

Complaint  
EXHIBIT  
1 - 10/7/15

JUSTIN  
KELLY,  
ART  
TEACHER

May 29, 2015

Yesterday, Thursday, May 28, 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 did not appear to be doing anything wrong. He was walking appropriately to class when she grabbed him. I do not think that she was aware that I was present. I just happened to look outside my art room door and witness it.

Justin Kelly

*Justin Kelly*  
(Art Teacher)

BETH  
OWENS,  
2<sup>ND</sup>  
GRADE  
TEACHER

6-1-15

On Thursday, May 28, 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 [redacted] in the hallway outside of the art room. [redacted] back was against the wall. Miss Brown was bent over so they were at eye level. I observed [redacted] turn his head in my direction, away from Miss Brown. Miss Brown then took her fingers, placed them on his chin and turned his head so he was again looking in her direction. I continued on to my room and didn't observe any further interaction between Miss Brown and the student. After school, on the same day, I notified Principal Ruppe of the physical interaction observed between Miss Brown and [redacted]. Principal Ruppe requested a statement from me. With the Literacy Day / Field Day on Friday, I hadn't gotten around to it.

Beth Owens (2nd Grade Teacher)  
6-1-15

NAN  
RUPPE,  
PRINCIPAL

6-1-15

## Talk with Student -

Student said he was at end of line because he was ~~tying~~ <sup>tying</sup> his shoe. He walked into class with other students and went to seat. Mr. Kelly was in classroom when he arrived.

Miss Brown came to class, and asked Mr. Kelly to see the student. He went outside room to speak to Miss Brown. Nothing unusual happened when he spoke to Miss Brown. He didn't remember what it was about.

██████ was asked if Miss Brown ever put her hand on him, and student said no.

██████ was asked what he thought of Miss Brown as a teacher, and he said, "She's nice."

Written by - NanLugge, Principal  
June 1, 2015

Mrs. Torres, 5K TA who speaks Spanish, called parent, 12:05 pm to report the allegation and investigation response by CCSO. Mrs. Torres said parent is okay with everything and said she would talk to ██████ in Spanish this afternoon about everything.

Written by - NanLugge, Principal  
June 1, 2015

**CARL CARPENTER**

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**From:** Nan Ruppe  
**Sent:** Friday, June 5, 2015 3:57 PM  
**To:** CARL CARPENTER  
**Subject:** phone calls

I spoke to Brenda Torres by phone, 6-5-2015, to verify information regarding conversation with parent. Mrs. Torres was asked by principal to call parent of student in order to inform her of allegation of mistreatment by teacher. She was asked to call parent as a Spanish translator because mom does not speak English.

Following the conversation by phone, Mom came to school and signed out student. She reported to Mrs. Torres she would talk to her son in Spanish to see what she could find out.

Mrs. Torres was absent from school on Tuesday, June 2, 2015, so she did not speak to mom about her talk with her son until Wednesday, June 3, 2015. Mom told Mrs. Torres on Wednesday, June 3, 2015, that her son said teacher did not touch him. He told his mother the teacher said he was disrespectful. Student told teacher because you're so mean.

This was all Mrs. Torres said about her conversation with student's mother.

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TRACI  
WILSON,  
BEHAVIOR  
INTERVENTIONIST

June 1, 2015

On Thursday, May 28, 2015 Mr. Justin Kelly asked me, Tracie Wilson, to keep an eye out for his last period art class Miss Sharon Brown's class. So I did and I was walking by and knocked on the door. Mr. Kelly verified that it was me and a student let me into the classroom. The students were currently seated and settling down. Miss. 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. Mr. Kelly said OK and the student got up and went with her and she pushed the door up behind her. I cannot remember if the student came back or if the student stayed with her. Mr. Kelly informed the students that he wanted to do a fun activity 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. He explained the rules of the game because many had never played it before. He explained to the students sitting to put their heads down on the desk close their eyes and put their thumbs up in the air and one student standing will quietly touch their thumb finger and they will put their thumb down then anyone who has thumbs down will stand and take a guess at who picked them. (Repeat). We played about 3 to 5 rounds. One of the male students got mad because he lost during the game and started saying that he hated black people and laid in the floor, so took him out and talked with him and reinforced the positive behavior matrix allowing him to calm down. We went back to class and I noticed time was winding down for the class to be over. 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 he lined them up by the quietest table. Miss. Brown was late coming to pick them up so one student whose leaves early was sent to his regular schedule class and the other students were lined up and I asked Mr. Kelly do you want to walk Miss Brown's to class to her, I told him I will bring up the caboose if he walks in front. We were getting ready to take the students down the hall when Miss. Brown came to the door and asked can I speak to you Mrs. Wilson and I said sure and we both step to the side of the art room door hallway and 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 had stepped in to lend a hand. She said oh, okay and the students were standing there looking and waiting on her and she took them on down the hall. I went back to work. Mr. Kelly went on to prepare for the end of the day.

