THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

J. Mark Hayes Jr., Circuit Court Judge

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SC Court of Appeals

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

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Sharon Brown, . . . . . Appellant,

vs.

Cherokee County School District, . . . . . Respondent.

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# RECORD ON APPEAL

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| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | SEVENTH JUDICIAL CIRCUIT |
| COUNTY OF CHEROKEE | ) | CASE NO. 2015-CP-11-0828 |
| | ) | |
| Sharon Brown | ) | |
| | ) | |
| Appellant, | ) | |
| | ) | **ORDER** |
| v. | ) | |
| | ) | |
| Cherokee County School Board | ) | |
| | ) | |
| Respondent, | ) | |
| | ) | |

CHEROKEE COUNTY, S.C.
2016 JUN -1 A 11: 32
FILED

This is an appeal of the Cherokee County School Board's decision to uphold the School District Superintendent's decision to dismiss Appellant, Sharon Brown, a Cherokee County school teacher.

The substantive statutes applicable to this case are the Teacher Employment and Dismissal provisions of S.C. Code Ann. §§ 59-25-410 to -530. This Court's standard of review is limited to determining whether the Board's decision is supported by substantial evidence in the record. S.C. Code Ann. § 1-23-380; *Felder v. Charleston County School Dist.*, 327 S.C. 21, 489 S.E.2d 191 (1997); *Lark v. Bi-Lo*, 276 S.C. 130, 276 S.E.2d 305 (1981); *Hall v. Board of Trustee of Sumter County School District No. 2*, 330 S.C. 402, 499 S.E.2d 216 (Ct. App. 1998).

The School Board concluded that sufficient reasons existed for Appellant's termination. They concluded she engaged in conduct which evidenced a manifestation of an unfitness for teaching as she was dishonest in answering the superintendent's questions during an investigation into an incident involving an elementary student, she was insubordinate regarding a

directive to not have any discussions with school personnel about her suspension during the investigative process, and she had inappropriate interactions with a student.

After reviewing the transcript of the School Board's hearing and the exhibits presented as part of the hearing's record, reviewing the pleadings and briefs in the Clerk of Court's file, considering the arguments presented by counsel, and applying the required standard of review, the School Board's decision is affirmed.

While there is very little evidence that Appellant "violently" grabbed the student or that she verbally "assaulted" the student, as was first reported to have been observed by a fellow teacher. There is substantial evidence in the record to support the School Board's decision that Appellant was told not to have any discussions about her suspension with school personnel during the investigation into the alleged assault. There is also substantial evidence in the record that after Appellant was told not to discuss the investigation, Appellant tried to influence another school employee who was a potential witness in the investigation. There is also substantial evidence that Appellant was dishonest in her responses about the conversation with this witness.

Furthermore, if Appellant had actually performed the violent grabbing of the student by his lower jaw and throat and forcing the student against the wall while verbally assaulting him, school policy would have required intervention by other government entities like the Sheriff's Department and/or the Department of Social Services. It is significant that school authorities interviewed the student in question and his mother. The student and his mother indicated that such a violent incident did not happen, nor did they indicate that the alleged verbal assault occurred.

Notwithstanding, the School Board's decision that the teacher had inappropriate interaction with the student was based on the Superintendent's investigation that the teacher had used more

force than necessary when interacting with the student. Thus, applying the substantial evidence standard of review to the record, the School Board's decision that inappropriate interaction with the student occurred is supported.

Had the dismissal been based solely on the inappropriate interaction with the student, this Court may have agreed with the assertion that S.C. Code Ann. § 59-25-440 required the district to take reasonable efforts to correct Appellant's conduct. However, with the Board's finding of evidence that manifested an unfitness for teaching, which included dishonesty combined with the superintendent's "lost [*sic*] of all confidence" in Appellant's credibility, and rendered Appellant an ineffective and untrustworthy employee, S.C. Code Ann. § 59-25-430 does not require any affirmative remediation efforts by the district. *See Lark v. Bilo*, 276 S.C. 130, 276 S.E.2d 305 (1981) (cautioning that the court shall not substitute its judgment for that of the agency as to the weight of the evidence on the questions of fact).

Therefore, Appellant's appeal of the School Board's decision is DENIED and the appeal is DISMISSED.

IT IS SO ORDERED.

The Honorable J. Mark Hayes, II
Presiding Judge, Seventh Judicial Circuit

July 25, 2016
Spartanburg, South Carolina

FILED IN THE OFFICE
OF THE CLERK OF COURT
2016 AUG -1 A 11: 32
GREGORY M. HOBBS
SPARTANBURG COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

Sharon Brown,

Appellant,

v.

Cherokee County School District,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C.A. No. 2015-CP-11-0828

**ORDER**

FILED IN THE OFFICE
CLERK OF COURT
2016 JUN 15 A 11: 15
CHEROKEE COUNTY, SC

This matter came before the Court pursuant to Appellant's Motion for Reconsideration of an Order entered by the Court on August 1, 2016. In that Order, the Court dismissed Appellant's appeal of the decision of the Cherokee County School District Board of Trustees to terminate Appellant as a teacher in the District.

In her Motion for Reconsideration, Appellant makes several arguments, including that the Board of Trustees was biased against her; that her due process rights were violated; that she was not dishonest; and that the punishment of termination imposed on her by the Board of Trustees was excessive. In a subsequently filed Memorandum in Support of Motion to Reconsider, Appellant also argues that the Respondent's assertions in support of the Board's decision terminating her are barred by the doctrines of collateral, issue preclusion and res judicata.

As noted in its August 1, 2016, Order, the Court's jurisdiction is matter is governed by the provision of the South Carolina Teacher Employment and Dismissal Act, S.C. Code Ann. § 59-25-410, et seq. The Act, and the cases interpreting the Act, provide that, in ruling on an appeal from an order of a school district board of trustees terminating a teacher, the Court is limited to determining whether the school board's decision is supported by substantial evidence on the record

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and that the Court cannot conduct a *de novo* review and substitute its discretion for that of the board. *Felder v. Charleston County School Dist.*, 327 S.C. 21, 489 S.E. 2d 191 (1997); *Hall v. Board of Trustee of Sumter County School District No. 2*, 330 S.C. 402, 499 S.E.2d 216 (Ct. App. 1998); *Young v. Charleston County. Sch. Dist.*, 397 S.C. 303, 306, 725 S.E.2d 107, 108 (2012).

This Court finds no evidence in the record to support Appellant's assertion that her due process rights were violated. Likewise, nothing in the record indicates that the Board of Trustees acted with a preconceived bias towards Appellant. There is substantial evidence in the record to support the Board's conclusion that Appellant was dishonest during the District's investigation into Appellant's alleged assault of a student; therefore, Appellant's assertion that she had not previously demonstrated a proclivity for dishonesty is of no consequence.

The record reflects that Appellant's dishonesty resulted in the District Superintendent losing confidence in her, supporting the Board's determination that Appellant manifested an evident unfitness for teaching. Appellant's reliance on *In re Geiger, et al* is misapplied, as affirmative remedial actions are not required by S.C. Code Ann. § 59-25-440 where inappropriate behavior with a student was not the sole basis for Appellant's dismissal.

Regarding Appellant's assertion that decisions made by the South Carolina Department of Employment and Workforce are preclusive as to whether the Board had sufficient grounds to terminate her, our courts have long held that findings of fact made in connection with an employment security commission hearing are not given preclusive effect in any other litigation between the employer and employee. Shelton v. Oscar Mayer Foods Corp., 325 S.C. 248, 254, 481 S.E.2d 706, 709 (1997). It follows that the decision of the South Carolina Department of Employment and Workforce regarding whether Appellant was entitled to unemployment benefits

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has no effect on this Court's determination whether the Board's decision to terminate Appellant is supported by substantial evidence.

Based on the reasons set forth above, the Order issued on August 1, 2016, continues to reflect the Court's opinion in this matter and Appellant's Motion for Reconsideration is thus DENIED and DISMISSED.

AND IT IS SO ORDERED.

The Honorable J. Mark Hayes
Presiding Judge, Seventh Judicial Circuit

June 12, 2017
Spartanburg, South Carolina

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| STATE OF SOUTH CAROLINA, | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF CHEROKEE | ) | CASE NO.: 2015CP-1108 28 |
| SHARON BROWN, | ) | |
| Appellant, | ) | **NOTICE OF INTENT TO APPEAL** |
| v. | ) | |
| CHEROKEE COUNTY SCHOOL DISTRICT, | ) | |
| Respondent. | ) | |

**NOTICE OF INTENT TO APPEAL**

The Appellant, Sharon Brown, by and through her undersigned attorney hereby Appeals from an order whereby the Appellant was terminated from her job as a Second Grade School Teacher from the Cherokee County School District. This decision was made by the Cherokee County School District Administration after a hearing with the Cherokee County School District on October 7, 2015.

The Appellant will assign several specifications of error committed by the Cherokee County School District Administration in the course of the proceedings in the forthcoming issues to be presented to the Court of Common Pleas, after review of the hearing transcript. Grounds are attached to this Notice of Appeal.

Respectfully submitted,

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Greenville, South Carolina
November 5, 2015

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF CHEROKEE | ) | IN THE COURT OF COMMON PLEAS |
| SHARON BROWN,<br>APPELLANT, | ) | 015CP-10828 |
| CHEROKEE COUNTY SCHOOL DISTRICT,<br>RESPONDENT. | ) | **APPEAL BRIEF** |

This is an appeal from the decision of the Board of Trustees of Cherokee County School District to terminate the employment of Ms. Sharon Brown. At the time of this action, Ms. Brown was in her seventeenth year of teaching experience with Cherokee County School District (CCSD). Ms. Brown has never had any special conditions or stipulations on any of her teaching contracts with Cherokee County School District in her seventeen years of employment.

Ms. Brown has a bachelor's of science degree in criminal justice, a master's degree in elementary education, a master's degree in reading, and an educational specialist degree in school administration. She is certified as an elementary teacher, reading teacher, reading consultant, elementary principal, and an elementary supervisor. Ms. Brown was employed by Respondent to teach a second grade class during the 2014-2015 school term at Luther Vaughn Elementary School. On June 1, 2015, two days before the last day of school, Ms. Brown met with Dr. Carl Carpenter the Director of Human Resources for CCSD and the principal of Luther Vaughn Elementary Ms. Nanette Ruppe concerning an allegation of child abuse.

Initially, Dr. Carpenter did not tell Ms. Brown why they were meeting with her. Dr. Carpenter started the meeting by asking Miss Brown questions about Student J's family. Throughout this appeal brief I will refer to the student as Student J. Later in the meeting, Dr. Carpenter informed Ms. Brown that he had an allegation of child abuse reported by Justin Kelly, an art teacher at Luther Vaughn

Elementary, concerning Student J. Dr. Carpenter asked Ms. Brown to give him a statement concerning the allegation of child abuse and what happened that day. Additionally, Dr. Carpenter asked had anyone seen Ms. Brown talking with the student outside the art room. Ms. Brown informed him that Mrs. Owens had passed by. Ms. Brown never told Dr. Carpenter that Mrs. Owens was a witness for her. She just said that Ms. Owens and her husband had passed by. Ms. Brown is aware of Mrs. Owen's dislike for her. During this meeting with Dr. Carpenter and Ms. Ruppe. Ms. Brown informed Dr. Carpenter that Ms. Tracie Wilson was in the art room.

When the meeting was over, Ms. Brown requested a copy of the allegations that Justin Kelly made against her. Initially, Dr. Carpenter said he would e-mail Ms. Brown a copy of Justin Kelly's statement. However, Ms. Ruppe said she would make a copy. Ms. Brown received a copy of the allegations made by Justin Kelly. After the meeting was concluded, Ms. Brown was escorted to her classroom to get her purse and rolling cart and was escorted off the premises by the principal.

This action arises under the South Carolina Teacher Employment and Dismissal Act, South Carolina Code Section 59-25-410,et. seq. Under the Act, the District may terminate the employment of a teacher during the term of her contract if she manifests an unfitness for teaching. Dr. Quincie Moore, Cherokee County School District's superintendent initially (letter dated August 11, 2015) charged Ms. Brown with willfully violating a directive, being dishonesty in her answers to the May 28th interactions with Student J and about her encounter with Ms. Wilson on June 5th. During the board hearing, Superintendent Moore rescinded all the charges, except for failure to follow a directive.

In accordance with the Act, the Board of Trustees held a hearing at which it received testimony and evidence regarding the allegations. After the completion of the hearing and within the statutory time limit, the Board notified Ms. Brown that good and sufficient reasons for terminating her exists because, by her conduct, she manifested an evident unfitness for teaching. The board goes on to say

that "South Carolina Code of Law, Sections 59-19-90(ii), 59-25-430. Those reasons and manifested unfitness for teaching are based upon Ms. Brown's inappropriate interactions with a student; her insubordination regarding the directive she received from the administration, and her dishonesty in responding to questions from the Superintendent."

**THE DECISION OF THE SCHOOL BOARD SHOULD BE OVERTURNED ON THE FOLLOWING GROUNDS:**

1. The school board members were only to make finding of facts for the failure to follow a directive charge only, given that Superintendent Moore rescinded all the other charges/reasons why she was recommending Ms. Brown's dismissal during the board hearing?

2. The school board failed in proving that Ms. Brown was unfit to teach and, therefore, had no basis under the teacher employment an dismissal act to terminate her contract.

3. There is not substantial evidence in the record to support the School Board's decision.

4. Superintendent Dr. Moore did not charge Ms. Brown with telling Tracie Wilson what to say to Dr. Carpenter in her letter dated August 11, 2015.

5. Termination of Plaintiff's continuing contract as a teacher constitutes a breach of contract.

6. District was not suppose to question Ms. Brown about the alleged allegation of child abuse. The District is estopped from contending that Ms. Brown spoke with a witness at Ross Store because the District was not suppose to investigate the allegation of child abuse in the first place.

7. Ms. Brown was denied due process. The school district board of trustees were not impartial. They were biased against Ms. Brown.

8. . Ms. Brown's procedural due process rights were violated because she was terminated without all nine members of the school board voting on whether or not to terminate her .

**I. THE SCHOOL BOARD MEMBERS WERE ONLY TO MAKE FINDING OF FACTS FOR THE FAILURE TO FOLLOW A DIRECTIVE CHARGE ONLY, GIVEN THAT SUPERINTENDENT MOORE RESCINDED ALL THE OTHER CHARGES/REASONS WHY SHE WAS RECOMMENDING MS. BROWN'S DISMISSAL DURING THE BOARD HEARING.**

Dr. Moore rescinded all her charges during the board hearing, except the failure to follow a directive. Therefore the only issue left for the board of trustees was the failure to follow a directive. However, case law had already rendered the verdict on this matter. *See* Hall vs. Sumter School District No. Two, 330 S.C. 402, 499 S.E. 2d 216.

**II. THE SCHOOL BOARD FAILED TO PROVE THAT MS. BROWN WAS UNFIT TO TEACH, THEREFORE, HAD NO BASIS UNDER THE TEACHER EMPLOYMENT AND DISMISSAL ACT TO TERMINATE HER CONTRACT**

Dr. Quincie Moore, in her notice to Ms. Brown that a recommendation would be made for the termination of her contract, specifically stated that the action was being taken under South Carolina 430

That section states in part that:

> any teacher may dismissed at any time who shall fail, or may be incompetent, to give instruction in accordance with the directions of the superintendent, or 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.

in section 59-25-440, that:

> 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 o 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 59-24-450, allow reasonable time for improvement

The South Carolina Supreme Court in Adams vs. Clarendon County School District, No. Two, 270 S.C. 266, 241 S.E.2d 897 (1978) analyzed the two circumstances under the Act for which a teacher may be terminated. As noted by the Court, one category is provided for in Section 59-24-430 and the other is provided for in Section 59-24-440. Id. at p. 900. The two sections apply to different categories of grounds for dismissal. Under Section 59-25-430, a teacher may be dismissed at any time subject to the rights of notice and a hearing. However, under Section 59-25-440, a reason which may lead to termination does not become a "good and sufficient" reason, thereby justifying termination, until after a reasonable time for improvement has been allowed. Id. It is , therefore, the failure to improve which constitutes the good and sufficient reasons for termination.

The evidence of record reveals that the purpose of the hearing was to hear evidence in support of and in opposition to the recommendation that Ms. Brown's contract be terminated. The recommendation was based solely on section 59-25-430 which requires a finding of unfitness to teach. The Board cannot argue that the evidence showed a good and sufficient reason under 59-24-430 because Ms. Brown did not willfully and intentionally disregard a directive. Ms. Brown does not recall Dr. Carpenter telling her on June 1, 2015 not to have contact with District employees or students while on administrative leave. It is reasonable that any educator called to a meeting and told that there is an accusation of child abuse against him/her would be devastated and in the state of shock when the allegation has been totally fabricated. Further, the S.C. Court of Appeals in Hall vs. The Board of Trustees of Sumter School District Number Two 330 S.C. 402, 499 S.E. 2d 216 ruled that talking with a witness standing alone does not rise to being unfit to teach.

Ms. Brown was placed on administrative leave on June 1, 2015. She did not received the certified letter from Dr. Carpenter until June 11, 2015. The letter from Dr. Carpenter was mailed one day before the last day of school June 3, 2015. The letter indicates that Ms. Brown was being placed on

administrative leave for allegedly grabbing a student by his lower jaw and throat and forcing his body against the wall. Further, the letter instructs Ms. Brown not to have any contact with school district employees or students in any manner while on administrative leave.

**III. THERE IS NOT SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT THE SCHOOL BOARD'S DECISION.**

As previously stated, the superintendent dropped all the charges against Ms. Brown, except the failure to follow a directive. Ms. Brown did not intentionally and willfully disobey a directive. Further, talking with a witness standing alone does not rise to being unfit to teach. Additionally, the board's finding (based on Superintendent Moore) that Ms. Brown attempted to interfere with the District's investigation into the May 28th incident by telling her own witness, Ms. Wilson, what she should say to Dr. Carpenter is without any evidentiary support. Ms. Wilson's testimony during the hearing conflicts with her written statement before the board. Additionally, Dr. Moore did not charge Ms. Brown with interfering with an investigation in her August 11, 2015 letter to Ms. Brown.

When called to the meeting on July 31, 2015 with Dr. Moore and Dr. Carpenter, Dr. Carpenter read a statement written by Ms. Ruppe of what Tracie Wilson had called the school and told her concerning her encounter at Ross with Ms. Brown. During the meeting on July 31, 2015, the undated statement by Tracie Wilson concerning her encounter with Ms. Brown at Ross Store was not shared with Ms. Brown. It is believed that Dr. Carpenter got a statement from Tracie Wilson after Superintendent Moore brought charges against Ms. Brown.

Even if the Superintendent had not dropped the charges based on Justin Kelly and Beth Owens, the Board of Trustees cannot explain how they came up with the conclusion that Justin Kelly, Beth Owens, Tracie Wilson are credible given that each of these witness had at least two different versions of what occurred either on May 28, 2015 or June 5, 2015. The testimonies by these witnesses did not

match up with their written statements that were before the board. These witnesses have given conflicting stories. For Beth Owens written statement and testimony, view the exhibit submitted by Ms. Brown at the hearing for the layout of Luther Vaughan Elementary as it pertains to this subject matter. The Board of Trustees cannot make a finding of fact or draw conclusions based on what occurred on May 28th or June 5th based on these witnesses. Additionally, Superintendent Moore should not have drawn any conclusions based on these witnesses.

Beth Owens testimony before the board on October 7, 2015: Mrs. Owens testified that, after dropping her students off at the gym, she went to her car in the school parking lot to retrieve an item that her husband had come to the school get. She stated that at approximately 1:20- 1:25, **she and her husband were walking down the hall toward where the art room is located when she observed Ms. Brown in the hall outside the little theater.** Using the video-recording, Ms. Owens demonstrated where Ms. Brown and Student J were standing when she saw them, which was several feet away on the opposite side of a door way from where Mr. Kelly indicated he had observed Ms. Brown's interaction with Student J. Ms. Owens testified that the student looked away from Ms. Brown and that, in response, Ms. Brown physically redirected the student by placing her fingers on his lower jaw and turning his face back toward her. It is to be noted that that Ms. Owens and her husband had come off the hall that her classroom is located on and entered the hallway that Ms. Brown and student J was on. Mrs. Owens testimony indicates that she was on the right side of the hall with her husband when passing Ms. Brown ( according to the board, "using the video-recording, Ms. Owens demonstrated where Ms. Brown and Student J were standing when she saw them, which was several feet away on the opposite side of a doorway from where Mr. Kelly indicated that he had observed Ms. Brown's interaction with Student J).

In Beth Owens written statement dated June 1, 2015 she states," **I had just dropped my students off in the gym around 1:15 and I was on my way back to my classroom.** I noticed Miss Brown

and Student J in the hallway outside of the art room. J's back was against the wall. Miss Brown was bent over so they were at eye level. I observed Miss Brown then take her fingers, placed them on his chin and turned his head so he was again looking in her direction. I continued to room and didn't observe any further interaction between Miss Brown and the student."

If you look at the exhibit of the building layout that was submitted by Ms. Brown as it pertains to this subject matter, you will see that Ms. Owen's written statement dated June 1, 2015 and her testimony at the board hearing are contradictory. Ms. Owens is dishonest. In her written statement she was alone when she passed by Ms. Brown. Additionally, in her written statement she was coming from the opposite direction (gym) of what she asserted in her testimony before the board when she saw Ms. Brown with J outside the art room.

Justin Kelly is also dishonest. In his statement dated May 29, 2015, he states "I witnessed Sharon Brown, a second grade teacher, grabbing a student violently by his lower jaw and throat, and forcing his body against the wall while proceeding to verbally assault him. He goes on to say that student J was walking appropriately to class when Miss Brown grabbed him." Justin Kelly told Ruby Byers, Guidance Counselor for Luther Vaughan Elementary the following: "he saw Miss Brown squeezing his lower face and neck with her hands and yelling at him outside the room. Justin Kelly testimony at the board hearing was that he saw Ms Brown forcefully and violently grasp Student J by his lower jaw and push him toward the wall beside the fire extinguisher according to the board order. Keep in mind that Justin Kelly said that he was standing in his classroom doorway leading into the hall observing Ms. Brown and her students coming down the hall to art. Mr. Kelly testified that, as the last **students** approached the door and Ms. Brown had begun to head back down the hall to her classroom, he noticed Ms. Brown turn around quickly and head back toward student J, who was getting ready to enter the class.

It is to be noted that Justin Kelly never attempted to get Student J any type of medical assistance on May 29, 2015. He never sent student J to the nurses' office, Justin Kelly never states that the student screamed/ said something given that the student had been allegedly attacked by Ms. Brown. Further, none of the other students reacted to such a horrific occasion as alleged by Justin Kelly. Further, Justin Kelly never paged the office to have someone to come to the art room to see about student J, and he never notified dss and/or police as mandatory required by state law and Cherokee County School District Policy. Instead, Justin Kelly had art with the student for 40 minutes. According to Ms. Wilson, Ms. Brown's class played several rounds of the game *Heads Up Seven Up*. Justin Kelly, according to Ms. Wilson, never told her that student J had been physically abused. Ms. Owens and Mr. Kelly had personal issues with Ms. Brown. Both teachers were in the office on April 23, 2015 asserting allegations against Ms. Brown.

Student J and his mother concur with Ms. Brown on the fact that Student J was not touched by Ms. Brown. .It is to be noted that student J speaks English fluently and does not have any learning disabilities. Additionally, it is to be noted that Student J does not speak broken English as stated by Justin Kelly during the board hearing.

**IV. SUPERINTENDENT MOORE DID NOT CHARGE MS. BROWN WITH TELLING TRACIE WILSON WHAT TO SAY TO DR. CARPENTER IN HER LETTER DATED AUGUST 11, 2015**

Superintendent Moore and the School Board is estopped from now contending that Ms. Brown told Tracie Wilson what to say to Dr. Carpenter. Tracie Wilson's statement concerning her encounter at Ross is undated and this was not read to Miss Brown at a meeting with Dr. Moore and Dr. Carpenter on July 31, 2015. Dr. Carpenter read a statement written by Ms. Ruppe concerning what Tracie Wilson called the school and said to Ms. Ruppe concerning her encounter with Ms. Brown at Ross Store on June 5, 2015.

**V. TERMINATION OF APPELLANT'S CONTINUING CONTRACT AS A TEACHER CONSTITUTES A BREACH OF CONTRACT.**

Every contract entered in this state incorporates all applicable laws. *See*, Ayers v. Crowley, 205 S.C. 51, 30 S.E.2d 785, 788 (1944). *See* also, Hogsed v. Lancaster Area Schools Board of Trustees, 283 S.C. 42, 320 S.E. 2d 724, 727 (S.C. Court app. 1984) ( Teacher contracts incorporate district policy).

Respondent and its officials violated S.C. STATE LAW mandatory requirement for reporting of allegations of child abuse.

The Respondent violated state law including:

(A.) Code of Laws-Title 63-Chapter 7- **Section 63-7-310** : School teachers, counselors, principals ,and administrators must report allegations of child abuse to DSS/and or Law Enforcement when in the person's professional capacity the person has received information which gives the person reason to believe that a child has been or may be abused or neglected as defined in Section 63-7-20.

Cherokee County refusal to report the allegations of alleged child abuse alleged by Justin Keller to DSS and/ or law enforcement, prevented Ms. Brown from being able to have Justin Kelly possibly arrested and fined for false reporting. DSS and law enforcement (unbiased authorities) agents could have questioned Ms. Brown's students and looked for signs of any physical abuse on Student J. The alleged crime scene fabricated by Justin Kelly could have possibly been preserved for Ms. Brown to show additional evidence that Justin Kelly fabricated the child abuse allegation.

The Respondent and its officials violated their District Policy **(Policy AR JLF Student Welfare)** as it pertains to allegations of child abuse: The policy tells what procedures school and/or district personnel will follow in reporting suspected child abuse or neglect.

Respondent and its officials violated the following sections of Policy AR JLF- Student Welfare:

(A.) **Reporting Personnel must do the following**: Report by telephone of in a face-to-face meeting the suspected abuse to child protective unit of the department of social service

(B.) Complete the Report of Suspected Abuse/Neglect form JLF-E and submit to the principal.

(C.) **Principals and Administrators Must Do the following**: Be available to talk with child protective workers. Any involvement in the investigation or treatment must be in conjunction with the child protective unit of the department of social services or a law enforcement agency. District personnel may not conduct their own questioning or investigation after a report has been made.

x

**VI. Cherokee County SD was not suppose to question Ms. Brown about the alleged allegation of child abuse. The District is estopped from contending that Ms. Brown spoke with a witness at Ross Store.**

Ms. Brown was not suppose to know anything concerning the child abuse allegations against her from Cherokee County School District. She was to be sent home until DSS and/or Law Enforcement contacted her.

Questioning Ms. Brown is the same as doing an investigation before DSS and/or law enforcement speaks to Ms. Brown. DSS and/or law enforcement want the reporter's name to remain ANONYMOUS while they investigate an alleged child abuse. Section 63-7-330 (A.) of South Carolina Code states, "The identity of the person making a report pursuant to this section must be kept confidential by the agency or department receiving the report and must not be disclosed except as provided by subsection (B.) or (C) as otherwise provided for in this chapter.

**VII. MS. BROWN WAS DENIED DUE PROCESS. SCHOOL BOARD MEMBERS WERE NOT IMPARTIAL TOWARD MS. BROWN, THEY WERE BIASED.**

School Board Members were biased and impartial toward Ms. Brown during the board hearing. One of the board members Cheryl Smith had her eyes closed, at times, during the board hearing. Additionally, Robin Duncan- Harper interjected comments to try to help defend the Superintendent while appellant's counsel was questioning Superintendent Moore. This is an indication that board member Robin Duncan- Harper was biased and impartial toward Ms. Brown. The hearing was not a fair hearing. Board members deliberated for approximately 10 to 15 minutes before terminating Ms. Brown's employment with CCSD. The outcome of the hearing appeared to be predetermined and choreographed by District Attorney Andrea White.

It is to be noted that during the "choreographic" hearing, Ms. Nanette Ruppe testified that she found Ms. Brown to be defensive when questioned about various school matters, describing Ms. Brown as not being "forthright". Ms. Ruppe cannot and did not name any specific occasion whereby Ms. Brown

was not forthright with her. Ms. Brown has filed a grievance against Ms. Ruppe for harassment. Other teachers and workers for Cherokee County SD, as well, have filed grievances against Ms. Ruppe.

**VIII. MS. BROWN'S PROCEDURAL DUE PROCESS RIGHTS WERE VIOLATED BECAUSE SHE WAS TERMINATED WITHOUT ALL NINE MEMBERS OF THE BOARD OF TRUSTEES FOR CCSD VOTING ON WHETHER OR NOT TO TERMNATE HER**

Before voting to terminate Ms. Brown on October 7, 2015 the Board of Trustees for CCSD did not provide the absent members with the testimony, evidence, and observations notes taken at the board hearing. All nine board members needed to consider the testimony , evidence, and notes taken at the board hearing together before terminating Ms. Brown's employment on October 7, 2015. *See* Pettifold vs. S.C. State Board of Education 218 S.C. 322, 62 S.E. 2d 780.

**Respondent did not have any grounds for dismissal of Ms. Sharon Brown. Instead, it had and presently has grounds for dismissal of Justin Kelly, Beth Owens, and Tracie Wilson. Beth Owens and Justin Kelly manifest an evident unfitness to teach and to be employed in a school setting . Additionally, Tracie Wilson manifests an evident unfitness to be employed in a school setting. All three individuals have been dishonest with the Superintendent for Cherokee County School District and the Board of Trustees for Cherokee County School District. Wherefore, Appellant prays for the following relief:**

1. An order reinstating Appellant to her teaching position with Cherokee County School.

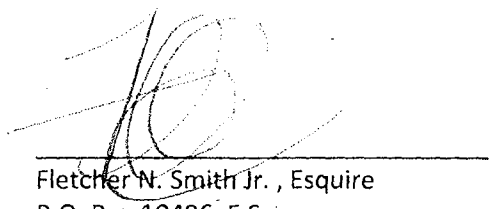
2. An order declaring respondent in violation of S.C. state mandatory reporting duty (S.C. Code of Laws-Title 63-Chapter 7- Section 63-7-310) and Cherokee County School District Policy (Policy AR JLF-Student Welfare) as it pertains to allegations of child abuse.

3. Judgment against Respondent for actual damages, including back pay, lost employment benefits, and contributions to the South Carolina State Retirement System.

4. Attorney fees.

5. Cost of this action

6. Such other and further relief as the Court may deem just and proper.



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Greenville, South Carolina
November 5, 2015

Case No:

**Certificate of Service** 015CP-110828

**I HEREBY CERTIFY** that a true and correct copy of foregoing document of Notice of Intent To Appeal and Grounds Attached was served upon the following parties by hand delivery on this 6th day of November, 2015.

Ms. Cheryll Smith
Chairman Of The Board of Trustees
141 Twin Lakes Road
Gaffney, S.C. 29341

**I HEREBY CERTIFY** that a true and correct copy of foregoing document of Notice of Intent To Appeal and Grounds Attached was served upon the following parties by U.S. Postage on this 6th day of November, 2015.

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Sharon Brown
Sharon Brown

Greenville, SC
Dated: November 5, 2015

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF CHEROKEE | ) | IN THE COURT OF COMMON PLEAS |
| SHARON BROWN,<br>APPELLANT, | ) | **AMENDED APPEAL BRIEF** |
| CHEROKEE COUNTY SCHOOL DISTRICT,<br>RESPONDENT. | ) | |

2015 NOV 13 P 3:54
BRANDY W. MABE
CLERK OF COURT
CHEROKEE COUNTY, S.C.

This is an appeal from the decision of the Board of Trustees of Cherokee County School District to terminate the employment of Ms. Sharon Brown. At the time of this action, Ms. Brown was in her seventeenth year of teaching experience with Cherokee County School District (CCSD). (Tr. pg. 10). Ms. Brown has never had any special conditions or stipulations on any of her teaching contracts with Cherokee County School District in her seventeen years of employment.

Ms. Brown has a bachelor's of science degree in criminal justice, a master's degree in elementary education, a master's degree in reading, and an educational specialist degree in school administration. (Tr. pg. 154). She is certified as an elementary teacher, reading teacher, reading consultant, elementary principal, and an elementary supervisor. Ms. Brown was employed by Respondent to teach a second grade class during the 2014-2015 school term at Luther Vaughn Elementary School. On June 1, 2015, two days before the last day of school, Ms. Brown met with Dr. Carl Carpenter (Dr. Carpenter) the Director of Human Resources for Cherokee County School District (CCSD) and the principal of Luther Vaughn Elementary, Ms. Nanette Ruppe (Ms. Ruppe) concerning an allegation of child abuse.

Initially, Dr. Carpenter did not tell Ms. Brown why they were meeting with her. Dr. Carpenter started the meeting by asking Ms. Brown questions about Student J's family. Throughout this appeal brief I will refer to the student as Student J. Later in the meeting, Dr. Carpenter informed Ms. Brown

that he had an allegation of child abuse reported by Justin Kelly (Mr. Kelly), an art teacher at Luther Vaughn Elementary, concerning Student J. Dr. Carpenter asked Ms. Brown to give him a statement concerning the allegation of child abuse and what happened that day. Additionally, Dr. Carpenter asked had anyone seen Ms. Brown talking with the student outside the art room. Ms. Brown informed him that Mrs. Beth Owens (Ms. Owens) had passed by. Ms. Brown never told Dr. Carpenter that Mrs. Owens was a witness for her. She just said that Ms. Owens and her husband had passed by. Ms. Brown is aware of Mrs. Owen's dislike for her. During this meeting with Dr. Carpenter and Ms. Ruppe, Ms. Brown informed Dr. Carpenter that Ms. Tracie Wilson was in the art room.

When the meeting was over with Dr. Carpenter and Ms. Ruppe, Ms. Brown requested a copy of the allegations that Justin Kelly made against her. Initially, Dr. Carpenter said he would e-mail Ms. Brown a copy of Justin Kelly's statement. However, Ms. Ruppe said she would make a copy. Ms. Brown received a copy of the allegations made by Justin Kelly. After the meeting was concluded, Ms. Brown was escorted to her classroom to get her purse and rolling cart and was escorted off the premises by the principal.

This action arises under the South Carolina Teacher Employment and Dismissal Act, South Carolina Code Section 59-25-410,et. seq. Under the Act, the District may terminate the employment of a teacher during the term of her contract if she manifests an unfitness for teaching. Dr. Quincie Moore, Cherokee County School District's superintendent (letter dated August 11, 2015), charged Ms. Brown with willfully violating a directive, being dishonesty in her answers to the May 28th interactions with Student J and about her encounter with Ms. Wilson on June 5th. At the Board Hearing, Dr. Moore gave the following testimony, "I made the recommendation or in my mind my recommendation was that, first of all, Ms. Brown completely went against a directive given by Dr. Carpenter which was for her protection being on administrative leave not to speak to anybody in the district that she readily

admitted that she did do. So that's the first thing. The second thing is that I have two staff members that say she put her hands on a student, two. She adamantly denies ever touching a student. So I believe she's being dishonest with me. Third, third, by speaking with Mrs. Wilson, her own witness, it clearly got in the way of our investigating the situation correctly for her, and so based on all three of those things, I made the recommendation that she be terminated from our district ." (pp. 125-126).

It is to be noted that Dr. Carl Carpenter II, Director of Human Resources for Cherokee County School District, agrees that Ms. Brown is credible in terms of she did not touch Student J. (pg. 61). However, Dr. Moore and *The Cherokee County School District Board of Trustees* (CCSB) have imputed a child abuse charge against a teacher without any regard for the teacher's reputation having been destroyed by such a finding that was rendered upon no evidence. Essentially, what Dr. Moore and CCSB have done could be analogous, for example, to two teachers asserting that they saw Ms. Brown raping a child, however the child confirms that the rape did not happen and law enforcement was not called to substantiate that the alleged rape actually occurred. (pp. 7-8; pg. 10; pg. 53; Complainant's Exhibit 1 concerning Nan Ruppe's Interview with Student J; Complainant's Exhibit 1 concerning Ms. Nan Ruppe's e-mail to Dr. Carl Carpenter dated June 5, 2015, concerning Student J's mother). Dr. Moore and CCSB have no victim in this case. Student J said Ms. Brown did not touch him. Further , Dr. Moore and CCSB have no basis for Ms. Brown's termination for "speaking to someone in the district." *See* Hall vs. The Board of Trustees of Sumter School District Number Two 330 S.C. 402, 499 S.E. 2d 216 (S.C. Court of Appeals). Additionally, Ms. Brown was due "equal protection" of the alleged June 1, 2015 directive by Dr. Carl Carpenter. (pp 62-63 and pp. 65-67). Tracie Wilson, should have been directed not to speak to Ms. Brown when interviewed on June 1, 2015. Additionally, the book keeper for Luther Vaughan Elementary should have been directed not to contact Ms. Brown by telephone on June 3, 2015 about the whereabouts of equipment. (pp. 62-63).

In accordance with the Act, the Board of Trustees held a hearing at which it received testimony and evidence regarding the allegations. After the completion of the hearing and within the statutory time limit, the Board notified Ms. Brown that good and sufficient reasons for terminating her exists because, by her conduct, she manifested an evident unfitness for teaching. The board goes on to say that "South Carolina Code of Law, Sections 59-19-90(ii), 59-25-430. Those reasons and manifested unfitness for teaching are based upon Ms. Brown's inappropriate interactions with a student; her insubordination regarding the directive she received from the administration, and her dishonesty in responding to questions from the Superintendent."

**THE DECISION OF THE SCHOOL BOARD SHOULD BE OVERTURNED ON THE FOLLOWING GROUNDS:**

1. The school board failed in proving that Ms. Brown was unfit to teach and, therefore, had no basis under the teacher employment and dismissal act to terminate her contract.

2. There is not substantial evidence in the record to support the School Board's decision.

3. Superintendent Moore did not charge Ms. Brown with telling Tracie Wilson what to say nor did Superintendent Moore charge Ms. Brown with other specific acts that were alleged and fabricated by Ms. Wilson during the board hearing. Ms. Brown's due process rights were violated by the Superintendent and the CCSB.

4. Termination of Plaintiff's continuing contract as a teacher constitutes a breach of contract.

5. District was not suppose to question Ms. Brown about the alleged allegation of child abuse. The District is estopped from contending that Ms. Brown spoke with a witness at Ross Store because the District was not suppose to investigate the allegation of child abuse in the first place.

6. Ms. Brown was denied due process. The school district board of trustees were not impartial. They were biased against Ms. Brown.

7. Ms. Brown's procedural due process rights were violated because she was terminated without all nine members of the school board voting on whether or not to terminate her .

**I. THE SCHOOL BOARD FAILED TO PROVE THAT MS. BROWN WAS UNFIT TO TEACH, THEREFORE, HAD NO BASIS UNDER THE TEACHER EMPLOYMENT AND DISMISSAL ACT TO TERMINATE HER CONTRACT**

Dr. Quincie Moore, in her notice to Ms. Brown that a recommendation would be made for the termination of her contract, specifically stated that the action was being taken under South Carolina 430

That section states in part that:

> any teacher may dismissed at any time who shall fail, or may be incompetent, to give instruction in accordance with the directions of the superintendent, or 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.

in section 59-25-440, that:

> 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 o 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 59-24-450, allow reasonable time for improvement

The South Carolina Supreme Court in Adams vs. Clarendon County School District, No. Two, 270 S.C. 266, 241 S.E.2d 897 (1978) analyzed the two circumstances under the Act for which a teacher may be terminated. As noted by the Court, one category is provided for in Section 59-24-430 and the other is provided for in Section 59-24-440. Id. at p. 900. The two sections apply to different categories of grounds for dismissal. Under Section 59-25-430, a teacher may be dismissed at any time subject to the rights of notice and a hearing. However, under Section 59-25-440, a reason which may lead to

termination does not become a "good and sufficient" reason, thereby justifying termination, until after a reasonable time for improvement has been allowed. Id. It is , therefore, the failure to improve which constitutes the good and sufficient reasons for termination.

The evidence of record reveals that the purpose of the hearing was to hear evidence in support of and in opposition to the recommendation that Ms. Brown's contract be terminated. The recommendation was based solely on section 59-25-430 which requires a finding of unfitness to teach. The Board cannot argue that the evidence showed a good and sufficient reason under 59-24-430 because Ms. Brown did not willfully and intentionally disregard a directive. *See* Hall vs. The Board of Trustees of Sumter School District Number Two 330 S.C. 402, 499 S.E. 2d 216 (S.C. Court of Appeals). Ms. Brown does not recall Dr. Carpenter telling her on June 1, 2015 not to have contact with District employees or students while on administrative leave. ( pgs. 151-152). It is reasonable that any educator called to a meeting and told that there is an accusation of child abuse against him/her would be devastated and in the state of shock when the allegation has been totally fabricated.

Ms. Brown was placed on administrative leave on June 1, 2015. ( Complainant's Exhibit 1, letter dated June 1, 2005 from Dr. Carpenter to Ms. Brown). She did not received the certified letter from Dr. Carpenter until June 11, 2015. (Respondent's Exhibit 6). The letter from Dr. Carpenter was mailed one day before the last day of school June 3, 2015. The letter indicates that Ms. Brown was being placed on administrative leave for allegedly grabbing a student by his lower jaw and throat and forcing his body against the wall. (Complainant's Exhibit 1, letter dated June 1, from Dr. Carpenter to Ms. Brown). Further, the letter instructs Ms. Brown not to have any contact with school district employees or students in any manner while on administrative leave. It is to be noted that there are discrepancies in regard to what Dr. Carpenter stated, during the board hearing, he told Ms. Brown in the meeting with her on June1, 2015 and what Ms. Ruppe said Dr. Carpenter told Ms. Brown at the meeting with her on

June 1, 2015. Dr. Carpenter's testified before the board that, "she (referring to Ms. Brown) was told that she was supposed to have no contact with employees or students." (pg. 56) Ms. Ruppe testimony before the board, in part, was that Ms. Brown was told "not to discuss anything about the case with anyone." (pg. 37) Ms. Ruppe's statement of what was said by Dr. Carpenter during the June 1, 2015 meeting with Ms. Brown does not confirm that Dr. Carpenter actually told Ms. Brown not to have contact with any employees or students during the meeting with Ms. Brown on June 1, 2015. Even if Dr. Carpenter told Ms. Brown not to have contact with any employees, Ms. Brown did not willfully and intentionally disobey a directive. Ms. Brown does not recall Dr. Carpenter telling her not to have contact with employees and students on June 1, 2015.

Additionally, Dr. Moore testified at the board hearing that " Third, by speaking with Ms. Wilson, her own witness, it clearly got in the way of our investigating the situation correctly for her, and so based on all three of those things, I made the recommendation that she be terminated from our district." (pg. 125-126). It is to be noted that Ms. Wilson was asked during the board hearing the question, "You didn't tell them anything different than the investigation after Ms. Brown talked to you on June the 5th than what you told them with regard to your statement on June the 1st, did you?" (pg. 105). Mrs. Wilson's response was "I don't think I did." Next, Ms. Wilson was asked the question, "Right, so that didn't compromise your testimony with regard to what you told Mr. Carpenter or Ms. Ruppe, did it? (pg. 105). Ms. Wilson's response was "Correct." (pg. 105). Ms. Wilson was also asked the question, "With regard to your own participation in this investigation, what you state in that statement on June the 1st, you stood by it whenever Mr. Carpenter spoke to you later on in July, correct? (pg. 106). Ms. Wilson's response was "Correct." (pg 106). The investigation was not comprised at all. Additionally, Ms. Brown's counsel argued that Dr. Carpenter had spoken with board Attorney Andrea White over five times prior to the hearing and that does not make Dr. Carpenter's testimony before the CCSB unreliable

because Dr. Carpenter is expected to tell the truth, just like employees of CCSD are expected to tell the truth. (72.).

Ms. Brown is fit to be a teacher for CCSD. She has done absolutely nothing to be treated so horribly by CCSD. Ms. Brown did not touch Student J. Student J confirmed this. Additionally, Student J's mother questioned Student J. Student J's mother said "teacher did not touch him." (Complainant's Exhibit 1, e-mail from Nan Ruppe to Dr. Carpenter dated June 5, 2015). As mentioned earlier, Dr. Carpenter, acknowledge that Ms. Brown is credible given that the alleged victim confirmed that Ms. Brown never touched him. If CCSD had followed their district policy and state law pertaining to dealing with allegations of child abuse, Ms. Brown would not be going through this crazy mess that she is going through with them. There is no victim that was assaulted or touched by Ms. Brown in this case. This is a bogus case to get rid of a teacher that CCSD does not want in their school district. It is to be noted that Student J confirms that he "walked into the room with other students." (Complainant's Exhibit 1, Statement of Student J taken by Nan Ruppe). Additionally, Ms. Brown indicates that student J went in the art room with the other students when she dropped her students off at art on May 28, 2015. (Complainant's Exhibit 1, Ms. Brown's statement). Both Ms. Brown and student J's statements contradict Justin Kelly's statement.

Moreover, Cherokee County School District officials are mandated by state law to contact DSS and/or law enforcement concerning allegations of child abuse. The Respondent violated state law including: (A.) Code of Laws-Title 63-Chapter 7- **Section 63-7-310** : School teachers, counselors, principals ,and administrators must report allegations of child abuse to DSS/and or Law Enforcement when in the person's professional capacity the person has received information which gives the person reason to believe that a child has been or may be abused or neglected as defined in Section 63-7-20.

Further, the respondent and its officials violated their District Policy (**Policy AR JLF Student Welfare**) as it pertains to allegations of child abuse: The policy tells what procedures school and/or district personnel will follow in reporting suspected child abuse or neglect. **I have attached a copy of Policy AR JLF Student Welfare to this amended brief**

Respondent and its officials violated the following sections of Policy AR JLF- Student Welfare:

(A.) **Reporting Personnel must do the following**: Report by telephone of in a face-to-face meeting the suspected abuse to child protective unit of the department of social service

(B.) Complete the Report of Suspected Abuse/Neglect form JLF-E and submit to the principal.

(C.) **Principals and Administrators Must Do the following**: Be available to talk with child protective workers. Any involvement in the investigation or treatment must be in conjunction with the child protective unit of the department of social services or a law enforcement agency. District personnel may not conduct their own questioning or investigation after a report has been made.

It is to be noted that Ms. Ruppe, Dr. Carpenter, and Superintendent Dr. Quince Moore(Dr. Moore) were not to conduct their own investigation into the allegations of child abuse. During Ms. Ruppe's testimony before CCSB, Ms. Ruppe was asked did she do an investigation into the alleged May 28, 2015 incident, her response was "I would say that Dr. Carpenter and I did the investigation together." ( pg 43). During the board hearing Dr. Carpenter was asked, when you received that report on May the 29th, that Friday, did you report it to law enforcement? Dr. Carpenter's response was "No, I did not. I called the superintendent, reported it to her, but I had not conducted an investigation at that time, so I did not feel comfortable reporting that to law enforcement. My initial investigation was going to begin Monday morning." (pg. 53). Further, Dr. Carpenter was asked "And so Ms. Ruppe and you both were conducting an investigation at the same time, correct? Dr. Carpenter responses was "That would

be correct." (pg. 67). During Dr. Moore's testimony she states, "Once Ms. Ruppe had sent the statements to Dr. Carpenter and he met with me to talk about the situation, as you can tell and as you've heard tonight, but also one that is very complicated, so as we began to start investigating further, and now me sitting in with Dr. Carpenter and questioning the folks that had provided statements, it took a while. " (pg. 121)

Further, during the board hearing, Dr. Moore testified that she did not know if the child said Ms. Brown did not touch him. (pg. 135). During Dr. Moore's testimony she states "and we don't have a statement from the student, Mr. Smith. We have what Ms. Ruppe's notes, and I didn't talk with the student." (pg. 135). So, Dr. Moore investigation was incomplete. However, she charged Ms. Brown with touching Student J. Additionally, Dr. Moore advanced the theory that Ms. Brown came into the art room twice. (pg. 128). Dr. Moore made an error in trying to fire somebody for something that she had no personal knowledge of and that has not been confirmed by any of the factual content in this case. (pg. 120). Dr. Moore never bothered to ask Student J, Student J's mother, or Ms. Torres whether or not student J came out of the art room twice to speak to Ms. Brown. (pg. 130). Dr. Moore's investigation was not complete and hasn't been completed to date.(pg. 130). Dr. Moore states that "I believe that's why the student wasn't crying because Ms. Brown went back a second time and, and made amends with the student. (p. 124). Dr. Moore came up with her own theories at the expense of an innocent person losing her livelihood. Additionally, Dr. Moore's investigation was not complete because she did not have any report by law enforcement to substantiate the findings of the allegations of physical contact by Ms. Brown. Cherokee County School District Board of Trustees accepted Dr. Moore's findings in error.

**II. THERE IS NOT SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT THE SCHOOL BOARD'S DECISION.**

Appellant reiterates each and every fact and allegation contained hereinabove as if recited verbatim here in. Ms. Brown was due "equal protection" of the alleged June 1, 2015 directive by Dr.

x

Carl Carpenter. (pp 62-63 and pp. 65-67). Tracie Wilson should have been directed not to speak to Ms. Brown when interviewed on June 1, 2015 by investigator Nan Ruppe. Further as previously stated, Ms. Brown did not intentionally and willfully disobey a directive. Additionally, the board's finding (based on Superintendent Moore) that Ms. Brown attempted to interfere with the District's investigation into the May 28th incident by telling her own witness, Ms. Wilson, what she should say to Dr. Carpenter is without any evidentiary support. Nowhere in Dr. Moore's charges (letter dated August 11, 2015) does she claim that Ms. Brown committed the specific acts at Ross Store that are asserted by Ms. Wilson, concerning Ms. Brown encounter at Ross Store on June 5,2015. Dr. Moore did not charge Ms. Brown with telling her witness what to say and the other fabricated allegations made by Ms. Wilson concerning her encounter with Ms. Brown at Ross Store on June 5, 2015 that are in the board order dated October 15, 2015. **Appellant's due process rights have been violated by the school board.** Additionally, Ms. Wilson's testimony during the hearing conflicts with her written statements before the board. During Mrs. Wilson's testimony before the CCSB she states, "We were just chit-chatting it up with each other, and then she was actually talking to me and saying, next thing I know she was like, well, Dr. Carpenter is supposed to call you, have you heard from Dr. Carpenter. (pg. 88) It is to be noted that nowhere in Ms. Wilson's undated statement does she state this, concerning her encounter with Ms. Brown at Ross Store. In Ms. Wilson's written statement she stated that, "she asked me had Dr. Carpenter spoke with me yet or called me." (Complainant's Exhibit 1; Mrs. Wilson, undated statement). Further, Ms. Wilson states in her testimony, "And she telling me that he was supposed to call me, and he supposed to be getting in touch with me, and whenever he does get in touch with me, I'm supposed to talk about what happened with the student. (pg. 89). This is not in her undated written statement. Additionally, Mrs. Wilson states in her testimony before the board that Ms. Brown said "he's going to call you and you need to tell him that, well, no, she's like, this is what happened with a student, and he's going to call you and ask you about what happened." (pg. 88). This too is not in her undated written statement.

