12(b)(6), SCRCP, or, in the alternative, a motion for summary judgment pursuant to Rule 56, SCRCP. Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action. *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). In considering such a motion, the trial court must base its ruling solely on allegations set forth in the complaint. *Id.* In the order granting the dismissal, the circuit court considered "the record in this case, the applicable law, and the argument of counsel and Brown." In doing so, it effectively treated James' Rule 12(b)(6) motion to dismiss as a Rule 56 motion for summary judgment as it based its ruling on allegations and information set forth outside the complaint. *Baird v. Charleston County*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999); *Gilbert v. Miller*, 356 S.C. 25, 27, 586 S.E.2d 861, 862-63 (Ct. App. 2003).

[6] S.C. Code Ann. §§ 1-23-310 to -400 (2005 & Supp. 2009).

[7] Although the current version of 2 Am. Jur. 2d *Administrative Law* does not include the quotation, the cases cited for its propositions are still binding.

[8] The notice did not inform Brown of the cause for the nonrenewal of her contract, as required by sections 59-25-420 and 59-25-460 of the South Carolina Code (2004).

[9] The Agenda for the April 24, 2007 Cherokee County School District No. 1, Board of Trustees, Board Meeting is replete with separate and distinct categories that address personnel recommendations; however, the reference to the nonrenewal of Brown's contract is titled "Terminations."

[10] James makes these assertions on pages 8 and 9 of the Final Reply Brief of Respondent.

[11] In *Darby v. Cisneros*, 509 U.S. 137, 144 (1993), the United States Supreme Court held that "the finality requirement is concerned with whether the initial agency decision maker has arrived at a definitive position on the issue that inflicts an actual, concrete injury" Additionally, in *Idaho Watersheds Project v. Hahn*, 307 F.3d 815, 825-28 (9th Cir. 2002), the Ninth Circuit held that under certain circumstances, an agency's initial decision can be considered final for exhaustion purposes. Specifically, when an agency has completed the process for reaching an initial decision that has immediate legal effects on the petitioner, the initial decision will be considered a final decision, even though the initial decision-maker may reconsider its decision or the initial decision is subject to review within the agency.

[12] During oral argument, the Court stated, "Her [Brown's] contract was terminated on the 24th," to which counsel for James interjected, "... effective on June 7th." Consequently, in order for there to be an effective date of termination, there had to have been a decision to terminate Brown in the first place.

[13] "All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." *Georgia: Carolina Bail Bonds, Inc. v. County of Aiken*, 354 S.C. 18, 23, 579 S.E.2d 334, 336 (Ct. App. 2003). "It is well settled that statutes dealing with the same subject matter are in pari materia and must be construed together, if possible, to produce a single, harmonious result." *Joiner ex rel. Rivas v. Rivas*, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000).

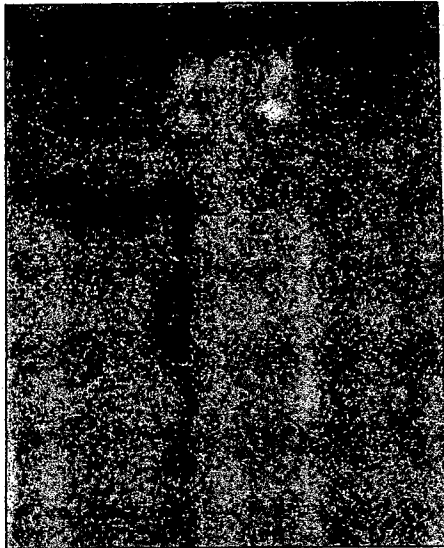
[14] In this case, the Board's designee was Cherokee County Superintendent James.

[15] James makes this assertion on page 9 of the Final Reply Brief of Respondent.

[16] See 24 P.S. § 1121 (1937) and note, and §§ 1126, 1161, 1201, and 1202 (1937).

[17] James contends that the Board did not dismiss Brown's request for a hearing for a lack of participation in a deposition. However, in the November 27, 2007 letter to Brown's then attorney, Theo W. Mitchell, James' attorney states:

I am writing to follow up on my letter to you dated October 25, 2007, in which I informed you that it is our position that because Ms. Brown is unable or unwilling to appear for a deposition, she has withdrawn her request for a hearing regarding her non-renewal. As I have had no contact from you since September 25, 2007, the District now considers the request to be withdrawn and the matter closed.



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DUFF, WHITE
&
TURNER, L.L.C.

COURT RULING ON EMPLOYMENT DISMISSAL ACT

S.C. Court of Appeals Rules on Teacher Employment and Dismissal Act Procedures

The South Carolina Court of Appeals recently issued a decision in a case that has broad implications for the teacher contract non-renewal process under the Teacher Employment and Dismissal Act. On July 21, 2010, the Court of Appeals issued a substituted opinion in the case of *Sharon Brown v. William B. James, Superintendent for Cherokee County School District*. In that case, the Court of Appeals ruled that the initial vote by the District Board of Trustees to accept Dr. James' recommendation that Ms. Brown's teaching contract not be renewed was the Board's "final action." As a result, the Court concluded that Ms. Brown could forego a Board hearing and proceed to appeal the Board's decision to circuit court. The Court disagreed with Dr. James' argument that the Board's initial decision to accept his non-renewal recommendation was subject to Ms. Brown's right to a full evidentiary hearing before the Board, at which time the Board's decision to uphold or reverse its initial vote would become its final decision.

The Employment and Dismissal Act, among other things, outlines the process a district should follow when a continuing contract teacher is not recommended for reemployment for the subsequent school year. The Act specifies that on or before April 15, the Board should "decide and notify" continuing contract teachers regarding their employment for the ensuing school year. In practice, this provision has been interpreted to mean that boards must act on a recommendation of non-renewal, and the teacher must be notified of that action, prior to April 15. The Act further states that a teacher who receives such notice is to be given the opportunity to request a hearing on the merits of the grounds for the contract non-renewal. If a hearing is requested in a timely manner, the hearing is to be held within fifteen days of the request, unless the parties agree to schedule the hearing at a later date so as to allow the parties adequate time to prepare for the hearing. Once the hearing is conducted, the Board

takes its "final" action by voting either to affirm or withdraw its initial decision of non-renewal. A teacher who disagrees with a board's final decision has the option under the Act to appeal to the local circuit court.

In Ms. Brown's case, Dr. James notified her by letter dated April 12 that her teaching contract would not be renewed for the subsequent school year. Within fifteen days, Ms. Brown submitted a written request for a hearing before the Board. On April 24, prior to receipt of Ms. Brown's hearing request, the Board had voted to accept James' recommendation of non-renewal. Through her attorney, Ms. Brown agreed to waive the time requirement for scheduling the hearing, but then refused to respond to inquiries about scheduling her deposition. Ms. Brown's attorney was notified on two different occasions that if Ms. Brown did not respond to these inquiries, the District would regard her lack of cooperation as a voluntary withdrawal of her request for a hearing. Thereafter, on November 27, Ms. Brown's attorney was notified that the District considered her request for a hearing to be withdrawn and the case closed.

Ms. Brown then filed suit in circuit court against Dr. James, claiming that he and the Board breached her contract by failing to follow the process outlined in the Employment and Dismissal Act. Dr. James filed a motion to dismiss Brown's case on the grounds that Ms. Brown had not exhausted her administrative remedies under the Act, namely a Board hearing. The circuit court agreed and dismissed the case. Ms. Brown appealed the circuit court's ruling to the Court of Appeals, who reversed the circuit court and concluded that Ms. Brown qualified for an exception to the exhaustion of administrative remedies requirement. It is interesting to note that Ms. Brown failed to raise the issue of whether her contract should have been automatically renewed because, in this case, the Board did not take action on or before April 15.

The Court of Appeals' decision in *Brown* appears to be inconsistent with the common interpretation of the "decide and notify" and subsequent "opportunity to request a hearing" provisions of the Employment and Dismissal Act. In what has been a long-standing, state-wide practice, boards typically have voted on the non-renewal recommendation and notified the teacher of the right to a hearing on the merits, on or before April 15. If the teacher requests a hearing, the board takes what is considered to be its "final" action at the conclusion of the hearing, at which time the teacher may appeal the board's decision to the local circuit court. As a result of the ruling in *Brown*, school boards now may be required to conduct non renewal hearings before ever taking action on the non-renewal recommendation. The unanswered question arising out of the *Brown* case is whether such hearings must be conducted prior to April 15. If so, districts will have to begin the non-renewal decision-making process much earlier in the school year, so that principal recommendations, notice and the hearing may all take place prior to April 15. Alternatively, *Brown* could be interpreted to allow boards not to take any action prior to April 15, provided the teacher is notified by the superintendent on or before April 15 that he or she is being recommended for non-renewal and of his or her right to request a hearing on the recommendation. The hearing could then be scheduled after the 15th, provided the hearing is scheduled within fifteen days of the receipt of the request, or at a later date if agreed upon by the parties.

As a result of the Court's decision in *Brown*, it is clear that school boards may no longer make initial decisions to accept or reject a superintendent's non-renewal recommendation prior to an evidentiary hearing, if such a hearing is requested. What is not clear is whether hearings must be conducted prior to April 15, or simply the notice of the non-renewal recommendation and of the opportunity for a hearing is to be given prior to April 15. Board policies and practices will have to be examined and possibly modified, in light of *Brown*. If you have questions about the courses of action available at this point, or assistance with your policies and procedures, please feel free to contact this firm.

09 10 Court Ruling On Employment Dismissal Act.pdf

94.