*Tracie Wilson*  
Tracie Wilson

Luther Vaughan Elementary School

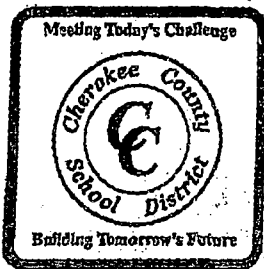
Behavior Interventionist

On June 5, 2015 I was at Ross Clothing store in Spartanburg and checking out when Miss Brown came into the store and I said hi to her. I asked how was her summer going or something about shopping. She said hi back to me and she 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 than 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 [REDACTED] 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 [REDACTED] you do know it was [REDACTED] 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 [REDACTED] 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 you have a good day shopping and 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. I once again told her that I did not know what she was talking about and did not have a clue of anything she was saying. Finally, a Hispanic student from school from Luther Vaughan came over and told her hey and we both looked around for the parents and we spoke to the student and I told Miss Brown to have a great day and enjoy the summer she said and you to and love ya and I walked out the store with my daughters.

Tracie Wilson

LVES Behavior Interventionist

DR. CARL  
CARPENTER,  
DIRECTOR  
OF  
HUMAN  
RESOURCES



**Cherokee County School District**  
**Office of Human Resources**  
Post Office Box 460  
Gaffney, South Carolina 29342  
Telephone: (864) 206-2218

**Dr. Carl A. Carpenter, II**  
**Director of Human Resources**

June 1, 2015

**VIA CERTIFIED MAIL**

Sharon Brown  
216 Ardmore Road  
Spartanburg, SC 29306

This correspondence is to notify you that you are being placed on administrative leave with pay, effective immediately. The reason is because you allegedly grabbed a student by his lower jaw and throat and forced his body against the wall. We will continue to investigate this matter and will be in touch with you soon.


This administrative leave will continue until you have been contacted by Dr. Quincie L. Moore, Superintendent or me. If you have not done so, please provide me with a current telephone number that I may use to contact you if the need arises.

You are restricted from going on any school property without our expressed permission. In addition, you should not have any contact with school district employees or students in any manner while you are on administrative leave.

If you have any questions regarding this matter, please do not hesitate to contact me at 864-206-2210.

Sincerely,

Carl A.

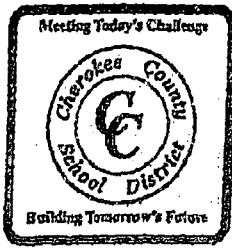
  
Carl A. Carpenter, II, Ph.D.  
Director of Human Resources

CC: Dr. Quincie L. Moore, Superintendent  
Nan Ruppe, Principal  
Personnel File

DR. QUINCIE

MOORE,

SUPERINTENDENT



**Cherokee County School District  
Office of the Superintendent**

P. O. Box 460  
Gaffney, S. C. 29342  
Telephone: (864) 206-2233

Dr. Quincie L. Moore, Superintendent

August 11, 2015

**VIA CERTIFIED MAIL**

Ms. Sharon Brown  
216 Ardmore Road  
Spartanburg, SC 29306

Dear Ms. Brown:

I am writing to follow up on our meeting on July 31, 2015, which also was attended by Dr. Carl Carpenter, Director of Human Resources. Also present at your request was your attorney, Fletcher Smith, Esq., along with Andrea White, Esq., the District's attorney.

