THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

The Honorable J. Mark Hayes Jr.
Circuit Court Judge

Case No. 2015-CP-11-0828
Appellate Case No. 2017-001466

Sharon Brown.....Appellant,

v.

Cherokee County School District.....Respondent.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

On November 5, 2015, Appellant Sharon Brown ("Brown") filed an Appeal of the decision of the Cherokee County School District Board of Trustees ("the Board") to terminate her employment with Appellant, the Cherokee County School District ("the District"). By Order dated June 25, 2016, the Honorable J. Mark Hayes, Circuit Court Judge, denied Brown's appeal, upholding the Board's decision of termination. Thereafter, Brown filed a Motion for Reconsideration, which was denied by Order dated June 12, 2017. Brown filed her Notice of Appeal to this Court on July 28, 2017.

STATEMENT OF THE FACTS

On August 11, 2015, District Superintendent Dr. Quince Moore ("Moore") notified Brown that she was recommending to the District's Board that Brown be terminated under the provisions of the S.C. Teacher Employment and Dismissal Act, S.C. Code Ann. § 59-25-410, et seq. ("TEDA"), and specifically pursuant to S.C. Code Ann. § 59-25-430, which sets forth a non-exhaustive list of the grounds upon which a teacher may be terminated immediately without the need for remediation. On October 7, 2015, the Board met to consider Moore's recommendation. The evidence presented to the Board during that hearing included the following.

During the 2014-15 school year, Brown was employed by the District as a second-grade teacher at Luther Vaughn Elementary School ("LVES"). (Trans. p 140, lines 1-7.) Brown's students attended art class once a week, beginning around 1:10 or 1:15 p.m. (Trans. p. 12, line 24-p. 13, line 6.) On May 28, 2015, Brown led her students down the hallway toward the art room and was watching them approach the art room door from a short distance away. (Trans. p. 16, lines 2-22.) Justin Kelly ("Kelly"), a first-year art teacher, was observing Brown's

students approach his classroom through a crack in the door, through which he also could see Brown. (Trans. p. 15, line 5-p. 16, line 22.) Student J,[1] a student who spoke limited English, (Trans. p. 20, lines 7-11), was at the end of the line. (Trans. p. 17, lines 9-10.) Kelly saw Brown begin to proceed back toward her classroom, but then quickly turn around just as Student J was nearing the art room door. (Trans. p. 17, lines 18-24.) Kelly testified that, before Student J opened the door, he saw Brown "put her hands on Student J, force him to the side of [Kelly's] door, and proceed to put her hand on the lower chin and under the neck forcing him to the wall . . . ." (Trans. p. 18, lines 5-9.) Kelly also witnessed Brown kneel and say something in an angry tone to Student J. (Trans. p. 19, lines 1-11.) Kelly testified that he did not believe Brown was aware that he had observed her interactions with Student J. (Trans. p. 18, lines 22-24.)

Beth Owens ("Owens"), another LVES teacher, saw Brown and Student J in the hallway outside the art room at 1:20 p.m., with Student J's back against the wall. (Trans. at Complainant Ex. 1-B.) Owens testified that she saw Student J turn away from Brown and that she then saw Brown place her fingers on Student J's chin and turn his head so he was again looking in her direction. *Id.* Owens notified LVES Principal Nan Ruppe ("Ruppe") of her observation that same day. *Id.*

The following day, Kelly reported the incident to the LVES guidance counselor, who took him to see Ruppe. Ruppe advised both Kelly and Owens to place their observations in writing, which they did. (Order, p. 4.) Ruppe then reported the matter to the District Office and participated in the District's investigation beginning on June 1, 2015, when District Director of Human Resources Dr. Carl Carpenter ("Carpenter") came to LVES to initiate the investigation. *Id.* Ruppe was present when Carpenter questioned Kelly regarding the May 28, 2015 incident,

[1] The student in question is referred to as "Student J" to protect his confidentiality.

and testified to the Board that Kelly's report was consistent with what he had told her on May 29, 2015. (Order, p. 5.)