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,

Please refer to PE job description provided

Phone Call Bloom Wed. March 26 10:13 AM office 342-6000

Phone Call Bloom Thurs. March 27 11:21 AM office 342-6000

Phone Call Bloom Thurs. March 27 1:20 PM office 342-6000

Meeting Thurs March 27 2014 1:30PM attorney George McMaster in Columbia.

Phone Call Bloom Fri. March 28 2:48 PM office 342-6000 trying to help temporary office worker learn how to fax and why it isn't working

Phone Call Bloom Fri. March 28 or oh 4 PM office 342-6000 trying to help temporary office worker learn how to fax and why it isn't working

Phone Call Bloom Fri. March 28 4:21 PM office 342-6000 trying to help temporary office worker learn how to fax and why it isn't working

Phone Call Bloom Fri. March 28 4:36 PM office 342-6000 trying to help temporary office worker learn how to fax and why it isn't working

Sun. Mar 30, 2014 at 9:23 PM

From: Alden Bauer

To: Alice Walton

Hello you will be receiving a report from Dr. Bloom on Monday please let me know immediately if you do not receive it by the end of the day

Mon, Mar 31, 2014 at 8:47 AM

From: *Alice Walton*

To: *Alden Bauer "McAden, Jill M"*
Alden,

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

Mon, Mar 31, 2014 at 8:51 AM

From: *Alden Bauer*

To: *"Walton, Alice W"*

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

Mon, Mar 31, 2014 at 9:02 AM

From: *Walton, Alice W*

To: *John Bauer*

A fax will be ok

Tue, Apr 1, 2014 at 6:52 PM

From: *Walton, Alice W*

To: *Alden Bauer*

Alden,

I did not receive a report from your Dr.

Tue, Apr 1, 2014 at 6:53 PM

94

From: *Alden Bauer*

To: *Alice Walton*

Okay I will call right now I'll make sure you get it tomorrow

Phone Call Bloom **Tues April 1 6:54 PM** office checking on success of Fax 342-6000

Tue, Apr 1, 2014 at 6:56 PM

From: *Walton, Alice W*

To: *Alden Bauer*

Thanks

Wed April 2 2014 8:10 am

From: *Alden Bauer*

To: **Dr. Bloom**

Please fax my wellness letter to Attn: Alice Walton 843-322-2371 today. She needs it as soon as possible. Thank you again.

Phone Call Bloom **April 2 2:59 PM office** checking on success of fax 342-6000

Phone Call Bloom **April 2 3:04 PM no answer** 342-6000

Phone Call Bloom **April 2 3:05 PM** office helping temp office worker 342-6000

Wed April 2, 2014 3:12PM

From: *Alden Bauer*

To: *Alice Walton*

I called Dr. Bloom to make sure they had sent the fax. The person who answered the phone told me that the office manager, Shannon, broke her foot and they have a temporary office person in there now. I gave the temporary office person all the information needed and hopefully she will figure out how to fax you. Dr. Bloom was in the office with a patient and she said she would tell her as soon as she gets out.

Phone Call Bloom **April 2 3:48 PM** office 342-6000

Phone Call Bloom **April 2 4:19 PM** office 342-6000

Mon. Apr 7, 2014 at 10:58 PM

From: *John Bauer*

94

To: Alice Walton

Dr blooms office called to say they think they were successful in faxing over the letter today. Their office person was out and they had an untrained person last week. They tried apparently unsuccessfully last week since I did not here from you. Let me know or call blooms office in case you still have not received it. Look forward to hearing from you.



May 29, 2014

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

Mr. John Alden Bauer
5 Gumtree 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

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

Post Office Drawer 309
Beaufort, South Carolina 29901-0309

Respondent's
98

118

From: Alden Bauer <aldenbauer706@gmail.com>
Subject: thune
Date: August 12, 2014 1:08:39 PM EDT
To: John Bauer <jbauer2@sc.rr.com>

Tuesday August 12, 2014 11:59AM

From: Angela Thune Thune4@yahoo.com
To: Alden Bauer

Hi Mr. Bauer,

Here is my perspective...

I was at all of the swimming lessons to monitor my son and I did not see or hear of anything inappropriate during that time. Mr. Bauer was always very attentive and great with the kids.

Thanks,
Angie Thune

Respondent's
118

121

McAden, Jill M

From: Bauer, John A
Sent: Tuesday, February 04, 2014 7:47 AM
To: McAden, Jill M
Cc: Kent, Treva H
Subject: Newsletter

Classes in grades 3-5 are participating in swim classes during PE. These classes are held at Island Recreation Center. We are covering water safety, as well as basic through advanced swimming strokes depending on students' individual needs; these are determined by the Island Recreation swim instructors on the first day. Our unit follows the American Red Cross swim guidelines and we began January 20 and will extend through the week of March 10 or 17 depending on weather. Participation and Effort will be the core of the grade, but emphasis is placed on learning and the enjoyment of swimming. There are 2-3 certified instructors, including myself, as well as lifeguards on duty.

Where are
grades
stored?

[REDACTED]

Respondent's

121

121 P

121

McAder, Jill M

From: Bauer, John A
Sent: Tuesday, February 04, 2014 7:47 AM
To: McAder, Jill M
Cc: Kent, Treva H
Subject: Newsletter

Classes in grades 3-5 are participating in swim classes during PE. These classes are held at Island Recreation Center. We are covering water safety, as well as basic through advanced swimming strokes depending on students' individual needs; these are determined by the Island Recreation swim instructors on the first day. Our unit follows the American Red Cross swim guidelines and we began January 20 and will extend through the week of March 10 or 17 depending on weather. Participation and Effort will be the core of the grade, but emphasis is placed on learning and the enjoyment of swimming. There are 2-3 certified instructors, including myself, as well as lifeguards on duty.

Where are
grades
stored?

Respondent's
121-P

(58) 121P

Jill M

Bauer, John A
Wednesday, January 22, 2014 8:03 AM
McAden, Jill M
SIC

Subject: Sorry I overlooked the message that said we had a meeting last night. I will make sure I am at the next one.

Reminder to
Aden to please
use Outlook.

2

3.

Yes, I added
PYP manual
markers in
preparation of
our site visit.

Hey did you add some artwork on the wall? I came in and suddenly there it was. Thanks if you did.

From: Bauer, John A
Sent: Thursday, December 19, 2013 11:13 AM
To: McAden, Jill M
Subject: stuff on wall

McAden, Jill M

121P
137

121P

Sudomerski, Justine

From: McAden, Jill M
Sent: Friday, December 20, 2013 1:09 PM
To: Bauer, John A
Subject: RE: stuff on wall

Next Day

2 I wish I could say it was me...

From: Bauer, John A
Sent: Thursday, December 19, 2013 11:13 AM
To: McAden, Jill M
Subject: stuff on wall

Hey did you add some artwork on the wall? I came in and suddenly there it was. Thanks if you did.

121P

Sudomerski, Justine

From: Perdue, Karen T
Sent: Thursday, December 19, 2013 11:25 AM
To: Bauer, John A
Subject: RE: stuff on wall
Categories: Red Category

2#

I did. Melissa Hady had a student who did not go on the Camp Driftwood Field trip. She had him make these and gave them to me. I needed a place to put them. I hope you don't mind, but thought they were cute. We'll see if they stay up!
Karen

From: Bauer, John A
Sent: Thursday, December 19, 2013 11:15 AM
To: Perdue, Karen T
Subject: FW: stuff on wall

↑

From: Bauer, John A
Sent: Thursday, December 19, 2013 11:13 AM
To: McAden, Jill M
Subject: stuff on wall

Hey did you add some artwork on the wall? I came in and suddenly there it was. Thanks if you did.

131P
1000

Title - McAden Sled check note Dec 10

McAden, Jill M

From: Bauer, John A
Sent: Tuesday, December 10, 2013 1:09 PM
To: McAden, Jill M
Subject: Emailing: Swim Letter to parents.docx
Attachments: Swim Letter to parents.docx

If it is ok I would like to send this out next week. Schedule looks good. I have not seen any conflicts occurring with PASS, MAP, etc. except for 2 days of PASS writing. You can let district know of the plan to go from Jan 20 to about March 17. Eric Kimeny has given approval over at rec. and I have given him out schedule. I have it all documented so I think we are good to go. I have a couple of parent volunteers also. Wendy Hallstrom mom, Rachel McAden's mom and Nathan Lewis' mom

Has Alden
checked to
make sure these
volunteers
are SLED checked?

4.

131P 80

From: "John Alden Bauer" <jabpe23@gmail.com>
 Subject:
 Date: July 12, 2014 3:38:31 PM EDT
 To: <jbauer2@sc.rr.com>
 1 Attachment, 788 KB



This email is free from viruses and malware because avast! Antivirus protection is active.

McAden, Jill M

From: Bauer, John A
 Sent: Monday, December 02, 2013 8:19 AM
 To: Alyssa Herrold
 Cc: McAden, Jill M
 Subject: RE: Quick question - American Heart Association

Thanks Alyssa. Jill was very supportive of our fundraising efforts to combat heart disease. The hesitation had to do with money keeping policies. I found out that the policy is that we can no longer store donations in our "vault" even if they are personal checks. Last year I kept personal checks locked away at home until deadline and Lori put money in vault. Then we counted everything up on a single day and then sent them to the AMA. Now everything that comes in must be deposited each day it comes in. That means Sue would need to check that the envelope contains what the total says on the outside as well as determine the prizes needed to be distributed. We could even be getting envelopes at the end of the day after she had made a deposit. I think this would be too much. I would love to do it again. I have done it nearly every year of my career but with new policies and us getting ready for our IB recertification I think we may want to figure out what we can do next year. I am sure Jill would be very willing to listen to a VP.