At the start of the meeting, you were informed that the purpose of the meeting was for you to share with me your side of an incident involving a student in your class, [REDACTED]. The incident in question was reported as occurring on May 28, 2015. As you were informed, Luther Vaughan Elementary School art teacher Justin Kelly reported to Principal Nan Ruppe that he observed an incident on that date in which you grabbed [REDACTED] "violently by his lower jaw and throat, and forcing his body against the wall while proceeding to verbally assault him."

You were made aware of this report on June 1, 2015, by Dr. Carpenter, who informed you that while the matter was under investigation, you would be on administrative leave with pay. During the investigation, you also were asked by Dr. Carpenter whether you had any witnesses that you believed could provide information about the May 28<sup>th</sup> incident. You gave Dr. Carpenter the names of Tracie Wilson, Luther Vaughan Elementary School Behavior Interventionist, and Luther Vaughan Elementary School teacher Beth Owens.

During his meeting with you on June 1<sup>st</sup> and in a subsequent letter dated that same day, Dr. Carpenter reminded you that you were not to have any contact with District employees or students while you were on administrative leave. During our meeting, you stated that you "did not recall" Dr. Carpenter telling you that you should not contact any District staff and further advised that you did not receive his June 1<sup>st</sup> letter until June 11, 2015.

When I asked you about the May 28<sup>th</sup> incident, you denied grabbing [REDACTED]. You said that you requested that Jose come out of Mr. Kelly's art class to talk with you in the hallway about his use of the words "I hate," but reiterated that at no time did you make physical contact with him.

We then continued to discuss the June 1<sup>st</sup> directive given to you by Dr. Carpenter that you should not have any contact with District staff while on administrative leave. When I asked you whether you had discussed the May 28<sup>th</sup> incident with anyone, you told me that you had run into Tracie Wilson at a Ross department store in Spartanburg on June 5<sup>th</sup>. You said that you had a very brief (3-5 minute) conversation with Ms. Wilson, in which you asked her how her summer was going and whether she had been contacted by Dr. Carpenter about the May 28<sup>th</sup> incident. You denied any other discussion with Ms. Wilson and also reiterated that you did not remember Dr. Carpenter telling you that you should not have contact with any District employees.

We then proceeded to read you the written statement provided by Ms. Wilson, which she had given to Nan Ruppe at the end of June. You replied that Ms. Wilson's statement describing your encounter at Ross was not accurate and also stated, in response to my inquiry, that you did not know of any reason why Ms. Wilson would report the facts of the encounter so differently than you.

At the conclusion of our meeting, I advised you that I was very disappointed and concerned about your actions in speaking with Ms. Wilson about this matter, particularly after you had provided her name to Dr. Carpenter as a witness. I explained that your talking with Ms. Wilson about her conversation with Dr. Carpenter had significantly adversely impacted the District's ability to complete its investigation into the May 28<sup>th</sup> incident. I then told you that I would review the entire situation and get back in touch with you with my conclusions and decision about your employment status.

Earlier this week, I asked that Ms. White contact Ms. Fletcher to advise that I have lost confidence and trust in you as a teacher in the Cherokee County School District, and that, in lieu of me proceeding to make a recommendation for your termination, I was willing to accept your resignation. Ms. White has informed me that you have rejected that alternative, which has led to this letter.

Ms. Brown, based on my review of your conduct in reference to the May 28<sup>th</sup> incident and the events subsequent to that incident, I have decided to recommend the termination of the contract you were issued for the 2015-16 school year. Your actions, in willfully violating a specific administrative directive that was given to protect both you and the District as this matter was investigated, have led me to conclude that I have lost confidence in your ability to conduct yourself in a professional manner and to abide by directives given to you.

I also have concluded that you were dishonest in your answers to me, both about the May 28<sup>th</sup> interactions with [REDACTED] and about your encounter with Ms. Wilson on June 5<sup>th</sup>. Specifically, while you have denied touching the student, it was reported by Ms. Owens, whose name you provided as a witness, that she observed

you physically guiding the student by his face to look at you as you spoke to him. Based on Ms. Owens' description of what she observed, I have concluded that the incident reported by Mr. Kelly was a different incident involving the same student. While you have denied making any physical contact with the student contrary to what was reported by Ms. Owens, your dishonesty in reporting other information causes me to question whether you did, in fact, touch the student in the manner as reported by Mr. Kelly. Certainly, if you did grab the student in a forceful or violent manner, that would serve as an additional ground for your immediate termination.