Ruppe also was present when Carpenter told Brown that he was placing her on administrative leave pending the conclusion of the District's investigation. (Trans. p 37, lines 16-17.) Ruppe testified to the Board that she heard Carpenter instruct Brown that she should not discuss the incident or the investigation with any other District employee (Order, p. 5) and that Brown did not have any questions about the directive. (Trans. p 38, lines 5-8.) When asked by Carpenter on June 1, 2015, whether she had any witnesses to the events of May 28, 2015, Brown provided the names of Owens and Tracie Wilson ("Wilson"). *Id.* Wilson is employed as a behavior interventionist at LVES and was in the classroom room with Kelly during the relevant time period. (Trans. p. 22, line 23-p. 23, line 6.)

Several days after Brown's meeting with Carpenter and Ruppe, Wilson was at a Ross Department Store in Spartanburg when Brown approached her. (Trans. p 87, lines 18-21.) Wilson had not yet been called by Carpenter to meet with him, nor was she aware that Brown had provided her name as a witness. (Trans. p. 87, line 22-p. 88, line 3.) Brown told Wilson that "Dr. Carpenter is supposed to call you" and that Wilson was "supposed to talk about what happened with the student." (Order, p. 7.) Brown admitted to Wilson that "you know, I'm not supposed to be discussing it," to which Wilson replied "well, don't discuss it because I don't know what happened . . ." (Trans. p. 89, lines 15-19.) Brown then attempted to tell Wilson what she believed had happened with her and Student J. (Trans. p. 90, lines 10-18.) Wilson testified to the Board that Brown "kept on talking and saying stuff about telling me what I'm supposed to say, what happened, well, what she felt like happened was she felt like I may have saw her [sic], and I was like no, I didn't see any of that, I don't know what you're talking about." (Trans. p. 91,

lines 18-23.) This interaction was in direct violation of the directive given to Brown by Carpenter.

Thereafter, on July 31, 2015, Moore interviewed Brown, who told Moore that she "did not remember" Carpenter telling her that she could not discuss the investigation or incident. (Order, p. 8.) Following that meeting, Moore concluded that Brown had become irritated with Student J, leading to the physical interaction witnessed by Kelly. *Id.* A short time later, in an effort to "make-up" with Student J, Brown spoke further with him, which was the interaction witnessed by Owens. *Id.* Moore found the statements of Kelly, Wilson, and Owens to be credible and concluded that Brown had interacted inappropriately with Student J, and also had intentionally interfered with the District's subsequent investigation by attempting to tell her own witness, Wilson, what she should say when questioned by Carpenter. *Id.* Based on these conclusions, Moore recommended that Brown be terminated, putting her recommendation in writing to Brown by letter dated August 11, 2015. (Trans. at Complainant Ex. 1-F.)

In response to Moore's letter, Brown requested an evidentiary hearing before the Board. In support of her recommendation for dismissal, Moore presented six witnesses: Kelly, Ruppe, Carpenter, Owens, Wilson, and herself. Brown served as her only witness. (Order, p. 3.) Following a four-hour hearing and deliberation, the Board voted to uphold Moore's recommendation of dismissal, concluding that there were good and sufficient reasons for terminating Brown because, by her conduct, she manifested an evident unfitness for teaching. *See* S.C. Code Ann. §§ 59-19-90(ii), 59-25-430. Relevant portions of the Board's Order state:

> ". . . [T]he Board believes that in addition to her dishonesty, Ms. Brown's inappropriate interactions with Student J and her insubordination by defying the directive that she not talk with any District employee, particularly an employee whose name she had provided as a witness, manifests an evident unfitness for teaching. Ms. Brown's conduct indicates to the Board that she does not have the judgment or the

credibility to work as an employee in the District. All of the findings and conclusions are sufficient reasons for her termination. Based on the facts, as established by the evidence and the legal standard, the Board upholds the Superintendent's recommendation to terminate the employment of Sharon Brown as a teacher . . . ."

(Order, pp. 9-10.)

ARGUMENT

I. THE CIRCUIT COURT CORRECTLY DETERMINED THAT SUBSTANTIAL EVIDENCE SUPPORTED THE BOARD'S DETERMINATION THAT THERE WERE GOOD AND SUFFICIENT REASONS FOR TERMINATING BROWN'S EMPLOYMENT.