Additionally, during Ms. Wilson testimony before the CCSB she claimed that Ms. Brown and her were arguing in the store and she lost her place of where she was and that she was shopping with her daughters. (pg. 90) This is not in her undated written statement. Further, in Mrs. Wilson's undated written statement she states, " she started stating Mr. Kelly has reported on her three times since April and she doesn't know why unless he is trying to get a promotion or trying to get ahead by reporting on her." (Complainant's Exhibit ;Ms. Wilson, undated statement). In Mrs. Wilson testimony before the CCSB she states "and then she was saying that Mr. Kelly, she don't know what he got the game from unless it's a promotion. She says he has been after her since April. (pg. 91). Also, in Mrs. Wilson's testimony before the board she states, "And next thing you know, I know we were loud, and my daughter had came over, and she looked at my daughter real funny, and I think she said something like we were talking, and I was like that's my daughter. You know that's my daughter, don't, I was like don't have a problem with her because she's my daughter, and she kept on. " (pg. 91.). This too is not in her undated written statement. Further, Ms. Wilson states , "They (referring to her daughters) sat down and waited and she kept on talking and saying stuff about telling me what I'm supposed to say." (pg. 91) This too is not in her undated written statement. Additionally, Ms. Wilson states that Mrs. Ruppe told her to write a statement, and just take it whenever you go and meet with Dr. Carpenter and Ms. Moore. (pg. 93). However, Ms. Ruppe stated during her testimony "you" (referring to Ms. Wilson) need to provide that statement for him (referring to Dr. Carpenter only) when you go see him. (pg. 41). During the board hearing Ms. Wilson was told by Ms. Brown's counsel that she is making up stuff. (pg. 103). Her testimony before CCSB conflicts with her undated written statement . Additionally, she fabricated that Ms. Brown told her that "you know, I'm not to be discussing it" during her encounter with Ms. Brown at Ross Store on June 5, 2015 and all the other nonsense that she made up concerning her encounter with Ms. Brown at Ross Store on June 5, 2015. Mrs. Wilson has proven to be absolutely not credible, however CCSB appear to be totally biased and impartial concerning Ms. Brown. CCSB appear not have considered

Ms. Brown's version of what happened during her encounter with Ms. Wilson at Ross Store on June 5, 2015. They appear to want to take the advantage of Mrs. Wilson's lies and use them to get rid of Ms. Brown , someone that the superintendent and the CCSB already wanted out of their district. Despite the fact that they know that Ms. Wilson is absolutely not credible and should not be allowed to work at any school. CCSB disregarded Ms. Brown's credible testimony concerning her encounter with Ms. Wilson at Ross Store on June 5, 2015. (pg. 146-148).

It is to be noted that Tracie Wilson written statement given on June 1, 2015 conflicts with testimony that she gave before the CCSB during the board hearing. In Ms. Wilson's written statement dated June 1, 2015 she states, " Mr. Kelly informed the students that he wanted to do a fun activity with them since it was the last day he would have with them since it was the last day he would have their class. He decided to play "Heads Up Seven Up" where he picked seven students to come up front and the rest sit at their desk. (Complainant's Exhibit 1, Tracie Wilson statement dated June 1, 2015). Ms. Wilson's statement before the board was that "I think Mr. Kelly, I'm sure Mr. Kelly and I, we had been discussing what we were going to do with them because it was the last full day and that was the last time he would see them, so we had discussed what games we were going to play." (pg. 84). It is to be noted that during questioning of Ms. Wilson by Ms. Brown's counsel, Ms. Wilson was asked the question," So you had to actually knock on the door to get in? (pg. 84) Ms. Wilson's response was "I knocked on the door and a student let me in. (pg. 84). Next, Ms. Brown counsel asked Ms. Wilson the question, "And at that point was Mr. Kelly already underway with activities he was doing with his students? (84). Ms. Wilson's response was "Yes." (pg. 84).

It is to be noted that Mrs. Wilson, during the board hearing, states, "**she was late coming to get them**, so when she was late coming to get them, Mr. Kelly and I were lining them up and he was like well, **I said what time, it is**, and he was like **well IT'S ALMOST THAT TIME** and he was like let's line them

up., and **while** we were lining them up and getting ready to take them down the hall, she came to the door...(pg.86). This contradicts her statement that was written on June 1, 2015. In Mrs. Wilson's written statement dated June 1, 2015 she states, "The student and I returned to the art room and **I informed Mr. Kelly it was almost time for the students special area time to be over** and he glanced at the clock and said oh, yea and said let's line them up, so lined them up by the quietest table. (Complainant's Exhibit #1, Ms. Wilson's statement dated June 1, 2015). Ms. Brown was not late ("it's almost that time") picking up her students on May 28, 2015 as asserted by Mrs. Wilson.

It is to be noted that Ms. Wilson's stated in her June 1, 2015 statement that, "she asked me if I had to stay with Mr. Kelly and her class the whole time and I told her no they had some commotion in the room and I stepped in to lend a hand." During the board hearing Attorney White asked Mrs. Wilson, "So she asked you if you had been in the room the whole time? Mrs. Wilson said Uh-huh. (pg. 86).

When Ms. Brown attended a meeting on July 31, 2015 with Dr. Moore and Dr. Carpenter, Dr. Carpenter read a statement that he said was written by Ms. Ruppe of what Tracie Wilson had called the school and told Ms. Ruppe concerning her encounter at Ross with Ms. Brown. During the meeting on July 31, 2015, the undated statement by Tracie Wilson concerning her encounter with Ms. Brown at Ross Store was not shared with Ms. Brown.

Additionally, Dr. Moore's witnesses have given conflicting stories. For Beth Owens written statement and testimony, view the exhibit submitted by Ms. Brown at the hearing for the layout of Luther Vaughan Elementary as it pertains to this subject matter. (Respondent's Exhibit #1). The Board of Trustees cannot make a finding of fact or draw conclusions based on what occurred on May 28th or June 5th based on these witnesses. Additionally, Superintendent Moore should not have drawn any conclusions based on these witnesses.

During Ms. Owen's testimony before the board she testified that, after dropping her students off at the gym, she went to her car in the school parking lot to retrieve an item that her husband had come to the school get. (pp. 75-76). At approximately 1:20- 1:25, she and her husband were walking down the hall toward where the art room is located when she observed Ms. Brown in the hall outside the little theater. Using the video-recording, Ms. Owens demonstrated where Ms. Brown and Student J were standing when she saw them, which was several feet away on the opposite side of a door way from where Mr. Kelly indicated he had observed Ms. Brown's interaction with Student J. Ms. Owens testified that the student looked away from Ms. Brown and that, in response, Ms. Brown physically redirected the student by placing her fingers on his lower jaw and turning his face back toward her. It is to be noted that that Ms. Owens and her husband had come off the hall that her classroom is located on and entered the hallway that Ms. Brown and Student J was on. (Respondent's Exhibit #1). Ms. Owen's was not truthful concerning where she and her husband were coming from when they passed by Ms. Brown.

In Beth Owens written statement dated June 1, 2015 she states," **I had just dropped my students off in the gym around 1:15 and I was on my way back to my classroom.** I noticed Miss Brown and Student in the hallway outside of the art room. Student J's back was against the wall. Miss Brown was bent over so they were at eye level. I observed Miss Brown then take her fingers, placed them on his chin and turned his head so he was again looking in her direction. I continued to room and didn't observe any further interaction between Miss Brown and the student."

In Ms. Owens written statement she was alone when she passed by Ms. Brown. During Ms. Owen's testimony before CCSB she's now with her husband when she passed by Ms. Brown. (pp. 75-76). Ms. Owens has not been forthright in this matter. She too is not credible.

Justin Kelly is also dishonest. In his statement dated May 29, 2015, he states "I witnessed Sharon Brown, a second grade teacher, grabbing a student violently by his lower jaw and throat, and forcing his body against the wall while proceeding to verbally assault him. He goes on to say that student J was walking appropriately to class when Miss Brown grabbed him." Justin Kelly told Ruby Byers, Guidance Counselor for Luther Vaughan Elementary the following: "he saw Miss Brown squeezing his lower face and neck with her hands and yelling at him outside the room. Justin was asked by Ms. Brown's counsel, "All right. And then you got to the statement to Ms. Ruby Byers, you said that she was squeezing his lower face and neck with her hands and yelling at him outside the art room. Do you remember making that statement?" (pg. 26-27). Mr. Kelly's response was "No, sir." (pg. 27). Next , Mr. Kelly was asked, "Okay. Well, Ms. Byers wrote it up now. Are you saying Ms. Byers didn't report what you said correctly?" (pg. 27). Justin's response was "I am." (pg. 27). Justin Kelly's testimony at the board hearing was , "before Student J got to that door handle, I see Ms. Brown come around the door and put her hands on student, and forced him to the side of my door...(pg. 18). This was not in Justin's May 29, 2015 written statement. (Complainant's Exhibit #1, Justin Kelly's statement dated June 1, 2015. Additionally, Student J said he entered the room with the other students. (Complainant' s Exhibit #1, Statement of Student J taken by Ms. Ruppe on June 1, 2015). Additionally, Ms. Brown's statement dated June 1, 2015 indicates that Student J entered the room with the other students. (Complainant's Exhibit #1, Statement by Ms. Brown dated June 1, 2015

It is to be noted that Justin Kelly never attempted to get Student J any type of medical assistance on May 29, 2015. He never sent student J to the nurses' office, Justin Kelly never states that the student screamed/ said something given that the student had been allegedly attacked by Ms. Brown. Further, none of the other students reacted to such a horrific occasion as alleged by Justin Kelly. Further, Justin Kelly never paged the office to have someone to come to the art room to see about student J, and he never notified dss and/or police as mandatory required by state law and Cherokee County School

District Policy. Instead, Justin Kelly had art with the student for 40 minutes. According to Ms. Wilson, Ms. Brown's class played several rounds of the game *Heads Up Seven Up*. Ms. Wilson was in the art room for practically the entire art period. (pg. 102). Justin Kelly, according to Ms. Wilson, never told her that Student J had been physically attacked. (pg. 103). Ms. Owens and Mr. Kelly had personal issues with Ms. Brown. Both teachers were in the office on April 23, 2015 asserting allegations against Ms. Brown.

Student J and his mother concur with Ms. Brown on the fact that Student J was not touched by Ms. Brown. It is to be noted that student J speaks English fluently and does not have any learning disabilities. Additionally, it is to be noted that Student J does not speak broken English as stated by Justin Kelly during the board hearing.

**The CCSB did not ask Justin Kelly why would Ms. Byers fabricate her report.** However, they state in their board order dated October 15, 2015 that " Based on the testimony of Beth Owens and Justin Kelly, her (referring to Ms. Brown) denial was not deemed credible, particularly since Ms. Brown was unable to provide any sound reason why either Mr. Kelly or Ms. Owens would fabricate their report. Further the CCSB states in their October 15, 2015 board order that, "Finally, the testimony of Ms. Brown regarding her encounter with Ms. Wilson at Ross on June 5th was not deemed credible, particularly since Ms. Brown was unable to provide any motivation for Ms. Wilson to fabricate her version of that encounter. Ms. Brown testified before CCSB that it seems to be Ms. Wilson's nature (referring to why Ms. Wilson fabricated her version of her encounter at Ross Store with Ms. Brown). (pg. 150). That's the motivation for Ms. Wilson lying about her encounter with Ms. Brown at Ross Store on June 5, 2015.

**III. SUPERINTENDENT MOORE DID NOT CHARGE MS. BROWN WITH TELLING TRACIE WILSON WHAT TO SAY NOR DID SUPERINTENDENT MOORE CHARGE MS. BROWN WITH THE OTHER SPECIFIC ACTS THAT WERE FABRICATED BY MS. WILSON. MS. BROWN'S DUE PROCESS RIGHTS HAVE BEEN VIOLATED.**

Appellant reiterates each and every fact and allegation contained hereinabove as if recited verbatim here in. The board's finding (based on Superintendent Moore) that Ms. Brown attempted to interfere with the District's investigation into the May 28th incident by telling her own witness, Ms. Wilson, what she should say to Dr. Carpenter is without any evidentiary support. Ms. Wilson has proven herself to be not credible. Additionally, nowhere in Dr. Moore's charges (letter dated August 11, 2015) does she claim that Ms. Brown committed this and other specific acts at Ross Store that are asserted by Ms. Wilson. Dr. Moore did not charge Ms. Brown with telling her witness what to say and the other fabricated allegation made by Ms. Wilson concerning her encounter with Ms. Brown at Ross Store on June 5, 2015 that are in the board order dated October 15, 2015. **Appellant's due process rights have been violated by the school board. (Complainant's Exhibit #1, Letter by Dr. Moore dated August 11, 2015).**

Dr. Moore and the CCSB are stopped from now contending that Ms. Brown told Tracie Wilson what to say. Additionally, they are estopped from making it a fact that Ms. Brown said the other fabricated allegations made by Traci Wilson. Tracie Wilson's statement concerning her encounter at Ross is undated and this was not read to Miss Brown at a meeting with Dr. Moore and Dr. Carpenter on July 31, 2015. Dr. Carpenter read a statement written by Ms. Ruppe concerning what Tracie Wilson called the school and said to Ms. Ruppe concerning her encounter with Ms. Brown at Ross Store on June 5, 2015.

**IV. TERMINATION OF APPELLANT'S CONTINUING CONTRACT AS A TEACHER CONSTITUTES A BREACH OF CONTRACT.**

Every contract entered in this state incorporates all applicable laws. *See*, Ayers v. Crowley, 205 S.C. 51, 30 S.E.2d 785, 788 (1944). *See* also, Hogsed v. Lancaster Area Schools Board of Trustees, 283 S.C. 42, 320 S.E. 2d 724, 727 (S.C. Court app. 1984) ( Teacher contracts incorporate district policy).

Respondent and its officials violated S.C. STATE LAW mandatory requirement for reporting of allegations of child abuse.

The Respondent violated state law including:

(A.) Code of Laws-Title 63-Chapter 7- **Section 63-7-310** : School teachers, counselors, principals ,and administrators must report allegations of child abuse to DSS/and or Law Enforcement when in the person's professional capacity the person has received information which gives the person reason to believe that a child has been or may be abused or neglected as defined in Section 63-7-20.

Cherokee County refusal to report the allegations of alleged child abuse alleged by Justin Keller to DSS and/ or law enforcement, prevented Ms. Brown from being able to have Justin Kelly possibly arrested and fined for false reporting. DSS and law enforcement (unbiased authorities) agents could have questioned Ms. Brown's students and looked for signs of any physical abuse on Student J. The alleged crime scene fabricated by Justin Kelly could have possibly been preserved for Ms. Brown to show additional evidence that Justin Kelly fabricated the child abuse allegation.

The Respondent and its officials violated their District Policy (**Policy AR JLF Student Welfare**) as it pertains to allegations of child abuse: The policy tells what procedures school and/or district personnel will follow in reporting suspected child abuse or neglect.

Respondent and its officials violated the following sections of Policy AR JLF- Student Welfare:

(A.) **Reporting Personnel must do the following**: Report by telephone of in a face-to-face meeting the suspected abuse to child protective unit of the department of social service

(B.) Complete the Report of Suspected Abuse/Neglect form JLF-E and submit to the principal.

(C.) **Principals and Administrators Must Do the following**: Be available to talk with child protective workers. Any involvement in the investigation or treatment must be in conjunction with the child protective unit of the department of social services or a law enforcement agency. District personnel may not conduct their own questioning or investigation after a report has been made.

**V. Cherokee County SD was not suppose to question Ms. Brown about the alleged allegation of child abuse. The District is estopped from contending that Ms. Brown spoke with a witness at Ross Store.**

Ms. Brown was not suppose to know anything concerning the child abuse allegations against her from Cherokee County School District. She was to be sent home until DSS and/or Law Enforcement contacted her.

Questioning Ms. Brown is the same as doing an investigation before DSS and/or law enforcement speaks to Ms. Brown. DSS and/or law enforcement want the reporter's name to remain

ANONYMOUS while they investigate an alleged child abuse. Section 63-7-330 (A.) of South Carolina Code states, "The identity of the person making a report pursuant to this section must be kept confidential by the agency or department receiving the report and must not be disclosed except as provided by subsection (B.) or (C) as otherwise provided for in this chapter.

**VI. MS. BROWN WAS DENIED DUE PROCESS. SCHOOL BOARD MEMBERS WERE NOT IMPARTIAL TOWARD MS. BROWN, THEY WERE BIASED.**

School Board Members were biased and impartial toward Ms. Brown during the board hearing. One of the board members Cheryll Smith had her eyes closed, at times, during the board hearing. Additionally, Robin Harper interjected comments to try to help defend the Superintendent while appellant's counsel was questioning Superintendent Moore. (pg. 136). Ms. Harper states, "And I want to know. Can you talk to a seven year old?" (p. 136). Additionally, Robin Harper interjected when Attorney Smith was questioning Ms. Tracie Wilson. (pg. 95). Robin Harper stated, "I think she still said she didn't know who the child was, right? (pg. 95) Next, Robin Harper said, "Yeah, until they were in Ross and then she said his name in their conversation. (95.) This is an indication that board member Robin Duncan was biased and impartial towards Ms. Brown. She appeared to be defending the complainant (district). Robin Harper was not a witness, she should not be answering/explaining things for a witness who is testifying. Ms. Brown's counsel should have had the freedom to question complainant's witness without a board member jumping in to explain/defend the complainant (district). The hearing was not a fair hearing. Board members deliberated for approximately 10 to 15 minutes before terminating Ms. Brown's employment with CCSD. Additionally, the outcome of the hearing appeared to be predetermined and choreographed by District Attorney Andrea White.

It is to be noted that during the "choreographic" hearing, Ms. Nanette Ruppe testified that she found Ms. Brown to be defensive when questioned about various school matters, describing Ms. Brown as not being "forthright". Ms. Ruppe cannot and did not name any specific occasion whereby Ms. Brown

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was not forthright with her. Ms. Brown has filed a grievance against Ms. Ruppe for harassment. Other teachers and workers for Cherokee County SD, as well, have filed grievances against Ms. Ruppe.

**VII. MS. BROWN'S PROCEDURAL DUE PROCESS RIGHTS WERE VIOLATED BECAUSE SHE WAS TERMINATED WITHOUT ALL NINE MEMBERS OF THE BOARD OF TRUSTEES FOR CCSD VOTING ON WHETHER OR NOT TO TERMNATE HER**

Before voting to terminate Ms. Brown on October 7, 2015 the Board of Trustees for CCSD did not provide the absent members with the testimony, evidence, and observations notes taken at the board hearing. All nine board members needed to consider the testimony , evidence, and notes taken at the board hearing together before terminating Ms. Brown's employment on October 7, 2015. *See* Pettifold vs. S.C. State Board of Education 218 S.C. 322, 62 S.E. 2d 780.

**Respondent did not have any grounds for dismissal of Ms. Sharon Brown. Instead, it had and presently has grounds for dismissal of Justin Kelly, Beth Owens, and Tracie Wilson. Beth Owens and Justin Kelly manifest an evident unfitness to teach and to be employed in a school setting . Additionally, Tracie Wilson manifests an evident unfitness to be employed in a school setting. All three individuals have been dishonest with the Superintendent for Cherokee County School District and the Board of Trustees for Cherokee County School District. Wherefore, Appellant prays for the following relief:**

1. An order reinstating Appellant to her teaching position with Cherokee County School.

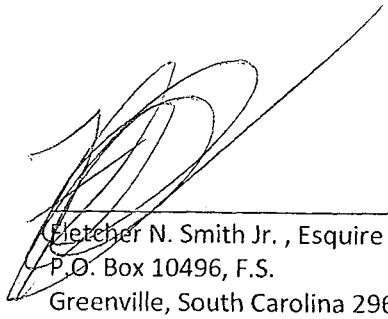
2. An order declaring respondent in violation of S.C. state mandatory reporting duty (S.C. Code of Laws- Title 63-Chapter 7- Section 63-7-310) and Cherokee County School District Policy (Policy AR JLF-Student Welfare) as it pertains to allegations of child abuse.

3. Judgment against Respondent for actual damages, including back pay, lost employment benefits, and contributions to the South Carolina State Retirement System. And that the Appellant be reinstated to her former position.

4. Attorney fees.

5. Cost of this action

6. Such other and further relief as the Court may deem just and proper.



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Greenville, South Carolina
November 13, 2015

**Policy JLF Student Welfare**

Issued 2/13

Purpose: To establish the basic structure for the reporting of child abuse (sexual, physical or mental) and neglect.

The schools of this district will cooperate vigorously to expose the problems of child abuse and neglect.

Any principal, assistant principal, school teacher, school attendance officer, nurse or counselor who has received information in his/her professional capacity which gives him/her reason to believe that a child under the age of 18 has been or may be abused or neglected as defined by law must report such a situation. These individuals may make the report to a law enforcement agency in the county where the child resides or to the county department of social services.

Other school employees who have reason to believe that a child under the age of 18 has been or may be abused or neglected as defined by law may also report or cause a report to be made, and are encouraged to do so, as stated above.

The State of South Carolina provides both civil and criminal immunity to those reporting suspected child abuse or neglect. Anyone required to report who knowingly fails to do so may be guilty of a misdemeanor.

District and school personnel will cooperate fully with investigators from the department of social services child protection unit or a law enforcement agency. However, it will be district policy to have a counselor, administrator or school nurse present during any interview which takes place in the school unless the child requests otherwise.

**District liaison**

The superintendent will designate a specific person or persons to serve as the district liaison and forward that information to the local child protection unit of the department of social services.

It will be the responsibility of the liaison to arrange for training and information necessary to assist staff members in identifying possible instances of child abuse and neglect, including annual updates regarding any changes in the law. Additionally, the liaison is charged with implementing a planned program of personal safety and awareness education, including methods for preventing sexual abuse, which will be provided to staff, students and parent/legal guardians.

Adopted 6/14/94; Revised 10/22/96, 2/11/13

Legal references:

S.C. Code, 1976, as amended:

Section 63-1-10, et seq. - South Carolina Children's Code.

Section 63-7-20 - Definitions.

Section 63-7-310 through 350 - Persons required to report.

FILED IN THE OFFICE OF THE CLERK OF COURT CHEROKEE COUNTY, S.C.
2015 NOV 13 P 3:54
BRANDY W. MCBEE

**AR JLF-R Student Welfare**

Issued 2/13

School and/or district personnel will follow the procedures listed below in reporting suspected child abuse or neglect.

**Reporting personnel must do the following.**

Report by telephone or in a face-to-face meeting the suspected abuse to the child protective unit of the department of social services.

Inform building principals and appropriate program supervisory personnel of the suspected abuse or neglect.

Complete the Report of Suspected Abuse/Neglect form JLF-E and submit to the principal.

Be prepared to give all necessary facts to the child protective worker who accepts the report. At a minimum this includes the following.

- name, address and age of student
- name and address of parent or caretaker
- nature and extent of injuries or description of suspected abuse or neglect
- any other information that might help to establish the cause of the injuries or condition
- if reported by the child, the identity of the person suspected of abuse

Take a color photograph, if there is actual physical trauma; e.g., bruising, cuts, welts, etc. School personnel will submit photographs to the child protective unit. School personnel may request that the child protective unit arrange for photographs or X-rays, if appropriate.

Maintain confidentiality of the report. Do not discuss with anyone other than the principal and/or program supervisor or the child protective unit of the department of social services. Prior to making the report, school personnel may wish to consult with the school counselor or nurse. However, **mandated reporters** are reminded that they are required to report **suspected** abuse or neglect. It is not your responsibility to prove abuse or neglect or to make a determination of the need for protection.

**Principals/administrators must do the following.**

- The principal will maintain the documentation form in a confidential file with access limited to principal, director of student services, superintendent and assistant superintendent. Contents of the file may be used by the principal to substantiate that a report was made or upon order of the court be released to the court for use in any legal action.
- Request and verify identification of persons who identify themselves as child protective or social service workers.
- Be available and make the reporter available to talk with child protective workers. Any involvement in the investigation or treatment must be in conjunction with the child protective unit of the department of social services or a law enforcement agency. District personnel may not conduct their own questioning or investigation after a report has been made.

• Make the child available to workers from the child protective unit at the school building. Inform the child protective worker of district policy that requires a school counselor, nurse or administrator to be present during the worker's conversation(s) with the child unless the child requests that school personnel not be present.

• Release child to the custody of a law enforcement officer when emergency protective custody is necessary. A law enforcement officer may take a child into custody without consent of parents/legal guardians or others exercising temporary or permanent control over the child if the following is true.

- The officer has reason to believe that an imminent danger to the child's life or physical safety exists.

- Parents/Legal guardians or others with temporary or permanent control over the child are unavailable or do not consent to the child's removal from their custody.

- There is not time to apply for a court order.

• Release child to the custody of a child protective or social services worker who presents a removal petition from the family court.

Issued 6/14/94; Revised 10/22/96, 2/11/13

CHEROKEE COUNTY SCHOOL DISTRICT

## REPORT OF SUSPECTED ABUSE/NEGLECT

Date of report_____ Reported to_____ Via: Phone/Personal contact

Reported by_____ Mandated reporter: Yes No

Name of student_____ DOB_____ School _____

Address _____

Name of parent/legal guardian _____

Address (if different from child's)_____

Description of suspected abuse _____

_____

_____

| Person(s) suspected of abuse (as reported by child) | Relationship to child of person(s) suspected of abuse |
|---|---|
| _____ | _____ |
| _____ | _____ |

Principal signature _____

Date _____

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December 1, 2015

The Honorable Brandy W. McBee
Cherokee County Court Clerk
P.O. Drawer 2289
Gaffney, South Carolina 29342-2289

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

Dear Ms. McBee:

Enclosed herewith for filing please find the original and one copy of the Answer and Return of Respondent Cherokee County School District in the above referenced matter.

Please return the extra clocked-in copy of the Pleading to my attention in the self-addressed, stamped envelope enclosed.

Thank you for your cooperation and assistance.

Sincerely,

Andrea E. White

Enclosure
c: Fletcher Smith, Jr., Esq.

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|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF CHEROKEE<br>Sharon Brown,<br>Appellant,<br>v.<br>Cherokee County School District,<br>Respondent. | IN THE COURT OF COMMON PLEAS<br>ELEVENTH JUDICIAL CIRCUIT<br>C.A. No.: 2015-CP-11-0828<br>**ANSWER AND RETURN OF RESPONDENT CHEROKEE COUNTY SCHOOL DISTRICT** |

Respondent, Cherokee County School District ("the District), responding to the Amended Appeal Brief of Appellant, Sharon Brown ("Brown"), would respectfully show unto the Court as follows:

The District denies each and every ground that Brown asserts in support of her appeal to this Court of her termination by the District. The District further asserts that there is substantial evidence on the record to support the District's decision to terminate Brown.

WHEREFORE, the District prays that this Court uphold the District's decision and dismiss this appeal.

Respectfully Submitted,

DUFF, WHITE & TURNER, LLC

By: _____

Andrea E. White
Joseph P. Bias
P.O. Box 1486
Columbia, SC 29202
Telephone: 803.790.0603
Facsimile: 803.790.0605

Attorneys for Respondent

1

December 1, 2015
Columbia, South Carolina

**CERTIFICATE OF SERVICE VIA U.S. MAIL**

The undersigned of Duff, White & Turner, LLC, hereby certifies that she has served the following counsel of record with the foregoing **ANSWER AND RETURN OF RESPONDENT CHEROKEE COUNTY SCHOOL DISTRICT,** by mailing a copy of same, postage prepaid and return address clearly indicated, to the following on this 1ST day of DECEMBER 2015:

Fletcher N. Smith, Jr., Esq.
Attorney at Law
P. O. Box 10496, F.S.
Greenville, SC 29603

Elizabeth M. Brown, Paralegal
DUFF, WHITE & TURNER, LLC
P.O. Box 1486
Columbia, SC 29202

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|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF CHEROKEE | ) | IN THE COURT OF COMMON PLEAS |
| | ) | Case No. 2015-CP-11-0828 |
| SHARON BROWN,<br>APPELLANT, | ) | |
| | | **SECOND AMENDED APPEAL BRIEF** |
| | ) | |
| CHEROKEE COUNTY SCHOOL DISTRICT,<br>RESPONDENT. | ) | |
| | ) | |

This is an appeal from the decision of the Board of Trustees of Cherokee County School District to terminate the employment of Ms. Sharon Brown. At the time of this action, Ms. Brown was in her seventeenth year of teaching experience with Cherokee County School District (CCSD). (Tr. pg. 10). Ms. Brown has never had any special conditions or stipulations on any of her teaching contracts with Cherokee County School District in her seventeen years of employment.

Ms. Brown has a bachelor's of science degree in criminal justice, a master's degree in elementary education, a master's degree in reading, and an educational specialist degree in school administration. (Tr. pg. 154). She is certified as an elementary teacher, reading teacher, reading consultant, elementary principal, and an elementary supervisor. Ms. Brown was employed by Respondent to teach a second grade class during the 2014-2015 school term at Luther Vaughn Elementary School. On June 1, 2015, two days before the last day of school, Ms. Brown met with Dr. Carl Carpenter (Dr. Carpenter) the Director of Human Resources for Cherokee County School District (CCSD) and the principal of Luther Vaughn Elementary, Ms. Nanette Ruppe (Ms. Ruppe) concerning an allegation of child abuse.

Initially, Dr. Carpenter did not tell Ms. Brown why they were meeting with her. Dr. Carpenter started the meeting by asking Ms. Brown questions about Student J's family. Throughout this appeal brief I will refer to the student as Student J. Later in the meeting, Dr. Carpenter informed Ms. Brown

that he had an allegation of child abuse reported by Justin Kelly (Mr. Kelly), an art teacher at Luther Vaughn Elementary, concerning Student J. Dr. Carpenter asked Ms. Brown to give him a statement concerning the allegation of child abuse and what happened that day. Additionally, Dr. Carpenter asked had anyone seen Ms. Brown talking with the student outside the art room. Ms. Brown informed him that Mrs. Beth Owens (Ms. Owens) had passed by. Ms. Brown never told Dr. Carpenter that Mrs. Owens was a witness for her. She just said that Ms. Owens and her husband had passed by. Ms. Brown is aware of Mrs. Owen's dislike for her. During this meeting with Dr. Carpenter and Ms. Ruppe, Ms. Brown informed Dr. Carpenter that Ms. Tracie Wilson was in the art room.

When the meeting was over with Dr. Carpenter and Ms. Ruppe, Ms. Brown requested a copy of the allegations that Justin Kelly made against her. Initially, Dr. Carpenter said he would e-mail Ms. Brown a copy of Justin Kelly's statement. However, Ms. Ruppe said she would make a copy. Ms. Brown received a copy of the allegations made by Justin Kelly. After the meeting was concluded, Ms. Brown was escorted to her classroom to get her purse and rolling cart and was escorted off the premises by the principal.

This action arises under the South Carolina Teacher Employment and Dismissal Act, South Carolina Code Section 59-25-410,et. seq. Under the Act, the District may terminate the employment of a teacher during the term of her contract if she manifests an unfitness for teaching. Dr. Quincie Moore, Cherokee County School District's superintendent (letter dated August 11, 2015), charged Ms. Brown with willfully violating a directive, being dishonesty in her answers to the May 28th interactions with Student J and about her encounter with Ms. Wilson on June 5th. At the Board Hearing, Dr. Moore gave the following testimony, "I made the recommendation or in my mind my recommendation was that, first of all. Ms. Brown completely went against a directive given by Dr. Carpenter which was for her protection being on administrative leave not to speak to anybody in the district that she readily

admitted that she did do. So that's the first thing. The second thing is that I have two staff members that say she put her hands on a student, two. She adamantly denies ever touching a student. So I believe she's being dishonest with me. Third, third, by speaking with Mrs. Wilson, her own witness, it clearly got in the way of our investigating the situation correctly for her, and so based on all three of those things, I made the recommendation that she be terminated from our district ." (pp. 125-126).

It is to be noted that Dr. Carl Carpenter II, Director of Human Resources for Cherokee County School District, agrees that Ms. Brown is credible in terms of she did not touch Student J. (pg. 61). However, Dr. Moore and *The Cherokee County School District Board of Trustees* (CCSB) have imputed a child abuse charge against a teacher without any regard for the teacher's reputation having been destroyed by such a finding that was rendered upon no evidence. Essentially, what Dr. Moore and CCSB have done could be analogous, for example, to two teachers asserting that they saw Ms. Brown raping a child, however the child confirms that the rape did not happen and law enforcement was not called to substantiate that the alleged rape actually occurred. (pp. 7-8; pg. 10; pg. 53; Complainant's Exhibit 1 concerning Nan Ruppe's Interview with Student J; Complainant's Exhibit 1 concerning Ms. Nan Ruppe's e-mail to Dr. Carl Carpenter dated June 5, 2015, concerning Student J's mother). Dr. Moore and CCSB have no victim in this case. Student J said Ms. Brown did not touch him. Further , Dr. Moore and CCSB have no basis for Ms. Brown's termination for "speaking to someone in the district." *See* Hall vs. The Board of Trustees of Sumter School District Number Two 330 S.C. 402, 499 S.E. 2d 216 (S.C. Court of Appeals). Additionally, Ms. Brown was due "equal protection" of the alleged June 1, 2015 directive by Dr. Carl Carpenter. (pp 62-63 and pp. 65-67). Tracie Wilson, should have been directed not to speak to Ms. Brown when interviewed on June 1, 2015. Additionally, the book keeper for Luther Vaughan Elementary should have been directed not to contact Ms. Brown by telephone on June 3, 2015 about the whereabouts of equipment. (pp. 62-63).

In accordance with the Act, the Board of Trustees held a hearing at which it received testimony and evidence regarding the allegations. After the completion of the hearing and within the statutory time limit, the Board notified Ms. Brown that good and sufficient reasons for terminating her exists because, by her conduct, she manifested an evident unfitness for teaching. The board goes on to say that "South Carolina Code of Law, Sections 59-19-90(ii), 59-25-430. Those reasons and manifested unfitness for teaching are based upon Ms. Brown's inappropriate interactions with a student; her insubordination regarding the directive she received from the administration, and her dishonesty in responding to questions from the Superintendent."

**THE DECISION OF THE SCHOOL BOARD SHOULD BE OVERTURNED ON THE FOLLOWING GROUNDS:**

1. The school board failed in proving that Ms. Brown was unfit to teach and, therefore, had no basis under the teacher employment an dismissal act to terminate her contract.

2. There is not substantial evidence in the record to support the School Board's decision.

3 Superintendent Moore did not charge Ms. Brown with telling Tracie Wilson what to say nor did Superintendent Moore charge Ms. Brown with other specific acts that were alleged and fabricated by Ms. Wilson during the board hearing. Ms. Brown's due process rights were violated by the Superintendent and the CCSB.

4. Termination of Plaintiff's continuing contract as a teacher constitutes a breach of contract.

5. District was not suppose to question Ms. Brown about the alleged allegation of child abuse. The District is estopped from contending that Ms. Brown spoke with a witness at Ross Store because the District was not suppose to investigate the allegation of child abuse in the first place.

6. Ms. Brown was denied due process. The school district board of trustees were not impartial. They were biased against Ms. Brown.

7. Ms. Brown's procedural due process rights were violated because she was terminated without all nine members of the school board voting on whether or not to terminate her .

8. A decision of a school board made in violation of state law and its district policies, as it pertains to child abuse, is arbitrary and capricious.

**I. THE SCHOOL BOARD FAILED TO PROVE THAT MS. BROWN WAS UNFIT TO TEACH, THEREFORE, HAD NO BASIS UNDER THE TEACHER EMPLOYMENT AND DISMISSAL ACT TO TERMINATE HER CONTRACT**

Dr. Quincie Moore, in her notice to Ms. Brown that a recommendation would be made for the termination of her contract, specifically stated that the action was being taken under South Carolina 430

That section states in part that:

> any teacher may dismissed at any time who shall fail, or may be incompetent, to give instruction in accordance with the directions of the superintendent, or 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.

in section 59-25-440, that:

> 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 o 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 59-24-450, allow reasonable time for improvement

The South Carolina Supreme Court in Adams vs. Clarendon County School District, No. Two, 270 S.C. 266, 241 S.E.2d 897 (1978) analyzed the two circumstances under the Act for which a teacher may be terminated. As noted by the Court, one category is provided for in Section 59-24-430 and the other is provided for in Section 59-24-440. Id. at p. 900. The two sections apply to different categories of grounds for dismissal. Under Section 59-25-430, a teacher may be dismissed at any time subject to the

rights of notice and a hearing. However, under Section 59-25-440, a reason which may lead to termination does not become a "good and sufficient" reason, thereby justifying termination, until after a reasonable time for improvement has been allowed. Id. It is , therefore, the failure to improve which constitutes the good and sufficient reasons for termination.

The evidence of record reveals that the purpose of the hearing was to hear evidence in support of and in opposition to the recommendation that Ms. Brown's contract be terminated. The recommendation was based solely on section 59-25-430 which requires a finding of unfitness to teach. The Board cannot argue that the evidence showed a good and sufficient reason under 59-24-430 because Ms. Brown did not willfully and intentionally disregard a directive. *See* Hall vs. The Board of Trustees of Sumter School District Number Two 330 S.C. 402, 499 S.E. 2d 216 (S.C. Court of Appeals). Ms. Brown does not recall Dr. Carpenter telling her on June 1, 2015 not to have contact with District employees or students while on administrative leave. ( pgs. 151-152). It is reasonable that any educator called to a meeting and told that there is an accusation of child abuse against him/her would be devastated and in the state of shock when the allegation has been totally fabricated.

Ms. Brown was placed on administrative leave on June 1, 2015. ( Complainant's Exhibit 1, letter dated June 1, 2005 from Dr. Carpenter to Ms. Brown). She did not received the certified letter from Dr. Carpenter until June 11, 2015. (Respondent's Exhibit 6). The letter from Dr. Carpenter was mailed one day before the last day of school June 3, 2015. The letter indicates that Ms. Brown was being placed on administrative leave for allegedly grabbing a student by his lower jaw and throat and forcing his body against the wall. (Complainant's Exhibit 1, letter dated June 1, from Dr. Carpenter to Ms. Brown). Further, the letter instructs Ms. Brown not to have any contact with school district employees or students in any manner while on administrative leave. It is to be noted that there are discrepancies in regard to what Dr. Carpenter stated, during the board hearing, he told Ms. Brown in the meeting with

her on June 1, 2015 and what Ms. Ruppe said Dr. Carpenter told Ms. Brown at the meeting with her on June 1, 2015. Dr. Carpenter's testified before the board that, "she (referring to Ms. Brown) was told that she was supposed to have no contact with employees or students." (pg. 56) Ms. Ruppe testimony before the board, in part, was that Ms. Brown was told "not to discuss anything about the case with anyone." (pg. 37) Ms. Ruppe's statement of what was said by Dr. Carpenter during the June 1, 2015 meeting with Ms. Brown does not confirm that Dr. Carpenter actually told Ms. Brown not to have contact with any employees or students during the meeting with Ms. Brown on June 1, 2015. Even if Dr. Carpenter told Ms. Brown not to have contact with any employees, Ms. Brown did not willfully and intentionally disobey a directive. Ms. Brown does not recall Dr. Carpenter telling her not to have contact with employees and students on June 1, 2015.

Additionally, Dr. Moore testified at the board hearing that " Third, by speaking with Ms. Wilson, her own witness, it clearly got in the way of our investigating the situation correctly for her, and so based on all three of those things, I made the recommendation that she be terminated from our district." (pg. 125-126). It is to be noted that Ms. Wilson was asked during the board hearing the question, "You didn't tell them anything different than the investigation after Ms. Brown talked to you on June the 5th than what you told them with regard to your statement on June the 1st, did you?" (pg. 105). Mrs. Wilson's response was "I don't think I did." Next, Ms. Wilson was asked the question, "Right, so that didn't compromise your testimony with regard to what you told Mr. Carpenter or Ms. Ruppe, did it? (pg. 105). Ms. Wilson's response was "Correct." (pg. 105). Ms. Wilson was also asked the question, "With regard to your own participation in this investigation, what you state in that statement on June the 1st, you stood by it whenever Mr. Carpenter spoke to you later on in July, correct? (pg. 106). Ms. Wilson's response was "Correct." (pg 106). The investigation was not compromised at all. Additionally, Ms. Brown's counsel argued that Dr. Carpenter had spoken with board Attorney Andrea White over five times prior to the hearing and that does not make Dr. Carpenter's testimony before the CCSB unreliable

because Dr. Carpenter is expected to tell the truth, just like employees of CCSD are expected to tell the truth. (72.).

Ms. Brown is fit to be a teacher for CCSD. She has done absolutely nothing to be treated so horribly by CCSD. Ms. Brown did not touch Student J. Student J confirmed this. Additionally, Student J's mother questioned Student J. Student J's mother said "teacher did not touch him." (Complainant's Exhibit 1, e-mail from Nan Ruppe to Dr. Carpenter dated June 5, 2015). As mentioned earlier, Dr. Carpenter, acknowledge that Ms. Brown is credible given that the alleged victim confirmed that Ms. Brown never touched him. If CCSD had followed their district policy and state law pertaining to dealing with allegations of child abuse, Ms. Brown would not be going through this crazy mess that she is going through with them. There is no victim that was assaulted or touched by Ms. Brown in this case. This is a bogus case to get rid of a teacher that CCSD does not want in their school district. It is to be noted that Student J confirms that he "walked into the room with other students." (Complainant's Exhibit 1, Statement of Student J taken by Nan Ruppe). Additionally, Ms. Brown indicates that student J went in the art room with the other students when she dropped her students off at art on May 28, 2015. (Complainant's Exhibit 1, Ms. Brown's statement). Both Ms. Brown and student J's statements contradict Justin Kelly's statement.

Moreover, Cherokee County School District officials are mandated by state law to contact DSS and/or law enforcement concerning allegations of child abuse. The Respondent violated state law including: (A.) Code of Laws-Title 63-Chapter 7- **Section 63-7-310** : School teachers, counselors, principals ,and administrators must report allegations of child abuse to DSS/and or Law Enforcement when in the person's professional capacity the person has received information which gives the person reason to believe that a child has been or may be abused or neglected as defined in Section 63-7-20.

Further, the respondent and its officials violated their District Policy (**Policy AR JLF Student Welfare**) as it pertains to allegations of child abuse: The policy tells what procedures school and/or district personnel will follow in reporting suspected child abuse or neglect. **I have attached a copy of Policy AR JLF Student Welfare to this amended brief**

Respondent and its officials violated the following sections of Policy AR JLF- Student Welfare:

(A.) **Reporting Personnel must do the following**: Report by telephone of in a face-to-face meeting the suspected abuse to child protective unit of the department of social service

(B.) Complete the Report of Suspected Abuse/Neglect form JLF-E and submit to the principal.

(C.) **Principals and Administrators Must Do the following**: Be available to talk with child protective workers. Any involvement in the investigation or treatment must be in conjunction with the child protective unit of the department of social services or a law enforcement agency. District personnel may not conduct their own questioning or investigation after a report has been made.

It is to be noted that Ms. Ruppe, Dr. Carpenter, and Superintendent Dr. Quince Moore(Dr. Moore) were not to conduct their own investigation into the allegations of child abuse. During Ms. Ruppe's testimony before CCSB, Ms. Ruppe was asked did she do an investigation into the alleged May 28, 2015 incident, her response was "I would say that Dr. Carpenter and I did the investigation together." ( pg 43). During the board hearing Dr. Carpenter was asked, when you received that report on May the 29th, that Friday, did you report it to law enforcement? Dr. Carpenter's response was "No, I did not. I called the superintendent, reported it to her, but I had not conducted an investigation at that time, so I did not feel comfortable reporting that to law enforcement. My initial investigation was going to begin Monday morning." (pg. 53). Further, Dr. Carpenter was asked "And so Ms. Ruppe and you both were conducting an investigation at the same time, correct? Dr. Carpenter responses was "That would

be correct." (pg. 67). During Dr. Moore's testimony she states, "Once Ms. Ruppe had sent the statements to Dr. Carpenter and he met with me to talk about the situation, as you can tell and as you've heard tonight, but also one that is very complicated, so as we began to start investigating further, and now me sitting in with Dr. Carpenter and questioning the folks that had provided statements, it took a while. " (pg. 121)

Further, Dr. Moore, during the board hearing, testified that she did not know if the child said Ms. Brown did not touch him. (pg. 135). During Dr. Moore's testimony she states "and we don't have a statement from the student, Mr. Smith. We have what Ms. Ruppe's notes, and I didn't talk with the student." (pg. 135). So, Dr. Moore investigation was incomplete. However, she charged Ms. Brown with touching Student J. Additionally, Dr. Moore advanced the theory that Ms. Brown came into the art room twice. (pg. 128). Dr. Moore made an error in trying to fire somebody for something that she had no personal knowledge of and that has not been confirmed by any of the factual content in this case. (pg. 120). Dr. Moore never bothered to ask Student J, Student J's mother, or Ms. Torres whether or not student J came out of the art room twice to speak to Ms. Brown. (pg. 130). Dr. Moore's investigation was not complete and hasn't been completed to date.(pg. 130). Dr. Moore states that "I believe that's why the student wasn't crying because Ms. Brown went back a second time and, and made amends with the student. (p. 124). Dr. Moore came up with her own theories at the expense of an innocent person losing her livelihood. Additionally, Dr. Moore's investigation was not complete because she did not have any report by law enforcement to substantiate the findings of the allegations of physical contact by Ms. Brown. Cherokee County School District Board of Trustees accepted Dr. Moore's findings in error.

**II. THERE IS NOT SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT THE SCHOOL BOARD'S DECISION.**

Appellant reiterates each and every fact and allegation contained hereinabove as if recited verbatim here in. Ms. Brown was due "equal protection" of the alleged June 1, 2015 directive by Dr.

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Carl Carpenter. (pp 62-63 and pp. 65-67). Tracie Wilson should have been directed not to speak to Ms. Brown when interviewed on June 1, 2015 by investigator Nan Ruppe. Further as previously stated, Ms. Brown did not intentionally and willfully disobey a directive. Additionally, the board's finding (based on Superintendent Moore) that Ms. Brown attempted to interfere with the District's investigation into the May 28th incident by telling her own witness, Ms. Wilson, what she should say to Dr. Carpenter is without any evidentiary support. Nowhere in Dr. Moore's charges (letter dated August 11, 2015) does she claim that Ms. Brown committed the specific acts at Ross Store that are asserted by Ms. Wilson, concerning Ms. Brown encounter at Ross Store on June 5, 2015. Dr. Moore did not charge Ms. Brown with telling her witness what to say and the other fabricated allegation made by Ms. Wilson concerning her encounter with Ms. Brown at Ross Store on June 5, 2015 that are in the board order dated October 15, 2015. **Appellant's due process rights have been violated by the school board.** Additionally, Ms. Wilson's testimony during the hearing conflicts with her written statements before the board. During Mrs. Wilson's testimony before the CCSB she states, "We were just chit-chatting it up with each other, and then she was actually talking to me and saying, next thing I know she was like, well, Dr. Carpenter is supposed to call you, have you heard from Dr. Carpenter. (pg. 88) It is to be noted that nowhere in Ms. Wilson's undated statement does she state this, concerning her encounter with Ms. Brown at Ross Store. In Ms. Wilson's written statement she stated that, "she asked me had Dr. Carpenter spoke with me yet or called me." (Complainant's Exhibit 1; Mrs. Wilson, undated statement). Further, Ms. Wilson states in her testimony, "And she telling me that he was supposed to call me, and he supposed to be getting in touch with me, and whenever he does get in touch with me, I'm supposed to talk about what happened with the student. (pg. 89). This is not in her undated written statement. Additionally, Mrs. Wilson states in her testimony before the board that Ms. Brown said "he's going to call you and you need to tell him that, well, no, she's like, this is what happened with a student, and he's going to call you and ask you about what happened." (pg. 88). This too is not in her undated written statement.

Additionally, during Ms. Wilson testimony before the CCSB she claimed that Ms. Brown and her were arguing in the store and she lost her place of where she was and that she was shopping with her daughters. (pg. 90) This is not in her undated written statement. Further, in Mrs. Wilson's undated written statement she states, " she started stating Mr. Kelly has reported on her three times since April and she doesn't know why unless he is trying to get a promotion or trying to get ahead by reporting on her." (Complainant's Exhibit ;Ms. Wilson, undated statement). In Mrs. Wilson testimony before the CCSB she states "and then she was saying that Mr. Kelly, she don't know what he got the game from unless it's a promotion. She says he has been after her since April. (pg. 91). Also, in Mrs. Wilson's testimony before the board she states, "And next thing you know, I know we were loud, and my daughter had came over, and she looked at my daughter real funny, and I think she said something like we were talking, and I was like that's my daughter. You know that's my daughter, don't, I was like don't have a problem with her because she's my daughter, and she kept on. " (pg. 91.). This too is not in her undated written statement. Further, Ms. Wilson states , "They (referring to her daughters) sat down and waited and she kept on talking and saying stuff about telling me what I'm supposed to say." (pg. 91) This too is not in her undated written statement. Additionally, Ms. Wilson states that Mrs. Ruppe told her to write a statement, and just take it whenever you go and meet with Dr. Carpenter and Ms. Moore. (pg. 93). However, Ms. Ruppe stated during her testimony "you" (referring to Ms. Wilson) need to provide that statement for him (referring to Dr. Carpenter only) when you go see him. (pg. 41). During the board hearing Ms. Wilson was told by Ms. Brown's counsel that she is making up stuff. (pg. 103). Her testimony before CCSB conflicts with her undated written statement . Additionally, she fabricated that Ms. Brown told her that "you know, I'm not to be discussing it" during her encounter with Ms. Brown at Ross Store on June 5, 2015 and all the other nonsense that she made up concerning her encounter with Ms. Brown at Ross Store on June 5, 2015. Mrs. Wilson has proven to be absolutely not credible, however CCSB appear to be totally biased and impartial concerning Ms. Brown. CCSB appear not have considered

Ms. Brown's version of what happened during her encounter with Ms. Wilson at Ross Store on June 5, 2015. They appear to want to take the advantage of Mrs. Wilson's lies and use them to get rid of Ms. Brown , someone that the superintendent and the CCSB already wanted out of their district. Despite the fact that they know that Ms. Wilson is absolutely not credible and should not be allowed to work at any school. CCSB disregarded Ms. Brown's credible testimony concerning her encounter with Ms. Wilson at Ross Store on June 5, 2015. (pg. 146-148).

