

Volume I (to page 167)

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

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

APPELLATE CASE NO. 2016-000955

John Alden Bauer, III

Appellant

v

Beaufort County  
School District

Respondent

**RECORD ON APPEAL**

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Jeffrey C. Moss, Ed.D.,

Complainant,

vs.

John Alden Bauer, III,

Respondent.

BEFORE THE BOARD OF EDUCATION OF THE BEAUFORT COUNTY SCHOOL  
DISTRICT

ORDER

On April 30 and May 1 and 2, 2015, the Board of Education ("Board") of the Beaufort County School District ("District") conducted a public evidentiary hearing under the South Carolina Teacher Employment and Dismissal Act on the recommendation of Superintendent Jeffrey C. Moss, Ed.D. ("Dr. Moss"), Complainant, that John Alden Bauer, III ("Mr. Bauer"), a physical education teacher at Hilton Head Island Elementary School, be dismissed from

employment. Following the conclusion of the hearing and after due deliberation, the Board, on May 2, 2015, voted eight-to-zero to uphold the Superintendent's recommendation that Mr. Bauer be dismissed from employment, effective that date. This Order sets forth the Board's reasons for upholding the termination recommendation.

### Procedural Issues

Several procedural matters or issues arose in this case, both prior to and during the hearing. As became clear to the Board, overlying the resolution of several procedural issues is the circumstance that Mr. Bauer, while choosing to proceed pro se at the hearing, steadfastly refused to take the stand on his own behalf to give sworn testimony and to introduce documentary evidence in support of his position through his sworn testimony. Consequently, as Mr. Bauer was repeatedly advised beforehand by the Board, his decision resulted in a total lack of his own testimonial evidence and the introduction of minimal documentary evidence supporting his position, limited to those exhibits that were entered during Mr. Bauer's cross examination of the administration's witnesses and to which counsel for the Complainant chose not to object.

There is some indication that Mr. Bauer objected, at least prior to the hearing, to the hearing being conducted because it was not held within the time specified by Section 59-25-470 of the Teacher Employment and Dismissal Act. There was further indication that the statutory deadline for holding a hearing was waived by an attorney, who indicated in writing to counsel for the Complainant that he represented Mr. Bauer. Mr. Bauer did not pursue this objection at the hearing, at least not with evidentiary support, and for the reasons mentioned above, the Record is devoid of any evidence supporting Mr. Bauer's contention. Accordingly, the Board has no basis on which to find that the time frame in conducting the

hearing prejudiced Mr. Bauer's rights or violated the statutory requirement.

At the hearing, Mr. Bauer also objected on two grounds to what he described as the "charges" against him, that is, the reasons for the recommendation that he be dismissed. To the extent that Mr. Bauer's objection is that he did not have proper notice or fully understand the reasons or bases for the Superintendent's recommendation, the Board finds that the initial communications from Dr. Moss to Mr. Bauer provided adequate written notice and explanation of the reasons for the recommendation. See Complainant's Exhs. 40 and 41. Those communications to Mr. Bauer state that he was being recommended for termination because of his negligence in supervising students, particularly a Section 504 disabled student, who was left by Mr. Bauer unattended off-campus, and insubordination during the follow-up to the student incident, when Mr. Bauer failed to comply with various directives, including directives to meet with administrative officials.

Mr. Bauer also objects to the proceedings against him because the "charges" or causes for the recommendation of dismissal were not issued by the Board, as Mr. Bauer believes is required by Section 59-25-460 of the Teacher Employment and Dismissal Act. Reading Section 59-25-460 together with 59-25-450, it is clear that the notice of the cause for dismissal should not come from the Board but rather from the Superintendent. Section 59-25-450 states that: "Whenever a superintendent has reason to believe that cause exists for the dismissal of a teacher," proceedings, including written notice, are to be issued by the superintendent. Since the school board is the entity that is to conduct an evidentiary hearing under Section 59-25-460, should a hearing be requested by the teacher, the board cannot, and should not, be the party issuing the specification of causes for dismissal. That function and responsibility falls upon the superintendent.