A. The Standard of Review Is Substantial Evidence on the Record as a Whole.

South Carolina courts have long recognized that the scope of judicial review in appeals of school board decisions is limited to an examination of the record of the board's evidentiary hearing to determine whether there is substantial evidence to support the board's decision. *See Laws v. Richland Co. Sch. Dist. No. 1*, 270 S.C. 492, 495, 243 S.E.2d 192, 193 (1978); *Kizer v. Dorchester Cty. Vocational Educ. Bd. of Trustees*, 287 S.C. 545, 548, 340 S.E.2d 144 (1986); *Hendrickson v. Spartanburg Co. Sch. Dist. Five*, 307 S.C. 108, 110, 413 S.E.2d 871, 873 (Ct. App. 1992); *Felder v. Charleston County Sch. Dist.*, 327 S.C. 21, 25, 489 S.E.2d 191, 193 (1997). Specifically, review of a school board's decision in a teacher termination case is limited to addressing the question "whether the grounds given for termination of the [teacher's] employment are supported by substantial evidence." *Laws,* 243 S.E.2d at 193. Consequently, the reviewing court is only concerned with the existence of such evidence, not its weight. *Barrett v. Charleston Cnty. Sch. Dist.*, 348 S.C. 426, 434, 559 S.E.2d 365, 369 (Ct. App. 2001). This limited standard of review is met when, considering the record as whole, reasonable minds could reach the same conclusion as was reached by the Board. *Hilliard v. Orangeburg County Sch. Dist. No. Three*, 300 S.C. 123, 125, 386 S.E.2d 628, 630 (1989).

Substantial evidence is that, which "considering the record as a whole, would allow reasonable minds to reach the conclusion the [school board] must have reached in order to justify its action." *Hendrickson,* 307 S.C. at 110-11, 413 S.E.2d at 873. If substantial evidence exists, a court may not substitute its judgment for that of the school board, and the decision must be upheld. *Id.* This scope of review is intended to preserve the "powers, functions, and discretion which must necessarily be vested in educational authorities if they are to execute the duties imposed upon them." *Laws*, 270 S.C. at 495. As stated in *Singleton v. Horry County Sch. Dist.,* 289 S.C. 223, 227, 345 S.E.2d 751, 753 (Ct. App. 1986), "[c]ourts will not interfere with the exercise of discretion by school boards in matters committed by law to their judgment unless there is clear evidence that the board acted corruptly, in bad faith or in clear abuse of its power." "[I]f any of the charges against a teacher are supported by substantial evidence, the school board's decision to dismiss must be sustained." *McWhirter v. Cherokee County Sch. Dist. No. 1,* 274 S.C. 66, 261 S.E.2d 157, 158 (1979) (citing *Laws v. Richland County Sch. Dist. No. 1*, 270 S.C. 492, 495, 243 S.E.2d 192, 193 (1978)).

Here, the record is replete with evidence that Brown manifested an evident unfitness for teaching. Section 59-25-430 of TEDA provides that a teacher who manifests "an evident unfitness for teaching" may be dismissed at any time without the need for a remedial period. "An evident unfitness for teaching" is manifested by a non-exclusive list of behaviors, including dishonesty and willful violation of the rules and regulations of a district board of trustees.

During the October 7, 2015 hearing, Moore submitted substantial evidence to the Board that Brown manifested an evident unfitness for teaching in three separate ways, each of which would justify her immediate termination: (1) by her inappropriate interactions with a

student on May 28, 2015; (2) by her insubordination on June 5, 2015, in willfully defying an administrative directive not to discuss the matter with District employees while the May 28th incident was under investigation; and (3) by her dishonesty in answering Moore's questions about the May 28th and June 5th incidents.