It is to be noted that Tracie Wilson written statement given on June 1, 2015 conflicts with testimony that she gave before the CCSB during the board hearing. In Ms. Wilson's written statement dated June 1, 2015 she states, " Mr. Kelly informed the students that he wanted to do a fun activity with them since it was the last day he would have with them since it was the last day he would have their class. He decided to play "Heads Up Seven Up" where he picked seven students to come up front and the rest sit at their desk. (Complainant's Exhibit 1, Tracie Wilson statement dated June 1, 2015). Ms. Wilson's statement before the board was that "I think Mr. Kelly, I'm sure Mr. Kelly and I, we had been discussing what we were going to do with them because it was the last full day and that was the last time he would see them, so we had discussed what games we were going to play." (pg. 84). It is to be noted that during questioning of Ms. Wilson by Ms. Brown's counsel, Ms. Wilson was asked the question," So you had to actually knock on the door to get in? (pg. 84) Ms. Wilson's response was "I knocked on the door and a student let me in. (pg. 84). Next, Ms. Brown counsel asked Ms. Wilson the question, "And at that point was Mr. Kelly already underway with activities he was doing with his students? (84). Ms. Wilson's response was "Yes." (pg. 84).

It is to be noted that Mrs. Wilson, during the board hearing, states, "**she was late coming to get them**, so when she was late coming to get them, Mr. Kelly and I were lining them up and he was like well, **I said what time, it is**, and he was like **well IT'S ALMOST THAT TIME** and he was like let's line them

up., and **while** we were lining them up and getting ready to take them down the hall, she came to the door...(pg.86). This contradicts her statement that was written on June 1, 2015. In Mrs. Wilson's written statement dated June 1, 2015 she states, "The student and I returned to the art room and **I informed Mr. Kelly it was almost time for the students special area time to be over** and he glanced at the clock and said oh, yea and said let's line them up, so lined them up by the quietest table. (Complainant's Exhibit #1, Ms. Wilson's statement dated June 1, 2015). Ms. Brown was not late (it's almost that time) picking up her students on May 28, 2015 as asserted by Mrs. Wilson.

It is to be noted that Ms. Wilson's stated in her June 1, 2015 statement that, "she asked me if I had to stay with Mr. Kelly and her class the whole time and I told her no they had some commotion in the room and I stepped in to lend a hand." During the board hearing Attorney White asked Mrs. Wilson, "So she asked you if you had been in the room the whole time? Mrs. Wilson said Uh-huh. (pg. 86).

When Ms. Brown attended a meeting on July 31, 2015 with Dr. Moore and Dr. Carpenter, Dr. Carpenter read a statement that he said was written by Ms. Ruppe of what Tracie Wilson had called the school and told Ms. Ruppe concerning her encounter at Ross with Ms. Brown. During the meeting on July 31, 2015, the undated statement by Tracie Wilson concerning her encounter with Ms. Brown at Ross Store was not shared with Ms. Brown.

Additionally, Dr. Moore's witnesses have given conflicting stories. For Beth Owens written statement and testimony, view the exhibit submitted by Ms. Brown at the hearing for the layout of Luther Vaughan Elementary as it pertains to this subject matter. (Respondent's Exhibit #1). The Board of Trustees cannot make a finding of fact or draw conclusions based on what occurred on May 28th or June 5th based on these witnesses. Additionally, Superintendent Moore should not have drawn any conclusions based on these witnesses.

During Ms. Owen's testimony before the board she testified that, after dropping her students off at the gym, she went to her car in the school parking lot to retrieve an item that her husband had come to the school get. (pp. 75-76). At approximately 1:20- 1:25, she and her husband were walking down the hall toward where the art room is located when she observed Ms. Brown in the hall outside the little theater. Using the video-recording, Ms. Owens demonstrated where Ms. Brown and Student J were standing when she saw them, which was several feet away on the opposite side of a door way from where Mr. Kelly indicated he had observed Ms. Brown's interaction with Student J. Ms. Owens testified that the student looked away from Ms. Brown and that, in response, Ms. Brown physically redirected the student by placing her fingers on his lower jaw and turning his face back toward her. It is to be noted that that Ms. Owens and her husband had come off the hall that her classroom is located on and entered the hallway that Ms. Brown and Student J was on. (Respondent's Exhibit #1). Ms. Owen's was not truthful concerning where she and her husband were coming from when they passed by Ms. Brown.

In Beth Owens written statement dated June 1, 2015 she states," **I had just dropped my students off in the gym around 1:15 and I was on my way back to my classroom.** I noticed Miss Brown and Student in the hallway outside of the art room. Student J's back was against the wall. Miss Brown was bent over so they were at eye level. I observed Miss Brown then take her fingers, placed them on his chin and turned his head so he was again looking in her direction. I continued to room and didn't observe any further interaction between Miss Brown and the student."

In Ms. Owens written statement she was alone when she passed by Ms. Brown. During Ms. Owen's testimony before CCSB she's now with her husband when she passed by Ms. Brown. (pp. 75-76). Ms. Owens has not been forthright in this matter. She too is not credible.

Justin Kelly is also dishonest. In his statement dated May 29, 2015, he states "I witnessed Sharon Brown, a second grade teacher, grabbing a student violently by his lower jaw and throat, and forcing his body against the wall while proceeding to verbally assault him. He goes on to say that student J was walking appropriately to class when Miss Brown grabbed him." Justin Kelly told Ruby Byers, Guidance Counselor for Luther Vaughan Elementary the following: "he saw Miss Brown squeezing his lower face and neck with her hands and yelling at him outside the room. Justin was asked by Ms. Brown's counsel, "All right. And then you got to the statement to Ms. Ruby Byers, you said that she was squeezing his lower face and neck with her hands and yelling at him outside the art room. Do you remember making that statement?" (pg. 26-27). Mr. Kelly's response was "No, sir." (pg. 27). Next , Mr. Kelly was asked, "Okay. Well, Ms. Byers wrote it up now. Are you saying Ms. Byers didn't report what you said correctly?" (pg. 27). Justin's response was "I am." (pg. 27). Justin Kelly's testimony at the board hearing was , "before Student J got to that door handle, I see Ms. Brown come around the door and put her hands on student, and forced him to the side of my door...(pg. 18). This was not in Justin's May 29, 2015 written statement. (Complainant's Exhibit #1, Justin Kelly's statement dated June 1, 2015. Additionally, Student J said he entered the room with the other students. (Complainant' s Exhibit #1, Statement of Student J taken by Ms. Ruppe on June 1, 2015). Additionally, Ms. Brown's statement dated June 1, 2015 indicates that Student J entered the room with the other students. (Complainant's Exhibit #1, Statement by Ms. Brown dated June 1, 2015

It is to be noted that Justin Kelly never attempted to get Student J any type of medical assistance on May 29, 2015. He never sent student J to the nurses' office, Justin Kelly never states that the student screamed/ said something given that the student had been allegedly attacked by Ms. Brown. Further, none of the other students reacted to such a horrific occasion as alleged by Justin Kelly. Further, Justin Kelly never paged the office to have someone to come to the art room to see about student J, and he never notified dss and/or police as mandatory required by state law and Cherokee County School

District Policy. Instead, Justin Kelly had art with the student for 40 minutes. According to Ms. Wilson, Ms. Brown's class played several rounds of the game *Heads Up Seven Up*. Ms. Wilson was in the art room for practically the entire art period. (pg. 102). Justin Kelly, according to Ms. Wilson, never told her that Student J had been physically attacked. (pg. 103). Ms. Owens and Mr. Kelly had personal issues with Ms. Brown. Both teachers were in the office on April 23, 2015 asserting allegations against Ms. Brown.

Student J and his mother concur with Ms. Brown on the fact that Student J was not touched by Ms. Brown. It is to be noted that student J speaks English fluently and does not have any learning disabilities. Additionally, it is to be noted that Student J does not speak broken English as stated by Justin Kelly during the board hearing.

**The CCSB did not ask Justin Kelly why would Ms. Byers fabricate her report.** However, they state in their board order dated October 15, 2015 that " Based on the testimony of Beth Owens and Justin Kelly, her (referring to Ms. Brown) denial was not deemed credible, particularly since Ms. Brown was unable to provide any sound reason why either Mr. Kelly or Ms. Owens would fabricate their report. Further the CCSB states in their October 15, 2015 board order that, "Finally, the testimony of Ms. Brown regarding her encounter with Ms. Wilson at Ross on June 5th was not deemed credible, particularly since Ms. Brown was unable to provide any motivation for Ms. Wilson to fabricate her version of that encounter. Ms. Brown testified before CCSB that it seems to be Ms. Wilson's nature (referring to why Ms. Wilson fabricated her version of her encounter at Ross Store with Ms. Brown). (pg. 150). That's the motivation for Ms. Wilson lying about her encounter with Ms. Brown at Ross Store on June 5, 2015.

**III. SUPERINTENDENT MOORE DID NOT CHARGE MS. BROWN WITH TELLING TRACIE WILSON WHAT TO SAY NOR DID SUPERINTENDENT MOORE CHARGE MS. BROWN WITH THE OTHER SPECIFIC ACTS THAT WERE FABRICATED BY MS. WILSON. MS. BROWN'S DUE PROCESS RIGHTS HAVE BEEN VIOLATED.**

Appellant reiterates each and every fact and allegation contained hereinabove as if recited verbatim here in. The board's finding (based on Superintendent Moore) that Ms. Brown attempted to interfere with the District's investigation into the May 28th incident by telling her own witness, Ms. Wilson, what she should say to Dr. Carpenter is without any evidentiary support. Ms. Wilson has proven herself to be not credible. Additionally, nowhere in Dr. Moore's charges (letter dated August 11, 2015) does she claim that Ms. Brown committed this and other specific acts at Ross Store that are asserted by Ms. Wilson. Dr. Moore did not charge Ms. Brown with telling her witness what to say and the other fabricated allegation made by Ms. Wilson concerning her encounter with Ms. Brown at Ross Store on June 5, 2015 that are in the board order dated October 15, 2015. **Appellant's due process rights have been violated by the school board. (Complainant's Exhibit #1,**

Dr. Moore and the CCSB are stopped from now contending that Ms. Brown told Tracie Wilson what to say. Additionally, they are estopped from making it a fact that Ms. Brown said the other fabricated allegations made by Traci Wilson. Tracie Wilson's statement concerning her encounter at Ross is undated and this was not read to Miss Brown at a meeting with Dr. Moore and Dr. Carpenter on July 31, 2015. Dr. Carpenter read a statement written by Ms. Ruppe concerning what Tracie Wilson called the school and said to Ms. Ruppe concerning her encounter with Ms. Brown at Ross Store on June 5, 2015.

**IV. TERMINATION OF APPELLANT'S CONTINUING CONTRACT AS A TEACHER CONSTITUTES A BREACH OF CONTRACT.**

Every contract entered in this state incorporates all applicable laws. *See*, Ayers v. Crowley, 205 S.C. 51, 30 S.E.2d 785, 788 (1944). *See* also, Hogsed v. Lancaster Area Schools Board of Trustees, 283 S.C. 42, 320 S.E. 2d 724, 727 (S.C. Court app. 1984) ( Teacher contracts incorporate district policy). Respondent and its officials violated S.C. STATE LAW mandatory requirement for reporting of allegations of child abuse.

The Respondent violated state law including:

(A.) Code of Laws-Title 63-Chapter 7- **Section 63-7-310** : School teachers, counselors, principals ,and administrators must report allegations of child abuse to DSS/and or Law Enforcement when in the person's professional capacity the person has received information which gives the person reason to believe that a child has been or may be abused or neglected as defined in Section 63-7-20.

Cherokee County refusal to report the allegations of alleged child abuse alleged by Justin Keller to DSS and/ or law enforcement, prevented Ms. Brown from being able to have Justin Kelly possibly arrested and fined for false reporting. DSS and law enforcement (unbiased authorities) agents could have questioned Ms. Brown's students and looked for signs of any physical abuse on Student J. The alleged crime scene fabricated by Justin Kelly could have possibly been preserved for Ms. Brown to show additional evidence that Justin Kelly fabricated the child abuse allegation.

The Respondent and its officials violated their District Policy **(Policy AR JLF Student Welfare)** as it pertains to allegations of child abuse: The policy tells what procedures school and/or district personnel will follow in reporting suspected child abuse or neglect.

Respondent and its officials violated the following sections of Policy AR JLF- Student Welfare:

(A.) **Reporting Personnel must do the following**: Report by telephone of in a face-to-face meeting the suspected abuse to child protective unit of the department of social service

(B.) Complete the Report of Suspected Abuse/Neglect form JLF-E and submit to the principal.

(C.) **Principals and Administrators Must Do the following**: Be available to talk with child protective workers. Any involvement in the investigation or treatment must be in conjunction with the child protective unit of the department of social services or a law enforcement agency. District personnel may not conduct their own questioning or investigation after a report has been made.

**V. Cherokee County SD was not suppose to question Ms. Brown about the alleged allegation of child abuse. The District is estopped from contending that Ms. Brown spoke with a witness at Ross Store.**

Ms. Brown was not suppose to know anything concerning the child abuse allegations against her from Cherokee County School District. She was to be sent home until DSS and/or Law Enforcement contacted her.

Questioning Ms. Brown is the same as doing an investigation before DSS and/or law enforcement speaks to Ms. Brown. DSS and/or law enforcement want the reporter's name to remain ANONYMOUS while they investigate an alleged child abuse. Section 63-7-330 (A.) of South Carolina Code states, "The identity of the person making a report pursuant to this section must be kept confidential by

the agency or department receiving the report and must not be disclosed except as provided by subsection (B.) or (C) as otherwise provided for in this chapter.

**VI. MS. BROWN WAS DENIED DUE PROCESS. SCHOOL BOARD MEMBERS WERE NOT IMPARTIAL TOWARD MS. BROWN, THEY WERE BIASED.**

School Board Members were biased and impartial toward Ms. Brown during the board hearing. One of the board members Cheryll Smith had her eyes closed, at times, during the board hearing. Additionally, Robin Harper interjected comments to try to help defend the Superintendent while appellant's counsel was questioning Superintendent Moore. (pg. 136). Ms. Harper states, "And I want to know. Can you talk to a seven year old?" (p. 136). Additionally, Robin Harper interjected when Attorney Smith was questioning Ms. Tracie Wilson. (pg. 95). Robin Harper stated, "I think she still said she didn't know who the child was, right? (pg. 95) Next, Robin Harper said, "Yeah, until they were in Ross and then she said his name in their conversation. (95.) This is an indication that board member Robin Duncan was biased and impartial towards Ms. Brown. She appeared to be defending the complainant (district). Robin Harper was not a witness, she should not be answering/explaining things for a witness who is testifying. Ms. Brown's counsel should have had the freedom to question the defendant's without a board member jumping in to explain/defend the complainant (district). The hearing was not a fair hearing. Board members deliberated for approximately 10 to 15 minutes before terminating Ms. Brown's employment with CCSD. Additionally, the outcome of the hearing appeared to be predetermined and choreographed by District Attorney Andrea White.

It is to be noted that during the "choreographic" hearing, Ms. Nanette Ruppe testified that she found Ms. Brown to be defensive when questioned about various school matters, describing Ms. Brown as not being "forthright". Ms. Ruppe cannot and did not name any specific occasion whereby Ms. Brown was not forthright with her. Ms. Brown has filed a grievance against Ms. Ruppe for harassment. Other teachers and workers for Cherokee County SD, as well, have filed grievances against Ms. Ruppe.

xx

**VII. MS. BROWN'S PROCEDURAL DUE PROCESS RIGHTS WERE VIOLATED BECAUSE SHE WAS TERMINATED WITHOUT ALL NINE MEMBERS OF THE BOARD OF TRUSTEES FOR CCSD VOTING ON WHETHER OR NOT TO TERMNATE HER**

Before voting to terminate Ms. Brown on October 7, 2015 the Board of Trustees for CCSD did not provide the absent members with the testimony, evidence, and observations notes taken at the board hearing. All nine board members needed to consider the testimony , evidence, and notes taken at the board hearing together before terminating Ms. Brown's employment on October 7, 2015. *See* Pettifold vs. S.C. State Board of Education 218 S.C. 322, 62 S.E. 2d 780.

**VIII. A DECISION OF A SCHOOL BOARD MADE IN VIOLATION OF STATE LAW AND ITS DISTRICT POLICIES, AS IT PERTAINS TO CHILD ABUSE, IS ABRITRARY AND CAPRICIOUS.**

Appellant reiterates each and every fact and allegation contained hereinabove as if recited verbatim here in. The school board's decision was made in violation of state law and CCSD's own polices pertaining to dealing with allegations of child abuse. Therefore the school board decision was arbitrary and capricious. If CCSD thought Ms. Brown had violated student J's safety in anyway, they had a duty to notify DSS and/or law enforcement. The violent force, physical attack, and verbal assault alleged by Mr. Kelly and the district would have mandated the involvement of a third party administrative agency such as DSS and/or law enforcement. Cherokee County District Policy and STATE LAW mandates that child abuse be reported to DSS. Not following state law and district policies handicapped Ms. Brown from showing additional evidence that Mr. Kelly fabricated that Ms. Brown choked Student J. CCSD was negligent in the handling of the allegations against Ms. Brown. Further, Ms. Brown was handicapped in being able to ask her former students to recollect the events of May 28, 2015 (on their way to art) and handicapped in being able to have student J examined by medical professionals. Students from Ms. Brown's class could have confirmed that student J was not grabbed from the line by Ms. Brown.

Additionally, Ms. Brown's students could have confirmed that Student J entered the room with them for art.

Student J confirmed that he entered the room with the class, however the other students could have been additional witnesses to this fact. DSS and/or law enforcement would have covered this in their interviews. They would not have focused on building a false case on Ms. Brown (someone that the District has long wanted out of their district). Ms. Brown was a continuing contract teacher and CCSD owed Ms. Brown a duty to have a "thorough investigation" by notifying the proper authorities, DSS and/or law enforcement, to secure any and all evidence for Ms. Brown for her use in her defense against the false allegations. Ms. Brown was not an at will employee. She had a property interest in her employment with CCSD.

**Respondent did not have any grounds for dismissal of Ms. Sharon Brown. Instead, it had and presently has grounds for dismissal of Justin Kelly, Beth Owens, and Tracie Wilson. Beth Owens and Justin Kelly manifest an evident unfitness to teach and to be employed in a school setting . Additionally, Tracie Wilson manifests an evident unfitness to be employed in a school setting. All three individuals have been dishonest with the Superintendent for Cherokee County School District and the Board of Trustees for Cherokee County School District. Wherefore, Appellant prays for the following relief:**

1. An order reinstating Appellant to her teaching position with Cherokee County School.

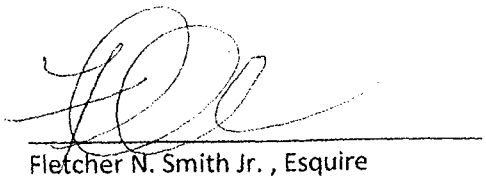
2. An order declaring respondent in violation of S.C. state mandatory reporting duty (S.C. Code of Laws- Title 63-Chapter 7- Section 63-7-310) and Cherokee County School District Policy (Policy AR JLF-Student Welfare) as it pertains to allegations of child abuse.

3. Judgment against Respondent for actual damages, including back pay, lost employment benefits, and contributions to the South Carolina State Retirement System.

4. Attorney fees.

5. Cost of this action

6. Such other and further relief as the Court may deem just and proper.



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January 22, 2016

**Policy JLF Student Welfare**

Issued 2/13

Purpose: To establish the basic structure for the reporting of child abuse (sexual, physical or mental) and neglect.

The schools of this district will cooperate vigorously to expose the problems of child abuse and neglect.

Any principal, assistant principal, school teacher, school attendance officer, nurse or counselor who has received information in his/her professional capacity which gives him/her reason to believe that a child under the age of 18 has been or may be abused or neglected as defined by law must report such a situation. These individuals may make the report to a law enforcement agency in the county where the child resides or to the county department of social services.

Other school employees who have reason to believe that a child under the age of 18 has been or may be abused or neglected as defined by law may also report or cause a report to be made, and are encouraged to do so, as stated above.

The State of South Carolina provides both civil and criminal immunity to those reporting suspected child abuse or neglect. Anyone required to report who knowingly fails to do so may be guilty of a misdemeanor.

District and school personnel will cooperate fully with investigators from the department of social services child protection unit or a law enforcement agency. However, it will be district policy to have a counselor, administrator or school nurse present during any interview which takes place in the school unless the child requests otherwise.

**District liaison**

The superintendent will designate a specific person or persons to serve as the district liaison and forward that information to the local child protection unit of the department of social services.

It will be the responsibility of the liaison to arrange for training and information necessary to assist staff members in identifying possible instances of child abuse and neglect, including annual updates regarding any changes in the law. Additionally, the liaison is charged with implementing a planned program of personal safety and awareness education, including methods for preventing sexual abuse, which will be provided to staff, students and parent/legal guardians.

Adopted 6/14/94; Revised 10/22/96, 2/11/13

Legal references:

S.C. Code, 1976, as amended:

Section 63-1-10, et seq. - South Carolina Children's Code.

Section 63-7-20 - Definitions.

Section 63-7-310 through 350 - Persons required to report.

CHEROKEE COUNTY SCHOOL DISTRICT

**AR JLF-R Student Welfare**

Issued 2/13

School and/or district personnel will follow the procedures listed below in reporting suspected child abuse or neglect.

**Reporting personnel must do the following.**

Report by telephone or in a face-to-face meeting the suspected abuse to the child protective unit of the department of social services.

Inform building principals and appropriate program supervisory personnel of the suspected abuse or neglect.

Complete the Report of Suspected Abuse/Neglect form JLF-E and submit to the principal.

Be prepared to give all necessary facts to the child protective worker who accepts the report. At a minimum this includes the following.

- name, address and age of student
- name and address of parent or caretaker
- nature and extent of injuries or description of suspected abuse or neglect
- any other information that might help to establish the cause of the injuries or condition
- if reported by the child, the identity of the person suspected of abuse

Take a color photograph, if there is actual physical trauma; e.g., bruising, cuts, welts, etc. School personnel will submit photographs to the child protective unit. School personnel may request that the child protective unit arrange for photographs or X-rays, if appropriate.

Maintain confidentiality of the report. Do not discuss with anyone other than the principal and/or program supervisor or the child protective unit of the department of social services. Prior to making the report, school personnel may wish to consult with the school counselor or nurse. However, **mandated reporters** are reminded that they are required to report **suspected** abuse or neglect. It is not your responsibility to prove abuse or neglect or to make a determination of the need for protection.

**Principals/administrators must do the following.**

- The principal will maintain the documentation form in a confidential file with access limited to principal, director of student services, superintendent and assistant superintendent. Contents of the file may be used by the principal to substantiate that a report was made or upon order of the court be released to the court for use in any legal action.
- Request and verify identification of persons who identify themselves as child protective or social service workers.
- Be available and make the reporter available to talk with child protective workers. Any involvement in the investigation or treatment must be in conjunction with the child protective unit of the department of social services or a law enforcement agency. District personnel may not conduct their own questioning or investigation after a report has been made.

• Make the child available to workers from the child protective unit at the school building. Inform the child protective worker of district policy that requires a school counselor, nurse or administrator to be present during the worker's conversation(s) with the child unless the child requests that school personnel not be present.

• Release child to the custody of a law enforcement officer when emergency protective custody is necessary. A law enforcement officer may take a child into custody without consent of parents/legal guardians or others exercising temporary or permanent control over the child if the following is true.

- The officer has reason to believe that an imminent danger to the child's life or physical safety exists.

- Parents/Legal guardians or others with temporary or permanent control over the child are unavailable or do not consent to the child's removal from their custody.

- There is not time to apply for a court order.

• Release child to the custody of a child protective or social services worker who presents a removal petition from the family court.

Issued 6/14/94; Revised 10/22/96, 2/11/13

CHEROKEE COUNTY SCHOOL DISTRICT

File: JLF-E

## REPORT OF SUSPECTED ABUSE/NEGLECT

Date of report_____ Reported to_____ Via: Phone/Personal contact

Reported by_____ Mandated reporter: Yes No

Name of student_____ DOB_____ School _____

Address _____

Name of parent/legal guardian _____

Address (if different from child's)_____

Description of suspected abuse _____

_____

_____

| Person(s) suspected of abuse (as reported by child) | Relationship to child of person(s) suspected of abuse |
|---|---|
| _____ | _____ |
| _____ | _____ |

Principal signature _____

Date _____

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF CHEROKEE<br>Sharon Brown,<br>Appellant,<br>v.<br>Cherokee County School District,<br>Respondent. | IN THE COURT OF COMMON PLEAS<br>SEVENTH JUDICIAL CIRCUIT<br>C.A. No. 2015-CP-11-0828<br>**RESPONDENT'S BRIEF IN OPPOSITION TO APPEAL AND IN SUPPORT OF BOARD'S DECISION** |

## INTRODUCTION

Respondent Cherokee County School District ("the District") submits this Memorandum in support of its Motion to Dismiss the appeal by Sharon Brown ("Brown" or "Appellant") of the decision by the Cherokee County School District Board of Trustees ("the Board") to terminate Brown's employment with the District. After an evidentiary hearing, the Board concluded that good and sufficient reasons existed to terminate Brown from her employment as a teacher because she manifested an evident unfitness for teaching. Appellant contends in her appeal that the record lacks substantial evidence to support the Board's decision; that the District violated her teaching contract in dismissing her; and that Appellant was not afforded sufficient due process.

## FACTUAL BACKGROUND

The District Superintendent, Dr. Quincie Moore, notified Brown on August 11, 2015, that she was recommending to the Board that Brown be terminated effective immediately under the provisions of S.C. Code Ann. § 59-25-430. Trans. at Complainant Ex. 1: Letter from Dr. Quincie Moore dated August 11, 2015. Seven of the nine members of the Board met on October 7, 2015

for a hearing on Dr. Moore's recommendation of termination. Trans. cover page; p. 1, lines 1-7. The evidence presented to the Board included the following information:

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 went to art class on the last period of the day, beginning at 1:15 p.m., once a week. Trans. p. 12, line 24-p. 13, line 6; *see also* Trans. at Respondent Ex. 4. Brown led her students down the hallway toward the art room on May 28, 2015, and stood watching them approach the art room door from a point a short distance away. Trans. p. 16, lines 2-22. Justin Kelly, the art teacher who was in his first year of teaching, Trans. p. 11, line 12-p. 12, line 12, was observing Brown's students approach his classroom through the opening between the door and the door frame, through which he also could see Brown. Trans. p. 15, line 5-p. 16, line 22. Student J,[1] an ESOL[2] student who spoke somewhat broken English, Trans. p. 20, lines 7-11, was at the end of the line. Trans. p. 17, lines 9-10. As the last students approached the art classroom, Kelly saw Brown turn as though to return to her classroom, but then saw her reverse course quickly and come toward Student J just as Student J was nearing the art room door. Trans. p. 17, lines 18-24.

At the hearing, Kelly told the Board that before Student J got to 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 down and say something in an angry tone into Student J's ear. Trans. p. 19, lines 1-11. Kelly remained at the door until all the students, including Student J, had

[1] The student in question is identified as Student J to protect his personal identifying information, as required by the federal Family Educational Rights and Privacy Act ("FERPA") and the South Carolina Rules of Civil Procedure.

[2] ESOL refers to English for Speakers of Other Languages. Students who speak other languages are provided ESOL services by the District as a part of their educational program.

entered. Trans. p. 19, lines 18-21. Kelly told the Board that he did not believe Brown was aware that he had observed her actions in the hallway with Student J. Trans. p. 18, lines 22-24. Kelly also said that Student J looked "a little upset" when he entered the classroom, Trans. p. 19, lines 22-24, although he was generally "a jolly kid . . . just happy, generally happy." Trans. p. 20, lines 2-6.

Tracie Wilson, a Behavioral Interventionist also employed at LVES, entered Kelly's classroom a few minutes later to assist with one of the students, after the art class had begun. Kelly told the Board that Wilson knocked on the door and entered five or ten minutes after the class began. Trans. p. 22, line 19-p. 23, line 14. Wilson confirmed to the Board that she was busy with another student and not present in Kelly's classroom at 1:15 p.m. when the class began, but entered it around 1:20 or 1:22, after Kelly had started class activities. Trans. p. 83, line 16-p. 84, line 8; p. 84, lines 18-25. Wilson testified that Brown knocked on the door to the classroom three or four minutes later and asked to see a student, who left the room with Brown. Trans. p. 85, line 1-p. 86, line 4; Trans. at Complainant Ex. 1: Tracie Wilson statement dated June 1, 2015. At the time she wrote her statement on June 1, 2015, Wilson could not remember which student Brown asked to see. Several days later after Brown had been placed on administrative leave, Brown told Wilson that Student J was the student she asked to see and took into the hallway with her. Trans. p. 107, lines 3-17. When the art class was over, Brown arrived (late) to pick up her students and asked to speak with Wilson alone. Brown asked if Wilson had been with her students in Kelly's class during the entire class period; Wilson told her she had not. *Id.*; Trans. p. 86, lines 8-20.

Ms. Beth Owens, another second grade teacher at LVES, told the Board that she had dropped her class at the gym for P.E. at 1:15 p.m. and then gone out to her car to retrieve something. When Owens came back into the hallway where Kelly's art classroom was located,

she saw Brown and Student J in the hallway outside the art room. She estimated the time she saw Brown with Student J in the hallway as around 1:20 p.m. Owens said Student J's back was against the wall, and Brown was bent over, looking into Student J's face, eye to eye. Trans. p. 75, line 2-p. 77, line 13. Owens also testified that as she approached, Student J turned his head to look in her direction, at which point Brown "reached up and just placed her hand on his face and turned his face so she was, he was looking back at her." Trans. p. 77, lines 17-20. Owens also said that Student J "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." Trans. p. 77, line 22-p. 78, line 1. *See also* Trans. at Complainant Ex. 1: Beth Owens statement. Because of the uneasy look Student J had on his face, Owens reported the interaction between him and Brown that afternoon to the school Principal, Nanette Ruppe. Trans. p. 77, line 21-p. 78, line 4. Ruppe asked Owens for a written statement, which Owens supplied the following Monday, June 1, 2015. Trans. p. 78, lines 5-25; *see* Trans. at Complainant Ex. 1: Tracie Wilson statement dated June 1, 2015.

Although Kelly told the Board he was "shocked" when he observed Brown's conduct with Student J, he also said he was confused and unsure what to do about it. Trans. p. 20, lines 16-25. Kelly testified that the matter weighed on his mind all the next night, and he was concerned about the student. The next morning, Kelly consulted with the school guidance counselor, Ruby Byers, about it; Kelly said he felt comfortable as a new teacher talking with Byers. Trans. p. 21, lines 8-18; *see also* Trans. at Respondent Ex. 3: Ruby Byers statement dated June 1, 2015. Byers recommended that he report the incident to Principal Ruppe, which he did that day. Trans. p. 21, lines 17-22.

On Friday, May 29, 2015, after Kelly orally reported to Ruppe the physical interaction he had observed between Brown and Student A the previous afternoon, Ruppe instructed Kelly to prepare a written statement. In his written statement, Kelly stated 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." Trans. at Complainant Ex. 1: Justin Kelly statement dated May 29, 2015. Byers also submitted a report to Ruppe, saying that Kelly told her he had seen Brown "shoving a student up against the wall and squeezing his lower face and neck with her hands and yelling at him outside the art room." Trans. at Respondent Ex. 3: Ruby Byers statement.

Ruppe, having heard a report from Owens the previous day and then a more alarming report from Kelly on May 29, both describing incidents of physical interaction between Brown and Student J on May 28, called Dr. Carl Carpenter, the District's Director of Human Resources, to report the matter and to initiate an investigation. Trans. p. 34, lines 11-21; p. 43, line 19-p. 44, line 14; p. 47, lines 13-25. Dr. Carpenter conducted separate interviews of Kelly and Brown at LVES the following Monday, June 1, 2015, which interviews were attended and witnessed by Ruppe. Trans. p. 35, lines 10-24; p. 37, lines 7-12. Kelly recounted to Carpenter everything he had told Ruppe previously. Trans. p. 35, line 13-p. 36, line 7. In her interview with Carpenter, Brown "denied that anything had transpired in reference to the student," Trans. p. 54, lines 1-4, and "adamantly denied that she ever physically touched Student J at all." Trans. p. 54, lines 16-20.

Carpenter directed Brown to provide a written statement, which she did that day, June 1. Trans. p. 54, lines 5-14; Trans. at Complainant Ex. 1: Brown statement dated June 1, 2015. In her written statement, Brown reported that she heard Student J saying "I hate" in the hallway on the way to the art room on May 28. Brown also said that after she dropped her students at the art

room, she returned to her room for "a few minutes," then walked back to the art room and asked to speak with Student J. Trans. p. 145, lines 13-16. She said she then "conferenced" with Student J outside the art room about his saying "I hate." Trans. at Complainant Ex. 1: Brown statement dated June 1, 2015; Trans. p. 54, line 24-p. 55, line 7 (Brown told Carpenter she "pulled [Student J] out of the classroom to talk to him"). A few days later, Brown was asked to provide another statement specifically addressing Kelly's report, which she did, adding to her original statement that she "did not grab a student violently by his lower jaw and throat, and force 'his body against the wall while proceeding to verbally assault him' on May 28, 2015." Trans. at Complainant Ex. 1: Sharon Brown statement dated June 8, 2015; Trans. p. 55, lines 17-25.

Ruppe and Carpenter both told the Board that, during their meeting with Brown on June 1, 2015, Carpenter told Brown that she was being placed on paid administrative leave and that she should not "discuss anything about the case with anyone." Trans. p. 37, lines 13-19; *see also* p. 56, lines 15-25. Carpenter testified that Brown asked no questions about the directive not to discuss the matter with other personnel and seemed to understand it. Trans. p. 37, lines 13-19; p. 57, lines 1-5. Carpenter followed up this meeting with a certified letter to Brown dated June 1, 2015 stating that the matter remained under investigation and for Brown not to contact school personnel or students. Trans. at Complainant Ex. 1: Letter from Carl A. Carpenter, II, Ph.D. to Sharon Brown dated June 1, 2015; Trans. p. 58, lines 15-24. The evidence is undisputed that Carpenter wrote the letter with these instructions on June 1, 2015 and that it was taken to the post office on June 2, 2015. Trans. p. 57, lines 15-19. Brown testified that she did not sign for or read Carpenter's certified letter until June 11, 2015.

During her meeting with Carpenter and Ruppe on June 1, 2015, Brown provided the names of Owens, Owens's husband, and Wilson as witnesses to her actions on May 28, 2015.

Trans. p. 38, lines 9-16. Ruppe obtained statements from Owens and Wilson on June 1, 2015. Trans. p. 38, lines 21-25; *see* Complainant Ex. 1: Beth Owens statement and Tracie Wilson statement dated June 1, 2015. Ruppe also spoke that day with Student J, who "indicated that nothing happened between him and Ms. Brown that was anything for him to recount." Trans. p. 39, lines 4-12.

Four days later, on June 5, 2015, Wilson, the Behavioral Interventionist who had come into Kelly's classroom after class had already started on May 28, had a conversation with Brown at a Ross Clothing Store in Spartanburg. Carpenter had not yet called Wilson to ask her to meet with him, and Wilson was not aware that Brown had provided her name to Carpenter and Ruppe as a witness. Trans. p 87, line 18-p. 88, line 3; Complainant Ex. 1: Tracie Wilson statement beginning "On June 5, 2015". During that conversation, Brown told Wilson that "Dr. Carpenter is supposed to call you" and that Wilson was "supposed to talk about what happened with the student." Trans. p. 88, line 22- p 89, line 4. Wilson's written statement about that encounter, which was provided to the Board, reads in part as follows:

> [S]he asked me had Dr. Carpenter spoke with me yet or called me. I looked at her all puzzled and told her no. She stated she had given Dr. Carpenter my name to speak on the incident that had taken place at school with her and another student. I told her I didn't know anything about the incident. She stated we are not supposed to be discussing this and I said to her then don't discuss it because I didn't know exactly what she was talking about. Miss Brown proceeded to tell me that she came to the art room to drop off her class and when she arrived I was already in the classroom waiting with Mr. Justin Kelly for her class to arrive and she took [Student J] with her to talk to him in the hall way and she did bring or return the student back to class before it was over and that I was there to witness this taking place. She stated to me you remember that day. I stated to her I did not recall what she was stating and I did not know what student she was talking about. She stated it was [Student J] you do know it was [Student J]. I looked at her and told her I don't know who the student was nor did I recall the exact same situation that she recalled. Miss Brown stated you do know that it was [Student J]. I looked at her and said I don't know who it was. She proceeded to tell me again what she saw and that I was supposed to have seen the same things that she saw. Miss Brown

> stated again that she isn't supposed to be discussing this with me anyway. I stated to her than [sic] you have a good day shopping . . . .

Trans. at Complainant Ex. 1: Tracie Wilson statement beginning "On June 5, 2015." Wilson's testimony to the Board was consistent with her written statement. *See* Trans. p. 88, line 20-p. 89, line 22; p. 90, line 10-p. 92, line 9.[3] According to Wilson, Brown stated at least twice that she

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[3] Wilson testified to the Board as follows:

> [N]ext thing I know she was like, well, Dr. Carpenter is supposed to call you, have you heard from Dr. Carpenter, and I said no, I haven't heard anything from Dr. Carpenter. And she was just telling me that he was supposed to call me, and he supposed to be getting in touch with me and whenever he does get in touch with me, I'm supposed to talk about what happened with the student. And I didn't know, I just looked puzzled, because I was like no, I don't know what you're talking about because no one has called me and I don't know anything about what's going on, and she was like he's going to call you and you need to tell him that, well, no, she's just like, this is what happened with a student, and he's going to call you and ask you about what happened. And I was like, well, okay, you know, like news to me, and she was just like well, you know what happened, and I was like no, I don't know what happened. And she was like well, you know, I'm not supposed to be talking to you anyway, we're not supposed to be discussing it, and I was like, well, don't discuss it because I don't know what happened and I don't really, I didn't really care what happened because I was on summer break and I didn't care at all what was happening.
>
> . . . .
>
> And she just proceeded to tell me that the student, that the incident happened with Student J . . . and I was like well, I didn't know and she just proceeded to tell me this is what happened and this is .... the student was just out in the hall or whatever, and this is what happened, and I was like well, I don't know, I don't know who the student was, and she was like yes, you do, and you were in there when I brought him in there, and I was like no, I wasn't in there when you brought him in there, and I just proceeded to let her talk because we were arguing in the store, in Ross's, in the clothing, in the store, and I lost my place of where I was and I was shopping with my daughters, and we were both loud, and I just decided to just let her say whatever she was going to say and just be like, okay, because I was like, okay, we're not in the school environment. And she just kept proceeding to tell me what had happened, and then she was saying that Mr. Kelly, she don't know what he got the game from unless it's a promotion. She say he been after her since April. He's wrote statements against her, and I was like puzzled again, and I didn't have a clue what she was talking about. Once again I say well, I don't know what you're talking about and I don't really care to keep talking about it. And next thing you know, I know we were loud, and she was very, very loud, and I was

was not supposed to be discussing this matter with Wilson, but 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 . . . ." Trans. p. 91, lines 18-21. It was during this conversation that Wilson learned from Brown that Student J was the student Brown had pulled from the classroom during the art class on May 28. Trans. p. 107, lines 3-17.

Having already provided a statement to Ruppe on June 1, 2015, Wilson had "thought that I was done with the whole situation." Trans. p. 92, lines 22-23. However, her husband told her "to do the right thing, just tell what happened because it's just not right for whatever is happening to be happening and you not tell that that incident happened." Trans. p. 93, 7-10. Accordingly, when Wilson was at LVES during the week of June 22, 2015, to obtain Ruppe's signature on a transfer request, Wilson told Ruppe and the incoming Principal of LVES, Janice Keller, about her encounter with Brown at the Ross store. Trans. p. 41, lines 4-15. Ruppe requested that Wilson document that encounter with another written statement, which Wilson did. Trans. p. 41, line 15-p. 42, line 1; *see* Complainant Ex. 1: Tracie Wilson statement beginning "On June 5, 2015".

District Superintendent Moore learned of the matter from Carpenter on May 29, 2015, and met with Brown, Brown's attorney Mr. Smith, Carpenter, and the District's attorney, Ms.

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> loud, and my daughter had came over, and she looked at my daughter real funny, and I think she said something like we were talking, and I was like that's my daughter, you know, that's my daughter, don't, I was like don't have a problem with her because she's my daughter, and she just kept on. My daughter went on and she kept on talking. They sat down and waited and she 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, and I was like no, I didn't see any of that, I don't know what you're talking about.

Trans. p. 88, line 22-p. 91, line 23.

White, on July 31.[4] Trans. p. 59, lines 1-13; p. 118, lines 11-18. At that meeting, Dr. Moore reviewed the reports of Brown's behavior on May 28 and June 5 with Brown and heard her version of events. Brown adamantly denied having any physical interaction with Student J. Trans. p. 60, line 23-p. 61, line 4; p. 120, lines 3-7. Brown also said she did not remember Carpenter instructing her not to talk with other District personnel. Trans. p. 125, lines 1-3. Brown admitted having spoken with Wilson on June 5, 2015 at the Ross store, but gave a very different version of that conversation than did Wilson, Trans. p. 120, line 11-p. 121, line 2, and denied discussing the situation concerning Student J with Wilson. Trans. p. 125, lines 4-7. Dr. Moore then read Wilson's statement about the June 5, 2015 conversation to Brown. Brown replied that the statement was not accurate, but admitted she "did not know of any reason why Ms. Wilson would report the facts of the encounter so differently than" Brown. Trans. at Complainant Ex. 1: Letter from Dr. Quincie Moore to Sharon Brown at p. 2.

Dr. Moore summarized the investigation and her conclusions in a letter to Brown dated August 11, 2015, in which she notified Brown that she was recommending termination. Trans. at Complainant Ex. 1: Letter from Dr. Quincie Moore to Sharon Brown dated August 11, 2015. Dr. Moore concluded that Brown had had two physical interactions with Student J on May 28, had lied about both interactions, had violated Carpenter's directive not to speak with other District personnel during the investigation by engaging Wilson in a discussion about it on June 5, and had lied about her June 5 conversation with Wilson. More specifically, Dr. Moore concluded that as Student J was about to enter Kelly's classroom on May 28, 2015, Kelly had seen Brown put her hands on Student J (forcing him to the side of the door), then put her hand on his lower face

[4] Brown had informed Carpenter that she would not meet with the District administrators unless her attorney was present. The meeting could not be scheduled with all necessary parties until July 31, 2015. Trans. p. 118, line 21-p. 119, line 2.

and under his neck (forcing him to the wall), then kneel down and speak angrily to him. Dr. Moore also concluded that, as related by Wilson who had entered the classroom after the class had begun, Brown returned to the classroom some time later, knocked on the door, asked to speak with Student J, and took Student J with her into the hallway. Dr. Moore concluded that it was at that point that Owens observed Brown outside the art classroom, bent over and speaking face to face and eye to eye with Student J, then, after Student J turned to look uneasily at Owens, put her hand on Student J's face and turn it back to face her. Trans. p. 121, line 17-p. 123, line 13. Based on that information, Dr. Moore concluded that Brown was dishonest when she denied having touched Student J at any time. Finally, Dr. Moore also concluded that Wilson's statement that Brown had discussed the situation on June 5 with Wilson while stating that she was not supposed to be doing so, was credible and truthful; that Brown's actions in so doing had interfered with and attempted to undermine the District's investigation; and that Brown's version of her June 5 conversation with Wilson was not truthful. Trans. p. 125, line 18-p. 14; Trans. at Complainant Ex. 1: Letter from Dr. Quincie Moore dated August 11, 2015.

In short, Dr. Moore found Kelly, Owens, and Wilson's statements to be credible; that Brown was not credible and had been dishonest in her statements; and that Brown had inappropriately interacted with Student J and had willfully violated a specific administrative directive given to her by discussing the situation with Wilson. Dr. Moore stated that she had lost confidence and trust in Brown as a teacher. For these reasons, Dr. Moore recommended that the Board terminate Brown's contract for the 2015-2016 school year pursuant to S.C. Code Ann. § 59-25-430. Trans. at Complainant Ex. 1: Letter from Dr. Quincie Moore to Sharon Brown dated August 11, 2015.

Brown requested that the District's Board of Trustees conduct an evidentiary hearing under the South Carolina Teacher Employment and Dismissal Act, S.C. Code Ann. § 59-25-470, to consider Dr. Moore's recommendation. The hearing was held on October 7, 2015, with seven of the nine members of the District Board of Trustees present and participating. In support of her recommendation for dismissal, Dr. Moore presented six witnesses: Justin Kelly, Nan Ruppe, Dr. Carl Carpenter, Beth Owens, Tracie Wilson, and Dr. Moore herself, all of whom testified in accordance with the facts as recited above.

Brown, who was represented by counsel, served as her only witness at the hearing. Brown denied the allegations against her and claimed that the three teacher witnesses called by Dr. Moore were not telling the truth as follows:

(1) Brown claimed that Kelly lied about seeing Brown put her hand on Student J's lower chin and under his neck forcing him to the wall. Trans. p. 143, lines 19-20. The only motivation Brown could assign to Kelly was that he had previously reported Brown for being late in picking up her students from his art class. Trans. p. 142, line 16-p. 143, line 18; p. 27, lines 18-22;

(2) Brown claimed that Owens lied about seeing Brown put her hand on Student J's face and turn it back to face her, Trans. p. 144, lines 17-23. The only motivation Brown could assign to Owens was that Brown had previously reported a friend of Owens "for unprofessional conduct." Trans. p. 143, line 21-p. 144, line 16; and

(3) Brown claimed that Wilson lied when she said Brown told Wilson she was not supposed to be talking about the situation with Student J, yet proceeded to do so, Trans. p 150, lines 2-7. The only motivation Brown could assign to Wilson was

that "it seems to be in [Wilson's] nature" or "her personality" to make up "stuff" about other people. Trans. p. 150, line 8-p. 151, line 14.

Following a four-hour hearing and deliberation by the Board, the Board voted unanimously to uphold the Superintendent's recommendation of dismissal. *See* Minutes of October 7, 2015 meeting of Cherokee County School District Board of Trustees. The Board's decision was memorialized in a written Order. *See* Order dated October 15, 2015. The Board found that Brown should be terminated because she manifested an evident unfitness to teach on three separate grounds: (1) her inappropriate physical interactions with Student J; (2) her willful and intentional insubordination in defying a directive not to talk with District employees; and (3) her dishonesty in responding to questions about the events of May 28 and June 5. The Board agreed with the Superintendent that Brown's conduct indicated "that she does not have the judgment or the credibility to work as an employee in the District." Order dated October 15, 2015 at p. 9. This appeal followed.

## ARGUMENT

### I. STANDARD OF REVIEW

This action is an appeal under S.C. Code Ann. § 59-25-480 of the Teacher Employment and Dismissal Act ("the Act") of the Board's decision to terminate Brown's employment as a teacher with the District. Brown is not entitled to a trial *de novo* in this court. Rather, this Court's review is limited to a determination of whether the Board's decision is supported by substantial evidence in the record before it. *See Young v. Charleston Cnty. Sch. Dist.*, 397 S.C. 303, 306, 725 S.E.2d 107, 108 (2012); *Laws v. Richland County Sch. Dist. No. 1*, 270 S.C. 492, 495, 243 S.E.2d 192, 193 (1978). The appellate court's review of a school board decision is confined to the record of the evidentiary hearing before the board. *Young*, 397 S.C. at 306, 725 S.E.2d at

108. If any one of several charges against a teacher in such an appeal is supported by substantial evidence, the school board's decision to dismiss must be sustained. *Laws v. Richland County School District No. 1*, 270 S.C. 492, 496, 243 S.E.2d 192, 193 (1978).

Importantly, "[t]he Court cannot substitute its judgment for that of school authorities, in view of the powers, functions and discretion which must necessarily be vested in such authorities if they are to execute the duties imposed upon them." *Kizer v. Dorchester Cnt. Voc. Educ. Bd. of Trustees*, 287 S.c. 545, 340 S.E.2d 144, (1986); *see also Felder v. Charleston Cnty. Sch. Dist.*, 327 S.C. 21, 25, 489 S.E.2d 191, 193 (1997); *accord, Sloan v. Greenville County*, 356 S.C. 531, 555, 590 S.E.2d 338, 351 (Ct. App. 2003) ("In reviewing the discretionary decision of a legislative body, our courts have been loath to substitute their judgment for that of elected representatives."). Consequently, the court may not consider the weight of the evidence, only its existence. *Barrett v. Charleston Cnty. Sch. Dist.*, 348 S.C. 426, 434, 559 S.E.2d 365, 369 (Ct. App. 2001) (the court is "only concerned with the existence of evidence and not its weight").

Brown argues in her Amended Appeal Brief that the decision of the Board should be reversed on several grounds. While she enumerates seven grounds in her Amended Appeal Brief at pp iv-v, her ensuing arguments encompass only the following three substantive grounds: (1) the record does not contain substantial evidence to support the Board's decision, *see* Grounds 1, 2, 3, 5, and 6 and arguments in support; (2) the Board's termination of Brown's employment constitutes a breach of contract, *see* Ground 4 and argument in support; and (3) the Board violated Brown's due process rights, *see* Grounds 3, 6, and 7 and arguments in support. The Board addresses Brown's substantive grounds below.