From: Alyssa Herrold [mailto:Alyssa_Herrold@heart.org]
 Sent: Tuesday, November 26, 2013 5:15 PM
 To: Bauer, John A
 Subject: Quick question - American Heart Association

Hello! I hope your school year is going well!

My managers had a question and I said I'd run it by you. They are wanting to contact principals at schools that raised over \$5000 last year as a thank you and a check-in about participating this year. I remember that there was some hesitation with your principal so I asked them not to contact your school unless I heard from you that it might be a good idea. Do you have a preference on an AHA Senior Vice President contacting your principal?

I'll admit I did not ask the district office about money handling policy - since I don't know what each school is doing (but do encourage them to follow necessary procedures), I'd prefer not to make waves at the DO. I also don't want to make waves for you at your school if it's better to let the matter alone. But, if you think she'd like to hear from someone high up at AHA we'd be glad to contact her. What do you think?

Thanks so much, and have a wonderful Thanksgiving!

Alyssa Herrold

No ↑
 = This goes
 against policy & procedure.

5

Testimonials

Respondent's
" 148

Tammy Downing
Hilton Head Island, SC
Parent of: 5th Grade Chinese Immersion Student

Reference: Mr. Alden Bauer (PE Teacher)

August 25, 2014

Dr. Moss and Mr. Evans,

I am writing this letter to you both with a heavy heart. I have spent most of last year and the previous one within the Hilton Head Island Elementary IB School as a Parent Volunteer in the classroom and Co-President for the PTO. During this time and the past 4 years my child has been at IB, I have had the opportunity to meet some amazing teachers and staff. I understand the time that each spends with our students and gets to know each of them through the year. Many times, no matter how hard two working parents try, our children spend more time during the school year being "taught" by our teachers and "in school" with after school events than time spent at home. With this being said, I as a parent realize that it is my responsibility to make sure my daughter understands how to act in school, obey the rules set forth and to stay focused/ listening to each teacher. As each teacher has something to teach and she (my daughter) will gain something very valuable from each one!

On many nights, our family sits down to dinner and discusses the things she has learned, what teachers mentioned in instruction and some of her favorite activities for the week.

One name that has come up about as many times as her own homeroom teachers over the past 4 years has been her PE Teacher ~ Mr. Bauer.

Our child thinks he has some pretty amazing qualities for a PE teacher: funny, makes everyone laugh, includes everyone, can tell when someone is upset/sad, knows their names, creates new and fun activities and always makes them feel like "trying" new things. Once Mr. Bauer left the school, I can't tell you how many and how often many different students asked and wanted to know where he was and when he would be back! His being away affected many many students at our school. I have yet (in dealing with many students on a weekly basis) to find a student who doesn't "miss him and want him back"!

I have had the pleasure to get to know Mr. Bauer and we worked together on a PTO standpoint and also as a parent in talking about my daughter. Mr. Bauer is one of the kindest, gentlest person to students, caring about their feelings and needs, a very hard worker, always a smile on

his face and willing to help with everything, can do attitude and a true ASSET to IB. I know that I am not the only parent who feels this way. I also know that if one asks the entire school of students, Mr. Bauer would be an all time favorite and they would have positive comments as to his character. He truly is an amazing teacher, a positive role model to our students and provides an environment for our children to learn from and be productive. I am hoping that Mr. Bauer is back at IB in September or sooner! The students would be overcome with excitement!! Many Many parents would be as well!

I know that I can not as one parent stop a freight train that has already left the station with a decision made. I CAN do my part and get other parents involved as well to show a support group of parents that feel he is better off back in the school teaching our students/children every 7 days....PE! Hopefully, the "train"/"decision" hasn't been made and he will receive a fair and adequate hearing so that a majority can rule in bringing him back to IB. Not one teacher, student, parent, faculty member, school board member, etc is perfect or has perfect days... life happens and I would hope that (any/all of us) looking in the mirror, will give Mr. Bauer another chance to come back to IB. If not for anyone's self gain but for the students whom adore this fantastic teacher!

I did some reading over the past year since you took on Superintendent. I value the words that the Beaufort County School Board used upon selecting (you) Dr. Moss: "repeatedly heard of his ability to get the most out of people and his ability to put the right staff in place to make the biggest difference in the lives of kids". I also see one of your 5 components (from your 1st 90 days on the job) is "providing quality professional development programs". I am entrusting the School Boards' decision to bring you on as Superintendent still holds these words to be true. I know a big part of this is in your hands and I hope you know that Mr. Bauer is part of that "RIGHT STAFF TO MAKE A DIFFERENCE"! I would also like to hope/know that any and all "development" programs would be fully exercised and offered to someone if one feels a staff member or teacher could use extra enrichment or development to reach their full potential as a teacher.

I hope that this letter finds you well. I am hoping that the time it took me to write this letter and spend less minutes this evening being a parent, getting to bed early, finishing PO's for my business; I hope you understand I did all this for a teacher I do respect and a teacher that is admired by so many many students at our school. For that reason, I believe in a teacher; a teacher that needs to know he is appreciated and an asset. For that reason, I stay up late to write a letter to you!

I am hoping these words, this letter, the content within it; finds its way to Dr. Moss, Mr. Evans and the School Board Members seeking to review Mr. Bauer.

Wishing for the best outcome!

Thank you for your time.

John Townsend

PE Teacher Beaufort Elementary

Dear Bill,

You've known me for a long time since you were principal at HHH. I've been with the district since Hank Noble hired me in 1991. For my first 18 years I taught classes at Hilton Head Elementary. With the expansion of the school in 1999 and the boom in student population an additional position was necessary. Initially Sherrel Craft worked alongside me as the other full-time teacher until she transferred in 2001. It was at that time that Alden Bauer was hired to fulfill the other full-time physical education position at the school.

Alden adapted well to the area and to his new school. We became friends and on some occasions had to team teach. Alden brought great credentials with him having finished with a Masters Degree from USC. He also worked hard and successfully became Nationally Board Certified on his first attempt in 2003. Alden is a hard-worker, plans a great curriculum of activities for his students and often volunteers his time with after school programs and island recreation center tournaments. He coordinated very successful field days that required many volunteer helpers for years.

Alden is a strict follower of school guidelines and if I were a principal would feel very confident that he would be providing a challenging, exciting program that meets or exceeds the standards of physical education for South Carolina. I have incorporated many of his games and activities from working together from 2001-2009.

Sincerely,

John Townsend
Physical Education Teacher
Beaufort Elementary School

Renee and Todd Fox

Parents of 4th Grade Student

Dear Mr. Moss/ Mr. Evans,

Upon first meeting Alden Bauer, we were instantly impressed with his friendly, welcoming, and gregarious nature. Since being at the school and getting to know him, we've realized that his positive attributes extend much further. Alden Bauer is a positive leader and motivator. He offers encouragement, help, respect, and support to students, faculty members, volunteers, and visitors.

Whether in class, the hallway, cafeteria, pick up line, school events, or out in public, Mr. Bauer extends himself to supply a friendly smile and kind words. He never misses an opportunity to recognize and applaud students for striving hard and reaching goals. Alden Bauer expresses sincere appreciation for any assistance he receives. He conducts himself with honesty and integrity. Mr. Bauer provides an excellent example for students.

Our daughter, [REDACTED], has been a student at HHIE IB for three years. Mr. Bauer is her favorite teacher, and because of him, PE is her favorite special. [REDACTED] has participated in Mr. Bauer's PE club every year (even when she had to drop out of chorus to do so).

[REDACTED] has felt a tremendous loss since Mr. Bauer's departure. She loves Mr. Bauer, and so do we! It's impossible not to, when we measure the positive impact that he's had in our daughter's life. We miss Mr. Bauer, and our greatest wish is that he'll be back to teaching this year!

Sincerely,

Renee and Todd Fox

Dr. Gregory Hall, USN, Retired

Parent of 3 Students I taught

Mr. Moss and Mr. Evans,

I am writing you on behalf of Mr. Alden Bauer in support of his upcoming deposition and school board hearing. I was very surprised to hear that he had been placed on administrative leave.

I had the pleasure of working closely with Mr. Bauer two years ago when I volunteered as a chaperone at Camp Driftwood. I was assigned to Mr. Bauer's group for all the daytime activities. Throughout the week, he was extremely professional at all times and was very pleasant to work with. In his interactions with the children, he maintained a perfect balance of approachability, friendliness, and mutual respect. It was a fairly hectic week with so many excited children in a different environment, and minor "emergencies" seemed to crop up all the time. While I don't recall specifics, I remember that Mr. Bauer seemed to handle them all in stride. My brief interactions with him since that time have all been positive.

Three of my children, [REDACTED] (now seventh grade), [REDACTED] (fourth grade), and [REDACTED] (second grade), have all had Mr. Bauer for PE, and they all have loved him as a teacher and have missed him since he has been away. My youngest, [REDACTED], was in first grade last year and participated in PE Club after school with Mr. Bauer. I think it was his favorite activity of the year.

If Mr. Bauer has been accused of disrespectful or disruptive behavior, that is certainly contrary to my own experience. I absolutely believe he has been a positive influence on my three children and their attitudes toward Physical Education and school in general. I would be happy to discuss my own experiences regarding this matter over the telephone or in person if necessary.

Thank you.

Sincerely,

Gregory Hall, MD

CDR, Medical Corps, USN (Ret)
(910) 545-2707 cell
(843) 342-4535 home
Hello!

Thank you for your kind words about my crew!

I am so sorry to hear of this! I did not know anything. My kids told me that you retired this school year, I am not sure where they got that information but that is what they told me. I am sorry to hear of your struggles.