B. Brown's Unfitness for Teaching Was Manifested by Her Inappropriate Interactions with Student J on May 28, 2015.

Two teachers at LVES testified to the Board about two separate incidents occurring on May 28, 2015, in which they observed Brown inappropriately manipulating Student J's face to force him to look at her while she spoke intently with him in the hallway outside the art classroom. Kelly described the more forceful encounter: as Student J approached the art classroom, Kelly saw Brown move Student J to the side of the classroom door, then place her hand on his chin and under his neck, forcing him against the wall. He then heard her speak to Student J in an angry tone. In his written statement, which was submitted to the Board, Kelly said Brown "grabb[ed] a student violently by his lower jaw and throat, and forc[ed] his body against the wall while proceeding to verbally assault him." Kelly was disturbed by what he had seen, and continued to be concerned for Student J through the following night, prompting him to seek advice from the guidance counselor and then to report his observations to the school's principal the next day.

The other teacher, Owens, told the Board that she saw Brown approximately five minutes after the art class began bend over to Student J in the hallway, speaking to him and placing her hand on the child's face to turn him toward her. According to Owens, Student J had his back up against the wall and "had an uneasy look on his face when he looked back towards me. He just kind of had a nervous, uneasy look about him like he was uncomfortable, it was an uncomfortable situation for him." The conclusion that this was a second encounter between

Brown and Student J on May 28 is supported by six pieces of evidence: (1) Kelly said the interaction he witnessed occurred before Student J entered the art classroom and before the art class began at 2:15; (2) Owens said the encounter she witnessed in the hallway occurred at about 2:20, after the 2:15 classes were already underway; (3) another witness, Wilson, told the Board that Brown knocked on the art classroom door several minutes after class had begun and took Student J out of the class into the hallway with her; (4) Brown wrote in her initial statement that she "went back to [her] room," then decided to return to the art classroom to speak with Student J; (5) Brown told the Board that after she dropped her students at the art room, she returned to her classroom for "a few minutes," then walked back to the art room and asked to speak with Student J; and (6) Carpenter, who investigated these incidents, testified that Brown told him that she "pulled [Student J] out of the classroom to talk to him." Thus, there is substantial evidence that the incident witnessed by Kelly occurred before the 1:15 class began, while the incident observed by Owens occurred after the 1:15 class began.

Substantial evidence in the record further establishes that Brown knew Wilson saw Brown take Student J out of the classroom after the class began and also knew Owens saw Brown speaking to Student J in the hallway. Brown's first written statement refers solely to that encounter because she knew Wilson and Owens knew about that encounter. Substantial evidence in the record also establishes that Brown was not aware that Kelly saw her take Student J's face in her hand and force him up against the wall before the class started. Kelly told the Board that he did not believe Brown knew he had seen her behave in that way. In fact, when questioned by Ruppe and Carpenter on June 1, 2015, Brown did not identify Kelly as a witness; she identified only Owens and Wilson. It was not until Brown was shown a copy of Kelly's written statement

that she addressed the first encounter that had been witnessed by Kelly by submitting a second statement on June 8 denying that she had behaved in the manner described in Kelly's statement.

Nevertheless, the Board had substantial evidence from Kelly by which it determined that Brown grabbed Student J in a forceful manner. The Board also had substantial evidence from Owens that Brown subsequently put her hands on Student J again to force him to look her in the eye as she spoke intently to him. As Moore testified at the hearing, Brown made inappropriate contact on two separate occasions with a student, which behavior was witnessed by two witnesses who had no reason to fabricate such information.

Brown argues that because she denies putting her hands at any time on Student J and because Student J, a second-grader, and his mother stated that she did not touch him, the statements by Kelly and Owens must be disbelieved. However, this Court cannot weigh the evidence or make assessments of witness credibility. That is the function of the Board, which determined that Kelly and Owens were credible witnesses and Brown was not. In its Order setting forth its reasons for upholding the termination recommendation, the Board acknowledged that Brown denied making any physical contact with Student J, but did not find her denial credible based on the testimony of Owens and Kelly, "particularly since Ms. Brown was unable to provide any sound reason why either Mr. Kelly or Ms. Owens would fabricate their reports." (Order, p. 9). In reviewing the evidence presented to the Board, the Court cannot refuse to credit the testimony of Kelly and Owens simply because Brown denies it. *Felder,* 327 S.C. at 25 (court exceeded the scope of judicial review when it refused to credit the testimony of sheriff's deputy who witnessed behavior of teacher, which was denied by the teacher). Clearly, there was substantial evidence to sustain Moore's recommendation that Brown be terminated based on her inappropriate interactions with Student J.