I also believe that you were untruthful in reporting the facts to me regarding your discussion with Ms. Wilson at Ross on June 5<sup>th</sup>. While you stated that Ms. Wilson's statement was not truthful, you agreed that Ms. Wilson had no reason to report the facts inaccurately. Alternatively, you had a clear motivation to downplay that encounter.

Based on the above, I am recommending your immediate termination to the District Board of Trustees pursuant to the provisions of S.C. Code § 59-25-430. As stated in S.C. Code § 59-25-470, you have the right to request a hearing before the Board of Trustees regarding my recommendation, provided that you make a request for a hearing no later than fifteen (15) calendar days after your receipt of this letter. This request must be in writing and may be addressed to me. Please be advised that if you do not request a hearing within the specified time period, you will waive all rights under the Teacher Employment and Dismissal Act, and the Board will proceed to vote on my recommendation, with the Board's decision regarding your employment being final.

Should you have any questions, you may contact me directly or you may have Ms. Smith call Ms. White.

Sincerely,

*Quincie L. Moore*

Quincie L. Moore, Ph.D.  
Superintendent

C: Dr. Carl Carpenter  
Andrea E. White, Esq.  
Fletcher Smith, Esq.

SHARON

BROWN,

2<sup>ND</sup>

GRADE

TEACHER

June 1, 2015

On Thursday, May 28th [redacted]  
was heard going down the hallway  
saying "I hate." At the time I was  
headed toward art room (near it).

I dropped kids off at art. I went  
back to my room and decided that  
I needed to deal with "I hate."  
So, I went (walked) back to the art  
room and asked to speak with [redacted]

I conferenced with [redacted] about "I hate"  
outside of art room. [redacted]  
[redacted] said he would not use the words  
again.


I felt [redacted] had heard [redacted]  
never use "I hate."

Miss Brown  
2nd Grade Teacher  
(864) 253-9975  
(864) 431-4123

June 8, 2015

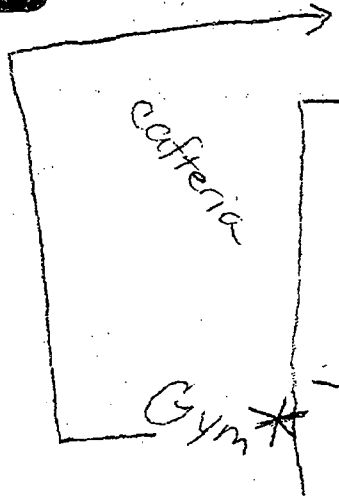
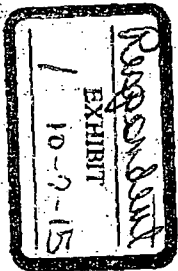
I, Sharon Brown, did not grab a student violently by his lower jaw and throat, and force "his body against the wall while proceeding to verbally assault him" on May 28, 2015.