Other procedural matters were also addressed by the Board. Early in the proceedings, Mr. Bauer requested that Lauren L. Martel, Esquire, who was present in the audience at the public hearing, be permitted to make a motion on his behalf. At one time, Ms. Martel was Mr. Bauer's legal representative in this matter; however, at some point prior to the hearing, Mr. Bauer notified counsel for Complainant and counsel to the Board that he was no longer represented by Ms. Martel and would be proceeding pro se at the hearing. The Board sustained the objection by counsel for the Complainant that Ms. Martel should not be permitted to serve again as Mr. Bauer's legal representative for the sole purpose of making a motion at that point in the proceedings. There was no objection that Ms. Martel, if both Mr. Bauer and she so requested, could not have resumed her representation of Mr. Bauer for the entirety of the hearing. The District's Chief Human Resources Officer, Alice Walton, testified at the hearing through the vehicle of a video-taped deposition de bene esse. Mr. Bauer objected to entering evidence presented by Ms. Walton by this means. Discussion regarding the objection took place at the hearing among counsel for the Complainant, Mr. Bauer, and the Board. It was stated that prior to Ms. Walton's de bene esse deposition, both Ms. Martel, while she represented Mr. Bauer, and Mr. Bauer, subsequent to Ms. Martel's withdrawal, agreed that Ms. Walton's testimony by de bene esse deposition, which included Mr. Bauer's cross-examination of her, would be admitted, subject to any specific objection during the deposition that might be sustained by the Board. At the hearing, Mr. Bauer confirmed the existence of the prior agreements regarding the presentation of Ms. Walton's evidence by de bene esse deposition. On that basis, Mr. Bauer's objection was overruled, and the Walton deposition was viewed and entered into the Record.

Near the end of the administration's case, after Dr. Moss had completed his direct testimony, Mr. Bauer asked that his father, John Alden Bauer, Jr., Ph.D., be permitted to

cross examine Dr. Moss, so that Mr. Bauer, Respondent, could spend time preparing for his own testimony and closing argument. Counsel for the administration's objection to allowing Dr. Bauer to cross-examine the witness was sustained. The Board was apprised of, and specific reference was made to, a prior understanding reported by the Chair in his opening remarks to all assembled. The previously agreed upon understanding between the two parties, i.e., counsel for Complainant and Mr. Bauer, acting pro se, was that Dr. Bauer, who is not an attorney, could assist Mr. Bauer during the hearing in the handling of documents and for brief consultation but that Dr. Bauer would not examine witnesses or offer arguments on behalf of Respondent.

The matter of Mr. Bauer's decision not to testify on his own behalf and the impact that decision had on inclusion in the Record of documentary evidence that might support his position has been referenced above. Complainant's Exhibits 1-41 and supplemental Exhibits 1-12 were entered in the Record without objection from Mr. Bauer. Only a few of Mr. Bauer's Exhibits, to which counsel for the Complainant made no objection, were entered in the Record during Mr. Bauer's cross-examination of the administration's witnesses.<sup>1</sup> Those exhibits, which consist of unnumbered documents from Mr. Bauer's exhibit notebooks, do not contradict or draw into question in any significant way the probative value of the testimony and documentary evidence admitted on behalf of the Complainant.

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 law ("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

At the hearing, Mr. Bauer and counsel for the Complainant agreed that the determination of which documents from Mr. Bauer's notebook were entered into evidence would be based on the personal notes of the proceedings made by the presiding officer, the Board Chair.

this case, the Superintendent posited that Mr. Bauer manifested an evident unfitness for teaching because of his failure to supervise properly a student or students and demonstrated insubordination in the aftermath when the administration attempted to draw closure to its inquiry into the concern.

#### Facts

The administration's evidence in support of its stated grounds for dismissal, failure to supervise and insubordination, was uncontradicted because, again, Mr. Bauer chose not to testify on his own behalf or, with limited exception (and solely during his cross-examination of witnesses), enter into the Record any exhibits. While Mr. Bauer, proceeding pro se, sought during his cross-examination of the administration's witnesses to undercut Complainant's position, those witnesses were unshaken in regard to the facts presented relating to Mr. Bauer's failure to supervise students and his insubordination. In particular, witnesses for the administration testified that, during the investigation of the precipitating incident when Mr. Bauer left a Section 504 disabled student unattended off campus for thirty minutes, Mr. Bauer, when questioned about the occurrence, admitted he had done so, though he attempted to explain that his failing was minor and inconsequential. Because Mr. Bauer did not testify, the administration's evidence regarding the incident and its aftermath went un rebutted.

The precipitating event leading ultimately to the recommendation that Mr. Bauer be dismissed occurred on Wednesday, February 5, 2014. On that occasion, Mr. Bauer, by his own admission, left a fifth-grade, male Section 504 disabled student at the Hilton Head Island Recreation Center ("Rec Center") after a swimming class at 12:50 p.m. Some thirty minutes

after Mr. Bauer and the class left the Rec Center and returned across the street to Hilton Head Island Elementary School, the child in question approached a member of the Rec Center staff and shared that he had been left behind. A Rec Center staff member promptly walked the student back to his school and delivered him to the Main Office. When questioned about the incident by the Principal and an Assistant Principal of Hilton Head Island Elementary School, Mr. Bauer failed to appreciate the seriousness of his action or omission, stating, for example, that he could not believe the administration was taking a "silly mistake" so seriously. When initially asked to discuss the matter with the administration by coming to the front office after school, Mr. Bauer's response was something to the effect that "is[n't] this something we can talk about on the phone" and that it was "ridiculous" that he would have to remain after the school day to discuss the matter.