Brown accuses the District and its employees of failing to comply with South Carolina law requiring the reporting of child abuse. However, no one in the District ever alleged that Brown committed child abuse in her encounters with Student J. Brown's behavior does not have to reach the level of child abuse to constitute unfitness for teaching. Substantial evidence supported the Board's decision that Brown's inappropriate interactions with Student J manifested an unfitness for teaching.

C. Brown's Unfitness for Teaching Was Manifested by Her Willful Disregard of the Directive Given to Her by the District Administration.

Two witnesses – Ruppe, the school Principal, and Carpenter, the Director of Human Resources – told the Board that Brown was directed not to talk with other District personnel while the incidents with Student J were under investigation. Carpenter issued the directive orally to Brown at his interview of her on June 1, which Ruppe witnessed. Carpenter and Ruppe also testified to the Board that Brown seemed to understand the directive and had no questions about it. To document that he instructed Brown not to speak with other District personnel, Carpenter sent a letter to Brown that same day reiterating the same instructions. Brown claims that she does not recall hearing Carpenter tell her not to speak with other District personnel during the pendency of the investigation. She also testified that she did not receive the letter from Carpenter until June 11. Nevertheless, substantial evidence in the record exists that Carpenter told Brown not to speak with other District personnel and that Brown heard and understood the directive.

Substantial evidence in the record also exists that Wilson, who was present in Kelly's art classroom on May 28 when Brown took Student J from the art class into the hallway, told the Board that Brown spoke to her about the situation with Student J at Ross Department

Store on June 5. According to Wilson's written statement and her testimony to the Board, Brown herself raised the topic of Student J and the fact that Carpenter would be calling Wilson. Brown admits that she brought up the subject of Kelly's allegation regarding Student J in her conversation with Wilson, but denied she discussed the incidents involving him. Wilson, however, told the Board that Brown said, more than once, that she was not supposed to be discussing this topic with Wilson, in response to which Wilson repeatedly told Brown not to continue to discuss it, to no avail. Wilson described to the Board how Brown attempted to convince her of what happened to the student on May 28, 2015, with Brown arguing with Wilson about what she believed the events of May 28 to be. Brown argues that discrepancies between the written statements and testimony of the witnesses destroy their credibility. Initially, the written statements and testimony of witnesses are not verbatim, nor are they required to be. The written statements and testimony before the Board are entirely consistent in this case, however; any differences are minor and irrelevant to the issue of whether Brown discussed the situation concerning Student J with Wilson. Second, and more importantly, this Court is limited in its review to finding whether substantial evidence exists to support the findings of the Board. The Court may not weigh the evidence or make assessments of witness credibility without exceeding the scope of its judicial review. *Felder,* 327 S.C. at 25 (court exceeded the scope of judicial review when it disregarded the testimony of a witness which conflicted with that of the teacher). Issues of witness credibility have no place in this appeal; Brown's arguments on the credibility of Wilson and other witnesses must be disregarded.

Substantial evidence exists that Brown was instructed not to discuss the situation with other District personnel during the investigation, and that she heard and understood that directive. Substantial evidence also exists in the record that, despite this directive, Brown

attempted to tell Wilson what to say to Carpenter, thus interfering with and undermining Carpenter's investigation. Brown's reliance on the case of *Hall v. Bd of Trustees of Sumter Cnty. Sch. Dist. No. 2*, 330 S.C. 402, 410, 499 S.E.2d 216, 220 (1998) to argue that her insubordination was insufficient to terminate her is misplaced. In finding that the Sumter School Board did not have substantial evidence to terminate Hall for insubordination, the Court specifically noted that the Board did not have evidence before it to conclude that Hall attempted to undermine the investigation into her behavior on a student field trip. Here, the Board was presented with substantial evidence that Brown clearly tried to tell Wilson what she should say to Carpenter. (Trans. p. 89, line 9-p. 91, line 23.) Because substantial evidence supports the Board's decision that Brown was insubordinate by willfully and intentionally disregarding a directive given to her in an effort to undermine the District's investigation, the Circuit Court's decision affirming the Board's decision to terminate Brown should be upheld.