Sharon Brown

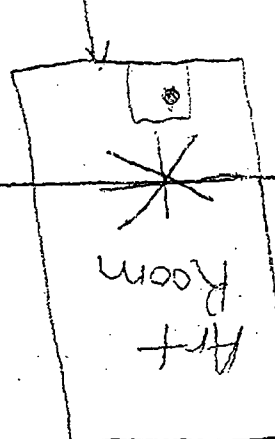


Second Grade Teacher

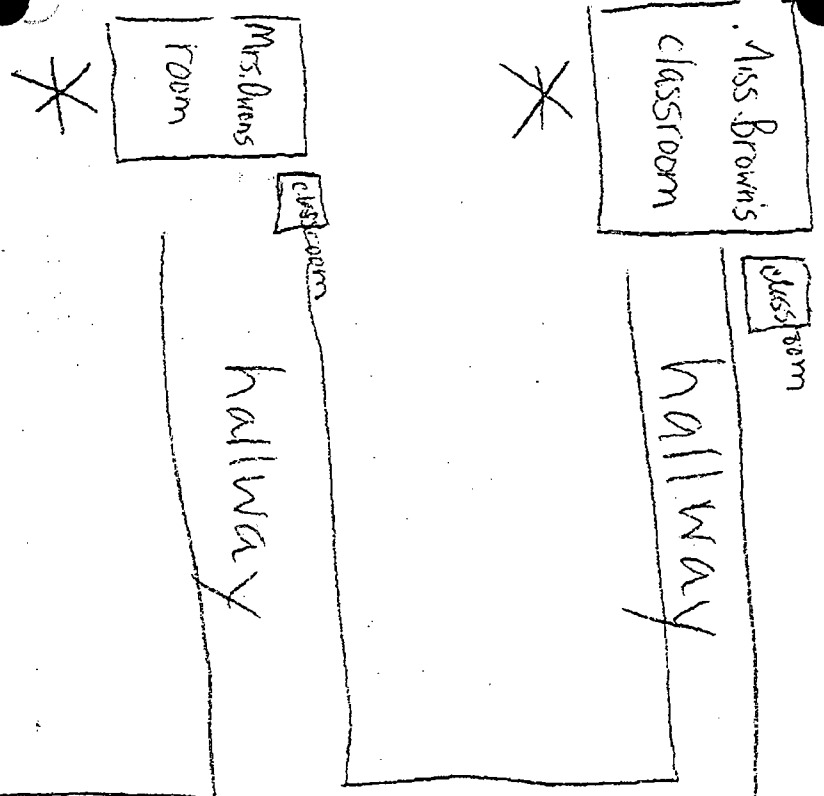
Luther Vaughn Elementary School



Miss Brown  
Spoke with  
Jose outside  
of art room



\* hallway  
Mrs. Owens and her husband were  
walking down the hall and passed by  
Miss Brown and Jose

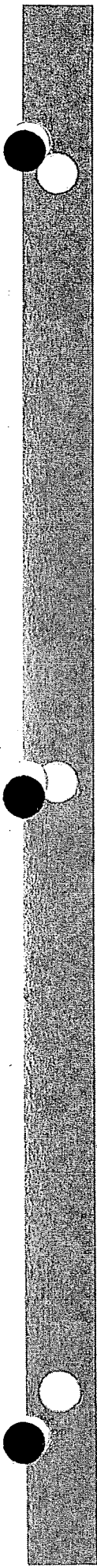


Mrs. Owens claims that "On Thursday, May 28, I had just  
dropped my students off in gym around 1:15 and I was on my  
way back to my classroom. I noticed Miss Brown and Jose in  
the hallway..."

Complaint Ex 2

Thump Drive

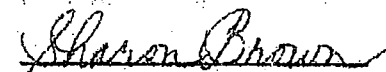
MOORE V. BROWN



June 8, 2015

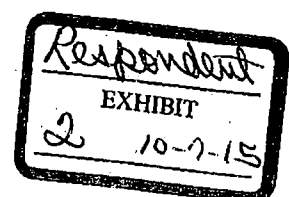
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Sharon Brown



Second Grade Teacher

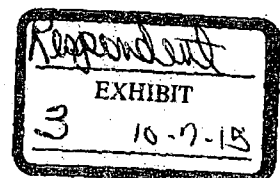
Luther Vaughn Elementary School



June 1, 2015

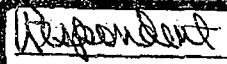
On May 29 at approximately 3:10 p.m., Justin Kelly, the art teacher, came to my office and told me that he witnessed a teacher doing something disturbing and he wanted to tell me about it so that he could get advice on what to do. He told me that the day before (Thursday), he saw Miss Brown shoving a student up against the wall and squeezing his lower face and neck with her hands and yelling at him outside the art room. I told him that he needed to report this to Ms. Ruppe. I walked with him to the office and told Ms. Ruppe that he had witnessed something and needed to let her know. I left him with Ms. Ruppe and returned to my office.