The Jill McAden I know is one of integrity and fairness. Is she working with or against you on this? Because the names were left out it was hard to tell. I myself, have worked for Beaufort County for the past three years as a teachers assistant at the Early Childhood Center under Kim Bratt. I can see how this misunderstanding occurred and feel that there should have been a consequence, but why so harsh? Is there something more? I know the "counting heads" thing all too well and can see how it could happen with the late add. That was always my biggest fear! I'm sorry it did, and I am glad that no one was injured. (I am now only subbing at ECC, as I resigned this year to spend more time working on our business)

I have never been successful contacting Dr. Moss. I have sent letters in the past for various situations. I am saddened that I feel he is so out of reach to the parents and staff of Beaufort County.

I can agree that we have only met a few times in person. Here is what I do know about the Mr. Bauer that my kids speak of:

You gave my daughter ~~an~~ an award the first day she entered IB coming from a private school. (The transition was hard on her). You told her she was "awesome"! She told me that was the best part of her day.

I know that you have supported and encouraged my children for the past five years we have been a part of the IB family. My children speak of how much fun PE is, How funny you are and how they look forward to your class.

Anytime I have encountered you in the hall of or at a special event you are kind, professional and focused on the well being of the students. (one time you were killing fire ants with vinegar during a water day celebration, but did stop to say hello)

During teacher appreciation my children reminded me that we need to buy YOU a gift, they always wanted to be sure that you knew how special you are. They picked out a cap that was bright and were thrilled when they saw you wear it!

I hope that you can find new representation should this go any further.

May I speak to Jill McAden in regards to your email?

Please let me know about the times you will be going before the board.
Please feel free to pass this email on.

Kind Regards,

(from: Jeanine Clark, 8/28/2014)

File 170

----- Forwarded message -----

From: **Alden Bauer** <aldenbauer706@gmail.com>

Date: Thu, Sep 18, 2014 at 2:06 PM

Subject: Re: Hello again

To: Leah Arnold <leah.arnold@islandreccenter.org>

Thanks

On Thu, Sep 18, 2014 at 2:06 PM, Leah Arnold <leah.arnold@islandreccenter.org> wrote:

Sorry. I am not sure of that. We put more curtains up on the shower stall after I spoke with Mr. Clendaniel last year. The curtain between the restrooms and locker room has been up for several years but does get pulled down occasionally.

Respondent's
170

File 225
and 225a

Assumed Charges

Respondent's
225

Extrapolated: Email (Moss 5/29/2014)

- '1 & 2. Left a student unattended off campus. This was categorized as Negligence and Insubordination.
3. You were requested to have an (a second) examination from a psychiatrist and report back.
4. The date of the meeting to discuss the results (second psychiatrist) was scheduled for April 25, 2014. I sent you a directive to attend.'

"Bases" (or Charges) as written by Dr. Moss

----- Forwarded message -----

From: **Moss, Jeffrey** <Jeffrey.Moss@beaufort.k12.sc.us>
Date: Thursday, May 29, 2014
Subject: Personnel Action
To: Alden Bauer <aldenbauer706@gmail.com>
Cc: "Walton, Alice W" <Alice.Walton@beaufort.k12.sc.us>

Mr. Bauer:

I have been extremely patient with you while you have been on administrative leave. Your leave began on February 5, 2014 for leaving a special needs student unattended off campus. This was

categorized as Negligence and Insubordination. You were requested to have an examination from a psychiatrist and report back. The date of the meeting to discuss the results was scheduled for April 25, 2014. You refused to attend the scheduled meeting while still receiving pay from Beaufort County Schools. I sent you a directive to attend and you still elected not to meet, which I do consider an act of insubordination. A letter was then sent to you describing the additional action necessary to bring closure. The directive was to meet with a psychiatrist we identified and paid for. This is allowable under our policy which was provided. You were report back to Ms. Walton no later than May 16, 2014. You have elected to ignore this directive as well. All of these directive have occurred while you are still a Beaufort County School Employee and receiving pay. I must now direct you to complete all requirements by Monday, June 2, 2014 or I will proceed with a recommendation for termination based upon the facts to date.

Ms. Walton will follow up with a certified letter and an email copy outlining the process from this point. It is disappointing you have continually refused to cooperate to bring about a resolution to your suspension.

Original for 225a

Thu, May 29, 2014 at 2:54
PM

Moss, Jeffrey <Jeffrey.Moss@beaufort.k12.sc.us>

To: Alden Bauer <aldenbauer706@gmail.com>
Cc: "Walton, Alice W" <Alice.Walton@beaufort.k12.sc.us>

Mr. Bauer:

I have been extremely patient with you while you have been on administrative leave. Your leave began on February 5, 2014 for leaving a special needs student unattended off campus. This was categorized as Negligence and Insubordination. You were requested to have an examination from a psychiatrist and report back. The date of the meeting to discuss the results was scheduled for April 25, 2014. You refused to attend the scheduled meeting while still receiving pay from Beaufort County Schools. I sent you a directive to attend and you still elected not to meet, which I do consider an act of insubordination. A letter was then sent to you describing the additional action necessary to bring closure. The directive was to meet with a psychiatrist we identified and paid for. This is allowable under our policy which was provided. You were report back to Ms. Walton no later than May 16, 2014. You have elected to ignore this directive as well. All of these directive have occurred while you are still a Beaufort County School Employee and receiving pay. I must now direct you to complete all requirements by Monday, June 2, 2014 or I will proceed with a recommendation for termination based upon the facts to date.

Ms. Walton will follow up with a certified letter and an email copy outlining the process from this point. It is disappointing you have continually refused to cooperate to bring about a resolution to your suspension.

cc: Personnel File

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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From: Earnest, David
Sent: Thursday, May 23, 2013 9:50 AM
To: McAden, Jill M
Cc: Oetting, Robert S; Pernice, Anthony; Holland, Steven R; Miller, Ed
Subject: Work in the Yellow Gym @ IBE

Just to bring everyone up-to-date and make you aware of the work going on in the yellow gym.

Funding for the installation of access control, cameras and other control measures to allow outside use of the gym was identified. The work is starting and will be done after school hours.

The scope of work is as follows:

Access Control

1. Install a card reader on the outside corner door.
 - a. Steve Holland will be your point of contact for entering; the application of a schedule(s) for this door. 322-2406
2. Install an exit alarm on the doors leading into the school hallway toward the adjacent Media Center.
 - a. This will deter individuals from entering the school as when the crash bar on either of the two double doors leading into the Media Center hallway is pressed the alarm will sound.
 - b. A warning sign will be placed on both doors.
 - c. Staff will be able to arm / disarm the alarm with a common Janitorial key for the building that custodial workers should have.
 - d. This is battery operated and should last for a long while.
 - i. It will sound an alert when the battery gets low.
 - ii. Replacement of the battery should be accomplished by the submission of a SchoolDude ticket.

3. The existing rolled security screen has been checked out and it is intended that this be utilized for preventing travel into the school via the hallway.
 - a. The only need here is to procure a hook that can be used to pull the gate down.

Video Security

1. Install two cameras in the gym to look at action on the court
2. Install one camera in the hall-way to watch activity around the restrooms and the hall.

David Earnest, RCDD, GRC/L
BCSD Project Manager
2900 Mink Point BLVD
Beaufort, SC 29902
O 813-322-2344
C 706-726-8551

Wed, May 29, 2013 1:51 PM

From: Bauer
To: McAden
Subject: Outside use

Hi again. Once cameras and other measures are set up could you get me a list of all outside parties that will be using the gym so that I am aware of all parties involved. Thanks. I assume rec center but not been told of others. Keep me posted. Thanks.

December 16, 2012, 9:48 AM

From: McAden
To: Sherol Pheiffer, Billie Jones, Michelle Morante

Sherol, Please send the letter via school messenger.

Billie, Please post this message under the principal's page.

Michelle, please send to all PTA members.

Dear HHIE Family,

We are deeply saddened by the tragic events that took place Friday morning at Sandy Hook Elementary School in Newtown, Connecticut. Our thoughts and prayers are with the families of that school and that community as they try to make sense of a senseless act of violence.

In the wake of this tragedy, perhaps you have asked yourself, "How safe is my child's school? What precautions are in place to protect students and keep our school secure?" Safety and security of our students and staff is a priority for HHIE and our school district. We are vigilant about student safety and have district and school systems in place to address security measures. I share those with you below so that you are aware of what our district and school security measures are:

- We have a School Resource Officer, located at HHIHS and HHIMS, that will respond to HHIE rapidly to assist in maintaining the safety of our students and staff.
- We have Protective Services Coordinator at the district level, a retired Police Captain, to coordinate our Pre-Plans and Emergency Response from our local Law Enforcement Partners.
- We have Emergency Flip Charts in place for each staff member as guides for Teachers and Staff to reference for all drills and should an emergency situation develop.