D. Brown's Unfitness for Teaching Was Manifested by Her Dishonesty in Responding to Questions by the District Superintendent.

Moore told the Board that, following her investigation and the investigation of Carpenter and Ruppe, she concluded that Kelly and Owens had witnessed two separate encounters in which each saw Brown place her hands on Student J in an inappropriate manner. She also concluded, and told the Board, that Brown, in denying that she touched Student J in any manner, was dishonest when Moore questioned her about those encounters. Moore further concluded that Wilson, who had no reason to lie, had been truthful in recounting her conversation with Brown at the Ross store on June 5, and that Brown, in denying that she discussed the situation concerning Student J with Wilson, was dishonest when Dr. Moore questioned her about it.

S.C. Code Ann. § 59-25-430 contains a non-exclusive list of reasons a teacher may be immediately terminated because of an evident unfitness to teach, which list specifically includes dishonesty. The testimony from Moore, along with the other evidence reviewed by the Board, provide substantial evidence that Brown was dishonest in responding to questioning from Moore and was a sufficient reason for the Board to terminate her.

II. THE CIRCUIT COURT CORRECTLY DETERMINED THAT THE DISTRICT COMPLIED WITH THE DUE PROCESS REQUIREMENTS OF THE TEACHER EMPLOYMENT AND DISMISSAL ACT AND DID NOT VIOLATE ANY CONSTITUTIONAL OR STATUTORY PROVISIONS.

A. Brown's Statements of Issues on Appeal Are Procedurally Improper.

Rule 208(b)(1)(B), SCACR states: "A statement of each of the issues presented for review . . . shall be concise and direct as to each issue . . . . Broad general statements may be disregarded by the appellate court. Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal." "Every ground of appeal ought to be so distinctly stated that the reviewing court may at once see the point which it is called upon to decide without having to 'grope in the dark' to ascertain the precise point at issue." *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010). Issues on appeal which are not concise and direct, but rather broad general statements of error without reference to the legal principles involved, ought to be disregarded by this Court. *Id.* at 348.

Brown's Statement of the Issues on Appeal are improper because they do not clearly state the alleged reversible error or the legal principles involved. For this reason, the Court need not consider these claims of error and may affirm on the ground that the Circuit Court's decision is supported by substantial evidence. *Id.* at 346 ("Under the two-issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case.").

B. Brown Cannot Point to Any Evidence that the Board Denied Her Due Process or Violated Any Constitutional or Statutory Provisions.

As stated in *Singleton v. Horry County Sch. Dist.*, 289 S.C. 223, 227, 345 S.E.2d 751, 753 (Ct. App. 1986), "[c]ourts will not interfere with the exercise of discretion by school boards in matters committed by law to their judgment unless there is clear evidence that the board acted corruptly, in bad faith or in clear abuse of its power." Our Supreme Court reiterated that standard in *Young v. Charleston County Sch. Dist.*, 397 S.C. 303, 725 S.E.2d 107 (2012), citing to S.C. Code Ann. § 1-23-380 in holding that a court may not review substantive determinations of a school board, but only whether the teacher was afforded the process due her under the State Constitution and applicable state law. Here, there is no evidence as required by S.C. Code Ann. § 1-23-380 for the Court to overturn the Board's decision, that the Board violated any constitutional or statutory provisions; exceeded its statutory authority; or that its decision to terminate Brown was made upon unlawful procedure.

Initially, Brown was provided all the rights afforded to her by the procedures set forth in TEDA. She participated in a lengthy evidentiary hearing before the Board in which she was represented by counsel and had the opportunity to present witnesses and evidence on her behalf and was provided the opportunity to question the District's witnesses. The Board further had statutory authority under TEDA to hear the matter and make a decision based on the evidence and its conclusions. S.C. Code Ann. § 59-25-470.