*Ruby Byers* 6/1/15  
Ruby Byers (Huntence)  
June 1, 2015



## Special Area, 2014-2015

	Monday	Tuesday	Wednesday	Thursday	Friday
8:00-8:40 1 <sup>st</sup> per.	PE - Earle M - Deyton CL - Bolin *Rotate each 12 <sup>th</sup> week. *Team Plan	PE M - Black	PE - Black M - Penland	PE - Clawson A - Fernandez	PE A - Clawson CL - Jones/Parris
8:45-9:25 2 <sup>nd</sup> per.	PE - Reece M G/T-LV CL - Brown	PE M - Owens G/T-LV CL - Clawson	PE - Earle M - Deyton G/T-LV CL - Bolin *Rotate each 12 <sup>th</sup> week. *Team Plan	PE - Lyda A - Reece G/T-LV CL - Owens	PE A - Lyda G/T-LV
9:30-10:10 3 <sup>rd</sup> per.	PE - Brady M - Lyda L - Emory	PE - Reece M - Brady L - Lyda  *Team Plan	PE - Lyda M - Reece L - Brady  *Team Plan	PE - Brady A - Smalley L - McKeown	PE A - Brady L - Reece CL - Earle
10:15-10:55 4 <sup>th</sup> per.	PE - Parris M - Jones L CL - Mayes  *Team Plan	PE - Jones M - Parris L CL - Fernandez	PE - Parris M L - Jones CL - Black  *Team Plan	PE - Jones A - Parris L CL - Bolin	PE - Smalley A - Jones L - Parris CL - Deyton
11:00-11:40 5 <sup>th</sup> per.	PE - Bennett M - Smalley L - Penland CL  *Team Plan	PE - Penland M - Bennett L - Smalley CL  *Team Plan	PE - Smalley L - Bennett CL	PE - Penland A - Bennett L CL - Emory	PE - Bennett A - Penland L CL - McKeown
11:45-12:25 6 <sup>th</sup> per.	Lunch for Special Areas				
12:30-1:10 7 <sup>th</sup> period	PE - Mayes M - Fernandez L - Black CL  *Team Plan	PE - Fernandez M - Mayes L CL	PE - Fernandez L - Mayes CL - Bennett  *Team Plan	PE - Black A - Mayes L - CL - Penland	PE - Mayes A - Black L - Fernandez CL - Smalley
1:15-1:55 8 <sup>th</sup> per.	PE - Brown M - Clawson L - Owens CL - Brady  *Team Plan	PE - Clawson M - Brown L CL - Lyda	PE - Clawson/Owens L - Brown CL - Reece  *Team Plan	PE Owens A - Brown L - Clawson CL	PE - Brown A - Owens L CL - Jones/Parris
(2:00-2:25) 9 <sup>th</sup> Per.					

  
 EXHIBIT  
 4 10-7-15

Court of Appeals of South Carolina.

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

No. 2811.

**Decided: March 16, 1998**

Andrea E. White, of Childs & Halligan, Columbia, for appellant. J. Cabot Seth, of Jones, Seth & Shuler, Sumter, for respondent.

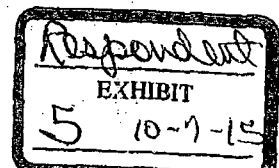
The Board of Trustees of Sumter County School District Number 2 appeals the circuit court's reversal of the Board's decision to terminate the employment of Judy Hall. The Board argues substantial evidence supports its findings with respect to Hall's unfitness for teaching and insubordination. We disagree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

**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.<sup>2</sup> 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 off-campus events or trips.

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 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 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.<sup>3</sup> 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.<sup>4</sup>

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, 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. 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 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.<sup>5</sup> 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).

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.<sup>6</sup> 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 here is insufficient to show Hall's unfitness for teaching within the meaning 59-25-430.

The decision of the circuit court judge is therefore

AFFIRMED.

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 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 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 rescission 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."<sup>1</sup> 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 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.<sup>2</sup>

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 is substantial evidence to support the Board's decision.

I, therefore, would reverse the trial court and reinstate the Board's decision to terminate Hall under section 59-25-430.

#### FOOTNOTES

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.
1. 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.
2. Any assertion by the majority that the Board should have proceeded under S.C.Code Ann. § 59-25-440 (1990) is misplaced. 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.

HEARN, Judge:

STILWELL, J., concurs. HOWELL, C.J., dissents in a separate opinion.

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