## II. The decision by the Board to terminate Brown from her employment as a teacher because she manifested an evident unfitness for teaching is supported by substantial evidence and should be sustained by this Court.

Section 59-25-430 of the Teacher Employment and Dismissal Act, pursuant to which Brown was dismissed, provides that a teacher in South Carolina who manifests "an evident unfitness for teaching" may be dismissed at any time without providing for a remedial corrective period. "An evident unfitness for teaching" is manifested by a non-exclusive list of behaviors, including dishonesty.

The District Superintendent submitted substantial evidence to the Board that Brown manifested an evident unfitness for teaching in three separate ways: (1) by her inappropriate interactions with a student at LVES on May 28, 2015; (2) by her insubordination on June 5, 2015, in willfully and knowingly defying an administrative directive not to discuss the matter with District employees while the May 29th incident was under investigation; and (3) by her dishonesty in answering the Superintendent's questions about the May 28th incident and the June 5th incident. Brown's arguments in support of her enumerated Grounds for Appeal 1, 2, 3, 5, and 6, should, therefore, be dismissed.

### A. Brown's unfitness for teaching was manifested by her inappropriate interactions with Student J on May 28, 2015.

Two teachers at LVES submitted written reports and testified to the Board about two separate incidents occurring on May 28, 2015, in which they observed Brown inappropriately touching and 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, the art teacher, described the more forceful encounter: as Student J approached the art classroom but before he entered it and before the class began, Kelly saw Brown physically force 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 report, 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 shocked and 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, bent over, eye to eye with Student J in the hallway, speaking to him and placing her hand on the child's face to turn it to face her directly. 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, the District's Director of Human Relations 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 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. Indeed, when questioned by Ruppe and Carpenter on June 1, 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 that Brown grabbed Student J in a forceful and violent 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 Dr. Moore, the Superintendent, concluded and told the Board 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. Trans. p. 157, line 10-14. Dr. Moore recommended termination because, in her words,

> Brown did not put her hands on that student in a way to gently guide them into line, to keep them from hurting somebody else, to keep them from falling into a sink hole. She did it because for whatever reason, she was ticked off at Student J, and then went back to

> make amends, and when he wasn't looking at her because he was looking at Ms. Owens, guided his face back to look at her. . . . [T]hat is grounds for termination.

Trans. p. 157, lines 17-25. The Board's finding that Brown manifested her unfitness for teaching by these inappropriate interactions with a student is supported by substantial evidence and should be sustained.

Brown argues that because she denies putting her hands at any time on Student J and because Student J, a second-grader, said she did not touch him, the statements by Kelly and Owens must be disbelieved and disregarded. 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 their Order setting forth the Board's reasons for upholding the termination recommendation, the Board acknowledged that Brown denied making any physical contact with the minor, 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. *See Felder v. Charleston Cnty. Sch. Dist.*, 327 S.C. 21, 25, 489 S.E.2d 191, 193 (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 the recommendation of the Superintendent that Brown be dismissed from employment based on her inappropriate interactions with Student J.

Finally, Brown attempts to cast blame in some way on the District and its employees by accusing them 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, and the Court should sustain that decision.

**B. Brown's unfitness for teaching was manifested by her insubordination and 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 received a directive 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, the Behavioral Interventionist at LVES 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. Trans. p. 147, lines 7-10; p. 147, line 20-p.148, line 7. 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 in the Ross store with Wilson about what she believed the events of May 28 to be. In Wilson's words, "she 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, 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.

Brown argues that discrepancies between the written statements and testimony of the witnesses destroy their credibility. She even makes the absurd claim that "Wilson is absolutely not credible and should not be allowed to work at any school." Amended Appeal Brief at p. xiii. First, the written statements and testimony of witnesses are not verbatim, but written statements and testimony are never verbatim, nor are they required to be verbatim. 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. This court cannot weigh the evidence or make assessments of witness credibility without exceeding the scope of its judicial review. *Felder v. Charleston Cnty. Sch. Dist.*, 327 S.C. 21, 25, 489 S.E.2d 191, 193 (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 by this court.

Substantial evidence exists in the record 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 discussed it with Wilson and, further, attempted to tell Wilson what to say to Carpenter, thus interfering with and undermining Carpenter's investigation. *See Hall v. Bd of Trustees of Sumter Cnty. Sch. Dist. No. 2*, 330 S.C. 402, 410, 499 S.E.2d 216, 220 (1998) (no evidence teacher attempted to undermine the investigation into her behavior on student trip, which in any event had been sanctioned by lead organizer of student trip). Because substantial evidence supports the Board's decision that Brown was insubordinate by willfully and intentionally disregarding a directive given to her by the District's administration and that such insubordination and defiance manifested Brown's evident unfitness to teach, the Board's decision to terminate Brown pursuant to § 59-25-430 should be sustained.

**C. Brown's unfitness for teaching was manifested by her dishonesty in responding to questions by the District Superintendent.**

Dr. 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 a manner that was inappropriate. She also concluded, and told the Board, that Brown, in denying that she touched Student J in any manner, was dishonest when Dr. Moore questioned her about those encounters. In addition, Dr. Moore 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; the list specifically includes dishonesty, but evidence of unfitness to teach is not limited to the enumerated behaviors. The testimony from Dr. Moore to the Board, along with the other evidence reviewed by the Board, provide substantial evidence that Brown was dishonest in responding to questioning from Dr. Moore. Brown's dishonesty is a good and sufficient reason for the Board to terminate her from her employment as a teacher. This Court should sustain that finding of the Board as it is supported by substantial evidence in the record.

**III. The decision by the Board to terminate Brown from her employment as a teacher because she manifested an evident unfitness for teaching is expressly authorized by law and does not depend upon or involve any contractual obligations.**

In support of her Ground for Appeal 4, Brown argues in her Amended Appeal Brief that the District violated state law in not reporting what she contends were child abuse allegations against her. She then argues that the District's failure to report child abuse constituted a breach of Brown's teaching contract because "every contract . . . incorporates all applicable laws." This argument is without merit because (1) Brown did not present or argue the issue of breach of contract to the Board and is foreclosed from raising it for the first time in this appeal; (2) no one in the District ever contended that Brown committed child abuse and had no legal duty to report the incidents to law enforcement; and (3) the Board terminated Brown because of her evident unfitness to teach, pursuant to S.C. Code Ann. § 59-25-430, and the issue of her teaching contract is irrelevant.

### A. Brown did not present to the Board the issue of whether her dismissal was a breach of contract and, therefore, cannot raise it on appeal.

During the three to four hours in which the Board heard Brown's case, Brown's counsel never suggested that the Board had breached any terms of its employment contract with Brown. The record of the hearing contains no suggestion of such a claim. Brown is, therefore, precluded from raising this argument in this appeal.

The Administrative Procedures Act ("APA") governs this court's scope of review of the Board's decision. S.C. Code Ann. § 1-23-380; *see also Young v. Charleston Cnty. Sch. Dist.*, 397 S.C. 303, 306, 725 S.E.2d 107, 108 (2012). Under the APA, such judicial review "must be confined to the record." S.C. Code Ann. § 1-23-380 (4). Brown's failure to raise her breach of contract claim to the Board forecloses her from making that argument in this court.

### B. The District's authority to terminate Brown under Section 59-25-430 of the Teacher Employment and Dismissal Act because of her evident unfitness for teaching is not and cannot be limited by policy or contractual matters.

The District terminated Brown's employment pursuant to the express statutory authority granted to it in S.C. Code Ann. § 59-25-430. Even if Brown had presented evidence to the Board that District personnel breached her teaching contract by violating a school policy or law, which she did not, termination under § 59-25-430 is not affected by such a violation. "To construe a school board policy statement as an integral part of a contractual agreement precluding the immediate removal 'at any time' as authorized by State law" of a teacher who manifests an evident unfitness for teaching "would be an agreement against public policy—illegal and void." *Kizer v. Dorchester Cnty. Voc. Educ. Bd. of* Trustees, 287 S.C. 545, 550-51, 340 S.E.2d 144, 147 (1986). As the Supreme Court has recognized, school boards not only have "the authority but the *duty* under State law to dismiss 'at any time' one whose conduct manifests an evident unfitness."

*Id.* To limit that authority by reference to policy or contractual provisions would be inconsistent with State law. *Id.* The Board's determination that good and sufficient reasons existed to terminate Brown's employment immediately because she manifested an evident unfitness to teach under the law was supported by substantial evidence and should be sustained by this court.

Moreover, Brown's argument that the District's failure to report child abuse constituted a breach of Brown's teaching contract because "every contract . . . incorporates all applicable laws" is based on an illusion that any District personnel ever charged or suspected Brown of child abuse; the record demonstrates that they did not. The word "abuse" was not mentioned at Brown's dismissal hearing, except by her attorney himself, nor was it mentioned in any correspondence from the District to Brown relating to her termination. Indeed, it is a mystery why Brown persists in referring to the May 28 incidents with Student J as "child abuse". District personnel investigated an allegation of inappropriate physical contact with Student J, not "child abuse," and had no obligation under either state law or its own policies to report the incidents to law enforcement. Brown's argument that the District breached her teaching contract by failing to report her to law enforcement is without merit.

## IV. The District did not violate Brown's due process rights when it terminated her from her employment as a teacher based on her evident unfitness for teaching.

Brown argues in her Grounds for Appeal 3, 6, and 7 that the District violated her procedural due process rights (1) because it did not formally charge her with telling Wilson what to say when questioned in the investigation; (2) because the members of the Board that heard her case were biased; and (3) because her case was heard and decided by less than the full membership of the Board. These arguments are without merit because Brown failed to raise them to the Board; because the evidence establishes that Brown was afforded all required procedural

due process protections;e4 and because Brown failed to establish actual bias on the part of any Board member.

**A. Brown did not present the issue or evidence of a violation of due process rights to the Board and, therefore, cannot raise this issue on appeal.**

As an initial matter, Brown did not raise any issues or arguments at the hearing before the Board that her procedural due process rights were violated in any way. Brown is, therefore, precluded from raising this argument in this appeal. S.C. Code Ann. § 1-23-380 (4) (judicial review of school board decisions "must be confined to the record"). Brown's failure to raise her claims of due process violations before the Board forecloses her from making that argument in this court on appeal.

**B. The Board properly followed the procedural due process requirements of notifying Brown of the claims against her and giving her an opportunity to respond.**

"To remove from the school one whose conduct manifests an evident unfitness for teaching, all that is required is 'prior notice and opportunity for hearing.'" *Kizer v. Dorchester Cnty. Voc. Educ. Bd. of Trustees*, 287 S.C. 545, 550, 340 S.E.2d 144, 147 (1986). Brown claims that the Superintendent failed to charge her with telling Wilson what to say in the investigation. This claim creatively amends and attempts to distort the District's stated reasons for her termination. Brown was amply informed of the reasons for her dismissal and given several opportunities to be heard.

Dr. Moore's August 11, 2015 letter included a summary of the matters discussed with Brown and her attorney at the meeting on July 31, 2015, including Kelly's allegation of Brown's physical contact with Student J on May 28 and Brown's denial of physical contact; Owen's description of Brown's physical contact with Student J on May 28 and Brown's denial of

physical contact; the June 1 directive to Brown not to have contact with District staff while on administrative leave; Wilson's written statement describing her June 5 conversation with Brown at the Ross store and Brown's version of that conversation. The Board heard the evidence on these matters and determined that Brown manifested an evident unfitness for teaching for three separate reasons: (1) Brown's "inappropriate interactions with a student; (2) her insubordination regarding the directive she received from the administration, and (3) her dishonesty in responding to questions from the Superintendent." Order at p 9. The Board's determination was not based simply on whether Brown told Wilson what to say, but on her insubordination in discussing the matter with Wilson at all.

The transcript of the hearing, including the exhibits introduced, demonstrates that Brown had sufficient notice and opportunity to be heard by the Board on her version of her conversation with Wilson. *See Pettiford v. S.C. Bd. of Educ.*, 218 S.C. 322, 346-47, 62 S.E.2d 780, 791-92 (1950). Moreover, Brown failed to argue or even attempt to show any prejudice as a result of the defect in notice about which she complains. In order to establish a violation of due process, substantial prejudice must be shown. *Felder v. Charleston Cnt. Sch. Dist.*, 327 S.C. 21, 26, 489 S.E.2d 191, 193 (1997). Brown failed to show a violation of due process or substantial prejudice resulting therefrom. The Board's decision terminating her should, therefore, but sustained by this court.

### C. Brown cannot establish that any Board member was actually biased against her such that she was deprived of a fair and impartial hearing.

Brown argues that "School Board Members were biased and impartial toward Ms. Brown during the board hearing. One of the board members Cheryl Smith had her eyes closed, at times, during the board hearing. Additionally Robin Harper interjected comments to try and defend the Superintendent while Brown's counsel was questioning Superintendent Moore." Amended

Appeal Brief, p. xx. Brown argues that the Board member's questioning was "an indication that board member Robin Duncan [sic] was biased and impartial towards Ms. Brown." *Id.*

Brown's argument that the Board was biased lacks both factual and legal support. The South Carolina Supreme Court has outlined clearly the requirements of a showing of bias in a school board hearing tribunal:

> School board members are clothed with a presumption of honesty and integrity in the discharge of their decision-making responsibilities. . . . In order to disqualify a hearing tribunal, actual bias rather than a mere potential for bias must be shown. . . . Individual decision makers must not have exhibited bias as to the factual questions to be decided at hearing, and evidence of actual bias which offends due process consists of statements on the merits by those who must make factual determinations on contested fact issues where fact finding is critical. . . . It is not actual bias to have made statements as to policy issues related to a dispute, nor to have stated charges in instigating an investigation of such. . . .Unless there is evidence that preformed opinions of board members are fixed and unchangeable, or that in the deliberations after hearing all the evidence, the result was dictated by such a preformed opinion, the appellant cannot successfully maintain that he was deprived of a fair and impartial hearing.

*Kizer v. Dorchester Cnty. Voc. Educ. Bd. of Trustees*, 287 S.C. 545, 552, 340 S.E.2d 144, 148 (1986) (citations omitted); *see also Felder v. Charleston Cnty. Sch. Dist.*, 327 S.C. 21, 26, 489 S.E.2d 191, 193-94 (1997). Thus, "[t]o nullify a ruling of a quasi-adjudicatory body on the basis of bias or prejudgment requires a substantial showing of a 'predetermined purpose to reach a determined end.'" *Kizer*, 287 S.C. at 553, 340 S.E.2d at 148-49.

Brown's claims regarding the alleged bias of Board members do not reach the level of even an accusation of "preformed opinions." Brown complains of a Board member asking questions during a hearing designed for the Board member to ask questions, an allegation which, even taken as true, does not provide any evidence of actual bias. Her claim that another Board member had her eyes closed at times during the hearing is not supported by evidence in the

record and does not carry with it a presumption of actual bias. In short, her arguments on bias have no weight or support and should be dismissed by this Court.

**D. All members of the Board need not serve on the tribunal hearing Brown's case.**

Brown complains that all nine of the members of the Board did not vote on her termination. She argues that her procedural due process rights were violated because "the Board of Trustees for CCSD did not provide the absent members with the testimony, evidence, and observations [sic] notes taken at the board hearing. All nine board members needed to consider the testimony, evidence, and notes taken at the board hearing together before terminating Ms. Brown's employment on October 7, 2015." Amended Appeal Brief at p. xxi.

The South Carolina Supreme Court has held that "a quorum of the Board must engage in a meaningful review of the evidence and testimony presented at [a teacher] dismissal hearing." *Young v. Charleston Cnty. Sch. Dist.*, 397 S.C. 303, 307, 725 S.E.2d 107, 109 (2012). *See also* S.C. Code Ann. § 59-15-30 (majority of members of a county school board constitute a quorum for the conduct of business); S.C. Code Ann. § 30-40-2 (3) (quorum of a public body means a simple majority of the membership, unless otherwise defined by law); *Garris v. Governing Bd. of S.C. Reins. Facility*, 333 S.C. 432, 453, 511 S.E.2d 48, 59 (1998) (common rule is that a simple majority constitutes a quorum of a board, unless law otherwise provides). The Cherokee County School Board has nine members, seven of whom were present and participated in Brown's hearing. Order at p. 1. The vote of those seven members was unanimous. *Id.* The Board had a quorum to decide the recommendation for Brown's termination, and Brown's due process rights were not violated by the absence of two members.

In support of her argument, Brown cites *Pettifold v. S.C. State Board of Education*, 218 S.C. 332, 62 S.E.2d 780 (1950), a case that actually supports the Board. That case held that a

decision made by a quorum of a board may be based on the report of an examining officer or panel that took the testimony and other evidence. Due process does not require an entire board, or even a quorum of the board, to take evidence itself, so long as those participating in the vote consider the evidence when rendering their decision.

A quorum of the Board heard the evidence and made its decision based on the evidence. Substantial evidence supports the decision of the Board, and its decision was valid. This court should sustain the Board's decision to terminate Brown from her employment.

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January 22, 2016
Columbia, South Carolina

Attorneys for Defendant Cherokee County School District

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|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF CHEROKEE | ) | IN THE COURT OF COMMON PLEAS |
| | ) | Case No. 2015-CP-11-0828 |
| SHARON BROWN,<br>APPELLANT, | ) | |
| | ) | **Memorandum In Support of Appellant's Second Amended Appeal Brief** |
| CHEROKEE COUNTY SCHOOL DISTRICT,<br>RESPONDENT. | ) | |

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The appellant in the above entitled matter has moved the court for the following: (1.) an order reinstating Appellant to her teaching position with Cherokee County School District (2.) an order declaring respondent in violation of S.C. state mandatory reporting duty (S.C. code of Laws- Title 63-Chapter 7-Section 63-7-310) and Cherokee County School District Policy (Policy AR- JLF-R Student Welfare) as it pertains to allegations of child abuse (3.) for judgment against Respondent for actual damages, including back pay, lost employment benefits, and contributions to the South Carolina State Retirement System (4.) attorney fees (5.) cost of this action (6.) and such other and further relief as the Court may deem just and proper. As shown by the Appellant's Second Amended Appeal Brief, this memorandum, and the attached exhibits, the Appellant is entitled to the relief that she seeks.

**Statement of Case**

This teacher appeal was commenced by the Appellant against the Defendant Cherokee County School District (CCSD) by filing of *Notice of Intent to Appeal and an Appeal Brief* on November 5, 2015. At the time of the filing, the transcript had not been prepared by the Court Reporter that attended the teacher dismissal hearing on October 7, 2015.

On November 13, 2015, Appellant filed an Amended Appeal Brief after receipt of the transcript. Thereafter, on December 1, 2015, Cherokee County School District (CCSD) filed the *Answer and Return of Respondent Cherokee County School District*. On January 22, 2016, approximately 52 days after CCSD filed *the Answer and Return of Respondent Cherokee County School District*, CCSD filed *Respondent's Brief In Opposition To Appeal and In Support of Board's Decision*. On January 25, 2016, Appellant filed Second Amended Appeal Brief. Appellant's Second Amended Brief consisted of an additional section having been added to the grounds on appeal (along with an argument for the additional ground).

**STATEMENT OF FACTS**

On June 1, 2015, two days before school was to end for Cherokee County School District teachers and students, Appellant met with the Director of Personnel (Dr. Carpenter) and her principal (Ms. Ruppe) about an allegation that she had assaulted a student on Thursday, May 28, 2015. After the meeting was concluded, Ms. Brown was escorted to her classroom to get her purse and rolling cart and escorted off the premises by the principal.

Thereafter, Appellant received a certified letter from Dr. Carpenter on June 11, 2015, during summer break. The letter instructed Ms. Brown, in part, not to have contact in any manner with district employees and students. Nowhere in the letter from Dr. Carpenter dated June 1, 2015 is there a reference that he told Appellant verbally on June 1, 2015 not to have contact with employees and students in manner while on administrative leave. Record on Appeal, Complainant Exhibit 1 letter from Dr. Carl Carpenter. The appellant, on June 11, 2015,

received the directive not to have contact with employees and students in any manner. Record on Appeal, Respondent Exhibit 6.

It is to be noted that Cherokee County School District officials questioned the alleged assaulted student and his mother. The student and his mother confirmed the fact that the child had not been touched. Furthermore, the teacher that fabricated this bogus allegation fail to get any medical attention for the alleged assaulted child and to report it to anyone until Friday, May 29, at approximately 3:10 p.m.

According to Ruby Byers, guidance counselor for Luther Vaughn Elementary School, on May 29, at approximately 3:10 p.m., Justin Kelly (Mr. Kelly), the art teacher, came to her office and told her that he witnessed a teacher doing something disturbing and he wanted to tell her about it so that he would get advice on what to do. Ms. Byers states, "he told me that the day before (Thursday) he saw Miss Brown shoving a student up against the wall and squeezing his lower face and neck with her hands and yelling at him outside the art room. Record on Appeal, Respondent Exhibit 3.

It is to be noted that Mr. Kelly nor Cherokee County School District officials contacted DSS or law enforcement as mandated by state law and their district policy.

By letter dated August 11, 2015, Dr. Moore notified Appellant that she would be recommending her termination to the Cherokee County Board of Trustees. Dr. Moore claimed that (1.) appellant willfully violated a specific administrative directive that was given to protect both her and the District (2.) Dr. Moore concluded that appellant was dishonest in her answers to her, both about the May 28th interactions with Jose and about appellant's encounter with

Ms. Wilson on June 5th and (3.) Dr. Moore believed that appellant was untruthful in reporting the facts to her regarding "your discussion " with Ms. Wilson at Ross on June 5th. Record on Appeal, Complainant Exhibit 1 Dr. Quince Moore Superintendent.

Dr. Moore's letter to Appellant, dated August 11, 2015, does not give Appellant any information as to the substance of Ms. Tracie's Wilson's allegations concerning an encounter at Ross on June 5, 2015. This charge was not sufficiently specific. Therefore any charges bought by the superintendent would not be sufficient to support the order of dismissal and the proceedings before the board did not meet the requirements of due process. Therefore the trial court should set aside the board's order. The charge as framed does not furnish Ms. Brown with facts upon which should could reasonably formulate a defense. ( *see* Elvin Osborne vs. Bullitt County Board of Education, 415 S.W. 2d 607 (Ct. or Appeals of Kentucky) and County Board of Education of Clarke County v. Oliver, 270 Ala. 107, 116 So.2d 566 (1959) ).

On October 7, 2015, seven members of the Cherokee County Board of Trustees accepted the CCSD Superintendent's, Dr. Moore, recommendation for termination of the Appellant as a teacher for Cherokee County School District. Exhibits Attached, CCSD Board of Trustees Board Minutes for October 7, 2015 and Board Order.

## ARGUMENT

**Part I : Violation of Due Process**

*S.C. Code Section 1-23-380* provides that "the court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are :

(a.) in violation of constitutional or statutory provisions;
(b.) in excess of statutory authority of the agency;
(c.) made upon unlawful procedure
(d.) affected by error or law;
(e.) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or
(f.) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

The Appellant takes the position that the agency (CCSD Board of Trustees) decision must be reversed in that the hearing violated due process. Dr. Moore's letter to Appellant, dated August 11, 2015, does not give Appellant any information as to the substance of Ms. Tracie Wilson's allegations concerning an encounter at Ross with the Appellant on June 5, 2015. This charge was not sufficiently specific. Therefore any charges bought by the superintendent would not be sufficient to support the order of dismissal and the proceedings before the board did not meet the requirements of due process . The charge as framed does not furnish Ms. Brown with facts upon which she could reasonably formulate a defense. ( *see* Elvin Osborne vs. Bullitt County Board of Education, 415 S.W.2d 607 (Ct. of Appeals of Kentucky) and County Board of Education of Clarke County v. Oliver, 270 Ala. 107, 116 So.2d 566 (1959) ).

Ms. Tracie Wilson fabricated allegations/testimony against the Appellant at the board hearing on October 7, 2015 should be consider null and void. Ms. Brown was not charged with any of the contents of the fabricated allegation/testimony by Superintendent Moore on August 11, 2015. Further, on July 31, 2015, during a meeting in which the appellant and her counsel attended, Dr. Carpenter (Director of Personnel for CCSD) claimed to have a statement written by Ms. Ruppe (principal) concerning Ms. Brown's encounter with Ms. Tracie Wilson at Ross Store. Dr. Carpenter never showed Appellant or her counsel the letter/memo itself that he was reading from on July 31, 2015.

Further, the respondent claims the following: "Dr. Moore's August 11, 2015 letter included a summary of the matters discussed with Brown and her attorney at the meeting on July 31, 2015, including Kelly's allegation of Brown's physical contact with Student J and Brown's denial of physical contact with Student J on May 28 and Brown's denial of physical contact; Owen's description of Brown's physical contact with Student J on May 28 and Brown's denial of physical contact; the June 1 directive to Brown not to have contact with District staff while on administrative leave; Wilson's written statement describing her June 5 conversation with Brown at the Ross store and Brown's version of that conversations." **Some of this information is not accurate. Attorney Laura Callaway Harte was not present during the meeting on July 31, 2015. Owen's description of Brown's physical contact with Student J on May 28 WAS NOT DISCUSSED OR MENTIONED IN THIS MEETING. Dr. Moore asked Ms. Brown did she have any physical contact with student J. Ms. Brown response was no. Additionally, there was no statement read that Ms. Wilson had written during this meeting on July 31, 2015.**

Respondent's Brief In Opposition To Appeal And In Support of Board's Decision, pg. 25.

## Part II: Appellant Denied an Impartial Tribunal

Cherokee County School District was not an impartial tribunal. Board members Cheryll Smith had her eyes closed, at times, during the hearing. Additionally, Robin Harper interjected comments to try to help defend the Superintendent while Appellant's counsel was questioning Superintendent Moore. (pg. 136). Ms. Harper states, "And I want to know. Can you talk to a seven year old. (Pg. 136). Additionally, Robin Harper interjected when Attorney Smith was questioning Ms. Tracie Wilson. (pg. 95). Robin Harper stated, "I think she still said she didn't know who the child was, right? (pg. 95). Next, Robin Harper said, "Yeah until they were in Ross and then she said his name in their conversation. (pg. 95.) This is an indication that board member Robin Harper was biased and impartial towards Appellant. Board member Harper repeatedly interfered while appellant's counsel asked questions of witnesses. Further, Cherokee County School District Board of Trustees showed their impartiality in their decision. For example, on page 9 of their order they state the following: Finally, the testimony of Ms. Brown regarding her encounter with Ms. Wilson at Ross on June 5th was not deemed credible, particularly since Ms. Brown was unable to provide any motivation for Ms. Wilson to fabricate her version of that encounter.

Again it is to be noted that Dr. Moore, superintendent, did not name any specific thing in her letter dated August 11, 2015 of something Ms. Wilson said that Ms. Brown said or did. Ms. Brown was technically not charged with this encounter with Ms. Wilson by Dr. Moore, Superintendent. **The Board exceeded in scope the reasons given by the Superintendent for termination of a continuing contract teacher .**

*S.C. Code Section 1-23-380* provides that "the court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are :

(a.) in violation of constitutional or statutory provisions;
(b.) in excess of statutory authority of the agency;
(c.) made upon unlawful procedure
(d.) affected by error or law;
(e.) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or
(f.) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Cherokee County School District Board of Trustees (Board) did not provide Appellant with fair and open-minded consideration that due process demanded her case receive. This is evident by all the incorrect material in their board order and/or the recitation of information received by the board outside of the hearing that is cited in the board's dismissal order dated October 15, 2015. **During a board hearing school board members must be able to set aside their prior knowledge and preconceptions concerning the matter at issue, and base their considerations solely upon the evidence adduced at the hearing. Objectivity is essential when a teacher's livelihood is at stake.**

Appellant provided the Board with the Special Area schedule for the 2014-2015 school term. The Special Area schedule specifically indicates that Ms. Brown's art time was on Thursdays , from 1:15-1:50. ( Record On Appeal, Respondent's Exhibit 4). However, the Board states in its Order that "Ms. Brown's students reported to art weekly on Thursday afternoons,

with the class beginning at approximately 1:15pm and ending at approximately 2:10 p.m. (Board Order, page 3).

Further, the board is making up facts in their board order or reciting information that was presented to them outside of the hearing . Specifically , the board states the following: "Ms. Ruppe also testified that, on the afternoon of May 28, 2015, another LVES second grade teacher, Beth Owens, mentioned to her while discussing another matter that she had seen Ms. Brown **"talking intently"** with a student outside the class while the class underway. (Board Order, pg. 4). This is another example of the school board members making a decision on facts of this case other than that presented before the school board on October 7, 2015. The trial transcript indicates the following pertaining to Ms. Ruppe and Ms. Owens on this matter:

**Question By Attorney White:** Now backing up to the afternoon of May 28th, that Thursday afternoon, do you recall having a conversation with Ms. Beth Owens about something she had observed with Sharon Brown? (Record On Appeal, pg. 34, lines 22-25).

**Ms. Ruppe's Answer:** She had actually come to my office for something else, and I do not recall what else it was, but it was nothing to do with Ms. Brown, and as she was getting ready to leave, she, she did indicate that there had been something that she had seen.(Record On Appeal pg. 35, lines 1-5).

**Question By Attorney White:** And later on did she provide a statement to you? (Record On Appeal pg. 35, line 6).

**Ms. Ruppe's Answer:** She provided a statement on Monday. (Record on Appeal pg. 35, line 7).

**Question By Attorney White:** June 1st (Record on Appeal, page 35, line 8).

**Ms. Ruppe's Answer:** Right. (Record On Appeal, page 35, line 9).

Additionally, the Board shows their impartiality and bias towards Appellant when they state the following in their Board Order: "Ms. Owens testified that the student appeared

slightly anxious and that because she thought the situation was a little out of the ordinary, she should mention it to Ms. Ruppe, which she did that afternoon. (Board Order pg. 5).

The trial transcripts indicates the following pertaining to Ms. Owens:

**Question By Attorney White**: And what lead you to report that to Ms. Ruppe? ( Record On Appeal pg. 77, line 21). .

**Ms. Owens' Answer:** He, the student just kind of 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. (Record On Appeal, pg. 77, lines 22-25; pg. 78, lines 1).

Further, the Board shows its impartiality and bias when recounting Dr. Moore's testimony . The board members are making up facts or reciting information that was presented to them outside of the board hearing: Specifically the board states the following in its order: "A short time later, in effort to "make up" with Student J, Ms. Brown returned to the class, where she asked that Ms. Wilson send Student J out into the hall to talk with her, which is the interaction witnessed at approximately 1:20 p.m. by Ms. Owens."

The trial transcripts indicates the following pertaining to Dr. Moore:

Attorney Moore: "I believe she went back to the classroom a second time and went in that, that, that door from the hallway. How she got in there, a student let her in, however that she got in. She asked to speak to Student J a second time, and based on Ms. Owens testimony that that is the second occurrence that Ms. Owens in fact witnessed on a different side of the hall. (Record on Appeal, pg. 122, lines 20-25; pg. 123 (lines 1-2).

No where in the teacher dismissal transcript, Dr. Moore's testimony, does it state that Ms. Brown returned to the class, where she asked that Ms. Wilson send Student J out into the hall to talk with her.

Further the board's order dated October 15, 2015 states the following: **Ms. Ruppe testified that she heard Dr. Carpenter inform Ms. Brown that he was placing her on administrative leave effective June 1, 2015, and that, while she was on administrative leave, she SHOULD NOT DISCUSS HER STATUS and the May 28the incident with any other District employee.** (Board Order, page 5). This is an incorrect version of Ms. Ruppe's testimony, which demonstrates the board's impartiality toward Appellant. The Board is adding testimony and/or reciting testimony that it heard outside of the board hearing. This is another example of the board's impartiality. Specifically, the board is making a decision that Ms. Brown was told a specific thing based upon evidence other than that presented before the school board. This is evidence of partiality.

Ms. Ruppe testified the following: "He indicated that she would be on paid administrative leave and that she needed to be available during the hours of the school day and not to discuss anything about the case with anyone. Record on Appeal, page. 37.

It appears that Cherokee County School Board has animosity towards Appellant's reinstatement by the local court in late 2011. The board was not an impartial tribunal. They appear to want revenge. Even if it means supporting a Superintendent who is filing CRAZY/INSANE formal charges against an educator with the school board.

**Part III: Insubordination**

Dr. Carpenter's June 1, 2015 letter to Appellant proves that he did not give a verbal order to the Appellant on June 1, 2015 for her "not to have any contact with employees in any manner while on administrative leave." Nowhere, in Dr. Carpenter's June 1, 2015 letter is there any mention or reference to Dr. Carpenter having given Ms. Brown a verbal order not to have any contact with employees in any manner while on administrative leave on June 1, 2015.

Cherokee County School District Superintendent and Board of Trustees do not have any credible evidence that a verbal order (not to have contact with employees and students in any manner while on administrative leave) was given on June 1, 2015 to the employee (Ms. Brown), that it was clearly communicated to the employee by someone with proper authority, and that the employee actually refused to comply. There where discrepancies in Dr. Carpenter's and Ms. Ruppe's account of what transpired at the meeting that Ms. Brown was called to on June 1, 2015. Dr. Carpenter should not be allowed to claim he said something when his letter indicates otherwise. **Keep in mind that the Board claimed Ms. Ruppe and other "alleged" witnesses said things at the board hearing that were not at all said.**

**Essentially, you have Dr. Carpenter stating that he gave the directive that Ms. Brown is prohibited from having contact with employees and students in any manner. On the other hand, essentially you have Ms. Ruppe (principal) stating Ms. Brown was told she can have contact with employees and students, just don't talk about the investigation with anyone. Neither of these two individuals are credible. The testimonies are conflicting.**

Further, Ms. Brown's verbal exchange at Ross Store with Tracie Wilson on June 5, 2015 and with the Bookkeeper for Luther Vaughn Elementary School on June 3, 2015, STANDING ALONE, does not amount to insubordination. Ms. Brown has a First Amendment Right to Free Speech. South Carolina Court of Appeals defines insubordination at common law, as a willful or intentional disregard of the lawful and reasonable instructions of an employer. *See Judy Hall vs. The Board of Sumter County School District No. 2. 330 S.C. 402, 499 S.E. 2d 216.* Appellant contends that her situation, with regard to speaking with District employees, does not meet the definition of insubordination.

Additionally, Brown's termination upon such a ground as having spoken with an employee while on administrative leave is not a valid ground for her termination. *See* S.C. Court of Appeals ruling in *Judy Hall vs. The Board of Trustees of Sumter County School District No. 2. 330 S.C. 402, 499 S.E. 2d 216.* Ms. Judy Hall's superintendent, Dr. Baker, admonished Ms. Hall not to discuss the investigation matter with any other employees pending closure of his investigation. However, Ms. Hall disobeyed the superintendent by speaking with three employees. Even though Ms. Hall was insubordinate, the S.C. Court of Appeals ruled that the county school board did not show that Ms. Judy Hall was unfit for teaching in their school district.

Further, in the case of *Judy Hall vs. The Board of Trustees of Sumter County School District No. 2, 330 S.C. 402, 499 S.E. 2d 216* our S.C. Court of Appeal ruled that Ms. Hall's insubordination in speaking about the investigation to other employees did not justify her dismissal without a reasonable time for improvement. So even if the Cherokee County Board of Trustees believed that the Appellant was insubordinate, the Appellant still should not have

been terminated by CCSD/employer. The employer's attorney , Andrea White, is aware of this. Ms. White represented Sumter County School District One in this particular case , Hall vs. Board of Trustees of Sumter School District No. 2. Further, Ms. Tracie Wilson, should have been directed not to speak to Ms. Brown when interviewed on June 1, 2015. Ms. Brown was due "equal protection" of the alleged June 1, 2015 verbal directive by Dr. Carpenter. (pp. 62-63 and pp. 65-67). Additionally, the bookkeeper of Luther Vaughn Elementary should have been directed not to contact Ms. Brown by telephone on June 3, 2015 about the whereabouts of equipment (pp. 62-63).

**Part IV: THE SCHOOL BOARD FAILED TO PROVE THAT MS. BROWN WAS UNFIT TO TEACH**

Appellant reiterates each and every fact and allegation contained hereinabove as if recited verbatim here in. It is to be noted that local school boards have the power to employ and discharge teachers. *S.C. Code Ann §59-19-90(2)(1990).* Our General Assembly permits the termination of a teacher's employment without affording a reasonable time for the teacher to rectify the offending behavior, only under certain narrow circumstances. *Section 59-25-430 of the Teacher Employment and Dismissal Act* provides: "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 superintendents, or who shall otherwise manifest any evident unfitness for teaching." *S.C. Code Ann. § 59-25-430(1990).* Other deficiencies or shortcomings, however, must be addressed by giving the teacher notice and a reasonable time for improvement. *S.C. Code Ann. § 59-25-440 (1990); Adams v. Clarendon County Sch. Dist. No. 2, 270 S.C. 266, 273, 241 S.E.2d 897, 900(1978).* Failure to improve constitutes a "good and sufficient" reason

warranting the termination of employment. *S.C. Code Ann. § 59-19-90(2); Adams, 270 S.C. at 272-73, 241 S.E.2d 900.*

Cherokee County School Board failed to prove that Ms. Brown was unfit to teach. The school board's decision to terminate Ms. Brown was made in violation of state law and CCSD's own polices pertaining to dealing with allegations of child abuse. Therefore the school board decision was arbitrary and capricious.

If CCSD thought Ms. Brown had violated student J's safety in anyway, they had a duty to notify DSS and/or law enforcement. The violent force, physical attack, and verbal assault alleged by Mr. Kelly and the district would have mandated the involvement of a third party administrative agency such as DSS and/or law enforcement. Cherokee County District Policy and STATE LAW mandates that child abuse be reported to DSS. Not following state law and district policies handicapped Ms. Brown from showing additional evidence that Mr. Kelly fabricated that Ms. Brown choked Student J. CCSD was negligent in the handling of the allegations against Ms. Brown. Further, Ms. Brown was handicapped in being able to ask her former students to recollect the events of May 28, 2015 (on their way to art) and handicapped in being able to have student J examined by medical professionals. Students from Ms. Brown's class could have confirmed that student J was not grabbed from the line by Ms. Brown. Additionally, Ms. Brown's students could have confirmed that Student J entered the room with them for art.

Student J confirmed that he entered the room with the class, however the other students could have been additional witnesses to this fact. R. pp. 7-8; pg. 10; pg. 53;

Complainant's Exhibit 1 concerning Nan Ruppe's interview with Student J; Complainant's Exhibit 1 concerning Ms. Nan Ruppe's e-mail to Dr. Carl Carpenter dated June 5, 2015, concerning Student J's mother. DSS and/or law enforcement would have covered this in their interviews. They would not have focused on building a false case on Ms. Brown (someone that the District has long wanted out of their district). Ms. Brown was a continuing contract teacher and CCSD owed Ms. Brown a duty to have a "thorough investigation" by notifying the proper authorities, DSS and/or law enforcement, to secure any and all evidence for Ms. Brown for her use in her defense against the false allegations. Ms. Brown was not an at will employee. She had a property interest in her employment with CCSD.

The Respondent violated state law including:

(A.) Code of Laws-Title 63-Chapter 7- **Section 63-7-310** : School teachers, counselors, principals ,and administrators must report allegations of child abuse to DSS/and or Law Enforcement when in the person's professional capacity the person has received information which gives the person reason to believe that a child has been or may be abused or neglected as defined in Section 63-7-20.

Cherokee County refusal to report the allegations of alleged child abuse alleged by Justin Keller to DSS and/ or law enforcement, prevented Ms. Brown from being able to have Justin Kelly possibly arrested and fined for false reporting. DSS and law enforcement (unbiased authorities) agents could have questioned Ms. Brown's students and looked for signs of any physical abuse on Student J. The alleged crime scene fabricated by Justin Kelly could have possibly been preserved for Ms. Brown to show additional evidence that Justin Kelly fabricated the child abuse allegation.

The Respondent and its officials violated their District Policy (**Policy AR JLF-R Student Welfare**) as it pertains to allegations of child abuse: The policy tells what procedures school and/or district personnel will follow in reporting suspected child abuse or neglect.

Respondent and its officials violated the following sections of Policy AR JLF-R Student Welfare:

(A.) **Reporting Personnel must do the following**: Report by telephone or in a face-to-face meeting the suspected abuse to child protective unit of the department of social service.

(B.) Complete the Report of Suspected Abuse/Neglect form JLF-E and submit to the principal.

(C.) **Principals and Administrators Must Do the following:** Be available to talk with child protective workers. Any involvement in the investigation or treatment must be in conjunction with the child protective unit of the department of social services or a law enforcement agency. District personnel may not conduct their own questioning or investigation after a report has been made.

**PART V: THERE IS NOT SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT THE SCHOOL BOARD'S DECISION**

Appellant reiterates each and every fact and allegation contained hereinabove as if recited verbatim here in. Review of a school board decision is normally limited to determining whether it is supported by substantial evidence. *See* Laws vs. Richland County School District 1, 270 S.C. 492, 243 S.E. 2d 192 (1978).

A court may reverse an administrative decision if that decision was "clearly erroneous in view of reliable, probative, and substantial evidence on the whole record " such that the "substantial rights of a party have been prejudiced." S.C. Code Ann. § 1-23-380 (A)(6)(e) (1997). Moreover, this court may reverse an administrative decision if substantial rights of the appellant have been prejudiced due to an error of Law. S.C. Code Ann. $1-23-380 (A)((6)d (Supp. 1997); Lark, 276 S.C. at 132-33, 276 S.E. 2d at 305.

Clearly, no reasonable person would conclude that a student was assaulted. Upon belief, Dr. Moore wanted to get rid of Ms. Brown as a personal vendetta for the district. So she filed formal charges against the appellant when she knew there was no victim in the case. Student J and his mother confirmed that Ms. Brown had not touched him. Upon belief, that's why the officials of CCSD never notified DSS and/or law enforcement as mandated by State Law

and Cherokee County Board Policy AR JLF-R Student Welfare. I have attached Cherokee Board Policy AR JLF -R Student Welfare to this memorandum.

**Conclusion**

Based on the foregoing, the memorandum and Appellant's Second Amended Appeal Brief which was previously submitted to the court, we request that Ms. Brown be granted all the relief that she seeks. Once again Cherokee County School District officials and their Board of Trustees are tying the court up with countless hours of court time and judicial resources when in fact, upon strong belief, the board of trustees is aware that the superintendent filed bogus formal charges with the school board against Ms. Brown.

Further we request that Appellant be granted an injunction enjoining the Defendant, its agents, employees, successors, attorney, and those acting in concert or participation with the Defendant, and at its direction from engaging in insane and outrageous behavior as set forth herein toward the Appellant. All of the behavior that has been exhibited by Cherokee County School District, its officials, and employees are beyond the bounds of any decency.

Respectfully Submitted,

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June 16 ,2016

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CHEROKEE COUNTY, S.C.

## Certificate of Service

I hereby certify that I am the Appellant/Petitioner in the above-captioned matter and that on the 17th day of June, 2016, in Spartanburg, South Carolina, I served a copy of the forgoing Memorandum In Support of Appellant's Second Amended Appeal Brief on the following person(s) by depositing the same in the United States Mail, postage paid, and addressed as follows:

Ms. Andrea E. White, Esquire
Duff, White & Turner, LLC
P.O. Box 1486
Columbia, S.C. 29202

Sharon Brown

Sharon Brown
216 Ardmore Road
Spartanburg, S.C. 29306

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2016 JUN 17 A 11:43
BRANDY W. RICE
CHEROKEE COUNTY, SC

CHEROKEE COUNTY SCHOOL DISTRICT NO. 1
BOARD OF TRUSTEES
BOARD HEARING

October 7, 2015

The Cherokee County School District Board of Trustees met in regular session on Wednesday, October 7, 2015, at 6:30 PM in the Board Room at the District Administrative Office. Board members present were Chair Ms. Cheryll Smith, Secretary Dr. Mark Nix, Mr. Barry Bailey, Mr. Billy Blackwell, Mrs. Elaine Fowler, Mrs. Robin Harper, and Mr. Tracy Moore. Administrators present were Superintendent Dr. Quincie L. Moore, Chief Operations Officer for Administrative Services Mr. Joe Walker, and Director of Human Resources Dr. Carl Carpenter. No News media were present.

In accordance with South Carolina Code of Laws, Section 30-40-80(d), as amended, the following have been notified of the time, date, and agenda of this meeting: The Cherokee Chronicle, The Gaffney Ledger, The Shelby Star, The Spartanburg Herald-Journal, Radio Stations WZZQ-AM and WFGN, WSPA-TV, WYFF-TV, and WSOC-TV.

Chair Ms. Smith called the meeting to order at 6:30 P.M.

Approval of the Board Agenda was the next item on the agenda **Mrs. Harper made the motion to approve the agenda, seconded by Mr. Blackwell. Trustees voted unanimously for the motion.**

Executive Session – Employee Hearing was next on the agenda. Ms. Smith called for a motion to go into Executive Session. **Dr. Nix made a motion that the Board enter into Executive Session for the Employee Hearing, seconded by Mr. Moore.** The Executive Session began at 6:32 PM and ended at 10:35 PM. Ms. Smith said the Board had been in Executive Session to discuss the Employee Hearing. **Dr. Nix made the motion to return to regular session, seconded by Mrs. Harper. Trustees voted unanimously for the motion.**

Action as needed from Executive Session was the next item on the agenda.

**Mr. Blackwell made the motion to accept the recommendation of termination of the teacher by the administration based on the evidence presented to the board at the dismissal hearing and applicable law and authorized the Board Chair and Board Secretary, in consultation with legal counsel, to prepare and sign a written decision in this matter to be executed in ten (10) days. The motion was seconded by Mrs. Fowler. Trustees voted unanimously for the motion.**

The next item on the agenda was adjournment. Ms. Smith called for a motion to adjourn. **Mrs. Harper made the motion to adjourn, seconded by Dr. Nix. Trustees voted unanimously to adjourn.** The meeting adjourned at 10:40 P.M.

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Dr. Mark K. Nix, Secretary

APPROVED BY:

_____
Ms. Cheryll D. Smith, Secretary

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| STATE OF SOUTH CAROLINA<br>COUNTY OF CHEROKEE<br>Dr. Quincie Moore,<br>Complainant,<br>vs.<br>Sharon Brown,<br>Respondent. | **BEFORE THE BOARD OF TRUSTEES OF THE CHEROKEE COUNTY SCHOOL DISTRICT**<br><br>**ORDER** |

On October 7, 2015, the Board of Trustees ("the Board") of the Cherokee County School District ("the District") conducted an evidentiary hearing under the South Carolina Teacher Employment and Dismissal Act (hereinafter sometimes referred to as "the Act") to consider the recommendation of District Superintendent Dr. Quincie L. Moore ("Dr. Moore"), that Sharon Brown ("Ms. Brown"), a second grade teacher at the District's Luther Vaughan Elementary School ("LVES") be dismissed from employment. The hearing was closed at Ms. Brown's request. Seven of the Board's nine members were present for the hearing. Following the conclusion of the hearing and after due deliberation, the Board voted unanimously to uphold the Superintendent's recommendation that Ms. Brown be terminated from employment, effective October 7, 2015. This Order sets forth the Board's reasons for upholding the termination recommendation.

## PROCEDURAL BACKGROUND

By letter dated August 11, 2015, Dr. Moore informed Ms. Brown of her recommendation that Ms. Brown be dismissed pursuant to S.C. Code §59-25-430. That letter also informed Ms. Brown of her right to request a hearing before the Board under the Act. By letter dated August 17, 2015, Ms. Brown timely requested a hearing. That hearing initially was scheduled by the District for August 31, 2015, in accordance with the time requirements set forth in the Act, but counsel for the parties subsequently agreed to waive the statutory time requirements in order to accommodate both parties and their counsel.

Prior to the hearing, counsel for the parties exchanged exhibits, with no objections to the admissibility of any exhibit being made. The parties agreed that, in order to protect the confidentiality of the student involved in the matter, they would refer to him as "Student J."

Counsel for Complainant also introduced as a demonstrative exhibit several video-recordings of the interior at LVES made in October 2015. These recordings were played for the Board and also made a part of the record. The hearing began at 6:35 pm, with both parties concluding their cases by approximately 10:45 pm. The Board subsequently deliberated on the matter with their counsel, Kenneth Darr, Esq., and then returned to Open Session, where they voted to uphold the Superintendent's recommendation of dismissal.

## LAW

The laws applicable to this teacher dismissal case are as follows. Section 59-19-90(ii) of the South Carolina Code of Laws states, in relevant part, that school trustees have the authority regarding teachers to "fix their salaries and discharge them when good and sufficient reasons for doing so present themselves . . . ." Additionally, the Teacher Employment and Dismissal Act, in Section 59-25-430, states:

> [a]ny teacher may be dismissed at any time who shall fail, or who may be incompetent, to give instruction in accordance with the direction of the superintendent, or who shall otherwise manifest an evident unfitness for teaching; *provided*, however, that notice and 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 the 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. (Emphasis added.)

It is clear from the language of the Act ("such as, but not limited to") that the statute provides a non-exclusive list of the reasons for dismissal of a teacher. However, those reasons, whatever they might be, must manifest, by the teacher's conduct, an "[e]vident unfitness for teaching." In this case, the Superintendent opined that Ms. Brown manifested an evident unfitness for teaching for three separate reasons: (1) because of her inappropriate interactions with a student at LVES on May 28, 2015; (2)

because of her insubordination on June 5, 2015, in willfully and knowingly defying an administrative directive not to discuss the matter with District employees while the May 29th incident was under investigation; and (3) because of her dishonesty in answering the Superintendent's questions about the May 28th incident and the June 5th incident.

## FACTS AS DETERMINED BY THE BOARD

In support of her recommendation for dismissal, Petitioner presented six witnesses, including herself. Respondent served as her only witness. The testimony of each witness, as determined by the Board, is set forth below.

### Justin Kelly

During the 2014-15 school year, Mr. Kelly was a first year teacher, teaching art at LVES and another District school. Mr. Kelly testified that, prior to May 28, 2015, he had only limited interactions with Ms. Brown, though he did report to LVES Principal Nan Ruppe on at least one occasion that Ms. Brown was often late in picking her second grade students up from art class. Ms. Brown's students reported to art weekly on Thursday afternoons, with the class beginning at approximately 1:15 pm and ending at approximately 2:10 pm. Ms. Brown, along with all other LVES teachers, walk their students to the art class, and then return to pick them up at the end of the class.