The Principal of Hilton Head Island Elementary School, Jill McAden, was sufficiently concerned with Mr. Bauer's response and attitude toward his leaving the child behind at the Rec Center that she felt compelled to communicate her concerns to Ms. Walton, the Chief Administrator for Human Resources. Ms. McAden expressed to Ms. Walton her shock at Mr. Bauer's lackadaisical attitude and defensive demeanor when he was questioned about the Rec Center occurrence, noting that he slouched in a chair and sighed as if the entire matter were being blown out of proportion. (McAden testimony, Compl. Exh. 18.) Ms. McAden noted that Mr. Bauer expressed no remorse or regret over what had taken place and did not appear to accept responsibility for his actions in leaving a student unsupervised. She also testified that Mr. Bauer had conveyed a similar attitude and demeanor earlier in the year when questioned by an assistant principal regarding an incident when a child was outside the gym during class,

unaccounted for by Mr. Bauer. After conferring with Ms. Walton and discussing the matter with Mr. Bauer, Ms. Walton placed Mr. Bauer on administrative leave with pay because of concerns about his negligent actions regarding the safety of elementary school students and his response or reaction to the incidents which had occurred. In her written communication to Mr. Bauer, Ms. Walton stated that a full inquiry into the situation would need to take place. (Compl. Supp. Exh.3.)

Ms. Walton determined that, given the serious concerns about repeated incidents of failure to supervise students and Mr. Bauer's troubling reaction and responses to the incidents in question, Mr. Bauer would be required to provide a written statement from a physician certifying that he was capable of carrying out the duties and responsibilities of his job as a Physical Education teacher. Such a procedure for requiring a statement verifying fitness for duty is permissible under District policy. (Walton testimony, Compl. Supp. Exh. 3.) Mr. Bauer missed the deadline he was given for submitting the physician's statement, but more importantly, the statement, from a psychiatrist who had seen Mr. Bauer, indicated in a rather general manner only that Mr. Bauer was capable of performing the essential functions of his job, adding that he should be returned to his duties as soon as possible. Ms. Walton considered the psychiatrist's statement insufficient in providing adequate assurance that Mr. Bauer appreciated the importance of supervising students and recognized his failure in that regard. She directed Mr. Bauer to submit to a further assessment, at District expense, by a mental health professional of the District's choosing. Mr. Bauer was given specific directions and a deadline for obtaining the second evaluation and presentation of the report. (Walton testimony, Compl. Supp. Exh. 10.) He never completed the task. Repeated attempts were

made by Ms. Walton to get Mr. Bauer to follow through with the second assessment and to meet with her about the situation, but for various reasons, including the fact that he was attempting to make arrangements for his lawyer to participate in any meetings, neither the follow-up evaluation nor any meetings for the purpose of resolving Mr. Bauer's status ever took place.

On May 22, 2014, Dr. Moss, the Superintendent, advised Mr. Bauer that there had been no discussion about terminating him but that he was not following through with the process, which might allow him to return to work. (Moss testimony, Comp. Supp. Exh. 29.) In a further communication on the same date, the Superintendent explained to Mr. Bauer that the second assessment by the District's physician had been due six days earlier and that only once the report was received, might he be returned from administrative leave. (Moss testimony, Comp. Supp.

Exh. 30.) Numerous replies to Dr. Moss were sent by Mr. Bauer on the same and several following days, in which Mr. Bauer challenged the District's ability to require a second examination and attempted to minimize his mistake regarding the February 4, 2014, incident at the Rec Center.

On May 29, 2014, Dr. Moss sent Mr. Bauer an email offering him a final opportunity to comply with the administration's directives and to return to his position. (Comp. Exh. 40.) In that email, Dr. Moss explained that he had been extremely patient with Mr. Bauer subsequent to his being placed on paid administrative leave in February for negligence and for what, based on his subsequent conduct, amounted to insubordination. Dr. Moss explained that he, i.e., Mr. Bauer, had been given a directive by Ms. Walton to undergo a second mental

assessment and that a meeting had been scheduled to discuss the examination results, but that Mr. Bauer had failed to follow through with either. Dr. Moss gave Mr. Bauer until June 2, 2014, to comply with the directives, else he would proceed with a recommendation for termination from employ. Ms. Walton confirmed the District's position in a letter of the same date. (Compl. Supp. Exh. 12.)

When it became apparent by June 5, 2014, that Mr. Bauer was not going to comply with the directives and deadline given to him in the May 29 communications, Dr. Moss recommended to the Board at its meeting that evening that Mr. Bauer be dismissed. The Board

accepted the Superintendent's recommendation on a conditional basis, subject to Mr. Bauer's right under the Teacher Employment and Dismissal Act to request a hearing for the purpose of allowing the Board to review of the matter on the merits. A letter stating such, dated June 6, 2014, was sent to Mr. Bauer by Dr. Moss. (Compl. Exh. 41.) Mr. Bauer invoked his rights under the Teacher Employment and Dismissal Act, and this hearing ensued.