- We have "Secure Lobbies" where all visitors are required, by design, to check in at the Front Office, utilizing software called lobby-guard, requiring all visitors who intend to enter the school building to use a photo ID.
- We have a Mandatory Photo ID Policy for Staff. Volunteers who spend time with children have been cleared through a SLED check.
- Lighting and Surveillance Cameras both inside and outside of the building have been updated at HHIE. Bushes have been trimmed for better visibility. You might have noticed this at the "Red" entrance recently.
- We review our District Emergency Plan and flip chart every year, disseminate it to all new teachers, making sure that all teachers have easy access to this reference.
- HHIE is equipped with a Web Based Pre-Plan program, called Rapid Responder. This program contains not only floor plans, site plans and hundreds of photos of each school but it also includes individual school emergency plans and Pre Plans for major incidents; that were developed with area Police, Fire EMS and County Emergency Management. This program is also available to Beaufort County First Responders.
- Our Protective Services Bureau performs "Readiness Checks" which are un-announced drills to test a school reaction to an un-authorized person. Every school has undergone one of these tests this school year. Our school scored EXCELLENT this year.
- Our Protective Services Bureau also conducts "Table Top Drills", with our office personnel, to practice the schools reactions to emergency scenarios.
- We practice Drills regularly; fire drills, earthquake drills, tornado drills and safety (or lockdown) drills. Our regularly scheduled monthly drill is occurring Tuesday.
- We train teachers, parent volunteers students and staff to be aware for anything out of the ordinary and to report any suspicious activity. Students are taught to ignore anyone knocking at any door to gain access to the building, and report this to their teacher. In this event, the teacher reports anything unusual to the office and administrators dispatch immediately. Our interior communication system is conducted using walkie talkies. All radio holders have been trained with common language for clear communication when securing our school on a daily basis.
- Our School Board and District Office Staff continue to make security a high priority throughout our district in all schools.

As you think about Hilton Head Island Elementary School and the safety processes I have shared with you above, if questions arise or particular areas of safety that concern you, please contact me to share your thoughts. From time to time, we have parents or guardians who do not like the fact that our office staff will ask to see a photo ID. We take safety and security measures seriously and we appreciate your cooperation. We are a school family and share the responsibility to care for each and every one of our students and staff members.

Also, this weekend, take extra care to hug your children, who represent our future and our security.

Jill M. McAden
Principal

Fri 12/14/2012 4:49 PM

From: Rosswurm, Jacqueline

Thu 5/30/2013 7:51 AM

From: Bauer

To: McAden

No the rec center has not contacted me about summer use I'm just talking about him when they use the rec center during the fall I assume from the email that's there were going to be other parties coming in since we were getting video surveillance the email that I saw from Cy mentioned something about outside parties And yes cy did answer my question after I heads sent this email to you I wasn't sure if he was around or not. I would like to be involved in any decisions made regarding the gym I think that I could be a help in that area.

Wednesday, May 29, 2013 5:58 PM

From: McAden

To: Brewer

Cc: Bauer

Subject: FW: Outside use

Sue,

Has the Rec Center contacted you about summer usage?

Wednesday, May 29, 2013 1:51 PM

From: Bauer

To: McAden

Subject: Outside use

Mon 4/1/2013 7:59 AM

From: Bauer

To: Clendaniel, McAden

Heavy cord outside was not placed on fence by me. That must of have been done recently. Check cameras and we can see who might have put it on the fence. Let me know and we can talk with them.

Only cord I know of was one where I tied a tunnel for the obstacle course you saw on Friday. Just to keep it from falling down.

Mon 4/1/2013 8:07 AM
From: Bauer
To: McAden, Clendaniel

Also, check camera that is located on outside 5th grade building. It is pointed straight at fence. Please ask maintenance also if they keep putting the gym mats in the stage ramp each morning. That is a fire hazard. Keep me posted and I can talk with any individual if you would like. Thanks.

Tue 8/20/2013 1:43 PM
From: McAden
To: HHIBE (Entire School)
Subject: GO TO:

Sherol Pheiffer 24207
Director of POWERSCHOOL, Data Entry and Organization
A-9's
Record Transfer
Enrollment
Daily Attendance / Tardy
State Reporting
Master Scheduler
Phone Blast Liaison
Student Absent Notes (please send these to the front office in a timely fashion)
Printing of Report Cards
Discipline Entry
Video Camera Reviewer

Alden Bauer

From: Bauer, John A
Sent: Wednesday, January 16, 2013 8:30 AM
To: Townsend, John K; Rozelle, Sharon H
Subject: RE: hockey sticks

Hey John and Sharon. I will meet ya'll at 7:30 chik fil a with hockey sticks. I am going to follow ya'll out there because I need to go to the dump and empty the back of my truck and run a few errands. See you Friday

From: Townsend, John K
Sent: Tuesday, January 15, 2013 1:17 PM
To: Bauer, John A
Subject: hockey sticks

Could you bring those hockey sticks on Friday in your truck so I can borrow them for a few week?. Sharon and I are meeting at Chik Fil A around 7:30 and ride together. If you want to meet us there then you can do that. Let me know.

JT

Respondent's
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Alden Bauer

From: Owen, Sarah
Sent: Monday, August 15, 2011 9:13 AM
To: Bauer, John A
Subject: RE: truck



From: Bauer, John A
Sent: Monday, August 15, 2011 9:10 AM
To: Clendaniel, Donald O; McAden, Jill M; Owen, Sarah
Subject: truck

I am parked behind the gym. I dropped some stuff off and then the buses began arriving. I am in a meeting right now, but I will move to the parking lot asap

Alden Bauer

From: Clendaniel, Donald O
Sent: Friday, April 26, 2013 8:13 AM
To: Brewer, Susan
Cc: Brammer, Allison; Kent, Treva H; Ashton, Helen P; Bauer, John A
Subject: volunteers

Hey Sue – my wife and two other volunteers will be this AM. I told Kelly to go check in with Alli and ask for you...as a reminder, they will be painting the four tables and utilizing Alden's truck to pick up plants at the high school.

Treva – can you gather some paint brushes for them...3 adults total.

Thanks to all,

Donald O. Clendaniel III
Assistant Principal
Hilton Head Island Elementary
An Authorized IB School
30 School Road
Hilton Head Island, SC 29926
843.342.4100

Alden Bauer

From: Bauer, John A
Sent: Thursday, January 24, 2013 9:51 AM
To: Clendaniel, Donald O
Subject: RE: tables

ok

From: Clendaniel, Donald O
Sent: Thursday, January 24, 2013 9:46 AM
To: Jorgensen, Diane M
Cc: Bauer, John A
Subject: RE: tables

Would you reach out custodial and make sure the 2 PTA tables located in the Yellow Gym middle closet get moved to the RED Auditorium storage closet..

Thanks so much,

Donald O. Clendaniel III
Assistant Principal
Hilton Head Island Elementary
An Authorized IB School
30 School Road
Hilton Head Island, SC 29926
843.342.4100

From: Bauer, John A
Sent: Thursday, January 24, 2013 7:55 AM
To: Clendaniel, Donald O
Subject: RE: tables

If you are talking about the middle closet of the gym, I do not use that closet I believe maintenance uses that for chair storage.

From: Clendaniel, Donald O
Sent: Wednesday, January 23, 2013 3:22 PM
To: Bauer, John A
Subject: FW: tables

I noticed in your middle closet, two white PTA tables. If you are not utilizing them, I'd prefer they be stored with our other tables in the Red Auditorium.

Could you reach out to Mrs. Jorgensen to assist in the move.

Thanks,

Alden Bauer

From: Ashton, Helen P
Sent: Friday, April 20, 2012 8:48 AM
To: HHIBE Grade 3
Cc: HHIBE Specialist; McAden, Jill M; Clendaniel, Donald O; Owen, Sarah
Subject: Looking for a truck...

Teachers,
 If you have email distribution lists for your classes, could you forward this message along?

I've been in contact with the Earth Day Performance Committee, and they would love to have our Recycled Sound Sculpture on display at the Earth Day event at Shelter Cove Community Park tomorrow (Saturday). The sculpture would be displayed next to the performance stage, and any 3rd grade students at the event could demonstrate some of the wonderful sounds the sculpture makes during breaks between stage performances throughout the day. I thought it would be great to allow the audience to try it out too. The only problem is getting it there. It should be easy enough to transport strapped into the back of a pickup truck, but we need a volunteer with a truck. This would involve picking it up at school around 9 and driving it to Shelter Cove park, then picking it up again after 5 in the afternoon. Or if there were two volunteers, one could drop it off and one could pick it up.

Please contact me ASAP if you have a pickup truck and could help: helen.ashton@earthday.org or 342-4333.

Thanks,
 Helen Ashton
 Studio Teacher

April 21st, 11am - 5pm
 Shelter Cove Community Park
 29 Shelter Cove Lane, Hilton Head Island, SC 29929

**Earth Day
 Celebration!**

"get in the loop"

The 2012 theme promotes people and planet connections to build sustainable communities! This family friendly event presents fun learning experiences for all ages to raise awareness about full loop connectivity of ecological, social and economic systems and how to support them sustainably.

You are invited to *connect with community*, celebrate the natural environment, and learn how to care for it and each other sustainably with green resources!

Nonprofits and other organizations are invited to showcase offerings that contribute to sustainability for the planet or its people. [Learn more](#) about display space and early bird discount.

Event Admission is \$5 for Adults - Kids under 12 are FREE

Alden Bauer

From: Clendaniel, Donald O
Sent: Tuesday, May 14, 2013 3:41 PM
To: Bauer, John A
Subject: Radio Conversation

Hey Coach – I just invited you for a quick debrief on Motorola Radio conversation. Everything's fine, just a crash course on 'private radio transmission'.

Thanks,

Donald O. Clendaniel III
Assistant Principal
Hilton Head Island Elementary
An Authorized IB School
30 School Road
Hilton Head Island, SC 29926
843.342.4100

Respondent's
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Alden Bauer

From: Bauer, John A
Sent: Wednesday, May 15, 2013 7:57 AM
To: Clendaniel, Donald D
Subject: Accepted: Radio Conversation

Alden Bauer

Subject: Canceled: Reschedule Radio Conversation
Location: Clendaniel's Office

Start: Thu 5/16/2013 8:45 AM
End: Thu 5/16/2013 9:00 AM
Show Time As: Free

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Jorgensen, Diane M
Required Attendees: Clendaniel, Donald O; Bauer, John A

Importance: High

Time does not work as Mr. Bauer has a special class at 9:00.