On May 28, 2015, Mr. Kelly was standing in his classroom doorway leading into the hall observing Ms. Brown and her students coming down the hall to art. Mr. Kelly testified that, as the last students approached his door and Ms. Brown had begun to head back down the hall to her classroom, he noticed Ms. Brown turn around quickly and head back toward Student J, who was getting ready to enter the art class. Mr. Kelly demonstrated by reference to the video-recording how he then observed Ms. Brown, through a gap in his door behind which he was standing, "forcefully" and "violently" grasp Student J by his lower jaw and push him toward the wall beside the fire extinguisher, where he then observed her speaking to Student J in what he described as an angry tone. Mr. Kelly testified that he did not believe Ms. Brown knew that he had observed the incident.

Mr. Kelly testified that Student J then came into the art class, at first appearing a little

sad, but then joining in with the rest of the class. Mr. Kelly said that he did not report the incident he had observed until the next afternoon, May 29, 2015, when he initially reported it to the LVES guidance counselor, who immediately took him to talk to Principal Ruppe.

When asked why he had not reported the incident earlier, Mr. Kelly testified that, as a first year teacher, he did not know how he should handle the matter. He continued to testify that he "felt guilty" for not reporting it earlier.

**Nan Ruppe**

During the 2014-15 school year, Ms. Ruppe served as LVES Principal. She retired at the conclusion of that year. Ms. Ruppe worked for the District as a teacher and an administrator for a number of years, and served as Ms. Brown's Principal for the 2012-13, 2013-14, and 2014-15 school years.

Ms. Ruppe testified that, prior to May 28, 2015, she and Ms. Brown had several interactions where she found Ms. Brown to be defensive when questioned about various school matters, describing Ms. Brown as not being "forthright." She stated that she learned of Mr. Kelly's observations of Ms. Brown's interactions with Student J on May 29, 2015, when the LVES guidance counselor brought Mr. Kelly to talk with her. She stated that she advised Mr. Kelly to place his report in writing, which he did. Ms. Ruppe then reported the matter to the District Office, and participated in the District's investigation beginning on June 1, 2015, when Director of Human Resources Dr. Carl Carpenter came to LVES to initiate the investigation.

Ms. Ruppe also testified that, on the afternoon of May 28, 2015, another LVES second grade teacher, Beth Owens, mentioned to her while discussing another matter that she had seen Ms. Brown talking intently with a student outside the art class while the class was underway. Ms. Ruppe asked that Ms. Owens place that information in writing, which Ms. Owens did on June 1, 2015.

Ms. Ruppe testified that when she talked with Student J on June 1, 2015, he denied that anything out of the ordinary had occurred with Ms. Brown and that, when the District's Spanish interpreter talked with Student J's mother, she confirmed that Student J had not had any problems with Ms. Brown. Student J and his mother are Hispanic, with Student J speaking English as a second

language.

Ms. Ruppe stated that she was present on June 1, 2015, when Dr. Carpenter questioned Mr. Kelly about the May 28th incident, and that Mr. Kelly's report was consistent with what he had told her on May 29th. Ms. Ruppe also testified that she heard Dr. Carpenter inform Ms. Brown that he was placing her on administrative leave effective June 1, 2015, and that, while she was on administrative leave, she should not discuss her status and the May 28th incident with any other District employee.

**Beth Owens**

Ms. Owens is a second grade teacher at LVES and has known Ms. Brown since the 2012-13 school year. She testified that, prior to May 28, 2015, she and Ms. Brown had not had any specific problems getting along. On Thursday, May 28, 2015, Ms. Owens' students were scheduled to go to physical education class in the gym beginning at 1:10 pm. Ms. Owens testified that, after dropping her students off at the gym, she went to her car in the school parking lot to retrieve an item that her husband had come to the school to get. She stated that, at approximately 1:20-1:25, she and her husband were walking down the hall toward where the art room is located when she observed Ms. Brown talking with a student in the hall outside the little theatre. Using the video-recording, Ms. Owens demonstrated where Ms. Brown and Student J were standing when she saw them, which was several feet away on the opposite side of a doorway from where Mr. Kelly indicated that he had observed Ms. Brown's interaction with Student J.

Ms. Owens testified that the student looked away from Ms. Brown and that, in response, Ms. Brown physically redirected the student by placing her fingers on his lower jaw and turning his face back toward her. Ms. Owens testified that the student appeared slightly anxious and that, because she thought the situation was a little out of the ordinary, she should mention it to Ms. Ruppe, which she did that afternoon.

**Dr. Carl Carpenter**

Dr. Carpenter is the District's Director of Human Resources. In that role, he is primarily responsible for investigating complaints about employee misconduct. Dr. Carpenter testified that, in the

late afternoon of May 29, 2015, he received a call from Principal Ruppe informing him of the report from Mr. Kelly. On the morning of June 1, 2015, he reported to LVES, where he separately interviewed Mr. Kelly and Ms. Brown. During his meeting with Ms. Brown, Dr. Carpenter asked Ms. Brown for the name of any witnesses that she wished for Dr. Carpenter to interview, and she provided the names of Beth Owens and Tracie Wilson.

Dr. Carpenter continued to testify that he placed Ms. Brown on paid administrative leave effective that same date, which is standard practice whenever the District is investigating a complaint of employee misconduct. He stated that he directed Ms. Brown not to have any contact with District employees or students while she was on administrative leave. He informed her that she would be receiving a follow-up letter, which he mailed to her via certified mail on June 2, 2015. According to the return receipt, Ms. Brown did not sign for that letter until June 11, 2015.

Dr. Carpenter also testified that he was involved in interviewing all of the other witnesses in this matter, including Ms. Owens and Tracie Wilson. During his meeting with Tracie Wilson, Ms. Wilson provided her statement regarding her encounter with Ms. Brown at a Ross Store in Spartanburg, SC on June 5, 2015.

**Tracie Wilson**

Ms. Wilson is employed as a behavior interventionist at LVES, where she works with students who have conduct issues. Her office is located in the little theatre of the school, near the art room. On May 28, 2015, she entered Mr. Kelly's classroom several minutes after class had started and the students were sitting down. She was in the classroom to assist with one of Ms. Brown's students, not Student J, who was engaging in inappropriate behavior. Ms. Wilson testified that, at some point after she came into Mr. Kelly's classroom, Ms. Brown tapped on the classroom door and asked to see a student. Ms. Wilson does not recall who that student was or whether the student returned to the classroom. Ms. Wilson estimated that it was approximately 1: 20 or so when she came into Mr. Kelly's class and that Ms. Brown knocked on the door a short time thereafter.

On June 1, 2015, Ms. Wilson was asked by Principal Ruppe to provide a statement

regarding the events of May 28, 2015, which she did. On Friday, June 5, 2015, Ms. Wilson ran into Ms. Brown at a Ross Department Store in Spartanburg. After exchanging pleasantries, Ms. Wilson testified that Ms. Brown began asking her whether Dr. Carpenter had contacted her. At that time, Ms. Wilson had not been contacted by Dr. Carpenter and was unaware that Ms. Brown had provided her name to Dr. Carpenter as a witness to the events of May 28, 2015. Ms. Wilson's testimony included the following description of her exchange with Ms. Brown at Ross: "well, Dr. Carpenter is supposed to call you, have you heard from Dr. Carpenter and I said no, I haven't heard anything from Dr. Carpenter. And she was just telling me that he was supposed to call me....and whenever he does get in touch with me, I'm supposed to talk about what happened with the student." Ms. Wilson continued to testify that Ms. Brown told her that "you know, I'm not supposed to be discussing it" to which Ms. Wilson replied "well don't discuss it." Ms. Brown did not heed Ms. Wilson's request, then telling her that "this is what happened...the student was just out in the hall or whatever, and this is what happened." In response to Ms. Wilson responding that she did not know what happened, Ms. Brown continued to state "yes, you do, and you were in there when I brought him in there" to which Ms. Wilson responded that she was not in the art classroom at that time. According to Ms. Wilson, Ms. Brown "kept on talking and saying stuff about telling me what I'm supposed to say, what happened."

**Dr. Quincie Moore**

Dr. Moore is the District Superintendent and has held that position since July 1, 2012. She became aware of the May 28, 2015 incident when Dr. Carpenter reported it to her on the evening of May 28th. Dr. Moore testified that, while Dr. Carpenter conducted the initial investigation into this matter, she also was involved, interviewing all of the witnesses, including Beth Owens, Justin Kelly, Nan Ruppe, and Tracie Wilson. Dr. Moore met with Ms. Brown, in the presence of her counsel, on July 31, 2015. Dr. Moore testified that, during that meeting, Ms. Brown denied making any physical contact with Student J at any time on May 28, 2015. While Ms. Brown admitted to Dr. Moore that she had talked with Ms. Wilson at the Ross Store on June 5th, Ms. Brown stated that she was unaware that she had been directed by Dr. Carpenter that she was not to have any discussions with District employees, stating that

she "did not remember" Dr. Carpenter telling her that during their June 1, 2015 meeting and stating that she did not receive Dr. Carpenter's letter dated June 1 until June 11.

Dr. Moore continued to testify about what she had concluded occurred between Student J and Ms. Brown on May 28, 2015, saying that she reached that conclusion based on her interviews with all of the witnesses. Dr. Moore testified that she had concluded that, on May 28th while walking her students to art class, Ms. Brown had for some unknown reason become irritated with Student J, which led to the more forceful physical interaction witnessed by Mr. Kelly before class started at 1:10 pm. A short time later, in an effort to "make up" with Student J, Ms. Brown returned to the class, where she asked that Ms. Wilson send Student J out into the hall to talk with her, which is the interaction witnessed at approximately 1:20 pm by Ms. Owens. Dr. Moore continued to state that she believed the reports from both Mr. Kelly and Ms. Owens and that she did not find Ms. Brown to be credible. Dr. Moore stated that she believed that Student J may not have confirmed the physical encounter with Ms. Brown because of his second interaction with Ms. Brown.

Dr. Moore also testified that she found Ms. Wilson's version of the June 5th encounter with Ms. Brown at Ross to be credible, thus concluding that Ms. Brown had defied Dr. Carpenter's directive and had attempted to interfere with the District's investigation into the May 28th incident by telling her own witness, Ms. Wilson, what she should say to Dr. Carpenter.

Dr. Moore concluded her testimony by stating that she was basing her dismissal recommendation on three separate grounds, any one of which manifests an evident unfitness to teach: (1) Ms. Brown's inappropriate physical interactions with a student; (2) Ms. Brown's willful and intentional insubordination in defying a directive which negatively impacted the District's ability to complete its investigation into the May 28th incident; and (3) Ms. Brown's dishonesty in responding to questions about the May 28th incident and the June 5th incident. Dr. Moore concluded her testimony by saying that she had lost all confidence in Ms. Brown's credibility, thus rendering her an ineffective and untrustworthy employee.

**Sharon Brown**

Ms. Brown denied making any physical contact with Student J at any time on May 28, 2015. Based on the testimony of Beth Owens and Justin Kelly, her denial was not deemed credible, particularly since Ms. Brown was unable to provide any sound reason why either Mr. Kelly or Ms. Owens would fabricate their reports. Ms. Brown also denied that she was directed not to talk to any District employees, but her denial was not deemed credible, based on the testimony of Dr. Carpenter and Ms. Ruppe. Finally, the testimony of Ms. Brown regarding her encounter with Ms. Wilson at Ross on June 5th was not deemed credible, particularly since Ms. Brown was unable to provide any motivation for Ms. Wilson to fabricate her version of that encounter.

**Decision**

Based on the evidence presented and the facts as determined by the Board and set forth above, the Board sustains the recommendation of the Superintendent that Ms. Brown be dismissed from employment with the District. The Board concludes that good and sufficient reasons for terminating Ms. Brown exist because, by her conduct, she manifested an evident unfitness for teaching. South Carolina Code of Law, Sections 59-19-90(ii), 59-25-430. Those reasons and manifested unfitness for teaching are based upon Ms. Brown's inappropriate interactions with a student; her insubordination regarding the directive she received from the administration, and her dishonesty in responding to questions from the Superintendent.

Section 59-25-430 provides that a teacher may be dismissed at any time for evident unfitness for teaching as manifested by the teacher's conduct. While the statute lists several examples of such conduct, including dishonesty, it also makes it clear that the listing is not exclusive. Here, the 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 with the Cherokee County School District.

AND IT IS SO ORDERED.

ATTEST:

Dr. Mark Nix, Board Secretary

Cheryll Smith, Board Chairperson, on Behalf of the Cherokee County School District

Gaffney, South Carolina
October 15, 2015

**Policy JLF Student Welfare**

Issued 2/13

Purpose: To establish the basic structure for the reporting of child abuse (sexual, physical or mental) and neglect.

The schools of this district will cooperate vigorously to expose the problems of child abuse and neglect.

Any principal, assistant principal, school teacher, school attendance officer, nurse or counselor who has received information in his/her professional capacity which gives him/her reason to believe that a child under the age of 18 has been or may be abused or neglected as defined by law must report such a situation. These individuals may make the report to a law enforcement agency in the county where the child resides or to the county department of social services.

Other school employees who have reason to believe that a child under the age of 18 has been or may be abused or neglected as defined by law may also report or cause a report to be made, and are encouraged to do so, as stated above.

The State of South Carolina provides both civil and criminal immunity to those reporting suspected child abuse or neglect. Anyone required to report who knowingly fails to do so may be guilty of a misdemeanor.

District and school personnel will cooperate fully with investigators from the department of social services child protection unit or a law enforcement agency. However, it will be district policy to have a counselor, administrator or school nurse present during any interview which takes place in the school unless the child requests otherwise.

**District liaison**

The superintendent will designate a specific person or persons to serve as the district liaison and forward that information to the local child protection unit of the department of social services.

It will be the responsibility of the liaison to arrange for training and information necessary to assist staff members in identifying possible instances of child abuse and neglect, including annual updates regarding any changes in the law. Additionally, the liaison is charged with implementing a planned program of personal safety and awareness education, including methods for preventing sexual abuse, which will be provided to staff, students and parent/legal guardians.

Adopted 6/14/94; Revised 10/22/96, 2/11/13

Legal references:

S.C. Code, 1976, as amended:

Section 63-1-10, et seq. - South Carolina Children's Code.

Section 63-7-20 - Definitions.

Section 63-7-310 through 350 - Persons required to report.

CHEROKEE COUNTY SCHOOL DISTRICT

**AR JLF-R Student Welfare**

Issued 2/13

School and/or district personnel will follow the procedures listed below in reporting suspected child abuse or neglect.

**Reporting personnel must do the following.**

Report by telephone or in a face-to-face meeting the suspected abuse to the child protective unit of the department of social services.

Inform building principals and appropriate program supervisory personnel of the suspected abuse or neglect.

Complete the Report of Suspected Abuse/Neglect form JLF-E and submit to the principal.

Be prepared to give all necessary facts to the child protective worker who accepts the report. At a minimum this includes the following.

- name, address and age of student
- name and address of parent or caretaker
- nature and extent of injuries or description of suspected abuse or neglect
- any other information that might help to establish the cause of the injuries or condition
- if reported by the child, the identity of the person suspected of abuse

Take a color photograph, if there is actual physical trauma; e.g., bruising, cuts, welts, etc. School personnel will submit photographs to the child protective unit. School personnel may request that the child protective unit arrange for photographs or X-rays, if appropriate.

Maintain confidentiality of the report. Do not discuss with anyone other than the principal and/or program supervisor or the child protective unit of the department of social services. Prior to making the report, school personnel may wish to consult with the school counselor or nurse. However, **mandated reporters** are reminded that they are required to report **suspected** abuse or neglect. It is not your responsibility to prove abuse or neglect or to make a determination of the need for protection.

**Principals/administrators must do the following.**

- The principal will maintain the documentation form in a confidential file with access limited to principal, director of student services, superintendent and assistant superintendent. Contents of the file may be used by the principal to substantiate that a report was made or upon order of the court be released to the court for use in any legal action.
- Request and verify identification of persons who identify themselves as child protective or social service workers.
- Be available and make the reporter available to talk with child protective workers. Any involvement in the investigation or treatment must be in conjunction with the child protective unit of the department of social services or a law enforcement agency. District personnel may not conduct their own questioning or investigation after a report has been made.

• Make the child available to workers from the child protective unit at the school building. Inform the child protective worker of district policy that requires a school counselor, nurse or administrator to be present during the worker's conversation(s) with the child unless the child requests that school personnel not be present.

• Release child to the custody of a law enforcement officer when emergency protective custody is necessary. A law enforcement officer may take a child into custody without consent of parents/legal guardians or others exercising temporary or permanent control over the child if the following is true.

- The officer has reason to believe that an imminent danger to the child's life or physical safety exists.

- Parents/Legal guardians or others with temporary or permanent control over the child are unavailable or do not consent to the child's removal from their custody.

- There is not time to apply for a court order.

• Release child to the custody of a child protective or social services worker who presents a removal petition from the family court.

Issued 6/14/94; Revised 10/22/96, 2/11/13

CHEROKEE COUNTY SCHOOL DISTRICT

File: JLF-E

## REPORT OF SUSPECTED ABUSE/NEGLECT

Date of report_____ Reported to_____ Via: Phone/Personal contact

Reported by_____ Mandated reporter: Yes No

Name of student_____ DOB_____ School _____

Address _____

Name of parent/legal guardian _____

Address (if different from child's)_____

Description of suspected abuse _____

_____

_____

| Person(s) suspected of abuse (as reported by child) | Relationship to child of person(s) suspected of abuse |
|---|---|
| _____ | _____ |
| _____ | _____ |

Principal signature _____

Date _____

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| STATE OF SOUTH CAROLINA<br>COUNTY OF CHEROKEE<br>Sharon Brown,<br>Appellant,<br>v.<br>Cherokee County School District,<br>Respondent. | IN THE COURT OF COMMON PLEAS<br>SEVENTH JUDICIAL CIRCUIT<br>C.A. No. 2015-CP-11-0828<br>**RESPONDENT'S AMENDED BRIEF IN OPPOSITION TO APPEAL AND IN SUPPORT OF BOARD'S DECISION** |

## INTRODUCTION

Respondent Cherokee County School District ("the District") submits this Memorandum in support of its Motion to Dismiss the appeal filed by Sharon Brown ("Brown" or "Appellant") of the decision by the Cherokee County School District Board of Trustees ("the Board") to terminate Brown's employment with the District. After an evidentiary hearing, the Board concluded that good and sufficient reasons existed to terminate Brown from her employment as a teacher because she manifested an evident unfitness for teaching. Appellant contends in her appeal that the record lacks substantial evidence to support the Board's decision; that the District violated her teaching contract in dismissing her; and that Appellant was not afforded sufficient due process.

## FACTUAL BACKGROUND

The District Superintendent, Dr. Quincie Moore, notified Brown on August 11, 2015, that she was recommending to the Board that Brown be terminated effective immediately under the provisions of S.C. Code Ann. § 59-25-430. Trans. at Complainant Ex. 1: Letter from Dr. Quincie Moore dated August 11, 2015. Seven of the nine members of the Board met on October 7, 2015

for a hearing on Dr. Moore's recommendation of termination. Trans. cover page; p. 1, lines 1-7. The evidence presented to the Board included the following information:

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 went to art class on the last period of the day, beginning at 1:15 p.m., once a week. Trans. p. 12, line 24-p. 13, line 6; *see also* Trans. at Respondent Ex. 4. Brown led her students down the hallway toward the art room on May 28, 2015, and stood watching them approach the art room door from a point a short distance away. Trans. p. 16, lines 2-22. Justin Kelly, the art teacher who was in his first year of teaching, Trans. p. 11, line 12-p. 12, line 12, was observing Brown's students approach his classroom through the opening between the door and the door frame, through which he also could see Brown. Trans. p. 15, line 5-p. 16, line 22. Student J,[1] an ESOL[2] student who spoke somewhat broken English, Trans. p. 20, lines 7-11, was at the end of the line. Trans. p. 17, lines 9-10. As the last students approached the art classroom, Kelly saw Brown turn as though to return to her classroom, but then saw her reverse course quickly and come toward Student J just as Student J was nearing the art room door. Trans. p. 17, lines 18-24.

At the hearing, Kelly told the Board that before Student J got to 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 down and say something in an angry tone into Student J's ear. Trans. p. 19, lines 1-11. Kelly remained at the door until all the students, including Student J, had

[1] The student in question is identified as Student J to protect his personally identifiable information, as required by the federal Family Educational Rights and Privacy Act ("FERPA") and the South Carolina Rules of Civil Procedure.

[2] ESOL refers to English for Speakers of Other Languages. Students who speak other languages are provided ESOL services by the District as a part of their educational program.

entered. Trans. p. 19, lines 18-21. Kelly told the Board that he did not believe Brown was aware that he had observed her actions in the hallway with Student J. Trans. p. 18, lines 22-24. Kelly also said that Student J looked "a little upset" when he entered the classroom, Trans. p. 19, lines 22-24, although he was generally "a jolly kid . . . just happy, generally happy." Trans. p. 20, lines 2-6.

Tracie Wilson, a Behavioral Interventionist also employed at LVES, entered Kelly's classroom a few minutes later to assist with one of the students, after the art class had begun. Kelly told the Board that Wilson knocked on the door and entered five or ten minutes after the class began. Trans. p. 22, line 19-p. 23, line 14. Wilson confirmed to the Board that she was busy elsewhere with another student and not present in Kelly's classroom at 1:15 p.m. when the class began, but entered it around 1:20 or 1:22, after Kelly had started class activities. Trans. p. 83, line 16-p. 84, line 8; p. 84, lines 18-25. Wilson testified that Brown knocked on the door to the classroom three or four minutes later and asked to see a student, who left the room with Brown. Trans. p. 85, line 1-p. 86, line 4; Trans. at Complainant Ex. 1: Tracie Wilson statement dated June 1, 2015. At the time she wrote her statement on June 1, 2015, Wilson could not remember which student Brown asked to see. Several days later after Brown had been placed on administrative leave, Brown told Wilson that Student J was the student she asked to see and took into the hallway with her. Trans. p. 107, lines 3-17. When the art class was over, Brown arrived (late) to pick up her students and asked to speak with Wilson alone. Brown asked if Wilson had been with her students in Kelly's class during the entire class period; Wilson told her she had not. *Id.*; Trans. p. 86, lines 8-20.

Ms. Beth Owens, another second grade teacher at LVES, told the Board that she had dropped her class at the gym for P.E. at 1:15 p.m. and then gone out to her car to retrieve

something. When Owens came back into the hallway where Kelly's art classroom was located, she saw Brown and Student J in the hallway outside the art room. She estimated the time she saw Brown with Student J in the hallway as around 1:20 p.m. Owens said Student J's back was against the wall, and Brown was bent over, looking into Student J's face, eye to eye. Trans. p. 75, line 2-p. 77, line 13. Owens also testified that as she approached, Student J turned his head to look in her direction, at which point Brown "reached up and just placed her hand on his face and turned his face so she was, he was looking back at her." Trans. p. 77, lines 17-20. Owens also said that Student J "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." Trans. p. 77, line 22-p. 78, line 1. *See also* Trans. at Complainant Ex. 1: Beth Owens statement. Because of the uneasy look Student J had on his face, Owens reported the interaction between him and Brown that afternoon to the school Principal, Nanette Ruppe. Trans. p. 77, line 21-p. 78, line 4. Ruppe asked Owens for a written statement, which Owens supplied the following Monday, June 1, 2015. Trans. p. 78, lines 5-25; *see* Trans. at Complainant Ex. 1: Tracie Wilson statement dated June 1, 2015.

Although Kelly told the Board he was "shocked" when he observed Brown's conduct with Student J, he also said he was confused and unsure what to do about it. Trans. p. 20, lines 16-25. Kelly testified that the matter weighed on his mind all the next night, and he was concerned about the student. The next morning, Kelly consulted with the school guidance counselor, Ruby Byers, about it; Kelly said he felt comfortable as a new teacher talking with Byers. Trans. p. 21, lines 8-18; *see also* Trans. at Respondent Ex. 3: Ruby Byers statement dated June 1, 2015. Byers recommended that he report the incident to Principal Ruppe, which he did that day. Trans. p. 21, lines 17-22.

On Friday, May 29, 2015, after Kelly orally reported to Ruppe the physical interaction he had observed between Brown and Student A the previous afternoon, Ruppe instructed Kelly to prepare a written statement. In his written statement, Kelly stated 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." Trans. at Complainant Ex. 1: Justin Kelly statement dated May 29, 2015. Byers also submitted a report to Ruppe, saying that Kelly told her he had seen Brown "shoving a student up against the wall and squeezing his lower face and neck with her hands and yelling at him outside the art room." Trans. at Respondent Ex. 3: Ruby Byers statement.

Ruppe, having heard a report from Owens the previous day and then a more alarming report from Kelly on May 29, both describing incidents of physical interaction between Brown and Student J on May 28, called Dr. Carl Carpenter, the District's Director of Human Resources, to report the matter and to initiate an investigation. Trans. p. 34, lines 11-21; p. 43, line 19-p. 44, line 14; p. 47, lines 13-25. Dr. Carpenter conducted separate interviews of Kelly and Brown at LVES the following Monday, June 1, 2015, which interviews were attended and witnessed by Ruppe. Trans. p. 35, lines 10-24; p. 37, lines 7-12. Kelly recounted to Carpenter everything he had told Ruppe previously. Trans. p. 35, line 13-p. 36, line 7. In her interview with Carpenter, Brown "denied that anything had transpired in reference to the student," Trans. p. 54, lines 1-4, and "adamantly denied that she ever physically touched Student J at all." Trans. p. 54, lines 16-20.

Carpenter directed Brown to provide a written statement, which she did that day, June 1. Trans. p. 54, lines 5-14; Trans. at Complainant Ex. 1: Brown statement dated June 1, 2015. In her written statement, Brown reported that she heard Student J saying "I hate" in the hallway on the way to the art room on May 28. Brown also said that after she dropped her students at the art

room, she returned to her room for "a few minutes," then walked back to the art room and asked to speak with Student J. Trans. p. 145, lines 13-16. She said she then "conferenced" with Student J outside the art room about his saying "I hate." Trans. at Complainant Ex. 1: Brown statement dated June 1, 2015; Trans. p. 54, line 24-p. 55, line 7 (Brown told Carpenter she "pulled [Student J] out of the classroom to talk to him"). A few days later, Brown was asked to provide another statement specifically addressing Kelly's report, which she did, adding to her original statement that she "did not grab a student violently by his lower jaw and throat, and force 'his body against the wall while proceeding to verbally assault him' on May 28, 2015." Trans. at Complainant Ex. 1: Sharon Brown statement dated June 8, 2015; Trans. p. 55, lines 17-25.

Ruppe and Carpenter both told the Board that, during their meeting with Brown on June 1, 2015, Carpenter told Brown that she was being placed on paid administrative leave and that she should not "discuss anything about the case with anyone." Trans. p. 37, lines 13-19; *see also* p. 56, lines 15-25. Carpenter testified that Brown asked no questions about the directive not to discuss the matter with other personnel and seemed to understand it. Trans. p. 37, lines 13-19; p. 57, lines 1-5. Carpenter followed up this meeting with a certified letter to Brown dated June 1, 2015 stating that the matter remained under investigation and for Brown not to contact school personnel or students. Trans. at Complainant Ex. 1: Letter from Carl A. Carpenter, II, Ph.D. to Sharon Brown dated June 1, 2015; Trans. p. 58, lines 15-24. The evidence is undisputed that Carpenter wrote the letter with these instructions on June 1, 2015 and that it was taken to the post office on June 2, 2015. Trans. p. 57, lines 15-19. Brown testified that she did not sign for or read Carpenter's certified letter until June 11, 2015.

During her meeting with Carpenter and Ruppe on June 1, 2015, Brown provided the names of Owens, Owens's husband, and Wilson as witnesses to her actions on May 28, 2015.

Trans. p. 38, lines 9-16. Ruppe obtained statements from Owens and Wilson on June 1, 2015. Trans. p. 38, lines 21-25; *see* Complainant Ex. 1: Beth Owens statement and Tracie Wilson statement dated June 1, 2015. Ruppe also spoke that day with Student J, who "indicated that nothing happened between him and Ms. Brown that was anything for him to recount." Trans. p. 39, lines 4-12.

Four days later, on June 5, 2015, Wilson, the Behavioral Interventionist who had come into Kelly's classroom after class had already started on May 28, had a conversation with Brown at a Ross Clothing Store in Spartanburg. Carpenter had not yet called Wilson to ask her to meet with him, and Wilson was not aware that Brown had provided her name to Carpenter and Ruppe as a witness. Trans. p 87, line 18-p. 88, line 3; Complainant Ex. 1: Tracie Wilson statement beginning "On June 5, 2015". During that conversation, Brown told Wilson that "Dr. Carpenter is supposed to call you" and that Wilson was "supposed to talk about what happened with the student." Trans. p. 88, line 22- p 89, line 4. Wilson's written statement about that encounter, which was provided to the Board, reads in part as follows:

> [S]he asked me had Dr. Carpenter spoke with me yet or called me. I looked at her all puzzled and told her no. She stated she had given Dr. Carpenter my name to speak on the incident that had taken place at school with her and another student. I told her I didn't know anything about the incident. She stated we are not supposed to be discussing this and I said to her then don't discuss it because I didn't know exactly what she was talking about. Miss Brown proceeded to tell me that she came to the art room to drop off her class and when she arrived I was already in the classroom waiting with Mr. Justin Kelly for her class to arrive and she took [Student J] with her to talk to him in the hall way and she did bring or return the student back to class before it was over and that I was there to witness this taking place. She stated to me you remember that day. I stated to her I did not recall what she was stating and I did not know what student she was talking about. She stated it was [Student J] you do know it was [Student J]. I looked at her and told her I don't know who the student was nor did I recall the exact same situation that she recalled. Miss Brown stated you do know that it was [Student J]. I looked at her and said I don't know who it was. She proceeded to tell me again what she saw and that I was supposed to have seen the same things that she saw. Miss Brown

> stated again that she isn't supposed to be discussing this with me anyway. I stated to her than [sic] you have a good day shopping . . . .

Trans. at Complainant Ex. 1: Tracie Wilson statement beginning "On June 5, 2015." Wilson's testimony to the Board was consistent with her written statement. *See* Trans. p. 88, line 20-p. 89, line 22; p. 90, line 10-p. 92, line 9.[3] According to Wilson, Brown stated at least twice that she

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[3] Wilson testified to the Board as follows:

> [N]ext thing I know she was like, well, Dr. Carpenter is supposed to call you, have you heard from Dr. Carpenter, and I said no, I haven't heard anything from Dr. Carpenter. And she was just telling me that he was supposed to call me, and he supposed to be getting in touch with me and whenever he does get in touch with me, I'm supposed to talk about what happened with the student. And I didn't know, I just looked puzzled, because I was like no, I don't know what you're talking about because no one has called me and I don't know anything about what's going on, and she was like he's going to call you and you need to tell him that, well, no, she's just like, this is what happened with a student, and he's going to call you and ask you about what happened. And I was like, well, okay, you know, like news to me, and she was just like well, you know what happened, and I was like no, I don't know what happened. And she was like well, you know, I'm not supposed to be talking to you anyway, we're not supposed to be discussing it, and I was like, well, don't discuss it because I don't know what happened and I don't really, I didn't really care what happened because I was on summer break and I didn't care at all what was happening.
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> . . . .
>
> And she just proceeded to tell me that the student, that the incident happened with Student J . . . and I was like well, I didn't know and she just proceeded to tell me this is what happened and this is .... the student was just out in the hall or whatever, and this is what happened, and I was like well, I don't know, I don't know who the student was, and she was like yes, you do, and you were in there when I brought him in there, and I was like no, I wasn't in there when you brought him in there, and I just proceeded to let her talk because we were arguing in the store, in Ross's, in the clothing, in the store, and I lost my place of where I was and I was shopping with my daughters, and we were both loud, and I just decided to just let her say whatever she was going to say and just be like, okay, because I was like, okay, we're not in the school environment. And she just kept proceeding to tell me what had happened, and then she was saying that Mr. Kelly, she don't know what he got the game from unless it's a promotion. She say he been after her since April. He's wrote statements against her, and I was like puzzled again, and I didn't have a clue what she was talking about. Once again I say well, I don't know what you're talking about and I don't really care to keep talking about it. And next thing you know, I know we were loud, and she was very, very loud, and I was

was not supposed to be discussing this matter with Wilson, but 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 . . . ." Trans. p. 91, lines 18-21. It was during this conversation that Wilson learned from Brown that Student J was the student Brown had pulled from the classroom during the art class on May 28. Trans. p. 107, lines 3-17.

Having already provided a statement to Ruppe on June 1, 2015, Wilson had "thought that I was done with the whole situation." Trans. p. 92, lines 22-23. However, her husband told her "to do the right thing, just tell what happened because it's just not right for whatever is happening to be happening and you not tell that that incident happened." Trans. p. 93, 7-10. Accordingly, when Wilson was at LVES during the week of June 22, 2015, to obtain Ruppe's signature on a transfer request, Wilson told Ruppe and the incoming Principal of LVES, Janice Keller, about her encounter with Brown at the Ross store. Trans. p. 41, lines 4-15. Ruppe requested that Wilson document that encounter with another written statement, which Wilson did. Trans. p. 41, line 15-p. 42, line 1; *see* Complainant Ex. 1: Tracie Wilson statement beginning "On June 5, 2015".

District Superintendent Moore learned of the matter from Carpenter on May 29, 2015, and met with Brown, Brown's attorney Mr. Smith, Carpenter, and the District's attorney, Ms.

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> loud, and my daughter had came over, and she looked at my daughter real funny, and I think she said something like we were talking, and I was like that's my daughter, you know, that's my daughter, don't, I was like don't have a problem with her because she's my daughter, and she just kept on. My daughter went on and she kept on talking. They sat down and waited and she 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, and I was like no, I didn't see any of that, I don't know what you're talking about.

Trans. p. 88, line 22-p. 91, line 23.

White, on July 31.[4] Trans. p. 59, lines 1-13; p. 118, lines 11-18. At that meeting, Dr. Moore reviewed the reports of Brown's behavior on May 28 and June 5 with Brown and heard her version of events. Brown adamantly denied having any physical interaction with Student J. Trans. p. 60, line 23-p. 61, line 4; p. 120, lines 3-7. Brown also said she did not remember Carpenter instructing her not to talk with other District personnel. Trans. p. 125, lines 1-3. Brown admitted having spoken with Wilson on June 5, 2015 at the Ross store, but gave a very different version of that conversation than did Wilson, Trans. p. 120, line 11-p. 121, line 2, and denied discussing the situation concerning Student J with Wilson. Trans. p. 125, lines 4-7. Dr. Moore then read Wilson's statement about the June 5, 2015 conversation to Brown. Brown replied that the statement was not accurate, but admitted she "did not know of any reason why Ms. Wilson would report the facts of the encounter so differently than" Brown. Trans. at Complainant Ex. 1: Letter from Dr. Quincie Moore to Sharon Brown at p. 2.

Dr. Moore summarized the investigation and her conclusions in a letter to Brown dated August 11, 2015, in which she notified Brown that she was recommending termination. Trans. at Complainant Ex. 1: Letter from Dr. Quincie Moore to Sharon Brown dated August 11, 2015. Dr. Moore concluded that Brown had had two physical interactions with Student J on May 28, had lied about both interactions, had violated Carpenter's directive not to speak with other District personnel during the investigation by engaging Wilson in a discussion about it on June 5, and had lied about her June 5 conversation with Wilson. More specifically, Dr. Moore concluded that as Student J was about to enter Kelly's classroom on May 28, 2015, Kelly had seen Brown put her hands on Student J (forcing him to the side of the door), then put her hand on his lower face

[4] Brown had informed Carpenter that she would not meet with the District administrators unless her attorney was present. The meeting could not be scheduled with all necessary parties until July 31, 2015. Trans. p. 118, line 21-p. 119, line 2.

and under his neck (forcing him to the wall), then kneel down and speak angrily to him. Dr. Moore also concluded, based on the statement of Wilson who had subsequently entered the classroom after the class had begun, that Brown returned to the classroom some time later, knocked on the door, asked to speak with Student J, and took Student J with her into the hallway. Dr. Moore concluded that it was at that point that Owens observed Brown outside the art classroom, bent over and speaking face to face and eye to eye with Student J, then, after Student J turned to look uneasily at Owens, put her hand on Student J's face and turn it back to face her. Trans. p. 121, line 17-p. 123, line 13. Based on that information, Dr. Moore concluded that Brown was dishonest when she denied having touched Student J at any time. Finally, Dr. Moore also concluded that Wilson's statement that Brown had discussed the situation on June 5 with Wilson while stating that she was not supposed to be doing so, was credible and truthful; that Brown's actions in so doing had interfered with and attempted to undermine the District's investigation; and that Brown's version of her June 5 conversation with Wilson was not truthful. Trans. p. 125, line 18-p. 14; Trans. at Complainant Ex. 1: Letter from Dr. Quincie Moore dated August 11, 2015.

In short, Dr. Moore found Kelly, Owens, and Wilson's statements to be credible; that Brown was not credible and had been dishonest in her statements; and that Brown had inappropriately interacted with Student J and had willfully violated a specific administrative directive given to her by discussing the situation with Wilson. Dr. Moore stated that she had lost confidence and trust in Brown as a teacher. For these reasons, Dr. Moore recommended that the Board terminate Brown's contract for the 2015-2016 school year pursuant to S.C. Code Ann. § 59-25-430. Trans. at Complainant Ex. 1: Letter from Dr. Quincie Moore to Sharon Brown dated August 11, 2015.

Brown requested that the District's Board of Trustees conduct an evidentiary hearing under the South Carolina Teacher Employment and Dismissal Act, S.C. Code Ann. § 59-25-470, to consider Dr. Moore's recommendation. The hearing was held on October 7, 2015, with seven of the nine members of the District Board of Trustees present and participating. In support of her recommendation for dismissal, Dr. Moore presented six witnesses: Justin Kelly, Nan Ruppe, Dr. Carl Carpenter, Beth Owens, Tracie Wilson, and Dr. Moore herself, all of whom testified in accordance with the facts as recited above.

Brown, who was represented by counsel, served as her only witness at the hearing. Brown denied the allegations against her and claimed that all three teacher witnesses called by Dr. Moore were not telling the truth as follows:

(1) Brown claimed that Kelly lied about seeing Brown put her hand on Student J's lower chin and under his neck forcing him to the wall. Trans. p. 143, lines 19-20. The only motivation Brown could assign to Kelly was that he had previously reported Brown for being late in picking up her students from his art class. Trans. p. 142, line 16-p. 143, line 18; p. 27, lines 18-22;

(2) Brown claimed that Owens lied about seeing Brown put her hand on Student J's face and turn it back to face her, Trans. p. 144, lines 17-23. The only motivation Brown could assign to Owens was that Brown had previously reported a friend of Owens "for unprofessional conduct." Trans. p. 143, line 21-p. 144, line 16; and

(3) Brown claimed that Wilson lied when she said Brown told Wilson she was not supposed to be talking about the situation with Student J, yet proceeded to do so, Trans. p 150, lines 2-7. The only motivation Brown could assign to Wilson was

that "it seems to be in [Wilson's] nature" or "her personality" to make up "stuff" about other people. Trans. p. 150, line 8-p. 151, line 14.

Following a four-hour hearing and deliberation by the Board, the Board voted unanimously to uphold the Superintendent's recommendation of dismissal. *See* Minutes of October 7, 2015 meeting of Cherokee County School District Board of Trustees. The Board's decision was memorialized in a written Order. *See* Order dated October 15, 2015. The Board found that Brown should be terminated because she manifested an evident unfitness to teach on three separate grounds: (1) her inappropriate physical interactions with Student J; (2) her willful and intentional insubordination in defying a directive not to talk with District employees; and (3) her dishonesty in responding to questions about the events of May 28 and June 5. The Board agreed with the Superintendent that Brown's conduct indicated "that she does not have the judgment or the credibility to work as an employee in the District." Order dated October 15, 2015 at p. 9. This appeal followed.

## ARGUMENT

### I. Standard of review.

This action is an appeal under S.C. Code Ann. § 59-25-480 of the Teacher Employment and Dismissal Act ("the Act") of the Board's decision to terminate Brown's employment as a teacher with the District. Brown is not entitled to a trial *de novo* in this court. Rather, this Court's review is limited to a determination of whether the Board's decision is supported by substantial evidence in the record before it. *See Young v. Charleston Cnty. Sch. Dist.*, 397 S.C. 303, 306, 725 S.E.2d 107, 108 (2012); *Laws v. Richland County Sch. Dist. No. 1*, 270 S.C. 492, 495, 243 S.E.2d 192, 193 (1978). The appellate court's review of a school board decision is confined to the record of the evidentiary hearing before the board. *Young*, 397 S.C. at 306, 725 S.E.2d at

108. If any one of several charges against a teacher in such an appeal is supported by substantial evidence, the school board's decision to dismiss must be sustained. *Laws v. Richland County School District No. 1*, 270 S.C. 492, 496, 243 S.E.2d 192, 193 (1978).

Importantly, "[t]he Court cannot substitute its judgment for that of school authorities, in view of the powers, functions and discretion which must necessarily be vested in such authorities if they are to execute the duties imposed upon them." *Kizer v. Dorchester Cnt. Voc. Educ. Bd. of Trustees*, 287 S.c. 545, 340 S.E.2d 144, (1986); *see also Felder v. Charleston Cnty. Sch. Dist.*, 327 S.C. 21, 25, 489 S.E.2d 191, 193 (1997); *accord, Sloan v. Greenville County*, 356 S.C. 531, 555, 590 S.E.2d 338, 351 (Ct. App. 2003) ("In reviewing the discretionary decision of a legislative body, our courts have been loath to substitute their judgment for that of elected representatives."). Consequently, the court may not consider the weight of the evidence, only its existence. *Barrett v. Charleston Cnty. Sch. Dist.*, 348 S.C. 426, 434, 559 S.E.2d 365, 369 (Ct. App. 2001) (the court is "only concerned with the existence of evidence and not its weight").

Brown argues in her Amended Appeal Brief that the decision of the Board should be reversed on several grounds. While she enumerates eight grounds in her Second Amended Appeal Brief at pp iv-v, her ensuing arguments encompass only the following three substantive grounds: (1) the record does not contain substantial evidence to support the Board's decision, *see* Grounds 1, 2, 3, 5, and 6 and arguments in support; (2) the Board's termination of Brown's employment constitutes a breach of contract, *see* Ground 4 and argument in support; and (3) the Board violated Brown's due process rights, *see* Grounds 3, 6, 7, and 8 and arguments in support. The Board addresses Brown's substantive grounds below.

## II. The decision by the Board to terminate Brown from her employment as a teacher because she manifested an evident unfitness for teaching is supported by substantial evidence and should be sustained by this Court.

Section 59-25-430 of the Teacher Employment and Dismissal Act, pursuant to which Brown was dismissed, provides that a teacher in South Carolina who manifests "an evident unfitness for teaching" may be dismissed at any time without providing for a remedial corrective period. "An evident unfitness for teaching" is manifested by a non-exclusive list of behaviors, including dishonesty.

The District Superintendent submitted substantial evidence to the Board that Brown manifested an evident unfitness for teaching in three separate ways: (1) by her inappropriate interactions with a student at LVES on May 28, 2015; (2) by her insubordination on June 5, 2015, in willfully and knowingly defying an administrative directive not to discuss the matter with District employees while the May 29th incident was under investigation; and (3) by her dishonesty in answering the Superintendent's questions about the May 28th incident and the June 5th incident. Brown's arguments in support of her enumerated Grounds for Appeal 1, 2, 3, 5, and 6, should, therefore, be dismissed.

### A. Brown's unfitness for teaching was manifested by her inappropriate interactions with Student J on May 28, 2015.

Two teachers at LVES submitted written reports and testified to the Board about two separate incidents occurring on May 28, 2015, in which they observed Brown inappropriately touching and 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, the art teacher, described the more forceful encounter: as Student J approached the art classroom but before he entered it and before the class began, Kelly saw Brown physically force 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 report, 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 shocked and 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, bent over, eye to eye with Student J in the hallway, speaking to him and placing her hand on the child's face to turn it to face her directly. 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, the District's Director of Human Relations 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 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. Indeed, when questioned by Ruppe and Carpenter on June 1, 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 that Brown grabbed Student J in a forceful and violent 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 Dr. Moore, the Superintendent, concluded and told the Board 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. Trans. p. 157, line 10-14. Dr. Moore recommended termination because, in her words,

> Brown did not put her hands on that student in a way to gently guide them into line, to keep them from hurting somebody else, to keep them from falling into a sink hole. She did it because for whatever reason, she was ticked off at Student J, and then went back to make amends, and when he wasn't looking at her because

> he was looking at Ms. Owens, guided his face back to look at her. . . . [T]hat is grounds for termination.

Trans. p. 157, lines 17-25. The Board's finding that Brown manifested her unfitness for teaching by these inappropriate interactions with a student is supported by substantial evidence and should be sustained.

Brown argues that because she denies putting her hands at any time on Student J and because Student J, a second-grader, said she did not touch him, the statements by Kelly and Owens must be disbelieved and disregarded. However, this Court cannot weigh the evidence or make assessments of witness credibility. That is solely the Board's decision, which determined that Kelly and Owens were credible witnesses and Brown was not. In their Order setting forth the Board's reasons for upholding the termination recommendation, the Board acknowledged that Brown denied making any physical contact with the minor, 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. *See Felder v. Charleston Cnty. Sch. Dist.*, 327 S.C. 21, 25, 489 S.E.2d 191, 193 (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 the recommendation of the Superintendent that Brown be dismissed from employment based on her inappropriate interactions with Student J.

Finally, Brown attempts to cast blame in some way on the District and its employees by accusing them of failing to comply with South Carolina law requiring the reporting of child abuse. However, the District did not view Brown's actions with Student J as constituting child

abuse under the law. *See* S.C. Code Ann. § 63-7-20(4)(a) and discussion in Section III.B. at p. 24, *infra*. 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 unfitness for teaching, and the Court should sustain that decision.

### B. Brown's unfitness for teaching was manifested by her insubordination and 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 received a directive 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, the Behavioral Interventionist at LVES 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. Trans. p. 147, lines 7-10; p. 147, line 20-p.148, line 7. 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 in the Ross store with Wilson about what she believed the events of May 28 to be. In Wilson's words, "she 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, 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.

Brown argues that discrepancies between the written statements and testimony of the witnesses destroy their credibility. She even makes the absurd claim that "Wilson is absolutely not credible and should not be allowed to work at any school." Amended Appeal Brief at p. xiii. First, the written statements and testimony of witnesses are not verbatim, but written statements and testimony are never verbatim, nor are they required to be verbatim. 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. This Court cannot weigh the evidence or make assessments of witness credibility without exceeding the scope of its judicial review. *Felder v. Charleston Cnty. Sch. Dist.*, 327 S.C. 21, 25, 489 S.E.2d 191, 193 (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 by this court.

Substantial evidence exists in the record 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 discussed it with Wilson and, further, attempted to tell Wilson what to say to Carpenter, thus interfering with and undermining Carpenter's investigation. *See Hall v. Bd of Trustees of Sumter Cnty. Sch. Dist. No. 2*, 330 S.C. 402, 410, 499 S.E.2d 216, 220 (1998) (no evidence teacher attempted to undermine the investigation into her behavior on student trip, which in any event had been sanctioned by lead organizer of student trip). Because substantial evidence supports the Board's decision that Brown was insubordinate by willfully and intentionally disregarding a directive given to her by the District's administration and that such insubordination and defiance manifested Brown's evident unfitness to teach, the Board's decision to terminate Brown pursuant to § 59-25-430 should be sustained.

**C. Brown's unfitness for teaching was manifested by her dishonesty in responding to questions by the District Superintendent.**

Dr. 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 a manner that was inappropriate. She also concluded, and told the Board, that Brown, in denying that she touched Student J in any manner, was dishonest when Dr. Moore questioned her about those encounters. In addition, Dr. Moore 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; the list specifically includes dishonesty, but evidence of unfitness to teach is not limited to the enumerated behaviors. The testimony from Dr. Moore to the Board, along with the other evidence reviewed by the Board, provide substantial evidence that Brown was dishonest in responding to questioning from Dr. Moore. Brown's dishonesty is a good and sufficient reason for the Board to terminate her from her employment as a teacher. This Court should sustain that finding of the Board as it is supported by substantial evidence in the record.

**III. The decision by the Board to terminate Brown from her employment as a teacher because she manifested an evident unfitness for teaching is expressly authorized by law and does not depend upon or involve any contractual obligations.**

In support of her Ground for Appeal 4, Brown argues in her Amended Appeal Brief that the District violated state law in not reporting what she contends were child abuse allegations against her. She then argues that the District's failure to report child abuse constituted a breach of Brown's teaching contract because "every contract . . . incorporates all applicable laws." This argument is without merit because (1) Brown did not present or argue the issue of breach of contract to the Board and is foreclosed from raising it for the first time in this appeal; (2) no one in the District ever contended that Brown committed child abuse and had no legal duty to report the incidents to law enforcement; and (3) the Board terminated Brown because of her evident unfitness to teach, pursuant to S.C. Code Ann. § 59-25-430, and the issue of her teaching contract is irrelevant.

**A. Brown did not present to the Board the issue of whether her dismissal was a breach of contract and, therefore, cannot raise it on appeal.**

During the three to four hours in which the Board heard Brown's case, Brown's counsel never suggested that the Board had breached any terms of its employment contract with Brown. The record of the hearing contains no suggestion of such a claim. Brown is, therefore, precluded from raising this argument in this appeal.

The Administrative Procedures Act ("APA") governs this court's scope of review of the Board's decision. S.C. Code Ann. § 1-23-380; *see also Young v. Charleston Cnty. Sch. Dist.*, 397 S.C. 303, 306, 725 S.E.2d 107, 108 (2012). Under the APA, such judicial review "must be confined to the record." S.C. Code Ann. § 1-23-380 (4). Brown's failure to raise her breach of contract claim to the Board forecloses her from making that argument in this court.