Brown asserts that the Board's decision violated constitutional and statutory provisions as follows: (a) the Board was not impartial during the hearing; (b) she did not receive sufficient written notice of the grounds for Moore's recommendation of her termination; (c) she was denied equal protection because the District did not instruct other District employees not to talk with Brown during the investigation into Brown's conduct; (d) she was denied her right to

freedom of speech when she was instructed not to talk with anyone during the course of the District's investigation; (e) the Board's decision to terminate her was excessive punishment; (f) Wilson's testimony to the Board was coerced or bribed; (g) she failed to receive a fair hearing because the District did not bring Student J to the hearing; and (h) the Board was not impartial because, prior to her hearing, Brown had "reported incidents of racism and retaliation to the district and made Whistle Blower claims of racism and retaliation to the government, prior to the board hearing" and, further, that the Board had "animosity towards Appellant's reinstatement to her teaching position by the local court in late 2011." (Resp. Initial Brief, p. 25).

1. Impartiality of the Board

"School board members are clothed with a presumption of honesty and integrity in the discharge of their decision-making responsibilities." *Felder,* 327 S.C. at 21. To demonstrate a denial of due process, a teacher must show an actual bias, rather than the mere potential for bias. *Id.*

Here, Brown asserts that one Board member closed her eyes during the hearing and another asked questions. Neither assertion demonstrates actual bias. Rather, the fact that a Board member asked questions during the hearing indicates that the member wanted to have all the relevant facts before deciding whether to uphold Moore's recommendation for Brown's termination. Likewise, the fact that a Board member may have closed her eyes during a four hearing does not demonstrate actual bias.

Brown also argues that the Board improperly considered evidence outside the hearing process. (Resp. Initial Brief, p. 27). However, in support of that argument, Brown cites to testimony during the hearing from Owens, Ruppe, and Moore. (Resp. Initial Brief, pp. 27-29). Brown points to no evidence that the Board conducted its own independent investigation or that

it otherwise made its decision to uphold Moore's recommendation on anything but the evidence presented during the October 7, 2015 hearing.

2. Insufficient Notice of Grounds for Termination

Section 59-25-460 of TEDA states that no teacher shall be dismissed unless "written notice specifying the cause of dismissal is first given the teacher...." Contrary to Brown's assertion, TEDA does not require that the notice of dismissal set forth all the facts upon which the recommendation for termination is based. Moore's letter of August 11, 2015, sufficiently enumerated the three separate grounds upon which her recommendation for Brown's termination was based: that she inappropriately interacted with a student; that she willfully violated a directive; and that she was dishonest in her conversations with Moore, each of which independently manifests an evident unfitness to teach. Such notice satisfies the requirement of S.C. Code § 59-25-460, as well as the general due process principle that a public employee facing termination has the right to know the charges against her. *Cleveland Board of Education v. Loudermill, et al.,* 470 U.S. 532 (1985).

3. Equal Protection

Brown did not raise before the Board her claim that she was denied equal protection and is thus precluded from raising it in her appeal. *See Ross v. Medical Univ. of South Carolina*, 317 S.C. 377, 453 S.E.2d 880 (1994) (an administrative appeal must be confined to the record except in cases of alleged irregularities in the procedure before the agency not apparent on the record).

Assuming, *arguendo,* that Brown was not required to raise her equal protection claim to the Board, she does not properly state such a claim. The obligation to provide due process requires that no person shall be denied equal protection of the law. U.S. CONST. AMEND.

XIV, § 1; S.C. Const. art. I, § 3. "The *sine qua non* of an equal protection claim is a showing that similarly situated persons received disparate treatment." *Grant v. S.C. Coastal Council,* 319 S.C. 348, 354, 461 S.E.2d 388, 391 (1995); *Town_of Hollywood v. Floyd,* 403 S.C. 466, 480, 744 S.E.2d 161, 168 (2013). Here, Brown does not identify the law or protection she is invoking regarding her claim that she was treated differently, other than to claim that she was told that she could not speak to other District employees while others were not so restricted. That assertion is insufficient to set forth an equal protection claim.