Alden Bauer

From: Jorgensen, Diane M
Sent: Wednesday, May 15, 2013 8:27 AM
To: Bauer, John A
Subject: Radio Conversation with Mr. Clendaniel

Good Morning Mr. Bauer,

Mr. Clendaniel is at District today...this was a last minute decision as he is taking Mrs. McAden's place. I just sent you an invite to reschedule the meeting for Thursday morning.

Thank you.

Diane Jorgensen
Office Manager
Hilton Head Island Elementary
An Authorized IB School
30 School Road
Hilton Head Island, SC 29926
843.342.4209 / Fax 843.342.4299



Beaufort County School District

Work Order Search Results

Work Order ID	Status	Request Date	Requester	Area Type	Location
	Description	Completion Date	Assigned To	Building	Area Number
	Action Taken	Priority		Craft	
99642	Complete replace lights in yellow gym changed bulbs	9/17/2013 9/16/2013 Medium	Richard Jenkins Jenkins, Richard	Gym	Hilton Head Island International Baccalaureate - 62
99709	Complete Please install 24 hooks on the wall upon entrance into the yellow gym on the right. This is a cement wall and may require a certain kind of drill or a piece of plywood to secure properly installed hooks per request	9/17/2013 9/25/2013 Medium	LaKeisha lakeisha.lofton@b eaufort.k12.sc.us Jackson, Vane	Gym Wall Mounting	Hilton Head Island International Baccalaureate - 62 Q330
99710	Complete Yellow Gym--Please install 2 cork strips on the wall to the left of the exterior door straight in front when you enter the gym installed cork strips	9/17/2013 9/25/2013 Medium	LaKeisha lakeisha.lofton@b eaufort.k12.sc.us Jackson, Vane	Gym Wall Mounting	Hilton Head Island International Baccalaureate - 62 Q330
102865	Complete Too hot in gym and no airflow in office. Steve was here on another matter and I sent him to the Yellow Gym to check it out. This WO is for tracking purposes only as job has been handled.	10/31/2013 11/12/2013 Medium	Dane Jorgensen Rowe, Devin	Auxiliary Gym Heating/Ventilatio n/Air Conditioning	Hilton Head Island International Baccalaureate - 62 Yellow Gym
104339	Complete Yellow gym exterior left exit door w/d not close properly. It appears that the left portion of the door is dragging against the other door. Also, the same door exit device latch w/d not latch properly. K. Becker is aware of this. Door was fixed and latches are good at this time.	11/22/2013 11/26/2013 Medium	Phil Amster Becker, Kris	Gym Doors and Hardware	Hilton Head Island International Baccalaureate - 62 Yellow gym
104955	Complete No air flow - heat or cool air...air is stagnant. Mr. Bauer tried pushing the over-ride button and no luck. Found the supply air breaker to be off. Reset the breaker and checked the amp draw and wiring. No other problems found at this time.	12/3/2013 12/4/2013 8:53:32 Medium	Dane Jorgensen Miami, Robert	Gym Heating/Ventilatio n/Air Conditioning	Hilton Head Island International Baccalaureate - 62 Yellow Gym and Gym Office
104966	Complete Need the additional tack strips up on the wall near Alden's gym. One is up, but not the other three. (Perdue) just got in parts installed new tack strips	12/3/2013 1/23/2014 Medium	Dane Jorgensen Heaton, Michael	Gym Wall Mounting	Hilton Head Island International Baccalaureate - 62 Yellow Gym

1/9/2015 4:18:35 PM

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Beaufort County School District
Attn: Alice Walton, Human Resources
2900 Mink Point Blvd.
Beaufort, SC 29902
Thursday, April 2, 2015
Re: Benefits

Respondent's
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Ms. Walton,

Below is an email thread that I began on March 2 asking Ms. Velda Vaughn if my health benefits would remain intact through the hearing and beyond if an appeal becomes necessary. On March 9 you asked that I direct any future questions regarding insurance or other employee benefits to your attention. I've not received an answer from you to the following questions:

Am I covered if the final decision is delayed by reason of appeal?

What is the relevant part of the Consolidated Omnibus Budget Reconciliation Act that I should consult?

Thank you for your timely attention to this matter.

Cordially,

John Alden Bauer

Alden Bauer <aldenbauer706@gmail.com> Mon, Mar 2, 2015 at 5:39 PM
To: velda.vaughn@beaufort.k12.sc.us, John Bauer <jbauer2@sc.rr.com>, Lauren Martel
<martellaw@hargray.com>

I am assuming that my health benefits remain in tact through the hearing and beyond if an appeal becomes necessary. Am I correct?

Thank You
John Alden Bauer III

Alden Bauer <aldenbauer706@gmail.com> Sat, Mar 7, 2015 at 7:18 AM
To: John Bauer <jbauer2@sc.rr.com>, Lauren Martel <martellaw@hargray.com>, velda.vaughn@beaufort.k12.sc.us

Lauren I have received no response to this request from 5 days ago. was sent to Vaughn head of benefits. maybe you can email

[quoted text hidden]

Benefits

4 messages

Walton, Alice W <Alice.Walton@beaufort.k12.sc.us>
To: "John Bauer (jabpe23@gmail.com)" <jabpe23@gmail.com>

Mon, Mar 9, 2015 at 3:46 PM

Mr. Bauer,

The email to your legal counsel of this past Saturday, which you copied to a member of my staff, was shared with me Wednesday. Kindly direct any future questions regarding insurance or other employee benefits directly to my attention.

Your health benefits continue "as is" through Beaufort County School District until one of the following occurs: (1) after a hearing, the Board of Education reinstates you to a teaching position, or (2) after a hearing, the Board of Education issues a written decision affirming the Superintendent's recommendation that your employment be terminated. If the former, then the following month, you would go back to being responsible for the employee's portion of your health insurance, and the District will be responsible for the employer's portion of the premiums. If the latter, then at the conclusion of the month in which the decision is issued, you would be responsible in full for any personal health insurance, e.g., through the Consolidated Omnibus Budget Reconciliation Act or some other insurance option.

Best Regards,

John Bauer <jabpe23@gmail.com>
To: "alice.walton" <Alice.Walton@beaufort.k12.sc.us>

Mon, Mar 9, 2015 at 4:03 PM

I am assuming from your answer that the benefits continue until my case is resolved which would include an appeal.

[Quoted text hidden]

Walton, Alice W <Alice.Walton@beaufort.k12.sc.us>
To: John Bauer <jabpe23@gmail.com>

Tue, Mar 10, 2015 at 9:41 AM

Mr. Bauer,

Please refer to the second paragraph of my email of yesterday.

Regards,

Alice W. Walton

Chief Administrative and Human Resources Officer

Beaufort County School District

843-322-2419 | Office

843-812-8374 | Mobile

John Bauer <jabpe23@gmail.com> Tue, Mar 10, 2015 at 10:01 AM

To: "Walton, Alice W" <Alice.Walton@beaufort.k12.sc.us>

Ms. Walton,

The relevant portion of your second paragraph was:

" If the latter, then at the conclusion of the month in which the decision is issued, you would be responsible in full for any personal health insurance, e.g., through the Consolidated Omnibus Budget Reconciliation Act or some other insurance option."

That does not address my question, i.e., 'am I covered if the final decision is delayed by reason of appeal?'

What is the relevant part of the Consolidated Omnibus Budget Reconciliation Act that I should consult?

Alden Bauer

From: Cassidy, Lori
Sent: Wednesday, November 14, 2012 9:27 AM
To: Owen, Sarah; HHBE Specialist
Subject: November 30th absence

I will be out of town on Friday, November 30th. This is the passport club day and the red gym is occupied. I am not allowed to have a sub due to the unique position. I had written an email previously discussing the concern about double classes. I have covered 2 classes previously when Alden had meetings. Yes, one went fairly well but the other one was hard to manage. 40+ children to one teacher.

The classes that I have scheduled for that day are:

3rd - Middleton
1st - Wynn
5th - Polites
2nd - Tuttle
4th - Shupp

Any ideas or suggestions. I have only thought of splitting the classes or having an exercise/health informational DVD, or an extra available person to give a sit down, writing/drawing type of lesson that I can prepare.

I am sorry since I realize that this causes a bit of strategy and extra planning.

Lori Cassidy
Fitness Instructor
Hilton Head Elementary

Respondent's
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Alden Bauer

From: Jorgensen, Diane M
Sent: Monday, April 07, 2014 8:20 AM
To: HHIBE
Subject: Daily - Monday, April 7, 2014
Attachments: hawkfit 2014.pdf

Happy Monday!

 **April Town Hall Focus:**
Independence



Happy Birthday to Cathy Dyer!

Thank you to Maureen Keemer for sharing her new tutor, Mr. Frozier (again), to cover for Ms. Roberts on Friday afternoon as well as covering lunch duty. Thank you also goes to Ms. Perdue for covering lunch duty. Thank you to Ms. Roland for being flexible and combining P.E. and Fitness on Friday and thank you to Ms. Keisha for being Ms. Roland's assistant.



Teacher Contracts!

Teacher contracts are here! Please come see me to sign yours as soon as possible.

Hawkfit 5K Run

Please see attached flyer May 17, start time is 9:00 a.m.

Support Person of the Year

Alden Bauer

From: Owen, Sarah
Sent: Monday, December 13, 2010 9:35 AM
To: Bauer, John A
Subject: RE: Fifth Grade Morning Math Red Lab

Jill had to go out of town, so she didn't get to talk to you about this.....no worries. We won't start until the 16th. This will get us enough time to get coverage, etc.