**B. The District's authority to terminate Brown under Section 59-25-430 of the Teacher Employment and Dismissal Act because of her evident unfitness for teaching is not and cannot be limited by policy or contractual matters.**

The District terminated Brown's employment pursuant to the express statutory authority granted to it in S.C. Code Ann. § 59-25-430. Even if Brown had presented evidence to the Board that District personnel breached her teaching contract by violating a school policy or law, which she did not, termination under § 59-25-430 is not affected by such a violation. "To construe a school board policy statement as an integral part of a contractual agreement precluding the immediate removal 'at any time' as authorized by State law" of a teacher who manifests an evident unfitness for teaching "would be an agreement against public policy—illegal and void." *Kizer v. Dorchester Cnty. Voc. Educ. Bd. of* Trustees, 287 S.C. 545, 550-51, 340 S.E.2d 144, 147 (1986). As the Supreme Court has recognized, school boards not only have "the authority but the *duty* under State law to dismiss 'at any time' one whose conduct manifests an evident unfitness."

*Id.* To limit that authority by reference to policy or contractual provisions would be inconsistent with State law. *Id.* The Board's determination that good and sufficient reasons existed to terminate Brown's employment immediately because she manifested an evident unfitness to teach under the law was supported by substantial evidence and should be sustained by this court.

Moreover, Brown's argument that the District's failure to report child constituted a breach of Brown's teaching contract because "every contract . . . incorporates all applicable laws" is based on an illusion that any District personnel ever charged or suspected Brown of child abuse; the record demonstrates that they did not. Indeed, the statutory definition of child abuse specifically excludes:

> corporal punishment or physical discipline which:
>
> (i) is administered by a parent or person in loco parentis;
> (ii) is perpetrated for the sole purpose of restraining or correcting the child;
> (iii) is reasonable in manner and moderate in degree;
> (iv) has not brought about permanent or lasting damage to the child; and
> (v) is not reckless or grossly negligent behavior by the parents.

S.C. Code Ann. § 63-7-20 (4)(a). School officials are acting in loco parentis of children while the children are at school. Brown's actions, while inappropriate for a teacher, were not child abuse, but instead were consistent with this exclusion from the South Carolina statutory definition of child abuse. The District had no duty to report it to law enforcement as child abuse.

The word "abuse" was not mentioned at Brown's dismissal hearing, except by her attorney himself, nor was it mentioned in any correspondence from the District to Brown relating to her termination. Indeed, it is a mystery why Brown persists in referring to the May 28 incidents with Student J as "child abuse". District personnel investigated an allegation of inappropriate physical contact with Student J, not "child abuse," and had no obligation under either state law or its own policies to report the incidents to law enforcement. Brown's argument

that the District breached her teaching contract by failing to report her to law enforcement is without merit.

## IV. The District did not violate Brown's due process rights when it terminated her from her employment as a teacher based on her evident unfitness for teaching.

Brown argues in her Grounds for Appeal 3, 6, 7, and 8 that the District violated her procedural due process rights (1) because it did not formally charge her with telling Wilson what to say when questioned in the investigation; (2) because the members of the Board that heard her case were biased; (3) because her case was heard and decided by less than the full membership of the Board; and (4) because the Board's decision was arbitrary and capricious because it violated state law and District policies with respect to the reporting of child abuse. These arguments are without merit because Brown failed to raise them to the Board; because the evidence establishes that Brown was afforded all required procedural due process protections;e4 and because Brown failed to establish actual bias on the part of any Board member.

### A. Brown did not present the issue or evidence of a violation of due process rights to the Board and, therefore, cannot raise this issue on appeal.

As an initial matter, Brown did not raise any issues or arguments at the hearing before the Board that her procedural due process rights were violated in any way. Brown is, therefore, precluded from raising this argument in this appeal. S.C. Code Ann. § 1-23-380 (4) (judicial review of school board decisions "must be confined to the record"). Brown's failure to raise her claims of due process violations before the Board forecloses her from making that argument in this court on appeal.

### B. The Board properly followed the procedural due process requirements of notifying Brown of the claims against her and giving her an opportunity to respond.

"To remove from the school one whose conduct manifests an evident unfitness for teaching, all that is required is 'prior notice and opportunity for hearing.'" *Kizer v. Dorchester Cnty. Voc. Educ. Bd. of Trustees*, 287 S.C. 545, 550, 340 S.E.2d 144, 147 (1986). Brown claims that the Superintendent failed to charge her with telling Wilson what to say in the investigation. This claim creatively amends and attempts to distort the District's stated reasons for her termination. Brown was amply informed of the reasons for her dismissal and given several opportunities to be heard.

Dr. Moore's August 11, 2015 letter included a summary of the matters discussed with Brown and her attorney at the meeting on July 31, 2015, including Kelly's allegation of Brown's physical contact with Student J on May 28 and Brown's denial of physical contact; Owen's description of Brown's physical contact with Student J on May 28 and Brown's denial of physical contact; the June 1 directive to Brown not to have contact with District staff while on administrative leave; Wilson's written statement describing her June 5 conversation with Brown at the Ross store and Brown's version of that conversation. The Board heard the evidence on these matters and determined that Brown manifested an evident unfitness for teaching for three separate reasons: (1) Brown's "inappropriate interactions with a student; (2) her insubordination regarding the directive she received from the administration, and (3) her dishonesty in responding to questions from the Superintendent." Order at p 9. The Board's determination was not based simply on whether Brown told Wilson what to say, but on her insubordination in discussing the matter with Wilson at all.

The transcript of the hearing, including the exhibits introduced, demonstrates that Brown had sufficient notice and opportunity to be heard by the Board on her version of her conversation with Wilson. *See Pettiford v. S.C. Bd. of Educ.*, 218 S.C. 322, 346-47, 62 S.E.2d 780, 791-92

(1950). Moreover, Brown failed to argue or even attempt to show any prejudice as a result of the defect in notice about which she complains. In order to establish a violation of due process, substantial prejudice must be shown. *Felder v. Charleston Cnt. Sch. Dist.*, 327 S.C. 21, 26, 489 S.E.2d 191, 193 (1997). Brown failed to show a violation of due process or substantial prejudice resulting therefrom. The Board's decision terminating her should, therefore, but sustained by this court.

### C. Brown cannot establish that any Board member was actually biased against her such that she was deprived of a fair and impartial hearing.

Brown argues that "School Board Members were biased and impartial toward Ms. Brown during the board hearing. One of the board members Cheryl Smith had her eyes closed, at times, during the board hearing. Additionally Robin Harper interjected comments to try and defend the Superintendent while Brown's counsel was questioning Superintendent Moore." Amended Appeal Brief, p. xx. Brown argues that the Board member's questioning was "an indication that board member Robin Duncan [sic] was biased and impartial towards Ms. Brown." *Id.*

Brown's argument that the Board was biased lacks both factual and legal support. The South Carolina Supreme Court has outlined clearly the requirements of a showing of bias in a school board hearing tribunal:

> School board members are clothed with a presumption of honesty and integrity in the discharge of their decision-making responsibilities. . . . In order to disqualify a hearing tribunal, actual bias rather than a mere potential for bias must be shown. . . . Individual decision makers must not have exhibited bias as to the factual questions to be decided at hearing, and evidence of actual bias which offends due process consists of statements on the merits by those who must make factual determinations on contested fact issues where fact finding is critical. . . . It is not actual bias to have made statements as to policy issues related to a dispute, nor to have stated charges in instigating an investigation of such. . . .Unless there is evidence that preformed opinions of board members are fixed and unchangeable, or that in the deliberations after hearing all the evidence, the result was dictated by such a preformed opinion, the appellant cannot successfully maintain that he was deprived of a fair and impartial hearing.

*Kizer v. Dorchester Cnty. Voc. Educ. Bd. of Trustees*, 287 S.C. 545, 552, 340 S.E.2d 144, 148 (1986) (citations omitted); *see also Felder v. Charleston Cnty. Sch. Dist.*, 327 S.C. 21, 26, 489 S.E.2d 191, 193-94 (1997). Thus, "[t]o nullify a ruling of a quasi-adjudicatory body on the basis of bias or prejudgment requires a substantial showing of a 'predetermined purpose to reach a determined end.'" *Kizer*, 287 S.C. at 553, 340 S.E.2d at 148-49.

Brown's claims regarding the alleged bias of Board members do not reach the level of even an accusation of "preformed opinions." Brown complains of a Board member asking questions during a hearing designed for the Board member to ask questions, an allegation which, even taken as true, does not provide any evidence of actual bias. Her claim that another Board member had her eyes closed at times during the hearing is not supported by evidence in the record and does not carry with it a presumption of actual bias. In short, her arguments on bias have no weight or support and should be dismissed by this Court.

**D. All members of the Board need not serve on the tribunal hearing Brown's case.**

Brown complains that all nine of the members of the Board did not vote on her termination. She argues that her procedural due process rights were violated because "the Board of Trustees for CCSD did not provide the absent members with the testimony, evidence, and observations [sic] notes taken at the board hearing. All nine board members needed to consider the testimony, evidence, and notes taken at the board hearing together before terminating Ms. Brown's employment on October 7, 2015." Amended Appeal Brief at p. xxi.

The South Carolina Supreme Court has held that "a quorum of the Board must engage in a meaningful review of the evidence and testimony presented at [a teacher] dismissal hearing." *Young v. Charleston Cnty. Sch. Dist.*, 397 S.C. 303, 307, 725 S.E.2d 107, 109 (2012). *See also*

S.C. Code Ann. § 59-15-30 (majority of members of a county school board constitute a quorum for the conduct of business); S.C. Code Ann. § 30-40-2 (3) (quorum of a public body means a simple majority of the membership, unless otherwise defined by law); *Garris v. Governing Bd. of S.C. Reins. Facility*, 333 S.C. 432, 453, 511 S.E.2d 48, 59 (1998) (common rule is that a simple majority constitutes a quorum of a board, unless law otherwise provides). The Cherokee County School Board has nine members, seven of whom were present and participated in Brown's hearing. Order at p. 1. The vote of those seven members was unanimous. *Id.* The Board had a quorum to decide the recommendation for Brown's termination, and Brown's due process rights were not violated by the absence of two members.

In support of her argument, Brown cites *Pettifold v. S.C. State Board of Education*, 218 S.C. 332, 62 S.E.2d 780 (1950), a case that actually supports the Board. That case held that a decision made by a quorum of a board may be based on the report of an examining officer or panel that took the testimony and other evidence. Due process does not require an entire board, or even a quorum of the board, to take evidence itself, so long as those participating in the vote consider the evidence when rendering their decision.

A quorum of the Board heard the evidence and made its decision based on the evidence. Substantial evidence supports the decision of the Board, and its decision was valid. This court should sustain the Board's decision to terminate Brown from her employment.

### E. The Board did not act arbitrarily and capriciously but on the basis of the evidence before it and in accordance with state law and District policies.

Brown claims that the District had a duty to report her actions with Student J to law enforcement as child abuse, and if it had done so, a more thorough investigation of her actions by law enforcement would have ensued. Brown does not claim that a more thorough investigation

would have cleared her of any wrongdoing, but argues that without an investigation by law enforcement, she was deprived of evidence she could have used in defense of the "false allegations" asserted by the District against her. She argues that the Board, therefore, acted in an arbitrary and capricious manner, and their decision cannot be sustained.

As discussed in Section III.B. at p. 24, *supra,* Brown's actions manifested an unfitness for teaching, but did not rise to the level of child abuse. The District had no duty to report it to law enforcement or to defer its investigation to law enforcement on this matter because it was not criminal.

Moreover, Brown had every opportunity to present evidence in her defense. She could have called any witnesses in her defense that she wished. She had no "right" to be reported to law enforcement for suspected criminal activity to gain the supposed "benefit" of a criminal investigation. The notion that a criminal investigation would have benefitted her in some way is, at the least, curious. The hearing before the Board provided Brown with every due process protection, and the Board did not act arbitrarily or capriciously in proceeding.

## CONCLUSION

The Board respectfully submits that this Court should dismiss this appeal and sustain the decision of the Board because (1) substantial evidence supports the Board's determination that Brown manifested an evident unfitness for teaching; (2) the Board was authorized by law to terminate Brown from her contract as a teacher immediately because she manifested an unfitness for teaching; and (3) the Board did not violate Brown's due process rights when it terminated her from employment.

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Respectfully submitted,

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June 16, 2016
South Carolina

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| STATE OF SOUTH CAROLINA,<br><br>COUNTY OF CHEROKEE<br><br>SHARON BROWN,<br><br>Plaintiff,<br><br>CHEROKEE COUNTY SCHOOL DISTRICE ONE,<br><br>Defendant. | STATE OF SOUTH CAROLINA<br>ADMINISTRATIVE LAW COURT<br><br>CASE NO.: 2015-CP-11-0828<br><br>**BRIEF OF APPELLANT BROWN** |

## STATEMENT OF FACTS

The Appellant, Sharon Brown worked from August 1, 1999 to October 7, 2015 with the subject employer, most recently as a second grade school teacher. The Appellant, Sharon Brown was terminated effective October 7, 2015 for conduct violation(s).

On May 28, 2015, the Appellant, Sharon Brown admittedly and verbally addressed a second grade student for what she deemed inappropriate language. The incident, witnessed by a first year art teacher, co-worker and and one other teacher were employer witnesses participating in the evidentiary hearing before the Cherokee County School Board, alleged that the Appellant, Sharon Brown used both violent force and verbal assault against the student but admittedly failed to report the incident until

the following day; this, notwithstanding that both the principal and human resources (HR) director were on the premises at the time.

There was no third party administrative and/or law enforcement agency notification of any kind, the child simply returned to his class, according to the employer witness and no substantive follow-up thereafter relative to that matter. Additionally, the child hereinafter called student "J" gave two statements that Ms. Brown never touched him and stated that Ms. Brown was a good teacher.

The Appellant, Sharon Brown was not made aware of the allegation until June 1, 2015 when the Appellant, Sharon Brown was summoned to meet with among others, the HR supervisor Carpenter; the other employer witness participating in the Board of Trustees hearing.

Dr. Carpenter contends that at the time of the June 1, 2015 meeting, he placed the Appellant, Sharon Brown on an administrative leave for the duration of the subsequent investigation and verbally informed the Appellant, Sharon Brown not to have any contact with District employees or students during her leave; the Appellant, Sharon Brown maintains that she has no recollection of that specific directive.

The Appellant, Sharon Brown provided the Carpenter with the name of Owens a co-worker/behavior interventionist as her requested witness at that time.

A June 1, 2015 letter was then forwarded certified mail to the Appellant, Sharon Brown whose receipt of same was not until June 11, 2015; all parties stipulated to the date of receipt as in fact having been June 11, 2015.

The letter, although stating that the Appellant, Sharon Brown was restricted from going on any school property without expressed permission and/or having any contact with school district employees or students in any manner while on leave, failed to memorialize the June 1, 2015 meeting relative to latter of the two (2) directives contained in the letter.

In the interim and on June 5, 2015, the Appellant, Sharon Brown acknowledged that she had a chance meeting with her requested witness in a local department store and did engage the co-worker in a three (3) to five (5) minute conversation.

On June 31, 2015, the Appellant, Sharon Brown, her attorney, the school superintendent, Carpenter and counsel for the employer met wherein the Appellant, Sharon Brown was informed her encounter with the co-worker/witness in the department store had significantly and adversely

impacted the District's ability to complete its investigation into the May 28, 2015 incident; this, irrespective of the fact that the District had in fact already secured a signed statement from the co-worker on June 1, 2015.

The employer at that time concluded and informed the Appellant, Sharon Brown that the District deemed her to have been dishonest in her reporting the facts, questioned her denial of the May 28, 2015 incident and recommended her dismissal to the District Board of Trustees who upheld the superintendent's recommendation. The Appellant, Sharon Brown was formally terminated effective October 7, 2015.

Local school boards have the power to employ and discharge teachers. S.C.Code Ann. § 59-19-90(2) (1990). Our General Assembly permits the termination of a teacher's employment—without affording a reasonable time for the teacher to rectify the offending behavior—only under certain narrow circumstances. Section 59-25-430 of the Teacher Employment and Dismissal Act provides: "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 any evident unfitness for teaching...." S.C.Code Ann. § 59-25-430 (1990).

Other deficiencies or shortcomings, however, must be addressed by giving the teacher notice and a reasonable time for improvement. S.C.Code Ann. § 59-25-440 (1990); *Adams v. Clarendon County Sch. Dist. No. 2,* 270 S.C. 266, 273, 241 S.E.2d 897, 900 (1978). Failure to improve within this time constitutes a "good and sufficient" reason warranting the termination of employment. S.C.Code Ann. § 59-19-90(2); *Adams,* 270 S.C. at 272-73, 241 S.E.2d at 900.

In this case, Brown's competence as a teacher has not been challenged. To the contrary, the evidence shows that her performance for the past seventeen years was satisfactory, the highest rating generally given to teachers. Nor has Brown failed to give instruction in accordance with the superintendent's or principle's directions. Therefore, the only basis for terminating Brown without giving her a reasonable opportunity to rectify the offending behavior must involve evident unfitness for teaching.

Section 59-25-430 sets forth a non-exclusive list of examples of unfitness for teaching. Examples include "persistent neglect of duty, willful violation of rules and regulations of [the] 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." *Id.* It is undisputed that Brown's conduct does not fall within any of these specifically delineated categories.

The Board argues Brown's insubordination and her speaking to a witness and assault on a student demonstrate her evident unfitness for teaching, thereby justifying her dismissal without providing her with a reasonable time for improvement. See **Hall v. The Board of Trustees of Sumter County School District No. 2,** 330 S.C. 402, 499 S.E.2d 216 (S.C. App., 1998).

Although the Teacher Employment and Dismissal Act contemplates "evident unfitness for teaching" to encompass a broad variety of deficiencies, **the Act was also intended to prevent the abuse of a school board's power of termination.** *Adams,* 270 S.C. at 272 & n. 6, 241 S.E.2d at 900 & n. 6. Consistent with this requirement, South Carolina's appellate courts have upheld immediate termination only where evidence of unfitness for teaching was "undeniably and abundantly present." *Kizer v. Dorchester County Vocational Educ. Bd. of Trustees,* 287 S.C. 545, 550, 340 S.E.2d 144, 147 (1986). The following cases illustrate the appropriate application of this standard.

In *Kizer,* the South Carolina Supreme Court affirmed a school board's immediate termination where the teacher, among other things, referred to fellow teachers and students as "stupid," obstructed the provision of emergency medical service for a pregnant student suffering a miscarriage, used profanity, and otherwise created a school environment filled with "turmoil, tension, conflict, fear and an absence of trust and respect ... at war with the interests of society." *Id.* at 550-51, 340 S.E.2d at 147.

More recently, the supreme court extended unfitness for teaching to a teacher's participation in an unauthorized student protest, contrary to the specific directive of the principal that the students return to class. *Felder,* 327 S.C. at 23, 489 S.E.2d at 192. The court found a clear link between the teacher's insubordination, her unfitness for teaching, and her ability to perform her job duties in a professional manner. *Id.* at 25, 489 S.E.2d at 193. The court also affirmed the school board's finding that the teacher made a false statement to her superior. *Id.* at 25-26, 489 S.E.2d at 193.

In *Hendrickson v. Spartanburg County School District Number 5,* the court affirmed a teacher's immediate termination where the teacher slapped a student and could not maintain control of her temper or classroom. 307 S.C. 108, [330 S.C. 408, 112-13, 413 S.E.2d 871, 873-74 (Ct.App.1992). The

Court also upheld an immediate termination where a principal failed to supervise instruction in accordance with the superintendent's directions. *Barr v. Board of Trustees of Clarendon County Sch. Dist. No. 2,* 319 S.C. 522, 530-31, 462 S.E.2d 316, 320-21 (Ct.App.1995), *cert. denied,* (Apr. 4, 1996). This conduct, the court held, demonstrated a "persistent neglect of duty." *Id.* at 530, 462 S.E.2d at 321.

By contrast, when a teacher's conduct does not demonstrate unfitness for teaching of the type contemplated by the previously cited decisions, procedural safeguards must be followed to allow the teacher reasonable time to correct the problem. This delineation is an important one. As noted in *Johnson v. Spartanburg County School District Number 7,* "[t]here must be a distinction between the cases, or it renders the legislature's intent to create procedural safeguards for educators a nullity." 314 S.C. 340, 343, 444 S.E.2d 501, 503 (1994) (assistant principal demoted without an opportunity to modify offensive behavior and without being given notice that he risked demotion).

**I. Insubordination**

**WHETHER THERE WAS SUBSTANTIAL EVIDENCE THAT BROWN WAS SUFFICIENTLY INSUBORDINATE TO WARRANT DISMISSAL BY THE SCHOOL BOARD**

At common law, insubordination was defined as a wilful or intentional disregard of the lawful and reasonable instructions of an employer. *E.g., Freeman v. King Pontiac Co.,* 236 S.C. 335, 346-47, 114 S.E.2d 478, 483 (1960). Notwithstanding this broad definition, our supreme court has limited its application in the context of teacher employment to cases where insubordination evidences "unfitness to teach, substantially interfere[s] with the performance of [a teacher's] duty, and constitute[s] unprofessional conduct." *Felder,* 327 S.C. at 25, 489 S.E.2d at 193. Other state courts that have upheld termination for insubordination have established a similar connection.[5] We note that the cases relied on by the dissent do not involve teachers.

Without deciding whether Dr. Baker's instructions were reasonable or lawful, it is undisputed that Hall disobeyed his instructions by discussing the situation with three fellow teachers. We find, however, that the Board produced insufficient evidence to show that Hall's alleged insubordination demonstrated evident unfitness for teaching. *See Anonymous v. State Board of Medical Examiners,* 329 S.C. 371, 376-380, 496 S.E.2d 17, 20-21 (1998) (evidence in administrative hearing must substantially support conclusion of alleged misconduct); *Kizer,* 287 S.C. at 550, 340 S.E.2d at 147 (evidence of unfitness for teaching must be "undeniably and abundantly" present).

Our courts recognize that section 59-25-430 defines "unfitness for teaching" in a non-exclusive manner. Nevertheless, the type of conduct referred to in the statute—persistent neglect of duty, wilful violation of rules and regulations, drunkenness, conviction of a crime, gross immorality, dishonesty, illegal use, sale or possession of drugs—clearly exceed Brown's acknowledged failure to comply with Dr. Baker's general admonition "not to have any discussion with other employees."

Although Dr. Carpenter testified he issued his directive because "the matter was under investigation," there is no evidence that Hall's insubordination affected her primary duties as a second grade teacher. Moreover, the record does not contain any evidence showing she attempted to undermine the investigation. In fact, one of the conversations used to justify her termination occurred when a fellow teacher was in a Ross store initiated conversation with Brown and Brown asked her had Dr. Carpenter spoken to her. Dr. Carpenter did not know whether Brown initiated these conversations or their substance. While we recognize that a single act of disobedience could, under some circumstances, be sufficient to justify a teacher's termination even though it was unrelated to that teacher's classroom performance, the scant evidence introduced here is insufficient to show Hall's unfitness for teaching within the meaning.

## II. ASSAULT ON A STUDENT

### WHETHER THERE WAS SUBSTANTIAL EVIDENCE THAT BROWN IMPERMISSIBLY ASSUALTED A STUDENT AND THEN LIED ABOUT IT

In this case student "J" gave two statements that Ms. Brown did not touch him or assault him as two of Brown's accusers stated. Student "J's" statements corroborate Brown. Yet the School Board decided that Brown was telling a lie and found her worthy of being terminated from her employment. Based upon Hall v. Sumter County School District No. 2 this review of the whole record demonstrates that the exists no substantial evidence to warrant a finding by the Board that Brown assaulted a child in her care as a teacher.

Additionally, the school district did not report this to law enforcement and allege that Brown was impermissibly abusive to student "J".

Misconduct of School Administrators:

The school district did not allow Brown to call student "J" as a witness nor did the superintendent Moore interview student "J" in her so called investigation. It is clear that the investigation was bias and designed to

arbitrarily subject Brown to a recommendation by the Superintendent to the Board that Brown be terminated from her employment as a teacher.

Additionally, this amounts to prosecutorial misconduct by instructing Brown not to speak to anyone during an investigation but not telling potential witnesses of the School District interviewed on June 1, 2015 not to speak to Brown. Moreover, the restrictions on Brown covered all district employees and prohibited her from have in a small community even the most mundane of conversation which is violative of the overbreath doctrine, equal protection and vagueness concerns of the 14th Amendment of the U.S. Constitution and South Carolina Constitution.

The District's investigation was completed on June 1, 2015 and Brown was not informed of this development until much later. Clearly, Brown's conduct in speaking to any employees did not compromise the "integrity" of the school district's "investigation."

## WHETHER THE WAS AN ABSENCE OF SUBSTANTIAL EVIDENCE IN FINDING THAT BROWN'S SPEAKING TO A COWORKER AFTER HER SUPERVISORS HAD COMPLETED THEIR INVESTIGATION JUSTIFIED HER TERMINATION FOR BEING UNFIT AS A TEACHER

The honorable Circuit Court may reverse or modify the decision of the Board if substantial rights of the appellant have been prejudiced because

the findings of the Board are affected by an error of law. Board of Bank Control v. Thomason, 236 S.C. 158, 113 S.E. 2d 544 (1960). If the agency, here the Board, violates the appellant's statutory rights, the reviewing court has the authority to reverse the agency decision. Capri v. S.C. Dept. of Highways and Public Transportation, 274 S.C. 88, 261 S.E. 2d 307 (1979). A matter of purely statutory construction is within the sole province of the court. S.C. Code Section 1-23-380 (g) (2). Unlawful procedures or other errors of law are subject to judicial review. See e.g. Carter v. S.C. Dept. of Highways and Public Transportation, 279 S.C. 332, 306 S.E. 2d 614 (1983); Smith v. Union Bleachery/Cone Mills, 2766 S.C. 454, 280 S.E. 2d 52 (1981).

Brown had a valid contract with her public employer who mislead Brown about the status of its investigation into an alleged assault that Brown was accused of committing against on of her students. All of the investigation into this matter had been completed by June 1, 2015. Brown did not recall receiving notification that speaking to District employees until June 10, 2015. The conversation occurred on June 5, 2015. The letter of Carpenter was not a confirmatory letter of any conversation he had with Brown on June 1, 2015. Additionally, the letter restricted Brown from speaking to any employees. The employees who were witnesses were not

precluded from speaking to Brown. Consequently, the directive of Carpenter was arbitrary and not backed by any fair application of any written school policy governing investigations.

Furthermore, the School District violated Brown's right to a fair and impartial hearing by not having the child "J" present at the Board hearing. The Board and the Superintendent assumed that the child was lying when he gave statements that Brown did not touch or assault him.

Based upon the foregoing, the District's decision should be reversed.

**THE BOARD WAS NOT FAIR AND IMPARTIAL IN ITS FINDING OF FACTS AND CONCLUSIONS OF LAW WHERE IT MISTAKED FACTS AND OBTAIN EX PARTE COMMUNICATIONS WITHOUT BROWN'S KNOWLEDGE SUCH THAT THE DECISION OF THE BOARD IS INHERENTLY BIAS AGAINST BROWN A CONTRACT TEACHER**

Ms. Wilson claims (testimony before school board) that she saw five or more of my students, is false . I had two kids that were on behavioral plans that saw her. One of the kids moved approximately two months before the end of the school year, so there was only one student seeing her basically.

Ms. Wilson basically sees students who have been referred to the office a certain amount of times and referred by the principal to see Ms. Wilson. Teachers are not allowed to pile the behavioral interventionist (Ms. Wilson) with a almost a third of their class.

Ms. Wilson saw a student of mine who was not on behavioral plan a few times (maybe 3xs during the whole school year) who did not receive her bipolar medicine because her grandmother had the student staying with someone else why she was at the hospital with her husband. The person who watched the child for the grandmother, according to the grandmother, fail to give the bipolar student her medication.

On page 91 of the record on appeal (school board hearing) Ms. Wilson states: " I think she said something like we were talking, and I was likes that's my daughter, you know, that's my daughter, don't, have a problem with her because she's my daughter,etc... Notice that she used "I think."

This is an example of how Brown was denied due process. Wilson just made up stuff as she pleased. We could have requested video surveillance of the encounter at Ross Store. However, they waited right before the hearing to even give you any sort of information concerning Ms. Wilson and her undated statement. Such short notice violates due process as well. Brown was denied knowing what issues were raised by Wilson in her statement to Moore. As a result Brown could not time obtain the store video.

On page 103-104 (Cross examination by you)

Tracie Wilson was asked on Cross: And you didn't put anything in there about her disrespecting your child either, did you?

Tracie Wilson: "no."

You asked: And you didn't put anything in there about you all were arguing for over ten minutes in the store either, did you

Tracie Wilson: "no."

No reasonable tribunal would have believed Ms. Wilson. As stated by you during the hearing, she did not say that we argued at Ross Store or that I disrespected her child at Ross Store in the statement that they gave us (concerning Ms. Wilson) at the last minute (a few days) before trial. The board took the advantage of being the one to determine credibility.

**Ms. White:**

As previously mentioned in my June 7 e-mail to you: Attorney White states in her brief the following: "Substantial evidence also exists in the record that, despite this directive, Brown discussed it with Wilson and, further, attempted to tell Wilson what to say to Carpenter, thus interfering with and undermining the investigation, *See Hall vs. Bd of Trustees of Sumter City Schol. District* , no evidence teacher attempted to undermine the

investigation into her behavior on student trip, which in any event had been sanctioned by lead organizer of student trip." Respondent's Brief pg.21 Brown disputes Tracie Wilson's claimed that Brown told her that Brown was not suppose to be talking about the matter. .

On page 93 (Transcript of Dismissal Hearing) Tracie Wilson states that Mrs. Ruppe told her to write a statement, and just take it whenever you go and meet with Dr. Carpenter AND Ms. Moore.

On page 41 (Transcript of Dismissal Hearing). Ms. Ruppe states that Tracie would "need to provide that statement for him when she went to see him. Ms. Ruppe was referring to Dr. Carpenter, when she used the word you. Mrs. Ruppe statement does not include that Tracie would be seeing Dr. Moore. *** My point is there is no consistency in the witnesses (Tracie and Ms. Ruppe) on events/matters.

The board claims in their board order on page 6 that "She (referring to Ms. Wilson) was there to assist with one of Ms. Brown's students, not Student "J", who was engaging in inappropriate behavior." The board's fact-finding was contrary to testimony.

On page 110 of trial transcript Board Member Ms Harper asked Tracie Wilson "And who called you to this room?

(On page 111) Tracie states in part: "And previously he (referring to Justin Kelly) had already stated to me they were coming and he was like I might need you, so can you just check in on me.

Next Board Member asked Ms. Wilson, "Because why?" Ms. Wilson states, "Because he usually has issues with that class. He had in that class I have maybe five or more of those students on my behavior list that I was checking on, and that can be buses, just behavior in general, different situations.

Further, on page 96 of trial transcript Ms. Wilson states: You asked Ms. Wilson,

On Cross Examination Brown's Attorney asked:

"Ms. Brown came to the door standing between the door and the wall, she didn't come into the art room completely and asked to see a student whose name I cannot remember and stated that the student was not in trouble," is that correct?

Ms.Wilson response was Yes. Next you asked Ms. Wilson, "You say, Mr. Kelly said okay, student got up and went with her and she pushed the door up behind her, " correct? Ms. Wilson said yes.

This is just additional proof that the board is making up stuff because nowhere in the transcript is there a reference that I came to the art room and

asked Ms. Wilson to send a student out, not even in Ms. Wilson testimony pertaining to this above.

As stated in our memorandum, the board is claiming in their Dismissal Order that Dr. Moore testified that " a short time later, in an effort to "make up" with Student J, Ms. Brown returned to the class, where she asked that Ms. Wilson sent student J out into the hall to talk with her." (Board Order page 8). Dr. Moore did not testify that Ms. Brown asked Ms. Wilson to send student "J" out into the hall to talk with me.

It is clear that the Board's fact-finding was not totally based on what occurred during the board hearing. The Board appears to bias towards Brown. That's why the Board has problems throughout their Board Order with the accuracy of information presented in their dismissal order.

It is a violation of due process for the Board to include ex parte communications outside the Board hearing and not give Brown a Sixth Amendment right to confront those witnesses.

Additionally, the Board's adding in fabricated to aid in supporting the charges brought by superintendent is patently unfair and unseemly. Further, it appears that the Board had its mind made up as to what it was going to decide before the board hearing occurred.

Brown has previously taken on this Board and won at both the appellate level and Circuit Court level when the Board was found to have been unfair to Brown.

Because the Board was bias the decision should be overturned do to futility in sending the case back on remand and brown should be reinstated to her former teaching position.

## CONCLUSION

The decision of the lower court should be upheld as there is no substantial evidence of record to support the Board's decision.

Respectfully submitted,

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CHEROKEE, South Carolina
Dated: June 18, 2016

**330 S.C. 402**
**499 S.E.2d 216**

**Judy HALL, Respondent,**
**v.**
**THE BOARD OF TRUSTEES OF SUMTER COUNTY SCHOOL DISTRICT NO. 2, Appellant.**

**No. 2811.**

**Court of Appeals of South Carolina.**

**Submitted October 8, 1997.**

**Decided March 16, 1998.**

**Rehearing Denied April 23, 1998.**

[330 S.C. 403]

Andrea E. White, of Childs & Halligan, Columbia, for appellant.

J. Cabot Seth, of Jones, Seth & Shuler, Sumter, for respondent.

[330 S.C. 404]

HEARN, Judge:

The Board of Trustees of Sumter County School District Number 2 appeals the circuit court's reversal of the Board's decision to terminate the employment of Judy Hall. The Board argues substantial evidence supports its findings with respect to Hall's unfitness for teaching and insubordination. We disagree and affirm the circuit court's decision to reinstate Hall's employment.[1]

***FACTS***

Respondent Judy Hall served as a media specialist for Furman High School in Sumter County for fifteen years. In 1996, Margaree Simon, another Furman High teacher, asked Hall to chaperone the senior class trip to Disney World. Hall initially declined the invitation. Later, when another teacher could not go, Hall agreed to travel with the class, basing her decision on an agreement with Simon that she would serve as a chaperone only while traveling to and from Florida and during a visit to a shopping mall. She would be "off duty" at all other times. Once in Florida, Hall stayed with a friend in a different hotel. Hall returned with the class to Sumter at the end of the trip.

Prior to the trip, Furman High School's principal, Renee Mathews, approved Hall's designation as a chaperone.[2] She did not, however, learn of Hall's agreement with Simon until after the class returned. When she questioned Hall about her decision to stay apart from the students, Hall acknowledged that she stayed in a separate hotel with her friend, but that Simon—the trip's lead organizer—approved the arrangement. It is conceded there is no written policy for chaperoning offcampus events or trips.

[330 S.C. 405]

Mathews reported her findings to Dr. Frank Baker, superintendent of Furman's school district. On May 6, Dr. Baker met with Hall and placed her on administrative leave. Baker admonished Hall not to discuss the matter with any other employees pending closure of his investigation. Hall later met with Baker again and admitted discussing the matter with three employees, including Simon. On May 16, Baker recommended that the Board terminate Hall's employment based on Hall's failure to supervise the class during the trip and Hall's insubordination stemming from her discussion with co-employees.

The Board accepted Baker's recommendation and terminated Hall's employment. Hall filed a petition for judicial



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review of the Board's decision. The circuit court reversed and the Board appeals from that ruling.

***SCOPE OF REVIEW***

Our review of a school board decision terminating a teacher's employment is normally limited to determining whether it is supported by substantial evidence. *Felder v. Charleston County School Dist,* 327 S.C. 21, 25, 489 S.E.2d 191, 193 (1997). This court may reverse an administrative decision if that decision was "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record" such that the "substantial [rights] of a party have been prejudiced." S.C.Code Ann. § 1-23-380(A)(6)(e) (Supp.1997); *Lark v. Bi-Lo,* 276 S.C. 130, 132-33, 276 S.E.2d 304, 305 (1981). Moreover, this court may reverse an administrative decision if substantial rights of the appellant have been prejudiced due to an error of law. S.C.Code Ann. § 1-23-380(A)(6)(d) (Supp. 1997); *Lark,* 276 S.C. at 132-33, 276 S.E.2d at 305.

***DISCUSSION***

Local school boards have the power to employ and discharge teachers. S.C.Code Ann. § 59-19-90(2) (1990). Our General Assembly permits the termination of a teacher's employment—without affording a reasonable time for the teacher to rectify the offending behavior—only under certain narrow circumstances. Section 59-25-430 of the Teacher Employment and Dismissal Act provides: "Any teacher may

[330 S.C. 406]

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 any evident unfitness for teaching...." S.C.Code Ann. § 59-25-430 (1990). Other deficiencies or shortcomings, however, must be addressed by giving the teacher notice and a reasonable time for improvement. S.C.Code Ann. § 59-25-440 (1990); *Adams v. Clarendon County Sch. Dist. No. 2,* 270 S.C. 266, 273, 241 S.E.2d 897, 900 (1978). Failure to improve within this time constitutes a "good and sufficient" reason warranting the termination of employment. S.C.Code Ann. § 59-19-90(2); *Adams,* 270 S.C. at 272-73, 241 S.E.2d at 900.

In this case, Hall's competence as a teacher has not been challenged. To the contrary, the only evidence shows that her performance for the past fifteen years was satisfactory, the highest rating generally given to teachers. Nor has Hall failed to give instruction in accordance with the superintendent's directions.[3] Therefore, the only basis for terminating Hall without giving her a reasonable opportunity to rectify the offending behavior must involve evident unfitness for teaching.

Section 59-25-430 sets forth a non-exclusive list of examples of unfitness for teaching. Examples include "persistent neglect of duty, willful violation of rules and regulations of [the] 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." *Id.* It is undisputed that Hall's conduct does not fall within any of these specifically delineated categories.

The Board argues Hall's failure to supervise and insubordination demonstrate her evident unfitness for teaching, thereby justifying her dismissal without providing her with a reasonable time for improvement. We disagree.[4]

[330 S.C. 407]



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Although the Teacher Employment and Dismissal Act contemplates "evident unfitness for teaching" to encompass a broad variety of deficiencies, the Act was also intended to prevent the abuse of a school board's power of termination. *Adams,* 270 S.C. at 272 & n. 6, 241 S.E.2d at 900 & n. 6. Consistent with this requirement, South Carolina's appellate courts have upheld immediate termination only where evidence of unfitness for teaching was "undeniably and abundantly present." *Kizer v. Dorchester County Vocational Educ. Bd. of Trustees,* 287 S.C. 545, 550, 340 S.E.2d 144, 147 (1986). The following cases illustrate the appropriate application of this standard.

In *Kizer,* the South Carolina Supreme Court affirmed a school board's immediate termination where the teacher, among other things, referred to fellow teachers and students as "stupid," obstructed the provision of emergency medical service for a pregnant student suffering a miscarriage, used profanity, and otherwise created a school environment filled with "turmoil, tension, conflict, fear and an absence of trust and respect ... at war with the interests of society." *Id.* at 550-51, 340 S.E.2d at 147.

More recently, the supreme court extended unfitness for teaching to a teacher's participation in an unauthorized student protest, contrary to the specific directive of the principal that the students return to class. *Felder,* 327 S.C. at 23, 489 S.E.2d at 192. The court found a clear link between the teacher's insubordination, her unfitness for teaching, and her ability to perform her job duties in a professional manner. *Id.* at 25, 489 S.E.2d at 193. The court also affirmed the school board's finding that the teacher made a false statement to her superior. *Id.* at 25-26, 489 S.E.2d at 193.

In *Hendrickson v. Spartanburg County School District Number 5,* this court affirmed a teacher's immediate termination where the teacher slapped a student and could not maintain control of her temper or classroom. 307 S.C. 108,

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112-13, 413 S.E.2d 871, 873-74 (Ct.App.1992). We also upheld an immediate termination where a principal failed to supervise instruction in accordance with the superintendent's directions. *Barr v. Board of Trustees of Clarendon County Sch. Dist. No. 2,* 319 S.C. 522, 530-31, 462 S.E.2d 316, 320-21 (Ct.App.1995), *cert. denied,* (Apr. 4, 1996). This conduct, the court held, demonstrated a "persistent neglect of duty." *Id.* at 530, 462 S.E.2d at 321.

By contrast, when a teacher's conduct does not demonstrate unfitness for teaching of the type contemplated by the previously cited decisions, procedural safeguards must be followed to allow the teacher reasonable time to correct the problem. This delineation is an important one. As noted in *Johnson v. Spartanburg County School District Number 7,* "[t]here must be a distinction between the cases, or it renders the legislature's intent to create procedural safeguards for educators a nullity." 314 S.C. 340, 343, 444 S.E.2d 501, 503 (1994) (assistant principal demoted without an opportunity to modify offensive behavior and without being given notice that he risked demotion).

**I. Failure to Supervise**

The most cogent argument the Board makes is that the students were entrusted to Hall for the duration of the trip and that "common sense" would dictate that she had a duty to supervise them at all times. It also maintains Hall should have reported the agreement concerning her limited chaperone duties to her principal because the arrangement was outside of the norm.

As noted earlier, Hall's presence was not needed because the trip already had more than the required number of chaperones.



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Moreover, the Board introduced no evidence to contradict Hall's testimony about her agreement with Simon. In addition, the Board admitted no written policy existed which set out the responsibilities of a chaperone. Hall did exactly what she agreed to do: supervise the students on the trip to and from Florida and chaperone them at an Orlando shopping mall. Regardless of what common sense would appear to dictate, the immediate termination of a teacher with fifteen years experience for reasons unrelated to the discharge of her teaching responsibilities cannot be upheld under these

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circumstances. Unlike the situations presented in *Felder, Kizer, Hendrickson,* and *Barr,* Hall's "objectionable" behavior was sanctioned by the trip's lead teacher and was not persistent, abusive, or in flagrant violation of a supervisor's teaching directives.

**II. Insubordination**

At common law, insubordination was defined as a wilful or intentional disregard of the lawful and reasonable instructions of an employer. *E.g., Freeman v. King Pontiac Co.,* 236 S.C. 335, 346-47, 114 S.E.2d 478, 483 (1960). Notwithstanding this broad definition, our supreme court has limited its application in the context of teacher employment to cases where insubordination evidences "unfitness to teach, substantially interfere[s] with the performance of [a teacher's] duty, and constitute[s] unprofessional conduct." *Felder,* 327 S.C. at 25, 489 S.E.2d at 193. Other state courts that have upheld termination for insubordination have established a similar connection.[5] We note that the cases relied on by the dissent do not involve teachers.

Without deciding whether Dr. Baker's instructions were reasonable or lawful, it is undisputed that Hall disobeyed his instructions by discussing the situation with three fellow teachers. We find, however, that the Board produced insufficient evidence to show that Hall's alleged insubordination demonstrated evident unfitness for teaching. *See Anonymous v. State Board of Medical Examiners,* 329 S.C. 371, 376-380, 496 S.E.2d 17, 20-21 (1998) (evidence in administrative hearing

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must substantially support conclusion of alleged misconduct); *Kizer,* 287 S.C. at 550, 340 S.E.2d at 147 (evidence of unfitness for teaching must be "undeniably and abundantly" present).

We recognize that section 59-25-430 defines "unfitness for teaching" in a non-exclusive manner. Nevertheless, the type of conduct referred to in the statute—persistent neglect of duty, wilful violation of rules and regulations, drunkenness, conviction of a crime, gross immorality, dishonesty, illegal use, sale or possession of drugs—clearly exceed Hall's acknowledged failure to comply with Dr. Baker's general admonition "not to have any discussion with other employees."

Although Dr. Baker testified he issued his directive because "the matter was under investigation," there is no evidence that Hall's insubordination affected her primary duties as a media specialist. Moreover, the record does not contain any evidence showing she attempted to undermine the investigation. In fact, one of the three conversations used to justify her termination occurred when a fellow teacher unassociated with the senior trip heard Hall was upset and called to check on her.[6] Dr. Baker did not know whether Hall initiated these conversations or their substance. While we recognize that a single act of disobedience could, under some circumstances, be sufficient to justify a teacher's termination even though it was unrelated to that teacher's classroom performance, the scant evidence introduced



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here is insufficient to show Hall's unfitness for teaching within the meaning XX-XX-XXX.

The decision of the circuit court judge is therefore

AFFIRMED.

STILWELL, J., concurs.

HOWELL, C.J., dissents in a separate opinion.

[330 S.C. 411]

HOWELL, Chief Judge, dissenting:

I respectfully dissent. The majority concludes that Hall's insubordination cannot constitute "an evident unfitness for teaching" as contemplated by S.C.Code Ann. § 59-25-430 (1990), thereby causing the Board's decision to be controlled by an error of law. The majority, however, overlooks the evidence before the Board concerning Hall's gross unprofessional conduct and insubordination. I believe that Hall's insubordination, standing alone, constituted "an evident unfitness for teaching" and, given our scope of review, would reverse the trial court.

The General Assembly specifically empowered local school boards to "[e]mploy and discharge teachers." S.C.Code Ann. § 59-19-90(2) (1990). Section 59-25-430 states that teachers may be dismissed at any time for "an evident unfitness for teaching." In addition, section 59-25-430 provides a non-exclusive list of examples of unfitness for teaching, which, as the majority notes, includes: "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."

I agree with the majority that insubordination fits within the statutory framework of section 59-25-430. *See Felder v. Charleston County Sch. Dist.*, 327 S.C. 21, 489 S.E.2d 191 (1997). Our common law reflects the general public policy that insubordination should not go unpunished. The supreme court defined insubordination as "a wilful or intentional disregard of the lawful and reasonable instructions of the employer." *Porter v. Pepsi-Cola Bottling Co.*, 247 S.C. 370, 374, 147 S.E.2d 620, 622 (1966). In *Porter v. Pepsi-Cola Bottling Company,* the court explored the policy behind permitting a termination of an employment contract for insubordination, stating:

> Among the fundamental duties of the employees is the obligation to yield obedience to all reasonable rules, orders, and instructions of the employer, and wilful or intentional disobedience thereof, as a general rule, justifies a rescission of the contract of service and the peremptory dismissal of the employee, whether the disobedience consists in a disregard

[330 S.C. 412]

> of the express provisions of the contract, general rules or instructions, or particular commands. This rule is not restricted to employees in subordinate positions, but applies to those employed in executive or supervisory capacities, although with respect to the latter it is recognized that they are not bound to such strict adherence to directions as is one whose



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> employment involves the exercise of less degree of responsibility and discretion. The fact that an employee holds a position of authority over others, involving the exercise of executory and supervisory powers, does not relieve him from the duty of obedience to orders of the superiors.

*Id.* at 375, 147 S.E.2d at 622. The supreme court revisited the insubordination issue again in *Young v. McKelvey,* 286 S.C. 119, 333 S.E.2d 566 (1985), where Justice Ness, in a concurring opinion, added, "In all employment contracts, the employee has an obligation to obey all reasonable rules, orders and instructions of his employer. As a general rule, willful disobedience will justify a recission of the employment contract and peremptory dismissal of the employee." *Id.* at 124, 333 S.E.2d at 568 (citing *Freeman v. King Pontiac Company,* 236 S.C. 335, 114 S.E.2d 478 (1960)). Accordingly, insubordination can constitute such an egregious offense against the employer that it can be an evident unfitness for teaching. Each case must be judged by how material the insubordination was to the overall duties and responsibilities of the teacher.

I believe that the majority erroneously concludes that "the Board produced insufficient evidence that Hall's alleged insubordination demonstrated evident unfitness for teaching." [7] While some instances of insubordination by a teacher may not affect fitness, this case is not one of them. According to the principal's May 3, 1996, report, the principal first instructed Hall not to discuss the events of the field trip with other staff members because of other teachers' attempts to mislead her concerning the facts of the field trip. Given the principal's desire to uncover the truth about a situation that ultimately could have led to the termination of not only Hall but other teachers on the field trip, the principal's instructions were

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eminently reasonable. After receiving the principal's report, which conveyed the principal's concerns that there was a concerted effort by some of the teachers to deceive her, the superintendent also ordered Hall not to discuss the case with other members of the staff. Likewise, the superintendent was acting reasonably by addressing the concerns of the parents and to protect the integrity of the school district. Hall's insubordination revolved around the grave subject of the unprofessional conduct of a number of teachers. The result of Hall's decision to discuss the events of the field trip with other members of the staff was that she impeded the fact-finding mission of both her principal and her superintendent by forever tainting the results of their investigation. Thus, I think that the majority incorrectly ruled as a matter of law that Hall's insubordination was not actionable as an evident unfitness for teaching under section 59-25-430.[8]

Whether Hall's insubordination was material enough to affect her fitness as a teacher was a determination that the school board was particularly qualified to make. After hearing the evidence, the Board decided that Hall's insubordination was egregious enough to warrant dismissal under section 59-25-430. We must affirm the Board's decision if it is supported by substantial evidence. *Kizer v. Dorchester County Vocational Educ. Bd. of Trustees,* 287 S.C. 545, 548, 340 S.E.2d 144, 146 (1986) ("`Substantial evidence' is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the Board reached or must have reached in order to justify its action."). I believe that the majority opinion amounts to an improper substitution of their interpretation of the facts. In my view, there



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is substantial evidence to support the Board's decision.

[330 S.C. 414]

I, therefore, would reverse the trial court and reinstate the Board's decision to terminate Hall under section 59-25-430.

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Notes:

1. We decide this case without oral argument pursuant to Rule 215, SCACR.

2. The school district's policy states that principals are responsible for ensuring that each field trip has an adequate number of chaperones. At the high school level, one chaperone is required for every fifteen students. In this case, eight chaperones supervised approximately forty students, giving the group nearly three times the number of chaperones it required.

3. Dr. Frank Baker, the superintendent, testified:

"I have known Ms. Hall ... since she started to work at Hillcrest, and I really have nothing negative to say about her performance. I have nothing negative to say about her in terms of her support of the District and in terms of her performance as it relates to beyond the classroom with extracurriculars and things of that nature. And in all truthfulness ... I do not have anything negative to say on that."

4. Some of the other chaperones on the trip may well have been subject to termination under this Code section. The record reveals that two married women teachers were accompanied on the trip by men other than their spouses, without notice to or approval by the school. Hall, however, is unmarried and only met her male friend in Florida after separating from the students. Moreover, her principal must have known that Hall would be meeting him there since his name appeared on the approved list of adults on the trip.