4. Freedom of Speech

Public employees are protected by the First Amendment to the U.S. Constitution only when they are speaking out on a matter of public concern. *See Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006); *See also Urofsky v. Gilmore*, 216 F.3d 401, 407 (4th Cir. 2000) (en banc). If "an employee's speech regards a matter of personal interest rather than of public concern, it is unnecessary for the Court to scrutinize the basis for [the] termination." *Urofsky*, 216 F.3d at 407. If the speech does not involve a matter of public concern, "the employee has no First Amendment cause of action based on his or her employer's reaction to the speech." *Id.* (citing *Connick v. Myers*, 461 U.S. 138, 147 (1983)). Brown argues that the District abridged her right to freedom of speech when Carpenter told her that she could not discuss her employment situation with other employees. Brown's employment status was not a matter of public concern and she cannot state a claim for a violation of her First Amendment rights.

5. Excessive Punishment

TEDA provides that when a school board finds that the evidence shows good and sufficient cause for dismissal, the board "shall render its decision accordingly, either affirming or withdrawing the notice of suspension or dismissal". S.C. Code Ann. § 59-25-470. Here, the

Board found that Moore presented such evidence, and exercised its statutory authority to uphold Brown's dismissal. There is no evidence upon which this Court could conclude that the Board's "punishment" of Brown was excessive.

6. Bribery or Coercion of Wilson

This assertion was not raised before the Board or in any of Brown's prior filings with the Court. Accordingly, she is precluded from raising it now. *Ross,* 317 S.C. at 381; *see also Staubes v. City of Folly Beach*, 339 S.C. 406, 529 S.E.2d 543 (2000)(it is well-settled law that an issue cannot be raised for the first time on appeal). Further, Brown does not cite to any evidence supporting this absurd claim.

7. Student J's Absence

This assertion was not raised before the Board or in any of Brown's prior filings with the Court. Accordingly, she is precluded from raising it now. *Ross* 317 S.C. at 381; *Staubes,* 339 S.C. at 412. Further, had Brown wished to have Student J at the hearing, she could have compelled his presence pursuant to the provisions of S.C. Code Ann. § 59-25-460.

8. Board Prejudice

In her hearing before the Board and in her previous court filings, Brown did not allege that she had reported incidents of racism or retaliation or filed a Whistleblower claim. As such, she is precluded from raising those assertions now. *Ross*, 317 S.C. at 381; *Staubes*, 339 S.C. at 412. While Brown did allege before the Board and in her prior filings that Moore had animosity toward her because of her reinstatement to the District in 2011, she has not and cannot present any evidence of such.

CONCLUSION

Substantial evidence in the record created before the Board supports its decision, upheld by the Circuit Court, to terminate Brown's employment as a teacher. During her appeal to the Circuit Court and this Court, Brown makes unsupported factual assertions and related arguments for which there is no basis in the record.

For these reasons, this Court should affirm the Circuit Court's order.

Respectfully submitted,

WHITE & STORY, LLC

By: _____

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September 27, 2017
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

J. Mark Hayes Ir., Circuit Court Judge

Case No. 2015-CP-11-0828
Appellate Case No. 2017-001466

Sharon Brown, Appellant,

v.

Cherokee County School District, Respondent.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondent Cherokee County School District on Sharon Brown, by depositing a copy in the United States Mail, postage prepaid, on September 27, 2017, addressed to her attorney of record, Fletcher N. Smith, Esq., Law Firm of Fletcher N. Smith, Jr., LLC, 112 Wakefield Street, Greenville, SC 29601.

September 27, 2017

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September 27, 2017

VIA HAND-DELIVERY

The Honorable Jenny Abbot Kitchings
Clerk of Court, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: Sharon Brown v. Cherokee County School District
C.A. No. 2015-CP-11-0828
Appellate Case No. 2017-001466

Dear Ms. Kitchings:

Enclosed for filing please find the Initial Brief of Respondent Cherokee County School District ("Respondent") and Proof of Service, along with Respondent's Designation of Matter to Be Included in the Record on Appeal and Certificate of Counsel in the above-referenced case.

Thank you for your assistance in this matter.

Sincerely,

Andrea E. White

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Enclosures
c: Fletcher N. Smith, Esq. (w/enclosures)

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