From: Bauer, John A
Sent: Monday, December 13, 2010 8:29 AM
To: Owen, Sarah
Subject: RE: Fifth Grade Morning Math Red Lab

Hi Sarah I just go this. I have not heard any more from you about this but I am assuming you meant to confirm this with me before she sent the e-mail. Anyway I guess that I will no longer be implementing the Morning Walking Club in the gym unless Susan will just do it herself. Also, will someone be taking my place in the morning instead. 200 kids in the gym combined with walking club may be a bit much for her. Let me know. Thanks

From: Kecmer, Maureen S
Sent: Sunday, December 12, 2010 8:12 PM
To: Bauer, John A
Cc: McAden, Jill M; Owen, Sarah; Clendaniel, Donald O
Subject: Fifth Grade Morning Math Red Lab

Hi Alden,
 I enclosed a parent letter that gives information concerning the morning math in the Red Computer Lab that we will be starting in January. Please read it, and let me know if you approve. Will you be able to begin on Tuesday January 4th? I will send the letter to Viviana for translation if you agree.

If you look at the winter math MAP scores, which is also attached, you will find 21 students below the 25thile and 32 students between the 25thile & 49thile in fifth grade. I am thinking of inviting the lowest 30 students on the list who will not be getting a math intervention by the ESOL teachers. In addition, you will need some math activities in case the internet is down. I will give you the material and if you want we can store it in my room since you will be in the Red Computer Lab. When can you meet with me this week to discuss the daily math tech curriculum for this program? Thank you in advance for your assistance in improving math achievement at HHIE.

*Maureen Kecmer
 Math Instructional Coach
 HHIE An Authorized IB School
 Beaufort County School District*

Alden Bauer

From: Clendaniel, Donald O
Sent: Wednesday, January 22, 2014 8:51 AM
To: Kent, Treva H
Cc: HHIBE Specialist
Subject: RE: Schedule

You are very welcome! It's so nice to receive this positive feedback. I did have a formal conversation with both Mrs. Eisele and Mrs. D'Angelo's class yesterday prior to specials. My goal was to reiterate our expectations for appropriate behavior. I also indicated that if behavior became an issue, outings such as Mighty Eighth (coming up) and 5th Fun (4th marking period) may be impacted for repeat offenders.

I recognize combining of classes is not best practice...our goal is to not continue this option in the coming year.

Thanks for all you do...and the wonderful IB comments I'm seeing on report cards!

Donald O. Clendaniel III
 Assistant Principal
 Hilton Head Island Elementary
 An Authorized IB School
 30 School Road
 Hilton Head Island, SC 29926
 843.342.4100

From: Kent, Treva H
Sent: Wednesday, January 22, 2014 8:32 AM
To: Clendaniel, Donald O
Cc: HHIBE Specialist
Subject: Schedule

Mr. Clendaniel,
 The specialists would like to extend a huge praise to you for this year's schedule. We LOVE having 3, 4, and 5 grade and 1 & 2 in the afternoon! Much appreciation! We were going to take this praise to teacher forum, but thought it was more appropriate to send directly to you. We would also like to request that if possible, can we please try to avoid combining classes next year? We have noticed that when students from one class join another class for specials, there is an uncomfortable feeling for the students. Again, we want to extend our praises for the structure of this year's schedule!

Treva H. Kent
 Visual Arts Teacher
 Hilton Head Island Elem.
 (843)342-4266
treva.kent@beaufort.k12.sc.us

Alden Bauer

From: Kent, Treva H
Sent: Wednesday, June 04, 2014 8:00 AM
To: HHIBE Specialist
Subject: Please check email frequently today

Jill is trying to get us some relief time today! She really didn't see a need for us to have specials on the last ¼ day of school. However, feedback from first grade is that they really need to have the 45 minutes. She wants us to send in a count of how many students we have in each class. However, I just realized that she didn't say who to send that into?! Perhaps her?! Yes, let's email her our count. Then, maybe we can combine some classes so that a partner can get a free class to do some work?! We'll see how it goes!

Treva H. Kent, M.Ed.
Visual Arts Teacher
Hilton Head Island Elem.
treva.kent@beaufort.k12.sc.us

Alden Bauer

From: Clendaniel, Donald O
Sent: Wednesday, June 05, 2013 3:04 PM
To: Cassidy, Lori; Bauer, John A
Cc: Jorgensen, Diane M; Brammer, Allison
Subject: RE: Homeless Teacher

Lori - combine your classes with Alden tomorrow in the Yellow Gym...we are out of space and options.

Your communication with those 1st-4th grade teachers...personal correspondence, will be critical in ensuring students are prepared to meet in the Yellow Gym, not Red Gym.

Thanks,

Diane - for the daily tomorrow.

Donald O. Clendaniel III
Assistant Principal
Hilton Head Island Elementary
An Authorized IB School
30 School Road
Hilton Head Island, SC 29926
843.342.4100

From: Cassidy, Lori
Sent: Wednesday, June 05, 2013 2:05 PM
To: Clendaniel, Donald O
Subject: Homeless Teacher
Importance: High

There is an 80% of rain tomorrow. The computer lab is booked. I guess the word should be "Teacher Classroomless".

Lori Cassidy
Fitness Instructor
Hilton Head Elementary

Alden Bauer

From: Clendaniel, Donald O
Sent: Monday, June 10, 2013 9:49 AM
To: HHIE Specialist
Cc: Brammer, Allison
Subject: Changes

I have been informed that specialist are combining classes today. In an effort to locate children and communicate effectively, please correspond with Mrs. Brammer and cc me.

Donald O. Clendaniel III
Assistant Principal
Hilton Head Island Elementary
An Authorized IB School
30 School Road
Hilton Head Island, SC 29926
843.342.4100

Alden Bauer

From: Jorgensen, Diane M
Sent: Monday, June 10, 2013 8:37 AM
To: HHIBE
Subject: Daily - Monday, June 10!

Happy LAST DAY!!

Mentions & Reminders

FITNESS SPECIALS

Please send your Fitness Specials to the Yellow Cafe today. Ms. K's lady is not here today and her class will be combining with Mr. Bauer.

FROM THE YELLOW CAFÉ

Ms. Schenck is going for revised time to the ASRP, please forward to her so that she may prep for lunches.

FROM THE DESK OF BILLIE JONES

Free Books

There is a cart of books outside the Media Center which are free to anyone. There is an additional cart in the Media Ctr. For teachers to choose from before they are offered to students.

STAFF CELEBRATION

Today after Dismissal

There will be a staff celebration luncheon today after dismissal in the Yellow Cafe. Please plan on attending.

Summer Construction

As info - Construction work to tear up the tiled floor leading from the media center to the N and P pods will begin June 10 **AFTER SCHOOL HOURS**. Thus, your work day will not be affected by this construction. (This area, as well as yellow entry and corridor off the cafeteria will be off limits to all non-construction personnel after June 10.) Also, you will be able to access the school on Saturday in order to allow you time to finish up in your classroom.

Alden Bauer

From: Jorgensen, Diane M
Sent: Monday, March 17, 2014 8:11 AM
To: HHIBE
Subject: Daily - Monday, March 17, 2014
Attachments: invite_for_2014_IB_Beach_Bash.pdf

Happy Monday!

Thank you for your support and participation in the HHIBE Beach Bash. We look forward to seeing you on Monday, March 17th, at 8:00 AM.

**March Town Hall Meeting Focus
Enthusiasm and Commitment!
Meeting day is March 21!**



Happy Birthday to
Lena Benson!

Thank you again to Maureen Keemer, Steve Bouvier, Lori Soergel, Patrick Cristaldi, and Jill Torre for providing coverage on Friday where needed. Also thank you to the 3rd Grade and 5th Grade teams for assisting with team mate coverage. Kudos also go to Ms. Roland for "double duty" on Friday! Your help is GREATLY appreciated!

PASS SCHEDULE

Tuesday, March 18th and Wednesday, March 19th.

Lunch will look like this for 1st and 3rd:

Alden Bauer

From: Jorgensen, Diane M
 Sent: Tuesday, March 25, 2014 8:09 AM
 To: HHIBE
 Subject: Daily - Tuesday, March 25, 2014

Happy Tuesday!**METLIFE**

Roger Jensen will be here today from 11:30 to 4:00 to answer any questions you may have. There will be a sign up sheet in the mailroom later this morning.

P.E. and Fitness will be combined again today, if you have fitness, please take your students to the Yellow Gym.

Thank you to Ms. Howard for stepping into a classroom for coverage and Ms. Keisha for assisting Ms. Roland yesterday.

Voting ends April 1.
<http://www.honolulu.gov/elections/2014/03/25/voting-ends-april-1/>

**Pretzel Sales**

The 5th graders will be selling hot pretzels (yum) for the next 8 Wednesdays. They will cost \$1 and will be located in the kid's court in the morning until 8:20.

Class Pictures: There are a small quantity of extra class pictures. They will be in your mailbox. If you have a student who would like to purchase one, they are \$10. Also, there is one for each teacher at no charge. If you didn't have one from the first batch, please be sure to set one aside for yourself.

Alden Bauer

From: Kent, Treva H
 Sent: Thursday, November 14, 2013 1:45 PM
 To: Bauer, John A
 Subject: RE: Fifth Grade Specials

Samon from Hutchinsons' class comes with them, also:

From: Bauer, John A
 Sent: Thursday, November 14, 2013 1:36 PM
 To: Kent, Treva H
 Subject: RE: Fifth Grade Specials

Not to mention that Chayana also comes with that class. I will write up something at end of day, and send to you. I have had the same issues in PE.