5. *E.g., Board of Educ. of W. Yuma Sch. Dist. RJ-1 v. Flaming,* 938 P.2d 151, 159 (Colo.1997) (insubordination supported by teacher's disregard for express directions of her superiors concerning use of force in classroom); *Board of Educ. v. Harris,* 218 Ill.App.3d 1017, 161 Ill.Dec. 598, 606, 578 N.E.2d 1244, 1252, *appeal denied,* 142 Ill.2d 651, 164 Ill.Dec. 914, 584 N.E.2d 126 (1991) (continued refusal to accept classroom assignment constituted insubordination); *Childs v. Roane County Bd. of Educ.,* 929 S.W.2d 364, 365-66 (Tenn.Ct.App.), *appeal denied,* (Sept. 9, 1996) (insubordination finding supported where teacher did not control her classroom and maintained questionable grading methods); *Ray v. Minneapolis Bd. of Educ., Special Sch. Dist. No. 1,* 295 Minn. 13, 202 N.W.2d 375, 378 (1972) (insubordination must be "constant and continuing"); *Merchant v. Board of Trustees of Pearl Mun. Separate Sch. Dist.,* 492 So.2d 959, 962-63 (Miss.1986) (insubordination supported by finding of repeated violations of school financial policies).

6. Judge King found Hall's conversations did not impede the superintendent's investigation, but we do not necessarily agree that lack of prejudice would excuse clear acts of insubordination.

7. Obviously, a teacher's function encompasses more than that of an instructor and a judgment on fitness to teach should be based on much more than just classroom performance.

8. Any assertion by the majority that the Board should have proceeded under S.C.Code Ann. § 59-25-440 (1990) is misplaced.



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Section 59-25-440 requires the supervisor to first admonish a teacher for conduct which could lead to dismissal and then allow a reasonable time for improvement. Notice and a reasonable time for improvement cannot cure the damage cause by Hall's insubordination. The damage caused by Hall's insubordination was complete at the time of her insubordination. Assuming that Hall does not repeat her insubordination, section 59-25-440 would leave the board without recourse to punish Hall for her insubordination.

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STATE OF SOUTH CAROLINA )
) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT
COUNTY OF CHEROKEE )
)
) CASE NO.: 2015-CP-11-0828
)
SHARON BROWN )
Plaintiff, ) **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
vs. )
)
CHEROKEE COUNTY SCHOOL DISTRICT )
Defendant. )

| Plaintiff's Attorney: | Defendant's Attorney: |
|---|---|
| Fletcher N. Smith, Jr., Bar No. 005165<br>Address:<br>P.O. Box 10496, F. S.; Greenville, Sc 29603<br>Phone: 864.232.6541 Fax 864.232.6756<br>E-mail: fnsmith@bellsouth.net Other: ____ | Andrea White, Bar No. ____<br>Address:<br>P.O. Box 1486<br>Phone: 803.790.0603 Fax____<br>E-mail: awhite@dwlawfirm.comOther: ____ |

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

**SECTION I: Hearing Information**

Nature of Motion: Motion to Reconsider
Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES/☐ NO

**SECTION II: Motion/Order Type**

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ 8/05/2016
Signature of Attorney for ☒ Plaintiff /☐ Defendant Date submitted

**SECTION III: Motion Fee**

☐ PAID – AMOUNT: $_____
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

| **JUDGE'S SECTION** | |
|---|---|
| ☐ Motion Fee to be paid upon filing of the attached order.<br>☐ Other: _____ | JUDGE CODE _____<br>Date: _____ |

**CLERK'S VERIFICATION**

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF CHEROKEE | ) | IN THE COURT OF COMMON PLEAS |
| | ) | Case No. 2015-CP-11-0828 |
| SHARON BROWN,<br>APPELLANT, | ) | **MOTION TO RECONSIDER** |
| CHEROKEE COUNTY SCHOOL DISTRICT,<br>RESPONDENT. | ) | |

Comes now the Plaintiff, Sharon Brown, and request that the Court reconsider its order dated July 25, 2016.

Plaintiff requests that this Honorable Court address the issue that Ms. Brown's due process rights were violated by the school board of trustees. Additionally, Brown request that the court consider the issue as to whether the board was bias against Ms. Brown, as set forth in Appellant's Briefs and Appellant's Memorandum In Support of Second Amended Appeal Brief (pgs. 7-11. ), which may mandates reversal of the school board's decision based upon prior action of the Cherokee County School Board against Brown.

Furthermore, Plaintiff request that the Court reconsider the issue of alleged dishonesty of Brown in that Brown has no previous history of dishonesty or breaking the laws of this state.

Moreover, Brown has been an exemplary teacher for Cherokee County School District and Cherokee County School District Officials have never written Ms. Brown up in her 17 years as a teacher for dishonesty. Additionally Plaintiff believes and would assert that Superintendent Quincie Moore (Dr. Moore) has not produced sufficient evidence that Ms. Brown lied to her at the meeting on June 30, 2015. Brown was unaware beforehand as to what issues would be discussed on June 30, 2015. In this regard, Brown believes that the record reflects that Dr. Moore never wrote Brown after the meeting to confirm Ms. Brown's responses to the allegations

that Dr. Carpenter (Director of Human Resources) stated Ms. Traci Wilson stated to Ms. Nanette Ruppe, principal.

Brown would request that the court consider the issue as to whether Ms. Brown should have been expected to admit something she asserts did not occur and her insistence on her innocence should not have been weighed against her by the School Board. Instead, the discipline should have been related to the conduct found to have occurred, as well as Brown's past performance as teacher ( *See* New Jersey case. ***In Re Geiger, et al.,*** Docket No. A-1409-13T2 N.J. Superior App. Div. 2015.

Brown requests that the Court reconsider the issue as to whether the discipline imposed by the school board was excessive and whether the actions of the of the school board represent a retaliatory bias against Ms. Brown because they had to reinstate her a few years ago. The alleged assaulted kid, as well as his mother, confirmed that her child had not been touched by Ms. Brown. Ms. Brown had no reason to try to "influence" Ms. Wilson on an incident that never occurred.

Wherefore, Brown prays that this Court reconsider and revise its order to reflect Brown's position on the issue raised and reconsider reinstating her to her former teaching position.

Respectfully Submitted,

Fletcher N. Smith Jr. , Esquire
P.O. Box 10496, F.S.
Greenville, South Carolina 29603
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Fax: 864-232-6756
fnsmith@bellsouth.net

Greenville, South Carolina
August 5 ,2016

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF CHEROKEE | ) | IN THE COURT OF COMMON PLEAS |
| | ) | CIVIL ACTION NO.: 2015-CP-11-0828 |
| SHARON BROWN,<br>APPELLANT, | ) | |
| | | CERTIFICATE OF MAILING |
| | ) | |
| CHEROKEE COUNTY SCHOOL DISTRICT,<br>RESPONDENT. | ) | |
| _____ | ) | |

I, Sharon Brown, hereby certify that I have this 5th day of August, 2016, served a copy of the herein below listed document to the address listed below by depositing a copy of same in the United States Postal System postage prepaid, and mailing same to:

PLEADING(S): Motion for Reconsideration

PARTY SERVED: Ms. Andrea E. White, Esq.
Duff, White & Turner, LLC
P.O. Box 1486
Columbia, S.C. 29202
Phone 803-790-0603
Fax 803-790-0605
E-mail Address: awhite@dwtlawfirm.com

Sharon Brown
SHARON BROWN

**IN THE MATTER OF THE TENURE HEARING OF BRIGITTE GEIGER, SCHOOL DISTRICT OF THE TOWNSHIP OF MOUNT OLIVE, MORRIS COUNTY,**
**and**
**IN THE MATTER OF THE TENURE HEARING OF SHARON JONES, SCHOOL DISTRICT OF THE TOWNSHIP OF MOUNT OLIVE, MORRIS COUNTY.**

**DOCKET NO. A-1409-13T2**

**SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION**

**Argued September 29, 2015**
**November 18, 2015**

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

Before Judges Fisher, Espinosa and Currier.

On appeal from the Commissioner of Education, Agency Docket Nos. 106-4/12 and 107-4/12.

Alan L. Zegas argued the cause for appellants Brigitte Geiger and Sharon Jones (Law Offices of Alan L. Zegas, attorneys; Mr. Zegas and Stephanie G. Forbes, on the brief).

Marc H. Zitomer argued the cause for respondent Board of Education of the Township of Mount Olive (Schenck, Price, Smith & King, LLP, attorneys; Mr. Zitomer, of counsel; Mr. Zitomer and Joseph L. Roselle, on the brief).

John J. Hoffman, Acting Attorney General, attorney for respondent Commissioner of

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Education (Frederick H. Wu, Deputy Attorney General, on the brief).

PER CURIAM

Appellants Brigette Geiger and Sharon Jones were dismissed from their positions as teachers with the Mount Olive School District for conduct unbecoming a teaching staff member based on a claim of two students that the teachers made racially insensitive statements. Appellants denied making the statements, but at the conclusion of a nine-day hearing, an administrative law judge (ALJ) found credible the testimony of G.H. (Georgia) and Z.C. (Zenobia),[1] the high school students who claimed to have overheard the statements. An Assistant Commissioner of Education[2] adopted both the ALJ's findings and the recommendation that Geiger and Jones be dismissed. In appealing this final agency decision, Geiger and Jones argue, among other things, that the credibility findings were arbitrary, that their due process rights were violated because of what they claim was a deficient internal investigation, and that adverse inferences should have been drawn against their accusers. We reject those arguments but remand for further consideration of appellants' contention that the discipline imposed was excessive.

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Appellants Geiger and Jones were health and physical education teachers at Mount Olive High School for approximately thirty-one and twenty-eight years, respectively, when, on Friday, March 2, 2012, two twelfth-graders, Georgia and Zenobia, reported to Vice-Principal James Kramer that, while they were changing in the girl's locker room, they heard Geiger and Jones making inappropriate comments in an adjacent office. Although their versions varied as to some surrounding circumstances, the substance of their complaint was consistent.

There seems to have been no dispute that, due to the configuration of the locker room, the teachers could not see these two students and had no reason to believe anyone else was present. According to Georgia, the teachers were "yelling really loud," with Jones



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saying, "[t]hese Negroes think they're fucking tough shit," and Geiger responding, "Yeah, that's what they are. They're fucking Negroes, Negroes, Negroes, Negroes." In her testimony, Zenobia said that the two teachers said the same thing with the exception of the word "fucking." Georgia and Zenobia told this to a fellow student, L.W., and then the three concluded the vice-principal should be informed. In a short time, the vice-principal met with Georgia and Zenobia, who repeated what they claimed to have heard. They were later summoned to the vice-principal's office and asked to give

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written statements, which they prepared separately. The statements, although largely consistent with what the girls had verbally reported earlier and with their later testimony, had slight differences regarding minor aspects of the incident.

The vice-principal provided the written statements to Principal Kevin Stansberry, who reviewed them with Susan Miranda, Director of Guidance. Stansberry and Miranda also met with Georgia and Zenobia, who repeated the story in a manner consistent with their written statements.

The principal met with Georgia and Zenobia on Monday because he "wanted to make sure their stories didn't change over the weekend." Their versions did not change. The principal also reviewed a surveillance video of the hallway outside the locker room that suggested Georgia and Zenobia were together in the locker room for approximately five minutes.

Principal Stansberry also met with Geiger and Jones on Monday, March 5; their union representative and Miranda were present as well. Jones at first stated she had no recollection of such a conversation with Geiger. Upon further questioning, she stated that she might have discussed with Geiger an incident the previous day concerning the use of a cellphone by Ze.C., a female black student, but Jones denied making the statements attributed to her. The principal thought she was evasive.

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During her interview, Geiger recalled a conversation with Jones that included negative statements about students but denied using the language reported by Georgia and Zenobia. The principal thought Geiger "was holding back in terms of the details of [the] conversation," and he ultimately placed the two teachers on administrative reassignment pending further investigation.

The next day, Geiger, Jones and their union representative met with Dr. Larrie Reynolds, the school superintendent, as well as Stansberry and Miranda. According to Reynolds, the purpose of the meeting was "to give the teachers an opportunity to tell their side of the story." Geiger and Jones, however, refused to respond to questioning without counsel present and, for that reason, asked for a postponement. Reynolds denied the request, advising the teachers that his internal investigation could not proceed if attorneys were involved; he further asserted that if Geiger and Jones refused to give their side of the story, he would assume the allegations were true. After further discussion — including Reynolds' assurance that, though serious, he did not view the allegations as "career ending" — both Geiger and Jones maintained they would not respond without counsel.

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Reynolds directed that the investigation continue, and the girls were later interviewed by the school board's attorney. Their stories remained unchanged.

On March 22, 2012, Reynolds filed charges against Geiger and Jones, seeking their dismissal for conduct unbecoming a teaching staff member. The dispute was transferred by the Commissioner of Education to the Office of Administrative Law, where an ALJ conducted a lengthy hearing and eventually recommended that Geiger and Jones be dismissed from their positions as tenured teachers. The Assistant Commissioner ultimately adopted those recommendations for reasons set forth in a written opinion.

In appealing the final agency decision, Geiger and Jones argue: (1) the factual findings were arbitrary and not rationally based on the evidence; (2) their due process rights were violated; (3) the ALJ erred in denying their motion to dismiss or to draw an adverse inference based on the school district's failure to preserve evidence or provide discovery; (4) the ALJ erroneously shifted the burden of proof by seeking from Geiger and Jones an explanation for the students' accusations; (5) the ALJ erred by failing to rule on their motion for an adverse inference against Georgia for her failure to respond to their subpoena; and (6) even if the charges could

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be upheld on this record, the discipline imposed was arbitrary and excessive. We find no merit in the first five arguments, but, in considering the sixth, we agree the discipline imposed was excessive.

I

In attacking the ALJ's credibility determinations, which the Assistant Commissioner adopted, Geiger and Jones contend Georgia and Zenobia's testimony should have been viewed with great caution because they are children. They also argue the ALJ disregarded inconsistencies in the students' "various version[s] of events." Specifically, Geiger and Jones claim there were inconsistencies concerning some of the circumstances surrounding the event, including, among other things: whether the girls saw the teachers as they entered the locker room; whether the teachers visibly expressed shock when noticing the girls after making the statements; what the girls said to one another after hearing the comments; and whether the teachers used profanity during the exchange. Geiger and Jones also refer to alleged inconsistencies or inaccuracies regarding the girls' encounter with another teacher before their meeting with Reynolds that, in Geiger and Jones's view, constituted "an implied admission of collusion for the upcoming meeting with administrators." And the teachers argue the ALJ erred by

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relying on the statements of administrators finding credible Georgia and Zenobia's statements.[3] We find that these arguments are without sufficient merit to warrant further discussion in a written opinion, R. 2:11-3(e)(1)(E), and add only the following comments.

Judicial review of administrative action is limited. In re Herrmann, 192 N.J. 19, 27 (2007). A final agency decision "will be sustained unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." Id. at 27-28. Our role is limited to determining

> (1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in



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reaching a conclusion that could not reasonably have

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been made on a showing of the relevant factors.

[Mazza v. Bd. of Trs., Police & Firemen's Ret. Sys., 143 N.J. 22, 25 (1995).]

A reviewing court will not "substitute its own judgment for the agency's even though the court might have reached a different result." In re Carter, 191 N.J. 474, 483 (2007); see also In re Stallworth, 208 N.J. 182, 194 (2011). "This is particularly true when the issue under review is directed to the agency's special 'expertise and superior knowledge of a particular field.'" Id. at 195 (quoting Herrmann, supra, 192 N.J. at 28). In adhering to this approach, our appellate courts will not "disturb [an ALJ's] credibility determination, made after due consideration of the witnesses' testimony and demeanor during the hearing." H.K. v. Dep't of Human Servs., 184 N.J. 367, 384 (2005). "Because [the factfinder] 'hears the case, sees and observes the witnesses, [and] hears them testify,' it has a better perspective than a reviewing court in evaluating the veracity of witnesses." Pascale v. Pascale, 113 N.J. 20, 33 (1988) (quoting Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961)); see also Clowes v. Terminix Int'l, Inc., 109 N.J. 575, 587 (1988); Close v. Kordulak Bros., 44 N.J. 589, 599 (1965). Similarly, an "agency head may not reject or modify [an ALJ's] findings of fact as to issues of credibility of lay witness

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testimony" without demonstrating the findings were "arbitrary, capricious or unreasonable or [were] not supported by sufficient, competent, and credible evidence in the record." N.J.S.A. 52:14B-10(c).

Inconsistencies can be found in a comparison of the students' written statements, the notes taken by Kramer and Miranda of their meetings with the students, and the students' testimony at the hearing. But the minor inconsistencies cited lack sufficient materiality to overcome the deference we owe the credibility determinations made by the ALJ and adopted by the Assistant Commissioner.

For example, Geiger and Jones contend that Georgia and Zenobia gave "false and inconsistent statements" regarding whether they saw the teachers when they entered the locker room. Although the girls' written statements and Kramer's notes do not mention whether Geiger and Jones were in the locker room when the girls entered, Kramer's March 15 notes state that the girls reported that they saw both teachers in the offices when they entered the locker room. At the plenary hearing, Georgia testified that when she entered the locker room she saw Jones in her office but not Geiger, and she did not remember telling Kramer she saw Geiger. Zenobia testified she did not see the teachers when she entered the locker room and did not recall

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telling Kramer she had. And a surveillance video showed Geiger entering the locker room after the girls had already entered. While Geiger and Jones characterize these inconsistencies as "deliberate[] lying under oath," they were not so material as to compel a holding from this court that the ALJ was required to reject the entirety of Georgia and Zenobia's testimony. Inconsistent recollections by eyewitnesses are hardly uncommon[4] and they do not necessarily compel — particularly when they do not go to the heart of the matter — rejection of everything that eyewitness said.

Having closely examined the evidence in light of the teachers' arguments, we find no

principled reason for intervening or otherwise rejecting the credibility findings upon which the final agency decision was based.[5] Because the ALJ had

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the opportunity to hear the witnesses and observe their demeanor, her credibility determinations were entitled to deference not only by the Assistant Commissioner, N.J.S.A. 52:14B-10(c), but also by this court, State v. Locurto, 157 N.J. 463, 474 (1999).

II

Geiger and Jones claim their due process rights were violated at the informal investigation stage because: (a) Reynolds attempted to "coerce statements" from them and precluded them from having counsel present; (b) Reynolds did not review the videos of the area outside the locker room or the notes generated by Kramer, Miranda or Stansberry before filing tenure charges, and these administrators additionally failed to record their conversations with Georgia and Zenobia each time the girls were interviewed; (c) Kramer did not separately interview the girls when they made their initial report of the incident; and (d) Reynolds presumed the allegations were true

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when Geiger and Jones refused to answer questions without counsel. We reject these arguments.

Geiger and Jones were provided with all the process that was due. There is a process prescribed by statute concerning tenure charges against teachers. Tenured teachers may be dismissed "for inefficiency, incapacity, unbecoming conduct, or other just cause" but only after written charges are filed and a hearing is held. N.J.S.A. 18A:6-10. The charges must be filed with the board of education and accompanied by a written statement of evidence supporting the charges. N.J.S.A. 18A:6-11. The board then

> shall forthwith provide such employee with a copy of the charge, a copy of the statement of the evidence and an opportunity to submit a written statement of position and a written statement of evidence under oath with respect thereto. After consideration of the charge, statement of position and statements of evidence presented to it, the board shall determine by majority vote of its full membership whether there is probable cause to credit the evidence in support of the charge and whether such charge, if credited, is sufficient to warrant a dismissal or reduction of salary. The board of education shall forthwith notify the employee against whom the charge has been made of its determination, personally or by certified mail directed to his last known address. In the event the board finds that such probable cause exists and that the charge, if credited, is sufficient to warrant a dismissal or reduction of salary, then it shall forward such written charge to the [C]ommissioner

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> for a hearing pursuant to N.J.S.[A.] 18A:6-16, together with a certificate of such determination.
>
> [N.J.S.A. 18A:6-11.]

In addition, an accused teacher has fifteen days to "submit a written response to the

charges to the [C]ommissioner." N.J.S.A. 18A:6-16. The Commissioner then must review the charges and "render a determination on the sufficiency of the charges." Ibid. If the Commissioner determines the charges are "not sufficient to warrant dismissal or reduction in salary of the person charged, he shall dismiss the [charges]." Ibid. If, however, the Commissioner determines the "charge [was] sufficient to warrant dismissal or reduction in salary of the person charged," he is required to refer the case to the OAL for a hearing.[6] Ibid. Geiger and Jones do not contend any of these statutory procedures were bypassed or disregarded; they complain only of the internal investigation that occurred before charges were lodged.

Even if the internal investigation could have been more searching and thorough, Geiger and Jones received adequate notice of the charges and were given an opportunity to address

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those charges. And, over the course of a nine-day hearing, Geiger and Jones had the opportunity to present witnesses and confront the administrators who conducted the investigation and the witnesses who made the allegations.

We find no merit in Geiger and Jones's argument that the inadequacies in the pre-notice investigation by the school administrators constituted an actionable violation of due process principles.

III

Geiger and Jones argue that the district's failure to preserve footage from surveillance cameras, other than the images captured in the hallway outside the girls' locker room, constituted spoliation of evidence and required "at least an adverse inference that the unpreserved video supported" their factual contentions. We find this argument also has insufficient merit to warrant discussion in a written opinion, R. 2:11-3(e)(1)(E), beyond the following few comments.

"Spoliation typically refers to the destruction or concealment of evidence by one party to impede the ability of another party to litigate a case." Jerista v. Murray, 185 N.J. 175, 201 (2005). "In civil litigation . . . spoliation of evidence can result in . . . an adverse . . . inference against the party that caused the loss of evidence." Id. at 201-02.

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"The spoliation inference permits [a factfinder] to infer that the evidence destroyed or concealed would not have been favorable to the spoliator" and "serves the purpose 'of evening the playing field where evidence has been hidden or destroyed.'" Id. at 202 (quoting Rosenblit v. Zimmerman, 166 N.J. 391, 401 (2001)).

The record does not support Geiger and Jones's argument. What the record shows is that two videos from cameras pointed at the hallway outside the girls' locker room from different angles were entered into evidence. Stansberry testified there were cameras in other areas of the building, including the gym and the gym lobby, but there was no camera in the girls' locker room. Further, the evidence revealed that once a camera's hard drive reaches capacity, it empties itself out and then starts recording again.

One of the videos admitted into evidence shows Jones outside the locker room immediately after the alleged incident and contains images of Georgia and Zenobia leaving the locker room. There is no evidence that any other video of Geiger and Jones was recorded on March 2, 2012, and, even if Geiger and Jones did appear in another video later that day, the evidentiary value of such a video would be extremely limited. And,



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regarding videos from the gym and gym lobby that may have

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captured the girls after the alleged incident, there is no dispute that Georgia and Zenobia were together in the lobby and gym and had the opportunity to discuss the incident. If available, video of such events, without audio, of the girls in the gym or lobby, or anywhere else in the building, would not likely provide any evidence to support Geiger and Jones's contentions that the students fabricated their allegations about what was said in the locker room.

IV

Geiger and Jones argue the ALJ improperly shifted the burden to them to prove that Georgia and Zenobia had a motive to lie. They allude to the ALJ's determination that "the lack of motive to lie renders [Georgia and Zenobia] more credible than" them. Geiger and Jones's contention mischaracterizes the ALJ's determination.

In fact, the ALJ correctly noted that the burden of persuasion was on the district to establish the allegations supporting the charges by a preponderance of the evidence. See Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). The ALJ's determination that Georgia and Zenobia lacked a motive to lie was an entirely proper device for assessing their credibility, Scouler v. City of Camden, 332 N.J. Super. 69, 75 (App. Div. 2000) (noting that "one obvious consideration" in assessing

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credibility is whether the accuser "had a motive" to fabricate),[7] and the application of this inference should not be interpreted as requiring these teachers to prove the events did not occur.

V

In their fifth point, Geiger and Jones argue the ALJ erred by refusing to draw an adverse inference against Georgia because she did not answer their subpoena for information from her Facebook account. They rely on N.J.A.C. 1:1-11.4, which declares that "[a] party who refuses to obey a subpoena may . . . suffer an inference that the documentary or physical evidence or testimony that the party fails to produce is unfavorable." This regulation has no bearing here because Georgia was a witness, not a party. In any event, even if applicable, we find the contention that Georgia may have made contradictory statements on Facebook to be too speculative to warrant relief.

Moreover, the appropriate remedy when a person fails to

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answer a subpoena is to "seek enforcement" through "an action in the Superior Court pursuant to the New Jersey Court Rules." N.J.A.C. 1:1-11.5. Because Geiger and Jones failed to seek this remedy while the matter was pending before the ALJ, we conclude the argument that the ALJ abused her discretion in failing to draw an adverse inference is without merit and requires no further comment. R. 2:11-3(e)(1)(E).

VI

We lastly turn to Geiger and Jones's argument that dismissal was an excessive and arbitrary penalty. They contend that because dismissal was partially based on their failure to admit they made the statements in question violates their right to due process and, also, that the penalty is disproportionate because it was inconsistent with past precedent and did not give sufficient weight to mitigating factors.

We start with the premise that disciplinary sanctions imposed by administrative agencies are entitled to



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deference. Herrmann, supra, 192 N.J. at 28. Consequently, "courts should take care not to substitute their own views of whether a particular penalty is correct for those of the body charged with making that decision." Carter, supra, 191 N.J. at 486; see also In re Polk, 90 N.J. 550, 578 (1982) (observing that a court has "no power to act independently as an administrative tribunal or

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to substitute its judgment for that of the agency [and] can interpose its views only where it is satisfied that the agency has mistakenly exercised its discretion or misperceived its own statutory authority"). Because of the deference owed to such determinations, "the test" to be applied by an appellate court is to determine "whether [the] punishment is so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness." Polk, supra, 90 N.J. at 578 (internal quotation marks omitted); see also Herrmann, supra, 192 N.J. at 28. This standard inevitably requires consideration of penalties imposed in the past for similar conduct.

Geiger and Jones rely on several administrative decisions in arguing that no more than a 120-day suspension was warranted. In re Tenure Hearing of Lauren Cooke, EDU 74-09, initial decision (July 22, 2010), final decision (Nov. 23, 2010);[8] In re Tenure Hearing of Jayson H. Burg, EDU 3291-97, initial decision (Oct. 30, 1997), Comm'r decision (Dec. 18, 1997), final decision (June 3, 1998);[9] In re Tenure Hearing of Barbara Emri, EDU 4579-00, initial decision (Aug. 30, 2002), Comm'r decision (Oct. 21,

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2002), final decision (Dec. 5, 2003);[10] and In the Matter of the Tenure Hearing of Adelphia Poston, EDU 3876-05, initial decision, (July 19, 2006), final decision (Oct. 19, 2006).[11] Cooke referred to another teacher by use of "the N word" and "Aunt Jemima"; in imposing only a suspension, the Commissioner relied on Cooke's unblemished sixteen years as a teacher and the fact the comments were made during a private conversation and not directed at or heard by any students. Burg uttered the word "nigger" in his class in direct reference to his students; the Commissioner ordered a lengthy suspension to "impress upon [Burg] the seriousness of his conduct and his substantial need for greater control and sensitivity in dealing with students." Emri, who received a similar suspension, used the word "nigger" when speaking about a student to another staff member and compared some black students to monkeys; she also exhibited a pattern of inappropriate anger and insensitivity to students. Poston used the word "dyke" in referring to a student's mother after being taunted repeatedly with the same word by the student; concluding the penalty must be "sufficiently heavy to make it clear that obscene and derogatory outbursts of the type displayed by [Poston] . . . in her classroom interaction with a

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student, are a very serious matter and simply cannot be tolerated in the school setting no matter how grievously a teaching staff member may be provoked," the Commissioner ordered Poston to forfeit 120 days salary.

Although it seems the ALJ's recommendation that Geiger and Jones be dismissed was based in large part on their refusal to admit they made the offensive comments, this was not a factor adopted by the Assistant Commissioner in finding Geiger and Jones unfit. Indeed, Geiger and Jones's refusal to admit their culpability would have been an improper consideration. Cf. In re Fulcomer, 93 N.J. Super. 404, 419 (App. Div. 1967). Geiger and Jones should not have been expected to admit something they assert did



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not occur and insistence on their innocence should not have been weighed against them. Instead, the discipline imposed should have been related to the conduct found to have occurred, as well as Geiger and Jones's past performances as teachers.

In examining the propriety of the discipline imposed, we recognize that "unfitness to remain a teacher may be demonstrated by a single incident if sufficiently flagrant." Id. at 421; see also Redcay v. State Bd. of Educ., 130 N.J.L. 369, 371 (Sup. Ct. 1943), aff'd o.b., 131 N.J.L. 326 (E. & A. 1944). Here, the Assistant Commissioner found that Geiger and

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Jones's "inexcusable use of racially derogatory remarks to refer to students in the district necessitate[d] the termination of their employment," explaining that

> [t]he use of such an inappropriate expression to refer to a group of students is completely unprofessional and reveals a total lack of self[-]restraint on the[ir] part . . . .
>
> Unlike the circumstances [in Cooke], [Geiger and Jones's] use of the racial slur was not only heard by the students but it was specifically directed at students in the school. Notwithstanding [their] assertion that there was no deliberate exposure to the students or the public at large, the reality is that students did in fact hear [them] using the inflammatory term. As a result there was a direct impact to the school environment. Moreover, the ALJ found that . . . Geiger's demeanor during parts of her testimony revealed evidence of disdain and contempt for a group of African-American students, and similarly . . . Jones[] emotionally testified about her frustration with several African-American students. Therefore, the ALJ found that a potential negative impact on the school community remains an ongoing concern. As a result, the Commissioner finds that [Geiger and Jones] are unfit to discharge the duties and functions of their positions as teachers in the . . . [d]istrict.
>
> [Citation omitted.]

Although the Assistant Commissioner correctly observed that a single incident of sufficient seriousness and gravity may warrant dismissal in an appropriate case, we must also recognize that "consideration should be given to the impact of the penalty

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on [an employee's] teaching career," Fulcomer, supra, 93 N.J. Super. at 421,[12] and that an employee's past disciplinary record is relevant in determining the appropriate penalty for the committed offense, West New York v. Bock, 38 N.J. 500, 522-24 (1962). Here, there is no dispute that Geiger and Jones had lengthy, unblemished careers of thirty-one and twenty-eight years.

In our view, the conclusion reached here by the Assistant Commissioner is inconsistent with the Commissioner's determinations in Emri, Poston, Burg and Cooke. In fact, the Assistant Commissioner seems to have realized the decision in this case represented a significant departure. In expressly rejecting Emri,[13] where the teacher received only a suspension despite having referred to a student as a "nigger" in a



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discussion with another teacher, the Assistant Commissioner invoked and took comfort in Justice Francis's comment that "experience is a teacher and not a jailer." In re Masiello, 25 N.J. 590, 598 (1958).

The administrative process thrives on its ability to adjust to change and to remain flexible in light of experience; administrative bodies must often act swiftly to meet new challenges, and in this regard the Commissioner is certainly entitled to consider a sterner standard for dealing with such matters. By the same token, employees are entitled to rely upon standards existing at the time of their questioned conduct. Geiger and Jones were expected to govern their conduct in accordance with precedent existing in March 2012, and should not be subject to punishment based on a standard that has since evolved. Although views may and should change as certain conduct becomes more or less acceptable in society — a circumstance which prompted the observation that "experience is a teacher and not a jailer," ibid. — the Assistant Commissioner should also have considered Justice Francis's less quotable comment that "a realization has grown over the years that constancy of decision is desirable" and that "the agency charged with administration of the school laws ought to be . . . sensitive to the significance of precedent." Id. at 599.

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Accordingly, while the Commissioner may — going forward — give notice of an intent to impose greater discipline for racially insensitive comments, fundamental fairness precludes application of such an approach to conduct that occurred in March 2012. Geiger and Jones were entitled to be treated in the manner reflected by then-existing precedent. Because similar circumstances in the past warranted only a suspension, we conclude that the Assistant Commissioner acted arbitrarily and capriciously in dismissing Geiger and Jones.

In crafting an appropriate sanction following today's remand, the Assistant Commissioner should be guided by the fact that Geiger and Jones's comments, although certainly derogatory and racially motivated, carried a less pejorative sting than those uttered in cases where a sanction less than dismissal was imposed, such as Emri, and, also, Cooke (where, in 2010, a 120-day suspension was imposed for a teacher who, in a conversation with another teacher, referred to an African-American teacher with "use of the 'N word' and 'Aunt Jemima'"), Burg (where, in 1998, a 180-day suspension was imposed when the teacher not only told students in his classroom that they were "fools" and "jerks" but also "niggers"), and Poston (where, in 2006, a 120-day suspension was imposed when the teacher, after "relentless needling" by a "persistently disruptive" student, who "taunt[ed]

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her repeatedly with the epithet 'dyke,' . . . hurled the same epithet back at him with reference to his mother").[14] In addition, greater weight should be given to the fact that the statements in question were not directed at students and were not intended to be heard by students or others, although they

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were actually overheard by two students. The Assistant Commissioner should also give considerable weight to the fact that Geiger and Jones had unblemished records of greater duration than others who received less severe discipline in the recent past.[15] Ultimately, consistency in decision-making plays an important role in such matters and requires here issuance of a sanction bearing similarity to past rulings. Dismissal was too harsh a sanction in these circumstances.



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Affirmed in part, reversed in part, and remanded for further proceedings. We do not retain jurisdiction.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION

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Footnotes:

1. These are fictional names.

2. The matter was delegated to an assistant commissioner pursuant to N.J.S.A. 18A:4-34.

3. We reject this last aspect of the teachers' arguments out of hand because it mischaracterizes the ALJ's determination. Although the ALJ did mention that Stansberry and Reynolds testified they found the girls credible, the ALJ did not rely on those credibility assessments in making her own credibility determination. Rather, the ALJ stated that she found the girls' versions "were corroborated by the witnesses to whom they reported their version of events as well as the documentary evidence of their statements." In short, the ALJ's statement simply reflects that the girls' testimony was consistent with that of Stansberry, Miranda and Reynolds regarding what the girls reported to them.

4. Edith Wharton famously wrote in the opening sentence of Ethan Frome (1911): "I had the story, bit by bit, from various people and, as generally happens in such cases, each time it was a different story." Contrary to what is argued here, variations do not warrant rejection of eyewitnesses accounts; if anything, suspicions may be more justifiable when eyewitnesses present near identical versions.

5. We also briefly observe the lack of substance in the teachers' argument that Georgia and Zenobia "blatantly lied" about a "suspicious encounter" with Sean Smyth, another gym teacher at the high school, where, the teachers argue, the students "implicitly admitted that they were colluding about their stories" as proof of fabrication. Even if the encounter occurred as Smyth described — that is, that after missing class, the girls told him they had "things to sort out" because of a "big meeting" — it does not necessarily follow that the girls were colluding. The evidence is not so clear or compelling to suggest that the students actually fabricated the conversation between Geiger and Jones. In fact, the record reveals that by the time this conversation with Smyth occurred, the students had already given written statements and had already been interviewed by Stansberry and Miranda. The ALJ's decision to find the girls' testimony credible notwithstanding Smyth's testimony was not arbitrary, capricious or unreasonable.

6. The Teacher Effectiveness and Accountability for the Children of New Jersey Act was enacted August 6, 2012, several months after the conduct here in question. The Act amended N.J.S.A. 18A:6-16, which now requires the Commissioner to refer such cases to an arbitrator.

7. We hasten to add this was not the only ground upon which the ALJ found Georgia and Zenobia credible. For example, the ALJ also found the girls were "confident, unwavering and detailed in their recollection of the statements that were made" and their stories closely matched and were "corroborated by the witnesses to whom they reported their version of events." In addition, the ALJ rejected potential biases suggested, including the contentions that the girls had past negative experiences with Geiger and Jones, were associated with a group of black students who had complained about Jones, or were retaliating for Jones having disciplined Ze.C. for using her cell phone in class.



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8. http://njlaw.rutgers.edu/collections/oal/final/edu74-09.pdf.

9. http://njlaw.rutgers.edu/collections/oal/final/edu3291-97.pdf.

10. http://njlaw.rutgers.edu/collections/oal/final/edu4579-00.pdf.

11. http://njlaw.rutgers.edu/collections/oal/final/edu3876-05.pdf.

12. For example, in In re Tenure Hearing of Chaki, No. A-2430-11 (App. Div. Aug. 13, 2013), we upheld the Commissioner's dismissal of a teacher who had made inappropriate comments about ethnic groups during a chemistry class that included a characterization of African-Americans as "lazy" and who instructed the class about what she believed were the capabilities of other ethnic groups. (Although Rule 1:36-3 would appear to prohibit our citation to this unpublished opinion, we cite it only for what it was that the Commissioner held in that case and not to suggest that our opinion constitutes binding precedent.)

13. In a footnote in the Assistant Commissioner's opinion in this case, it was announced that Emri should no longer be considered as "controlling precedent and in fact if the same unbecoming conduct was proven today, the penalty imposed [there] would most likely be significantly different."

14. Without meaning to fall into an etymological rabbit hole the exploration of which is unnecessary for today's decision, it is fair to conclude the word "Negro," which Geiger and Jones were found to have used here, is not always considered as having a pejorative connotation, at least not to the degree of the word "nigger" used in Emri and Burg. Certainly, the word "Negro" is obsolete. The United Negro College Fund retains the word in its name but now mainly refers to itself as UNCF. Douglas Quenqua, Revising a Name, but Not a Familiar Slogan, N.Y. Times (Jan. 17, 2008), http://www.nytimes.com/2008/01/17/business/media. The Census Bureau used the word "Negro" in the 2010 census, as it had previously, but changed course in light of complaints. See Tanya Ballard Brown, No More "Negro" For Census Bureau Forms And Survey, NPR (Feb. 25, 2013), http://www.npr.org/sections/thetwo-way/2013/02/25/172885551. In 2014, the United States Army adopted a regulation that stated a service member could use the word "Negro" to describe black or African-American personnel, although once made public, a public outcry led the Army to amend the regulation. See Barbara Starr & Jeremy Diamond, Army Apologizes for Policy Approving Use of Word "Negro", CNN (Nov. 7, 2014), http://www.cnn.com/2014/11/07/politics. To be sure, there was a time when "Negro" was considered the preferred term for African-Americans. Dr. Martin Luther King, Jr. repeatedly referred to the circumstances of "the Negro" in his famous 1963 "I Have a Dream" speech, i.e.: "100 years later the Negro still is not free." But within a few years, the Black Power movement led to the word's abandonment, citing its nexus to slavery days and an implication of inferiority. Notwithstanding the relatively benign history of the word "Negro" suggested by its common use fifty and more years ago, we readily agree the words attributed to Geiger and Jones were racially motivated even if it could be reasonably argued the word "Negro" does not quite convey the exact pejorative sting as those uttered in Emri and Burg.

15. Emri, Cooke and Poston were teachers of approximately twenty, sixteen, and seven years, respectively; none had ever been previously disciplined; the Burg decision does not indicate that teacher's length of service. In Cooke, the Commissioner made a point of specifically observing, in responding to the



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district's demand for dismissal, that "removal of respondent from her tenured position is an unduly harsh penalty."

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| STATE OF SOUTH CAROLINA<br>COUNTY OF CHEROKEE<br><br>SHARON BROWN,<br>APPELLANT,<br><br>CHEROKEE COUNTY SCHOOL DISTRICT,<br>RESPONDENT. | ) | IN THE COURT OF COMMON PLEAS<br><br>Case No. 2015-CP-11-0828<br><br>**Memorandum In Support of Motion to Reconsider** |

As stated in Brown's motion for reconsideration, Brown prays that this Court reconsider and revise its order to reflect Brown's position on the issues raised in her motion for reconsideration and reconsider reinstating her to her former teacher position.

The defendant Cherokee County School District is in a "checkmate" situation because both South Carolina Department of Employment and Workforce (DEW) and South Carolina Administrative Law Court have ruled against the defendant. The rulings confirm that Cherokee County School District had no grounds to terminate Ms. Brown as a teacher for Cherokee County School District for inappropriate interactions with a student, insubordination, and dishonesty. "When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action..." *St. Phillips Episcopal Church vs. South Carolina Beverage Control Commission 285 S.C. 335, 329 S.E.2d 454, 456 (Ct. App. 1985).*

Brown asserts that res judicata, judicial estoppel, and collateral estoppel clearly provide that litigants cannot have retrials of the same issues. Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between these parties. *Plum Creek Dev. Com. v: City of Conway, 334*

*S.C. 30, 512 S.E. 2d 106 (1999).* "Under the doctrine of collateral estoppel, once a final judgment on the merits has been reached in a prior claim, the relitigation of those issues actually and necessarily litigated and determined in the first suit are precluded as to the parties and privies in any subsequent action based upon a different claim." *Richburg v. Baughman, 290 S.C. 431, 434, 351 S.E.2d 164, 166 (1986)*; see also *State vs. Bacote, 331 S.C. 328, 330, 503 S.E. 2d 161, 162 (1998)* ("When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or different claim.").

Brown requests that this Honorable Court reconsider its prior order of July 25, 2016 and consider the issues of res judicata, judicial estoppel, and collateral estoppel. The Defendant has tried its claims before DEW and South Carolina Administrative Law Court and received an adverse decision prior to this Court's ruling. I have attached supporting documentation. It would appear that two agencies have reached two different decisions under the substantial evidence test. Consequently, the first in time may be dispositive.

Brown respectfully requests that this court reconsider its prior order under the claim and issue preclusion doctrine.

Respectfully Submitted,

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Greenville, South Carolina
August 18, 2016

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF CHEROKEE | ) | IN THE COURT OF COMMON PLEAS |
| | ) | CIVIL ACTION NO.: 2015-CP-11-0828 |
| SHARON BROWN,<br>APPELLANT, | ) | |
| | ) | CERTIFICATE OF MAILING |
| CHEROKEE COUNTY SCHOOL DISTRICT,<br>RESPONDENT. | ) | |
| | ) | |

I, Sharon Brown, hereby certify that I have this 18th day of August, 2016, served a copy of the herein below listed document to the address listed below by depositing a copy of same in the United States Postal System postage prepaid, and mailing same to:

PLEADING(S): Memorandum In Support of Motion for Reconsideration

PARTY SERVED: Ms. Andrea E. White, Esq.
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P.O. Box 1486
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Phone 803-790-0603
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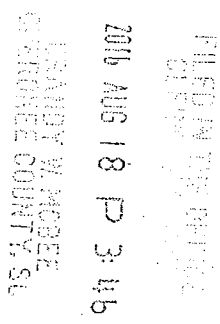

Sharon Brown
SHARON BROWN

APPEAL NO:1517782

DECISION NO: 2015-A-10160

# SOUTH CAROLINA
# DEPARTMENT OF EMPLOYMENT AND WORKFORCE

## DECISION OF APPEAL TRIBUNAL

Hearing Date: 12/17/2015

| | | |
|---|---|---|
| SHARON A BROWN<br>PO BOX 1442<br>SPARTANBURG, SC 29304 1442 | ) | CLAIMANT |
| CHEROKEE COUNTY SCHOOL DISTRICT 1<br>PO BOX 460<br>GAFFNEY , SC 29342 | ) | EMPLOYER |

APPELLANT: Claimant

SS NO: XXX-XX-5401

## APPEARANCES

FOR THE CLAIMANT: Present with 1 attorney

FOR THE EMPLOYER: Present with 2 witnesses and 1 attorney

## FINDINGS OF FACT

The issue in this case is whether the claimant was discharged for misconduct.

The claimant appealed the claims adjudicator's determination mailed November 16, 2015, which held the claimant disqualified from receiving benefits for twenty (20) weeks, effective October 4, 2015 through February 20, 2016, along with a corresponding reduction in the maximum potential benefit amount upon a finding the claimant was discharged for misconduct.

The claimant worked from August 1, 1999 to October 7, 2015 with the subject employer, most recently as a second grade school teacher. The claimant was terminated effective October 7, 2015 for conduct violation(s). On May 28, 2015, the claimant admittedly and verbally addressed a second grade student for what she deemed inappropriate language. The incident, witnessed by a first year art teacher, co-worker and one (1) of the two (2) employer witnesses participating in the evidentiary hearing, alleged that the claimant used both violent force and verbal assault against the student but admittedly failed to report the incident until the following day; this, notwithstanding that both the principal and human resources (HR) director were on the premises at the time. There was no third party administrative and/or law enforcement agency notification of any kind, the child simply returned to his class, according to the employer witness and no substantive follow-up thereafter relative to that matter. The claimant

Date Mailed: 12/18/2015

was not made aware of the allegation until June 1, 2015 when the claimant was summoned to meet with among others, the HR supervisor; the other employer witness participating. The HR supervisor contends that at the time of the June 1, 2015 meeting, he placed the claimant on an administrative leave for the duration of the subsequent investigation and verbally informed the claimant not to have any contact with District employees or students during her leave; the clamant maintains that she has no recollection of that specific directive. The claimant provided the HR director with the name of a co-worker/behavior interventionist as her requested witness at that time. A June 1, 2015 letter was then forwarded certified mail to the claimant whose receipt of same was not until June 11, 2015; all parties stipulated to the date of receipt as in fact having been June 11, 2015. The letter, although stating that the claimant was restricted from going on any school property without expressed permission and/or having any contact with school district employees or students in any manner while on leave, failed to memorialize the June 1, 2015 meeting relative to latter of the two (2) directives contained in the letter. In the interim and on June 5, 2015, the claimant acknowledged that she had a chance meeting with her requested witness in a local department store and did engage the co-worker in a three (3) to five (5) minute conversation. On June 31, 2015, the claimant, her attorney, the school superintendent, HR manager and counsel for the employer met wherein the claimant was informed her encounter with the co-worker/witness in the department store had significantly and adversely impacted the District's ability to complete its investigation into the May 28, 2015 incident; this, irrespective of the fact that the District had in fact already secured a signed statement from the co-worker on June 1, 2015. The employer at that time concluded and informed the claimant that the District deemed her to have been dishonest in her reporting the facts, questioned her denial of the May 28, 2015 incident and recommended her dismissal to the District Board of Trustees who upheld the superintendent's recommendation. The claimant was formally terminated effective October 7, 2015.

## REASONS

S.C. Code Ann. § 41-35-120(2)(a) requires disqualification from benefits for twenty (20) weeks, with a corresponding monetary reduction, when the Department finds that a claimant has been discharged for misconduct connected with the employment. "Misconduct" includes deliberate violations or disregard of the standards of behavior which an employer has the right to expect of his employee, and carelessness or negligence of such a degree or frequency as to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer.

S.C. Code Ann. § 41-27-20 requires that unemployment benefits to be set aside for persons unemployed through no fault of their own.

S.C. Code Ann. § 41-35-120(2)(b) requires disqualification from benefits for five (5) to nineteen (19) weeks, with a corresponding monetary reduction, when the Department finds that a claimant has been discharged for cause, other than misconduct, connected with the employment. "Cause" may include an unintentional disregard for the standards of behavior the employer can rightfully expect of his employee or the negligence of an employee that does not rise to the level of misconduct.

With the sole onus on the part of the employer to establish the requisite criteria for a discharge under the guidelines of the law, based solely upon the totality of the parties' respective testimony and submitted documentation, the Tribunal finds that the mandatory greater weight of credibility rests with the claimant in negating the necessary degree of inappropriate claimant conduct that would create the criteria to form a discharge for cause under the guidelines of the law. The employer had the opportunity

Date Mailed: 11/18/2015

to present several witnesses for the Tribunal hearing but chose instead to rely upon the transcript of the teacher dismissal hearing conducted by the Board of Trustees of the Cherokee County School District from an October 7, 2015 hearing, erroneously inferring that testimony having been taken therein and under oath was sufficient evidence. This Department has long held that as an independent Tribunal, the Department is under no obligation to accept an employer's reasons and/or decisions made in an employment termination. The employer's alleged eye-witness testimony lacked the requisite credibility to establish believability regarding the May 28, 2015 incident; the June 1, 2015 letter from the HR manager clearly failed to establish that the letter was to memorialize the directive that the claimant adamantly denied as having been given on June 1, 2015 and as a direct consequence, the claimant's chance meeting with her co-worker on June 5, 2015 could not have been in violation of such directive if she had not been issued same. Accordingly, the Tribunal therefore further finds and so holds the claimant discharged for non-disqualifying reason(s) and as such, no disqualification shall be imposed upon the claimant.

## DECISION

The Tribunal hereby holds the claimant eligible for benefits, effective October 4, 2015, upon a finding the claimant was discharged under non-disqualifying circumstances. This decision **reverses** the determination mailed November 16, 2015.

**This will be the final decision of the Department, unless you file an appeal to the Appellate Panel setting forth in detail the grounds for appeal within ten (10) calendar days**, including weekends and holidays, from the mailing date of this decision. If the tenth day falls on a Saturday, Sunday or holiday, the appeal period is extended to the next business day. Your appeal may be filed by mail addressed to **"Appellate Panel, Post Office Box 1752, Columbia, South Carolina, 29202"**, by **fax at 803.737.3166 or by claimants through your MyBenefits Portal or by employers via your SCBOS portal**. For additional information on filing an appeal, visit our web site at www.dew.sc.gov/appeals.asp .

Gerald B. Turner

Gerald B. Turner
Administrative Hearing Officer

Mailed By : TDD

Date Mailed: 12/18/2015

**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

| | |
|---|---|
| Sharon A. Brown,<br><br>Appellant,<br><br>vs.<br><br>South Carolina Department of Employment and Workforce and Cherokee County School District One,<br><br>Respondents. | Docket No. 16-ALJ-22-0050-AP<br><br>**ORDER** |

## STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or court) pursuant to the appeal of Sharon Brown (Appellant), filed February 10, 2016. The Appellant seeks review of the Department of Employment and Workforce's (Department's) decision concluding that the Appellant was terminated from her position with Cherokee County School District One (School District) for misconduct. The court has jurisdiction over this appeal pursuant to South Carolina Code Section 41-35-750. S.C. Code Ann. § 41-35-750 (Supp. 2015). After reviewing the record in this matter, the court reverses the decision of the Department's Appellate Tribunal and remands the case to the Department for proceedings in accordance with this Order.