From: Kent, Treva H
 Sent: Thursday, November 14, 2013 1:26 PM
 To: HHIBE Specialist
 Subject: Fifth Grade Specials

Team,

I had a VERY frustrating class with D'Angelo/Eisele today. I plan to send the following email to our entire admin. team. If you have input or feel that I shouldn't send the email, please let me know. Thanks for your input!

Dear Admin. Team,

I had a very frustrating class today with the D'Angelo/Eisele combination in art. Because the two classes are combined, there were 28 students in my room and the behavior was very poor. I am asking that you as a team please re-visit options for specials for fifth grade so that we do not have combined classes for the last half of the year. We all know how fifth grade behavior can deteriorate as the year progresses. Thank you for your attention to this matter.

Treva H. Kent
 Visual Arts Teacher
 Hilton Head Island Elem.
 843)342-4266
 treva.kent@hiltonhead.k12.sc.us

Alden Bauer

From: Clendaniel, Donald O
Sent: Tuesday, October 15, 2013 3:24 PM
To: Smith, Jennifer M; Roland, Heidi L; Bauer, John A; Brammer, Allison
Cc: Jorgensen, Diane M; McAden, Jill M; Brockway, Michelle M; Lofton, Lakeisha S
Subject: RE: Friday Study Hall

Friday update - it would appear as if RED Gym and RED Auditorium will be utilized all day Friday for Fall Festival set-up.

As a result:

- 1) Morning study hall will need to relocate - based on number of students, not sure where as of yet.
- 2) PE will need to either: a) combine with Fitness outside
b) stay separate, but also be outside

Remember, this is also TOWN HALL DAY which will be located in the YELLOW GYM. So, RED GYM, RED AUDITORIUM and YELLOW GYM will be utilized this Friday.

Donald O. Clendaniel III
Assistant Principal
Hilton Head Island Elementary
An Authorized IB School
30 School Road
Hilton Head Island, SC 29926
843.342.4100

-----Original Message-----

From: EM Morante [mailto:morante98@yahoo.com]
Sent: Sunday, October 13, 2013 7:00 PM
To: McAden, Jill M
Cc: Jorgensen, Diane M; Tammy Downing
Subject: Friday Study Hall

Hi. Could study hall be relocated on Friday morning? We were hoping to start setting up tables/games, organizing prizes, and taping off line area for the haunted stage on Thursday afternoon.

Also, can PE classes be held outside on Friday, so that the red gym can be set up during the day?

Thank you!

Michelle

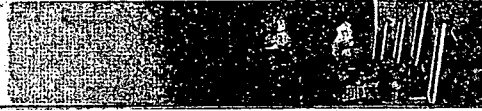
Sent from my iPhone

275

7014 1820 0001 8929 5094

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OFFICIAL USE		
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06/03/2015		
Sent To <i>Alice Walton</i>		
Street & Apt. No. or PO Box No. <i>2900 Marsh Point Blvd.</i>		
City, State, ZIP+4 <i>Beaufort SC 29902</i>		
PS Form 3800, July 2014 See Reverse for Instructions		

Respondent's
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Job Descriptions

JOB DESCRIPTION

JOB CATEGORIES > Certified POSITION TYPES > Teacher - Elementary School POSITIONS

JOB STATUS: MASTER

POSTING DATE:

CLOSING DATE:

POSTING NUMBER: 00001117

LOCATION:

POSITION TITLE: PHYSICAL EDUCATION

QUALIFICATIONS: South Carolina teaching certificate with "Highly Qualified" status is required. For additional information regarding certification please contact the South Carolina State Department of Education at 803-734-6466 or visit their website at <http://www.scednet.org>

JOB DESCRIPTION: To create and maintain a positive, stimulating environment for students to promote a culture of learning. Establish clear objectives for all lessons, units, and projects, and communicate those objectives to students. Prepare, administer and evaluate tests and classroom assignments to verify curriculum guidelines. Guide and counsel students with adjustment and/or academic difficulties, or special academic interests.

RESPONSIBILITIES:

- Teaches knowledge and skills in physical fitness, health education, rhythms and dance, and individual, dual, or team sports, utilizing course of study adopted by the Board of Education and other appropriate learning activities.
- Instructs pupils in essential, basic communications skills, and other general elements of the course of study common to all students as specified in state law and administrative regulations and procedures of the school district.
- Works cooperatively with other physical education teachers in planning balanced physical education programs, adapting daily schedules to accommodate weather conditions and to provide time for changing clothes, instruction, exercise, and sports activities.
- Anticipates, demonstrates, and explains basic skills, knowledge, and strategies of formal sports, games, rhythms, and fundamental body movements.
- Provides individual and small group instruction in order to adapt the curriculum to the needs of each pupil to an extent feasible.
- May teach one or more classes of adapted physical education for students with orthopedic and/or medical problems.
- Provides appropriate safety instruction and makes safety checks on equipment and field areas to insure the overall safety of pupils.
- Establishes and maintains standards of pupil behavior needed to provide an orderly, productive environment in the physical education areas.
- Maintains professional competence through participation in in-service education workshops and clinics provided by the district, and/or in self-directed professional growth activities.
- And other duties as assigned.

EXPERIENCE:

OTHER INFORMATION: The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. While performing the duties of this job, the employee is frequently required to climb, stoop, kneel, crouch, reach with hands and arms, stand accurately for extended periods of time (up to 90% of work day), walk, use hands and fingers to key data, handle, feel or operate objects, tools or controls; talk and hear; reach with hands and arms. The employee must occasionally lift and/or move up to 50 pounds. Specific vision abilities required by this job include close vision, distance vision ability to adjust focus.

The Beaufort County School District is an Equal Opportunity Employer.

APPLY TO: Visit our web site to complete a certified application. Choose this specific employment position under the Employee Position section of your application to be to be considered.

SALARY: Please refer to the Beaufort County School District Certified Personnel Salary Schedule.

DAYS: 180

FROM - TO: TDD - TSE

Employee Group: Certified

START DATE:

<https://winocular.beaufort.k12.sc.us/winocular/JobPost/Jobpost.exe>

3/25/2014

Respondent's
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Jobs -- Beaufort County School District

Page 2 of 2

There are currently 1 opening(s) for this Job Description.
Click [here](#) to view a list of these openings.

For additional information on how to apply, click [here](#).

Alden Bauer

From: Bauer, John A
Sent: Wednesday, May 15, 2013 9:02 AM
To: Clendaniel, Donald O; Owen, Sarah; McAden, Jill M
Subject: Bus

Fyi

Mr. Deas asks me to call Sarah Owen.

I call Sarah and say to stand by, may need to go private

Attempt to go private and ask Sarah if we are private. She says yes. Reggie then tells me a 3rd grade student punched and grabbed another student. I repeat to Sarah

Someone on airways then says we are not private.

Try again. Success.

Reggie tells me to tell Sarah that we will take care of in morning.

Not to come to buses.

Respondent's
Supplemental

1

1 State of South Carolina) Court of Common Pleas
2 County of Beaufort) 14th Judicial Circuit
No.: 2015-CP-07-1343

3
4 John Alden Bauer, III,)
5 Appellant,)
6 vs.) HEARING
7 Jeffrey C. Moss, Ed.D.,)
8 Respondent.) August 19, 2015
9

10
11 Hearing reported by Deborah S. Thomas,
12 Certified Verbatim Reporter and Notary Public in and
13 for the State of South Carolina; said hearing held
14 before the Honorable Marvin H. Dukes, III, Beaufort
15 County Master in Equity and Special Circuit Court
16 Judge in accordance with the South Carolina Rules of
17 Civil Procedure, at the Beaufort County Courthouse,
18 102 Ribaut Road, Room 212, Beaufort, South Carolina,
19 on August 19, 2015, at the hour of 11:15 a.m.

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THOMAS REPORTING SERVICES

11 definite and certain, I suppose that that probably
12 wouldn't hurt to make it clear that this is nothing
13 more than an appeal. So, anyway, you were going on.
14 So I'm sorry I interrupted you, Ms. Martel. Go
15 ahead. I just wanted to get that point clear
16 because, again, it sounded like you all were on the
17 same page.

18 MS. MARTEL: Well, Your Honor, I
19 don't need to continue to go on if that resolves the
20 issue in and of itself.

21 JUDGE DUKES: Well, let me ask you
22 this. Jeffrey Moss, your explanation on naming him
23 as a Defendant I suppose makes some sense, but it is
24 in conflict with the rules it looks like. What does
25 the 59 Code -- does it call for anything as far as

27

1 what -- what does it say about that?

2 MR. DUFF: Well, the appeals section
3 I think makes it clear that the appeal is from the
4 Board's order. At this point it is the Board's
5 order that is at issue. And the proper respondent
6 is the Board or the District which legally are one
7 in the same.

8 And I did cite -- all of this is in

1 State of South Carolina) Court of Common Pleas
2 County of Beaufort) 14th Judicial Circuit
3) No.: 2015-CP-07-1343

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John Alden Bauer, III,)
Appellant,)
vs.) HEARING
Beaufort County School)
District,)
Respondent.) January 19, 2016

Hearing reported by Deborah S. Thomas,
Certified Verbatim Reporter and Notary Public in and
for the State of South Carolina; said hearing held
before the Honorable Marvin H. Dukes, III, Beaufort
County Master in Equity and Special Circuit Court
Judge in accordance with the South Carolina Rules of
Civil Procedure, at the Beaufort County Courthouse,
102 Ribaut Road, Room 212, Beaufort, South Carolina,
on January 19, 2016, at the hour of 1:26 p.m.

THOMAS REPORTING SERVICES
156 Argent Way
Bluffton, South Carolina 29909
(803) 206-7390

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,

6

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.

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.