## BACKGROUND

The Appellant was terminated from the School District in October 2015 and filed for unemployment benefits. After reviewing her application, a claims adjudicator determined that the Appellant was discharged for a violation of the School District's policy, which amounted to misconduct under South Carolina Code Section 41-35-120(2)(A) and required a complete disqualification from benefits. The Appellant appealed that determination on November 20, 2015, and a hearing was held before the Department's Appeal Tribunal on December 17, 2015. Following the hearing the Appeal Tribunal issued an order finding in favor of the Appellant and fully reinstating her benefits. The School District appealed the order to the Department's Appellate Panel. After a Notice of Hearing on January 13, 2016, the Panel held a hearing on January 26, 2016, at the offices of the Department in Columbia, South Carolina. The Panel issued an order

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reversing the Appeal Tribunal's order, concluding that the Appellant was terminated for misconduct.

The Appellant then filed with this court for review. On March 16, 2016, the Appellant filed a Motion for the Record on Appeal to Be Supplemented. The Appellant alleged that, contrary to the laws and regulations of this state, the Appellate Panel took additional, unsworn testimony at the hearing on January 26, 2016. *See* S.C. Code Ann. Regs. § 47-52(B)(1) (2011) (providing that all appeals to the Appellate Panel must be heard solely on the evidence in the record before the Appeal Tribunal). In response, the Department averred that no record, audio or otherwise, was kept of the Panel's hearing.

After finding that the Department had erred in failing to keep a full and complete record of the proceedings required by S.C. Code Ann. § 41-35-720 (Supp. 1015), the court issued an Order Granting Motion to Supplement the Record on Appeal on June 8, 2016. [*See* S.C. Code Ann. § 1-23-380(4) (Supp. 2015) ("In cases of alleged irregularities in procedure before the agency, not shown in the record, and established by proof satisfactory to the court, the case may be remanded to the agency for action as the court considers appropriate."); *Ross v. Med. Univ. of S.C.*, 317 S.C. 377, 380–81, 453 S.E.2d 880, 882–83 (1994) (Construing an earlier version of the statute, the Supreme Court held that section 1-23-380 empowers the reviewing court, "in its discretion, to order discovery and admit extrinsic evidence in [Administrative Procedure Act] cases upon alleged irregularity in the agency proceeding.")]. In response, the Department filed an Affidavit of Dr. Carl A. Carpenter, II, on June 27, 2016.[1]

## STANDARD OF REVIEW

The Department is an agency under the Administrative Procedures Act (APA). *See Gibson v. Florence*, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984) (finding that the Employment Security Commission, the predecessor of the Department, was an agency within the meaning of the APA). It is "well-settled that decisions of administrative agencies should be upheld on appeal where they are supported by substantial evidence." *Parsons v. Georgetown Steel,* 318 S.C. 63, 456 S.E. 2d 366 (1995). Section 1-23-380(5) of the South Carolina Code (Supp. 2014) provides the standard used by appellate courts to review agency decisions. *See* § 1-23-600 (directing administrative law

[1] The Appellant filed a Supplemental Objection with the court on July 1, 2016. In light of this court's decision to remand the matter to the Department for further proceedings, the Appellant's Motion is deemed denied.

judges to conduct appellate review in the same manner prescribed in § 1-23-380). That section states:

> The court may reverse or modify the decision [of an agency] if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:
>
> (a) in violation of constitutional or statutory provisions;
>
> (b) in excess of the statutory authority of the agency;
>
> (c) made upon unlawful procedure;
>
> (d) affected by other error of law;
>
> (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
>
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

§ 1-23-380(5).

This court "may reverse or modify an administrative decision if such decision is affected by errors of law, characterized by an abuse of discretion, or clearly erroneous in view of the substantial evidence in the whole record." *Todd's Ice Cream, Inc., v. S.C. Emp. Sec. Comm'n*, 281 S.C. 254, 258, 315 S.E. 2d 373, 375 (Ct. App. 1984). The party challenging an agency action bears the burden "to prove convincingly that the agency's decision is unsupported by the evidence." *Waters*, 321 S.C. at 226, 467 S.E. 2d at 917.

## DISCUSSION

In this case the Appellant argues that the Department's Appellate Panel took unsworn testimony its hearing, and that its decision was based on unlawful procedure. After reviewing the Affidavit of Dr. Carl A. Carpenter, II, dated June 23, 2016, it appears that the Appellate Panel did take additional unsworn testimony from Dr. Carpenter and the Appellant. The review of a matter by the Appellate Panel of tribunal decisions is to be based solely on the record. S.C. Code Ann. § 41-35-710 (Supp. 2015); S.C. Code Regs. 47-52(B)1(2011). While the Appellate Panel may direct the taking of additional testimony, it may not do so at the panel hearing. Id. Additionally, any testimony taken should be sworn.

The Department takes the position that while the Appellate Panel hearing proceedings may have run afoul of procedural requirements, any error committed was harmless and should not be cause for a reversal of its decision. However, for any party asserting harmless

error, that party must demonstrate to the court that the error almost surely did not affect the outcome of the case. *Sam Wayne Vetro, M.D. v. South Carolina Department of Labor, Licensing, and Regulation, State Board of Medical Examiners*, Docket No. 06-ALJ-11-0120-AP (December 7, 2006), *citing Persinger v. Norfolk and Western Railway Co.*, 920 F.2d 1185 (4th Cir., 1990). Here, this court is unwilling to find that the compound procedural errors committed by the Appellate Panel, to include failing to keep a record of the proceedings, taking testimony in violation of procedural statutes and regulations, and considering unsworn testimony, were harmless. Additionally, it is difficult to find that the errors did not affect the outcome, as the Appellate Panel reversed the Appellate Tribunal's Order.

**ORDER**

For the forgoing reasons, **IT IS HEREBY ORDERED,** that the Appellate Panel's decision is **REVERSED,** and this matter is **REMANDED** to the Department for further proceedings in accordance with this Order.

**AND IT IS SO ORDERED.**

S. Phillip Lenski
Administrative Law Judge

July 22, 2016
Columbia, South Carolina

22 July 2016

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF CHEROKEE | ) | IN THE COURT OF COMMON PLEAS |
| | ) | Case No. 2015-CP-11-0828 |
| SHARON BROWN,<br>APPELLANT, | ) | **Supplemental Memorandum In Support of Motion to Reconsider** |
| CHEROKEE COUNTY SCHOOL DISTRICT,<br>RESPONDENT. | ) | |

FILED IN THE OFFICE OF THE CLERK OF COURT
2015 AUG 30 A 10:12
BRANDY S. HARBER
CHEROKEE COUNTY, SC

Plaintiff/Appellant requests that the this Court reconsider and revise its order to reflect Brown's position on the issues of procedural violations by Cherokee County School District officials, bias by Cherokee County School District and its officials, breach of contract, and the fact that Cherokee County School District officials were not suppose to question Ms. Brown about the alleged allegation of child abuse. Plaintiff contends that the Defendant/Respondent should be estopped from contending that Ms. Brown spoke with a witness at Ross Store because the District was not suppose to investigate the allegation of child abuse in the first place. DSS and Cherokee County Police Department should have been responsible for the child abuse investigation. Cherokee County School District is in violation of District Policy pertaining to allegations of child abuse.

Further, Attorney Andrea White's contention that "she alludes merely to a possibility that because a Board that contained different members, the members of this Board were necessarily biased against her." The appellant asserts that the board did not contain different members. Board members Billy Blackwell and Barry Bailey are listed on a 2008 lawsuit (as board members) filed by Brown against William B. James former Superintendent for Cherokee County. I have attached a copy of the cover page of Brown's 2008 lawsuit in

reference to her termination from Cherokee County School District . It is to me noted that Billy Blackwell who was listed as a board member on the 2008 lawsuit (court stamped February 14, 2008) made the motion to accept the recommendation of termination of the teacher by the administration on October 7, 2015. I have also attached the Board Minutes for the October 7, 2015 termination hearing.

Respectfully Submitted,

Fletcher N. Smith Jr. , Esquire
P.O. Box 10496, F.S.
Greenville, South Carolina 29603
864-232-6541
Fax: 864-232-6756
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Greenville, South Carolina
August 30,2016

FILED IN THE OFFICE OF THE CLERK OF COURT
2016 AUG 30 A 10: 22
GREENVILLE COUNTY, S.C.

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS
COUNTY OF CHEROKEE )

SHARON BROWN )
PLAINTIFF, )

Vs. )

WILLIAM B. JAMES,
Superintendent for Cherokee )
County School District No. One

DEFENDANT. )
)

**FIRST AMENDED COMPLAINT**

**Case #2007-CP-11-719**

**JURY TRIAL REQUESTED**

The Plaintiff above-named, complaining of the Defendant herein, would respectfully show unto the Court as follows:

1. Sharon Brown was a continuing contract teacher for *Cherokee County School District One.* Sharon Brown was illegally terminated.
2. As a continuing contract teacher, Sharon Brown had a property interest in her job that is protected by the due process clause of the Fourteenth Amendment. U.S. Supreme Court has held that teachers who have constitutionally protected interest in property or liberty are entitled to a hearing prior to termination. The Fourteenth Amendment states in it that "Nor shall any State deprive any person of life, liberty, or property without due process."
3. Sharon Brown is the proper party to this litigation.
4. Donnie Smith, Willie Crosby, Mike Ellis, Barry Bailey, Sandra Greene, Billy Blackwell, Lindley Auton, and Amanda Knowles are members of *Cherokee County School District No. One* Board of Trustees.
5. William B. James is an employee of *Cherokee County School District No. One.* Dr. William B. James is being sued in his individual and official capacity.
6. Defendant William B. James wrote Sharon Brown, continuing contract teacher, a letter (dated April 12, 2007) stating the following: Dear Ms. Brown:
   Based on the recommendation by your school principal, Mrs. Sharon Jefferies, your contract will not be renewed for the 2007-2008 school year.

CHEROKEE COUNTY SCHOOL DISTRICT NO. 1
BOARD OF TRUSTEES
BOARD HEARING

October 7, 2015

The Cherokee County School District Board of Trustees met in regular session on Wednesday, October 7, 2015, at 6:30 PM in the Board Room at the District Administrative Office. Board members present were Chair Ms. Cheryll Smith, Secretary Dr. Mark Nix, Mr. Barry Bailey, Mr. Billy Blackwell, Mrs. Elaine Fowler, Mrs. Robin Harper, and Mr. Tracy Moore. Administrators present were Superintendent Dr. Quincie L. Moore, Chief Operations Officer for Administrative Services Mr. Joe Walker, and Director of Human Resources Dr. Carl Carpenter. No News media were present.

In accordance with South Carolina Code of Laws, Section 30-40-80(d), as amended, the following have been notified of the time, date, and agenda of this meeting: The Cherokee Chronicle, The Gaffney Ledger, The Shelby Star, The Spartanburg Herald-Journal, Radio Stations WZZQ-AM and WFGN, WSPA-TV, WYFF-TV, and WSOC-TV.

Chair Ms. Smith called the meeting to order at 6:30 P.M.

Approval of the Board Agenda was the next item on the agenda **Mrs. Harper made the motion to approve the agenda, seconded by Mr. Blackwell. Trustees voted unanimously for the motion.**

Executive Session – Employee Hearing was next on the agenda. Ms. Smith called for a motion to go into Executive Session. **Dr. Nix made a motion that the Board enter into Executive Session for the Employee Hearing, seconded by Mr. Moore.** The Executive Session began at 6:32 PM and ended at 10:35 PM. Ms. Smith said the Board had been in Executive Session to discuss the Employee Hearing. **Dr. Nix made the motion to return to regular session, seconded by Mrs. Harper. Trustees voted unanimously for the motion.**

Action as needed from Executive Session was the next item on the agenda.

**Mr. Blackwell made the motion to accept the recommendation of termination of the teacher by the administration based on the evidence presented to the board at the dismissal hearing and applicable law and authorized the Board Chair and Board Secretary, in consultation with legal counsel, to prepare and sign a written decision in this matter to be executed in ten (10) days. The motion was seconded by Mrs. Fowler. Trustees voted unanimously for the motion.**

The next item on the agenda was adjournment. Ms. Smith called for a motion to adjourn. **Mrs. Harper made the motion to adjourn, seconded by Dr. Nix. Trustees voted unanimously to adjourn.** The meeting adjourned at 10:40 P.M.

_____
Dr. Mark K. Nix, Secretary

APPROVED BY:

_____
Ms. Cheryll D. Smith, Secretary

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF CHEROKEE | ) | IN THE COURT OF COMMON PLEAS |
| | ) | CIVIL ACTION NO.: 2015-CP-11-0828 |
| SHARON BROWN,<br>APPELLANT, | ) | |
| | ) | CERTIFICATE OF MAILING |
| CHEROKEE COUNTY SCHOOL DISTRICT,<br>RESPONDENT. | ) | |
| _____ | ) | |

I, Sharon Brown, hereby certify that I have this 30th day of August, 2016, served a copy of the herein below listed document to the address listed below by depositing a copy of same in the United States Postal System postage prepaid, and mailing same to:

PLEADING(S): Supplemental Memorandum In Support of Motion for Reconsideration

PARTY SERVED: Ms. Andrea E. White, Esq.
Duff, White & Turner, LLC
P.O. Box 1486
Columbia, S.C. 29202
Phone 803-790-0603
Fax 803-790-0605
E-mail Address: awhite@dwtlawfirm.com

Sharon Brown
SHARON BROWN

FILED IN THE OFFICE OF
CLERK OF COURT
2016 AUG 30 A 10:23
BRANDY M. HOBBS
CHEROKEE COUNTY, SC

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHEROKEE

| | | |
|---|---|---|
| SHARON A. BROWN, | ) | |
| | ) | |
| PLAINTIFF, | ) | 2015-CP-11-00828 |
| | ) | |
| | ) | |
| -VS- | ) | TRANSCRIPT OF RECORD |
| | ) | |
| CHEROKEE COUNTY SCHOOL, DISTRICT ONE, | ) | |
| | ) | |
| | ) | |
| DEFENDANT. | ) | |
| | ) | |

JUNE 20, 2016
GAFFNEY, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. MARK HAYES, II

A P P E A R A N C E S:

ATTORNEY FOR PLAINTIFF:

FLETCHER N. SMITH, JR., ESQ.

ATTORNEY FOR DEFENDANT:

ANDREA E. WHITE, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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## EXHIBITS

| NO | DESCRIPTION | ID | EVIDENCE |
|---|---|---|---|

(No exhibits were produced during this hearing)

**THE COURT:** This is the case of Sharon Brown versus the Cherokee County School District. On the docket it just has that this case is -- has a reference that it's pending. In the documents that have been filed, the -- what exactly -- how am I supposed to address this case today? What am I being asked to do?

**MR. SMITH:** Your Honor, this is an appeal from the School Board hearing and decision. So basically it's an appeal. And we're asking that the school district position be reversed. The school district, on the other hand, is asking that the appeal be dismissed. I think that's the way it's ---

**THE COURT:** Okay. So you are the Appellants. I'll be more than happy to hear from you.

**MR. SMITH:** Yes, sir. Your Honor, may it please the Court. I am here -- I'm here today on behalf of Ms. Sharon Brown, who worked from August 1st, 1999 to October 7th, 2015 with the Cherokee County School District Number One.

This is the second time Ms. Brown has been before this Court. Back in 2010 the Court of Appeals ruled in favor of her in a lawsuit, and the case settled out in front of this Court.

On May 28th, 2015 the Appellant, Sharon Brown, was accused of assaulting and abusing a second grade child at the Luther Vaughan Elementary School here in Cherokee

County. There were two eyewitnesses who accused Ms. Brown at the time.

According to the investigation of the school board, the child in question, who could speak fluent English, told the -- he's an Hispanic child, but he told the people in fluent English that he was never attacked by Ms. Brown, he was never touched by Ms Brown, he was never assaulted by Ms. Brown on not one occasion, but two occasions during the course of her investigation.

Notwithstanding that, the school district conducted -- they talked to that child, I think, on June the 2nd or June the 3rd of 2015. The incident was supposed to have taken place on May 28th, 2015.

On June the 1st of that same year they spoke to Ms. Brown about the incident. And she denied touching the child as well. She admits that she did have the child come out in the hall because he used the word I hate. She instructed him not to use that sort of word. But the two eyewitnesses said that she did.

Well, this led to an investigation, but DSS was not called in, law enforcement was not called in. The protocol for child abuse was never done by the Cherokee County School District at all.

Rather, what they did was they had Ms. Brown write a statement and come in and talk to a Mr. Carpenter, and they

had the two witnesses, a Ms. Owens -- no, I'm sorry, a -- there were two teachers who said it happened. And then there was a Mr. Carpenter, who was the HR director at the time, called Ms. Brown in, she gave a statement. He claims at the June the 1st that he told her not to speak to any personnel at Cherokee County School District, however, Ms. Brown did not recall him saying that to her.

And also when there was testimony about -- from Ms. Nan Ruppe, who was the principal at the time, she said she attended the meeting, and that Dr. Carpenter told her not to speak to anyone, which is three different positions by three different witnesses. And we have that testimony under oath under page 37 of the transcript of record that has been provided to the Court.

The other thing, too, Your Honor, is that there's a discrepancy between what the child says and Ms. Brown says and what the two witnesses say and what the finding was with regard to the superintendent who said in her letter that there were two incidents of child abuse. One occurred on the same day by Ms. Brown.

There's no witness that said that Ms. Brown assaulted this child on two different occasions, yet the school district -- the school board made that determination along with the superintendent, which we believe that is a clearly erroneous decision based on the facts that were submitted to

the school district.

So the other thing, too, Your Honor, is that throughout the school board's -- the school district's order, they used *ex parte* communications outside the record to make findings. And there are certain aspects of that order where they make these findings that were not included in the -- that were not testified to or were not in the record in and of itself.

The -- I don't know if the Court has the order in front of it, from the school board, but on page 8 of the school board administration the board says -- states that ---

**THE COURT:** Give me one second.

**MR. SMITH:** Yes, sir. Yes, sir, Your Honor.

**THE COURT:** Was it attached to any of your filings?

**MR. SMITH:** I think the ---

**MS. WHITE:** Record on appeal.

**MR. SMITH:** The record on appeal, Your Honor. And I don't know if the order has been attached to it. I don't think so.

**MS. WHITE:** Your Honor, I've got a copy of the order if you need it.

**MR. SMITH:** Yeah, me, too.

**THE COURT:** If y'all could pass it up, that would be great. Okay. I have it.

**MR. SMITH:** All right. Your Honor, may it please the Court. I think -- first of all, Your Honor, if the Court

goes back to exhibit -- there are two exhibits in the back. One is -- and you'll see it classified -- it says Nan Ruppe, principal, in the back.

**THE COURT:** The back of the transcript?

**MR. SMITH:** Yes, sir, Your Honor. It should be back there. Here you go. Those two pages, Your Honor, that page and that one, the Court will note that in those two pages the child was interviewed. And in that interview the child said he was never touched by Ms. Brown at all. Now this started the investigation.

And then on the next page they talked to the child and interviewed the mother along with the child. And I think they interviewed her as well. And Nan Ruppe is the principal. They interviewed the mother. The mother says that the child wasn't hit. The child also says it wasn't hit. Now, that's substantive evidence at the school board hearing.

Well, they discount that and say that because Ms. Brown said she never touched the child that Ms. Brown was lying and, therefore, she was dishonest. The best evidence as to whether or not the child was abused, assaulted or any kind of way was the documents that the school board had in its possession and that were presented during the course of that trial that said that Ms. Brown never assaulted that child on any occasion. The child is the best evidence.

And so in order to get around the parameters of the case called Hall versus Sumter County, they were trying to use -- the school district was trying to use the issue of dishonesty as a way of firing Ms. Brown.

It's clear that there are two ways of looking at it. And the Court in reviewing the records must look at the whole record and not just a part of the record. And that's one of the problems we have with the school district because they didn't looking at the whole record. They didn't include anything about the exhibit showing that it substantiates Ms. Brown's position that she never touched the child.

The other aspect of it, too, is that Ms. Brown has been accused of insubordination. And on that issue the director of the human resources, Mr. Carpenter, Dr. Carpenter, said that he instructed Ms. Brown to not speak to any school district employees.

Well, on page 37 of the transcript Nan Ruppe, who attended that interview, states in her testimony under oath that he told her not to speak to anyone, which is the whole world. And I think Ms. White, who was the lawyer representing the school district at the time, asked her several questions in that regard. And she stuck with the testimony that he told her not to speak to anyone.

Well, what -- why is that important? It is important

because although the Court has to give deference to the school district's position in these hearings, the lawyers, it has to be by substantial evidence in order to terminate a teacher because the legislative scheme is designed to protect the teacher. And it is not designed to allow the school district or the school board to run roughshod over the protections that are afforded school teachers in this State.

So it is important to note that if Ms. Brown was told not to speak to everyone, then that's an associational interest violation right there, which the school district can't -- which she's protected against. And the school district does have Ms. Brown's testimony which says she didn't recall him saying that to her.

But the school district has another witness, Ms. Tracy Owens, that says she came in contact five or ten minutes -- no, three to five minutes out at the Ross department store in Spartanburg, South Carolina, which was outside the jurisdiction of Cherokee County. And they discussed this -- this being Ms. Brown's witness, whether this lady Owens remembered what Ms. Brown had told her. And the lady didn't.

And then she wrote a statement saying to the school district that she did speak to Ms. Brown. They found Ms. Brown at that time as having violated the school policy --

not a written policy, mind you, but the directive -- alleged directive of Dr. Carpenter not to speak to any employees.

And as a result of that they said Ms. Brown was insubordinate, and being insubordinate she was dishonest because she couldn't -- she told the superintendent that she couldn't recall whether or not she received that instruction from the HR director. So that is the kind of situation that the Hall case was designed to protect against.

In the Hall case, which my sister on the other side, who's counsel, she ably argued before the Court of Appeals. They said that if an insubordination issue doesn't come to the fitness of the teacher in the classroom, then they cannot fire that teacher.

Nowhere can they show that any of the actions of Ms. Brown in this case affected her ability to teach in the classroom, in other words, whether or not she was an unfit teacher. As a matter of fact, the Court of Appeals ordered that back in 2010 that Ms. Brown essentially be put back in the classroom because this school has treated Ms. Brown in a shabby way during that period of time.

So here's a lady who's been educated at Converse College. She has several masters degrees. She loves her students and has never had any complaints about assault on any students before. She does her job. And she's not a popular teacher there because of the prior lawsuit.

The other thing, too, is even Nan Ruppe says in her -- Ms. Brown -- when she tries to talk to Ms. Brown is kind of guarded about what she says to people at the school because she doesn't want to get in trouble.

So here we've got a situation where the school district is trying to -- trying to manufacture, in other words, an insubordination charge to show that she was dishonest by what she stated to the superintendent.

And also the fact is -- and this is a key issue, too, Your Honor, is that Mr. -- the HR director, Mr. Carpenter, sent a letter to Ms. Brown, but didn't memorialize -- didn't say in his letter to memorialize our conversation, you're not to speak to any employees. And Ms. Brown didn't get that letter til June the 10th, I believe, or June the 11th, somewhere around that, six days after she spoke to this lady at the department store.

The other issue we have, Your Honor, is that ...

(Pause)

**MR. SMITH:** So basically our position on the insubordination was that common law insubordination was defined as a wilful, intentional disregard of the lawful or reasonable instructions of an employer. And we have it set out in a brief, Your Honor. So I won't read everything in the brief.

But she did not wilfully violate the instructions of

the school district. As a matter of fact, she was a great teacher in the classroom like the teacher was at Hall when the same sort of situation came up in the Hall versus Sumter County case.

She was a great teacher in the classroom. She didn't assault the child. She did everything she was told by administration in order to make sure her classroom was conducted in the proper fashion. So there was nothing here that shows her unfitness to be a school teacher, even if you look at the evidence in the light most favorable to the school district.

And we also assert that the board was not fair and impartial in its findings. In fact, in conclusions of law where it mistaked [sic] the facts and obtained *ex parte* communications without Brown's knowledge, the decision of the board is inherently biased against Brown, a contract employee. We believe that since Brown had a contract she had a property interest in a written contract, therefore, the school board couldn't just fire her just like you do an at-will employee.

And on page 91, I believe, Your Honor, of the record, it says Ms. Wilson says I think she said something like we were talking, I was like that's my daughter, you know, that's my daughter, I don't have a problem with her because she's my daughter. And she said I think -- we believe that

she was speculating.

And, Your Honor, the way the school district hearing was because I was the one that participated in it, it didn't appear that the person who was the chairman could adequately read. And I'm not saying that as an insult. I'm just saying -- pointing that out because whatever she was reading she doesn't understand because the lawyer that was there had to take control under certain circumstances to get the board to even understand what was going on in this case.

The other thing, too, was that we believe that there was no substantial evidence in -- I know we're limited for time, but we don't believe there's any substantial evidence for the termination of Ms. Brown. We believe that the Hall case -- have I presented the -- do you have the Hall case in front of Your Honor?

(Pause)

**MR. SMITH:** Okay, Your Honor. I see what I did now. I put it on the back of your brief, the Hall case, for the Court to review. Your Honor, at this time we rest.

**MS. WHITE:** May it please the Court. Your Honor, initially I just want to make sure that you did receive a copy of our amended brief. I sent it via email to your chambers as well as to Mr. Smith and, I believe, your law clerk on Thursday. If you don't have a copy in front of you, I'll be happy to hand one up.

**THE COURT:** If you would.

**MS. WHITE:** Sure. May I approach?

(Pause)

**MS. WHITE:** Your Honor, as Mr. Smith noted, this case arises under the South Carolina Teacher Employment and Dismissal Act and specifically under code section 59-25-430, which provides that a teacher may be dismissed at any time who -- the language in the statute is that who manifests an evident unfitness for teaching. And that statute indicates a number of -- a number of different types of conduct that amounts to an evident unfitness for teaching, one of which is dishonesty. And the code section also continues to say that it is a non-exhaustive list of the type of conduct that can manifest an evident unfitness for teaching.

And before I turn to the facts in this case, the first thing that I would call the Court's attention to is that in a case where a teacher is appealing the decision of a school board terminating that teacher, the standard is whether or not there is substantial evidence on the record in support of the board's decision. And our appellate courts have expounded on that and says that the court is not to substitute its discretion for that of the school board and that determinations on the credibility of witnesses is also within the exclusive province of the school board.

This case arose as Mr. Smith noted in May of 2015 when

Ms. Brown, she at the time was a second grade teacher, she was observed by a young teacher named Justin Kelly, as she was escorting her students to Mr. Kelly's art class. Mr. Kelly testified at the hearing that he observed Ms. Brown talk with the student in what he considered to be a very forceful and inappropriate way.

And he also testified at the hearing that he saw Ms. Brown make physical contact with the student by placing her hand on -- around his jaw as she was addressing him upside the wall in the hallway. And Mr. Kelly also testified that he did not report the incident that day. He went home, thought about it and reported it the next day.

What's interesting here is that later on that same day another teacher, Beth Owen, observed Ms. Brown talking to the same -- talking to the same student in the hallway. And she said that she -- Ms. Owen testified that she saw Ms. Brown also make physical contact with this student as she was addressing him in what Ms. Owen testified that she considered to be a serious way.

None of the witnesses in this case, neither Mr. Kelly, nor Ms. Owen, nor Ms. Ruppe, the principal, nor Dr. Carpenter, nor Dr. Moore, the superintendent, ever used the words child abuse in describing what they observed in the case of Mr. Kelly and Ms. Owen and what was concluded in the case of Ms. Ruppe, Dr. Carpenter and Dr. Moore. It was Mr.

Smith who used the word child abuse.

I'm not really sure why he would characterize his own client's actions as possibly being child abuse in an effort to say that the district should have called law enforcement and/or the Department of Social Services. But all of the testimony that was before the board was that it was inappropriate physical interactions by Ms. Brown with the student in question.

Something else that is significant here is that the second grounds for ---

**THE COURT:** Well, let me -- let me ask you a question. What is it that the school district contends she did to the student that was wrong?

**MS. WHITE:** The school district contends, and this was the testimony before the board, was that for whatever reason, and nobody knows what the reason was, she was aggravated with the student, student J. And that was the first interaction that was observed by Mr. Kelly. He testified that where he was standing in the doorway of his classroom, Ms. Brown could not see that he was watching her with the student.

**THE COURT:** And that he saw her grab the student's jaw in some fashion?

**MS. WHITE:** That's correct. As she was talking to him, grabbed the student's jaw. And the student was standing,

you know, upside the wall, and that he -- he couldn't hear exactly what she said, but he testified that he heard her speaking in an angry tone.

**THE COURT:** Okay.

**MS. WHITE:** The second -- and here's -- this is what the superintendent testified to at the hearing. Ms. Owen, who actually was a witness identified by Ms. Brown when the district got the first report of this from Mr. Kelly, Ms. Brown gave the name of Ms. Owen as someone that she wished for the district to talk to.

Ms. Owen testified that later on this same day, the same day that Mr. Kelly had observed Ms. Brown with this student, she saw Ms. Brown addressing the same student in a different spot in the hallway, maybe an hour or so later, as she, Ms. Owen, was coming down the hall. The superintendent concluded, and this is what the testimony was before the board, ---

**THE COURT:** Well, what did she say she saw her doing to that student that ---

**MS. WHITE:** She saw ---

**THE COURT:** --- was inappropriate?

**MS. WHITE:** She saw her addressing this student in the hallway. And she -- the student went to look away and Ms. Brown took her hand and turned the student's face back to her. That in and of itself, if that had been all that the

district was presented with, Ms. Owen's [sic] interaction with this student, that would not have served as the grounds for termination.

What the superintendent testified to, and, Your Honor, when you read the transcript of the hearing, this will become apparent, is that that initial interaction between Ms. Brown and this student, okay, which was inappropriate physical interaction, the superintendent testified because she studied that the times that this happened, there's a -- Mr. Kelly actually ---

**THE COURT:** Mr. Kelly's the only eyewitness on that first ---

**MS. WHITE:** On this first one, yes, sir.

**THE COURT:** And what he saw was she had this student -- holding the student's jaw?

**MS. WHITE:** Holding the student's jaw, ---

**THE COURT:** Right.

**MS. WHITE:** --- leaned over, speaking to him in a harsh way, enough that Mr. Kelly was concerned about it, went home, slept on it, came back and reported to the principal, I saw something today that caused me concern.

**THE COURT:** Is it described in any other way by anybody else?

**MS. WHITE:** It is not.

**THE COURT:** Okay.

**MS. WHITE:** Mr. Kelly was the sole witness to that encounter.

**THE COURT:** Okay.

**MS. WHITE:** And what the superintendent, after looking at -- well, could this have been the same interaction that Ms. Owen saw, which was totally different than what Mr. Kelly saw, what she testified to the board she believed occurred is that initial incident observed by Mr. Kelly, which was inappropriate, Ms. Brown ---

**THE COURT:** Do you think that that was inappropriate?

**MS. WHITE:** Yes, Your Honor. Again, ---

**THE COURT:** Tell me what -- tell me what was inappropriate about it.

**MS. WHITE:** The fact that she -- according to Mr. Kelly, that she forcefully grabbed him by the jaw and was talking to him in a harsh manner in the hallway.

**THE COURT:** So a -- which is inappropriate? The speaking to him harshly or grabbing his jaw?

**MS. WHITE:** I would say grabbing his -- I think you have to look at the totality of circumstances, but I would say grabbing his jaw as you're talking to him would be inappropriate physical interaction.

**THE COURT:** But, again, it's not a physical interaction sufficient enough for anyone to feel like that they would classify it as an assault, nor was it sufficient contact by

the teacher to student to justify any type of intervention by law enforcement or DSS. I think that's Mr. Smith's point.

**MR. SMITH:** It is.

**MS. WHITE:** That is correct.

**THE COURT:** Okay.

**MS. WHITE:** That is correct, Your Honor. The district did not deem it to be criminal or child abuse. They deemed it to be inappropriate.

**THE COURT:** And if Mr. Smith is correct, it was not even sufficient physical contact for this student, nor the student's mother to want to have a complaint about it.

**MS. WHITE:** That is correct.

**THE COURT:** Okay.

**MS. WHITE:** Ms. Ruppe, the principal, testified at the hearing, the student did -- he said everything was fine with Ms. Brown. Ms. Ruppe, the principal, testified at the hearing that as a ESOL, English for Speakers of Other Languages student, that she believed, the principal believed that it might have been a cultural response in terms of not defying authority.

The student did not testify at the hearing. I noted in Mr. Smith's brief that he took issue with that. He could have called the student and the mother if he had so chosen. The district decided not to involve the second grade student

in an adversarial hearing.

So getting back to the initial incident, Mr. Kelly observed that. Later on in the day, which is what the superintendent concluded, that Ms. Brown out of concern that either the student might have said something to an adult or that her grabbing the student by the jaw and speaking to him in the hallway might have been observed by an adult, went back to the student, called him out of class and then talked to him in the hall basically to say, we're cool now, right? To the student. That was the testimony before the board from the superintendent based on her interviews with Mr. Kelly and with Ms. Owen, the other teacher who observed Ms. Brown's interactions with this student.

**THE COURT:** So the superintendent inferred that that conversation was the teacher saying we're cool now?

**MS. WHITE:** That we're good now. Nobody ever heard exactly what he was saying. She testified that she believed it was Ms. Brown going to talk with the student basically to say are you okay, everything's good? Again, ---

**THE COURT:** And what -- is there something wrong with that?

**MS. WHITE:** No, except for the fact that the initial incident was an inappropriate physical interaction with the student by grabbing his jaw. No. If she just had that second conversation, there would have been nothing wrong

with that.

**THE COURT:** Okay. And to have a second conversation over a contact, a physical contact between the two, the teacher and the student, that was not an assault, that the student did not find offensive, that the parent did not find offensive and the school district knew about the initial touching and that the school district felt that there was no need to do anything otherwise ---

**MS. WHITE:** Well, ---

**THE COURT:** --- than to fire the teacher over it?

**MS. WHITE:** No, Your Honor. This is just the first grounds for the termination ---

**THE COURT:** Okay.

**MS. WHITE:** --- of the teacher. There's two other grounds. But one other thing I would say about that initial physical interaction that was observed by Mr. Kelly, ---

**THE COURT:** Right.

**MS. WHITE:** --- is that is a violation of board policy, harassment or intimidation of a student, again, not ---

**THE COURT:** Oh, ---

**MS. WHITE:** --- the same thing ---

**THE COURT:** --- now it's -- so the school district felt that that was harassment of a student?

**MS. WHITE:** No, Your Honor. The school district felt like it was inappropriate physical interaction with a

student that could be categorized as harassment -- I think the language of the policy -- and again, it's in the record, ---

**THE COURT:** Okay.

**MS. WHITE:** --- harassment, intimidation or bullying.

**THE COURT:** But did -- is it classified as harassment? Did the superintendent feel that that was harassment?

**MS. WHITE:** The superintendent felt that it was inappropriate physical interaction with the student. Her letter ---

**THE COURT:** Okay. I'm just asking a question. Because I'm trying -- I'm trying to get ahold of exactly how at that time did the school district view that physical interaction between the teacher and the student. Did they view that that interaction was -- it was a violation of a policy at that time?

**MS. WHITE:** Yes.

**THE COURT:** Which policy?

**MS. WHITE:** The policy on -- give me one second, Your Honor. I'll hand it up in a minute, Your Honor. I'm sorry. It's cited to in our memo of law or our brief, which I've handed up to you.

So they didn't -- and I think what's significant here is that Ms. Brown was not recommended for termination by the superintendent based solely on that physical interaction

between Ms. Brown and the student.

While that incident was being investigated Ms. Brown was placed on administrative leave by Dr. Carpenter, who is the district's director of human resources. And she was instructed, and this was testified to by Dr. Carpenter and Ms. Ruppe, that while the matter was under investigation by the district that she should not discuss the matter with anyone. A very reasonable directive by the administration to a teacher such that its investigation could be completed without there being any sort of adverse impact or hindering the investigation by Ms. Brown.

Tracy Wilson, who is another behavior interventionist, is her job at the school, Ms. Wilson, whose name was given by Ms. Brown as a witness, ran into Ms. Brown at a Ross clothing store in Spartanburg some four days after this meeting when Ms. Brown was placed on administrative leave. And Ms. Wilson testified that during that encounter Ms. Brown approached her and asked her whether or not Dr. Carpenter had talked with her with Ms. Owen about what had occurred at the school.

**THE COURT:** All right. Who approached who? I'm sorry, I missed that.

**MS. WHITE:** Ms. Brown approached Ms. Wilson.

**THE COURT:** All right. Thank you.

**MS. WHITE:** Okay. And it's significant that Ms. Brown

had provided Ms. Wilson's name as a witness to the incident involving student J. Ms. Wilson testified that during that encounter Ms. Brown asked her has Dr. Carpenter talked to you? And Ms. Wilson testified that, no, he has not talked to me.

And she further testified at the board hearing that Ms. Brown then said, well, you know I was in the classroom with -- I came to get a student out of the classroom. And Ms. Wilson testified that she believed that Ms. Brown was trying to see what she, Ms. Owen, was going to say to Dr. Carpenter when Dr. Carpenter interviewed her because she had been identified as a witness by Ms. Brown.

So basically Ms. Brown was attempting to get her own witness to give a version of events that would have tracked with Ms. Brown's version of events as far as student J. So that was the second ground for termination as cited in Dr. Moore's letter that Ms. Brown was insubordinate in that she wilfully violated a reasonable directive given by the administration.

And at this point, I think it would be appropriate, Your Honor, for me to address Mr. Smith's reliance on the Hall case as being controlling in this case. If you read Hall, one of the grounds for Dr. Frank Baker, who at the time was superintendent, one of the grounds for his recommendation for termination was insubordination.

And the court, a divided Court of Appeals in the Hall case found that there -- that first of all, they found that there was no evidence that her insubordination affected her primary duties, but then they continue to say moreover the record does not contain any evidence showing she, Hall, attempted to undermine the investigation.

Clearly here, Ms. Wilson testified to the board, and there was evidence before the board that, in fact, Ms. Brown was attempting to undermine the investigation of the administration. So that is a second independent ground for Ms. Brown's termination by the board.

And then, thirdly, the superintendent found -- and this was another ground for her recommendation for termination, that Ms. Brown had been dishonest in responding to Dr. Moore's questions about the May 28th encounter with student J. And then I'm responding to her, the superintendent, when she questioned Ms. Brown about what had occurred in the Ross store.

The superintendent made credibility determinations, determined that Ms. Brown was not credible. And then she testified to the board and the board also found that Ms. Brown was not credible.

And significantly when Ms. Brown, who by the way was the only witness for herself at the hearing, when Ms. Brown was asked by me can you think of any reason why Ms. Wilson

would make all this up about what happened at the Ross store, and the questions that you asked her, and what you said to her, she couldn't provide any reason.

**THE COURT:** Was Ms. Brown's response that the Ross incident never happened?

**MS. WHITE:** No. She said the Ross incident happened, that they ran into each other at Ross. She denied having any conversation where she attempted to get Ms. Wilson to basically corroborate her version of events. She described it as a very innocuous conversation between her and Ms. Wilson at the Ross store. But, again, she could not provide a reason why Ms. Wilson would make this up.

**THE COURT:** And the part of the conversation that the district found offensive or violated the prior directive was the fact that she had the conversation at all or was it a particular part of the conversation?

**MS. WHITE:** The part of the conversation when she said -- not that she just ran in to her and said, hey, how are you doing? I hope you're having a good Summer. I mean, clearly that would not have been -- yeah, if you looked at it technically, but the district would not have proceeded on that ground.

What was offensive to the district was the fact that she asked Ms. Wilson has Dr. Carpenter talked to you yet? And then continued to say to Ms. Wilson, well, you know,

here's how it happened, talking about the incident in the classroom.

**THE COURT:** I mean, did she go into great detail about the incident or did she just do the part about, well, you know, I did something -- I mean, was it like a passing comment about it or was she sitting there saying, you know, you got to talk to Dr. Carpenter, you got to tell him x, y, z that this happened?

**MS. WHITE:** She testified at the hearing, Your Honor, that she, Ms. Wilson, concluded that Ms. Brown was trying to get her to say certain things to Dr. Carpenter. So she felt pressured. She, Ms. Wilson, felt pressured by Ms. Brown as to what she should say to Dr. Carpenter.

And I think it's also significant that the district learned about this conversation because Ms. Wilson reported it to the principal, Ms. Ruppe. She testified that she was concerned enough about it, she came home from her shopping trip, said something to her husband and her husband said you need to report that. So Ms. Wilson was disturbed by it.

And Ms. Wilson, of course, didn't realize, because she would have no reason to realize, that Ms. Brown had been told not to have a conversation with her. So it was the substance of the conversation, not just the fact that the conversation occurred that led Ms. Wilson to say, hmm, something isn't right about this.

And then, Your Honor, as far as Mr. Smith's statement that there were *ex parte* communications between the board and I'm not sure who, without any specific assertions there, I really can't respond to that other than to say this was about a four hour hearing, a majority of the board was there, they listened, they asked questions, they had counsel with them immediately after the hearing, they excused all the parties and then issued a decision and ultimately a written order. So I, you know, without, again, knowing the supposed *ex parte* communications, I really can't address that.

And then as far as the issue of -- I beg the Court's indulgence one moment, Your Honor.

(Pause)

**MS. WHITE:** As far as the prior lawsuit between Ms. Brown and the board, there was no mention of that either by Ms. Brown and her counsel or by the board or the administration during that hearing. And I think it's inappropriate for this Court to, you know, take heed of that when that isn't anything that was even before the lower board.

So, again, Your Honor, for all those reasons, the three different reasons for the recommendation for termination, the appropriate standard of review and the province of the board in making credibility determinations, we would ask

that the Court uphold the board's decision and dismiss this appeal. Thank you.

**MR. SMITH:** Your Honor, brief reply.

**THE COURT:** Briefly.

**MR. SMITH:** Thank you, Your Honor. Basically there was no -- I think we've established no physical assault.

The other thing, Your Honor, with regard to the insubordination that my learned counsel who handled actually this case in front of the Court of Appeals, they stated that although the lady in that case was insubordinate because she spoke during the course of the investigation that it didn't have anything to do with classroom performance. As a result of it not having anything to do with classroom performance, insubordination in and of itself was not a fireable offense.

The other thing, too, Your Honor, is that -- when she talks about undermining the investigation, I think the facts in this case are the incident happened on May 28th, the school district concluded their investigation on June the 1st. And if you want to look at the child's second statement that happened on June the 3rd, the outside chance Ms. -- the lady that she met at Ross, gave her statement on June the 1st.

So all the investigation had been completed by all of the witnesses, even Ms. Brown's witness on June the 1st.

She did not speak to the lady, Ms. Owens, until June the 5th. And she didn't get a letter about not speaking to school district employees until June the 11th.

So when you look at the sequence of events, there was no way that she undermined the investigation that had already been completed. So, therefore, this comes within the parameters of the Hall case because they cannot make out a case that even assuming that she was insubordinate speaking to the employee at Ross that she was insubordinate enough to terminate her employment from the school district based on the Hall case.

So, therefore, the -- we believe that she should -- either we should have a new hearing in front of the school district because we believe that she should have been given a chance under a different code section to improve herself if they thought she was not under the Teacher Employment and Dismissal Act, she should have been given an opportunity to improve herself. And that's in our briefs. We have several briefs we filed.

And also that she was not unfit in technical terms with regards to the classroom and as specified in the Hall case. And the other issues with regard to the *ex parte* communications has been argued in the last portion of my brief, Your Honor. So ...

**THE COURT:** Well, clue me in. What were those *ex parte*

communications?

**MR. SMITH:** Okay. So basically we believe that the board is making up facts -- in their board order by deciding information that was presented to them outside the hearing. Specifically the board states Ms. Ruppe testified that on May 28th that the Luther Vaughan second grade teacher, Beth Owens, mentioned to her while discussing -- that she had seen Ms. Brown talking intently with a student outside the class while the class was underway. And that's in board order, I mean, the board order, page 4.

**THE COURT:** And that didn't -- their testimony was presented during the hearing on that?

**MR. SMITH:** I don't think so, Your Honor. That's basically our position. We believe that the order on -- I'm sorry. The trial transcripts intimates -- indicates the following pertaining to Ms. Ruppe and Ms. Owens on this matter.

First of all, the question by Ms. White was -- now backing up to the afternoon of May 28th, that Thursday afternoon, do you recall having a conversation with Ms. Beth Owens about something she had observed with Sharon Brown? And the answer of Ms. Ruppe, she actually came to my office for something else. And I do not recall what else it was, but it was nothing to do with Ms. Brown. And as she was getting ready to leave she -- she did indicate that there

was something that she had seen.

Question; And later on did she provide a statement to you? Ms. Ruppe; She provided a statement on Monday. And that was on June the 1st. So she didn't write a statement on May the 28th, she waited several days later before she made the statement.

**THE COURT:** And where are you reading from?

**MR. SMITH:** Reading from -- let me give you the transcript page. The question by Ms. White is on page 34 of the transcript on the record of appeal, lines 22 through 25. And I can give the Court a summation of basically what that argument is because we have it specified. I think she's got that in my brief.

**THE COURT:** Okay. Is that in your brief?

**MR. SMITH:** Yes, sir.

**THE COURT:** Okay. Well, I've got your brief.

**MR. SMITH:** All right, sir.

(Pause)

**MR. SMITH:** Your Honor, I'm just about finished. The -- we don't believe either, Your Honor, that when the board says -- the board shows -- we believe it shows partiality. The board members are making up facts or reciting information that was presented to them outside the board meeting.

Specifically the board states the following in its

order; A short time later in an effort to make up with student J, Ms. Brown returned to the class where she asked that Ms. Wilson send student J out into the hall to talk with her, which is an interaction witnessed at approximately 1:20 by Ms. Owens.

Well, Ms. Brown, according to the testimony, never asked the student to come out of the classroom because the student was already out in the hall. So this is a factual situation that was kind of like made up, too.

So we believe that, you know, anything that was not testified to should not have been included in the order. And I think the Court uses, I believe, the substantial evidence, but looks at the whole record.

And based on this it looks like you have a teacher who instructed the child not to use the word hate in the classroom, a teacher who had a three to five minute conversation with somebody at the Ross store about whether or not they were going -- Mr. Carpenter had testified and would she be a witness for her.

And quite possibly, if you consider that to be insubordination, then maybe she was insubordination -- insubordinate, but not under the standard of the Hall case, which says that insubordination under those circumstances is not a terminable offense. That concludes my conversation, Your Honor. And I'll present the Hall case to the Court.

**THE COURT:** Well, isn't it attached to your brief?

**MR. SMITH:** Yes, sir, it is.

**THE COURT:** I got that.

**MR. SMITH:** Thank you, Your Honor.

**THE COURT:** But this other lady, the other female teacher that was at Ross, she testified at the hearing.

**MR. SMITH:** Yes, sir.

**THE COURT:** Okay.

**MR. SMITH:** Yes, sir.

**THE COURT:** All right. Okay.

**MS. WHITE:** Just real briefly?

**THE COURT:** Briefly.

**MS. WHITE:** Ms. Owens also testified at the hearing as far as what she observed when she saw Ms. Brown talking intently to the student in the hallway. So those findings from the board in its order were based on the testimony from Ms. Owens.

As far as insubordination and affecting Ms. Brown in being a classroom teacher, when the administration asks you or directs you not to talk with anyone while an investigation is underway and you go out and you wilfully ignore that, and not only do you have a conversation with somebody, it's somebody that you identified as a witness.

And, Your Honor, I would just call your attention to page 9 of the transcript where Ms. Wilson talks about this

conversation. And she says, she asked me about student J. And I said, well, I don't know. And she just proceeded to tell me, this is what happened. And I was like, well, I don't know. I don't know who the student was. And she was like, yes, you do. And you were in there when I brought him in there. And I was like, no, I wasn't in there.

So she clearly was attempting to tell her own witness what to say. And when the administration can't rely on a teacher following directive, that indicates that there is a real question about their credibility as a teacher and their ability to work within the rules of the organization. Thank you, Your Honor.

**MR. SMITH:** Well, Your Honor, I hate to -- the superintendent wants to create two incidents that day with regard to the touching, which is clearly not true. The other thing, too, is that Ms. Brown under those circumstances say you must testify this way when you say something to Mr. Carpenter. There was none of that. There was a three to five minute conversation at a department store. She just asked her did she talk to Mr. Carpenter.

And the fact is, even Ms. Ruppe says that she -- that the -- that the HR director told Ms. Brown not to speak to anyone, anyone in the world. That's in -- on page 37 of the transcript. And Mr. Carpenter comes in and says he instructed her not to speak to personnel.

They send her a letter which does not memorialize any conversation. And in that letter where they do not memorialize the conversation he tells her not to speak to anyone during the investigation. And she doesn't get that letter until June the 10th.

**THE COURT:** But is it y'all's position that she was not told at all, that nobody instructed her not to have any discussions with staff, or the world, or anybody?

**MR. SMITH:** No, no, that's not our position. Our position is she said she didn't recall him saying it because I think it was a tense meeting they had. She just didn't recall -- if he did give that instruction, if he did ---

**THE COURT:** She just doesn't remember that instruction?

**MR. SMITH:** Right. That's what she testified to. And that's what she told the superintendent as well when the superintendent interviewed her. And instead of reading all the things I've talked about, these are ---

**THE COURT:** What are you handing me?

**MR. SMITH:** Ms. Brown wanted me to submit this to ---

**THE COURT:** Counsel?

**MS. WHITE:** I'm not sure. What is that?

(Pause)

**MS. WHITE:** I've not seen this, Your Honor. I'm not sure.

**THE COURT:** Okay.

**MS. WHITE:** I think it's something that Ms. Brown, herself, wrote.

**THE COURT:** I don't think it would be appropriate for you to hand it to me.

**MR. SMITH:** Thank you, Your Honor.

**THE COURT:** Okay. I'll take a look at it and let you know.

**MS. WHITE:** Thank you, Your Honor.

(Hearing Ended at 1:32 pm)

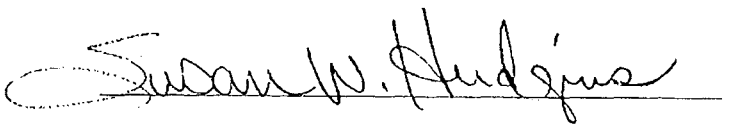
(End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Cherokee County, South Carolina, on the 20th day of June 2016.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 10, 2016



Circuit Court Reporter

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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November 3, 2017

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