### **Decision**

Based on the evidence presented and the facts as determined by the Board, the Board sustains the recommendation of the Superintendent that Mr. Bauer be dismissed from employment with the District. The Board concludes that good and sufficient reasons for terminating Mr. Bauer exist because, by his conduct, he 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 Mr. Bauer's negligence in the supervision of elementary school students and his insubordinate conduct regarding directives he received from the administration subsequent to the incident on February 5, 2014.

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, it also makes it clear that the listing is not exclusive. The Board believes that the instances when Mr. Bauer failed to properly supervise students, coupled with his apparent failure to understand and appreciate the seriousness and potential consequences of his actions, along with his failure to follow directives from the administration intended to demonstrate that he might be capable of sound judgment and fitness for teaching, are sufficient reasons for Mr. Bauer's termination from employment. District policy makes it clear that a teacher is expected to supervise students in his or her charge at all times and to attend vigorously to matters of student safety and well-being. (Compl. Exhs. 4, 6.)

It was not the administration's intention when Mr. Bauer was placed on administrative leave that his failure to properly supervise students would lead to his dismissal. Mr. Bauer's reaction or response to his failings, however, in conjunction with his resistant and indeed insubordinate behavior in the aftermath of the February 5, 2014 incident, left Dr. Moss, ultimately, with no choice but to recommend Mr. Bauer's dismissal. 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 John Alden Bauer, III, as a teacher with the Beaufort County School District.

AND IT IS SO ORDERED.



William M. Evans, Chairman, on Behalf of the Beaufort County Board of Education

Beaufort,  
South Carolina  
May 19, 2015

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

John Alden Bauer, III,  
Appellant,

v.

Jeffrey C. Moss, Ed.D.,  
Respondent.

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

C.A. No.: 2015-CP-07-1343

**ORDER**

2015 SEP -3 11:11:29  
BEAUFORT COUNTY S.C.

On August 19, 2015, this matter came before the Court for its consideration of several motions and other requests by the parties. Included in the pending matters were Respondent/Defendant's Amended Motion to Dismiss, Appellant/Plaintiff's Motion for Emergency Temporary Relief, Affidavit of Default, counsel for Respondent/Defendant's Motion to Quash Subpoena, and Appellant/Plaintiff's Motion for Public Disclosure.

Essentially with the agreement of counsel for the parties, with the Court's concurrence, these pending matters were resolved as follows.

Appellant is granted leave of the Court to file and serve an amended notice of appeal. That amended notice must be filed and served within 15 days of the date of the hearing, on August 19, that is, on or before September 3, 2015. The amended notice must be filed pursuant to the S.C. Teacher Employment and Dismissal Act, S.C. Ann. § 59-25-480, such as to empower this Court to review the decision of the Beaufort County School District ("District") Board of Education ("Board") to determine whether the Board's decision in this teacher dismissal case is supported by substantial evidence on the record as a whole. See Laws v. Richland Cnty. Sch. Dist. No. 1, 270 S.C. 492, 243 S.E.2d 192, 193 (1978). The amended notice of appeal shall not include independent causes of action or claims for relief or a prayer for

damages, which are beyond the parameters of an appeal pursuant to § 59-25-480. The appeal also shall name as the sole respondent the District or the Board. By agreement, counsel for the respondent will accept service of the amended notice of appeal by mail and thereafter will file and serve the appropriate responsive pleading.

Counsel for Appellant withdrew any request for default, as would be required under Rule 12(a), SCRCP, in light of the Respondent's filing of a motion to dismiss under Rule 12(b) within the time allowed by Rule 12(a), SCRCP. The above agreements render Appellant's Motion for Emergency Temporary Relief moot, and the Court denied Appellant's request for attorney's fees contained in that motion.

At the hearing, the Court quashed the subpoena issued to Respondent's counsel seeking information regarding legal fees incurred by the District in these proceedings. Such information is irrelevant to any issues on appeal. For the same reason, Appellant's Motion for Public Disclosure is denied.

The parties, by agreement and with the approval of the Court, establish the following schedule for further proceedings in this matter. Within 10 days of service of the amended notice of appeal, Respondent's counsel will file with the clerk of court the certified transcript record. Within 45 days of the filing of the record, counsel for Appellant will file and serve any memorandum of points and authorities that counsel wishes to submit to the Court. Counsel for Appellant in preparing any memorandum or brief should bear in mind the parameters of appeal under § 59-25-480, as well as the principle that a reviewing court may only consider issues that were presented to the tribunal below and preserved for appeal.

Within 21 days of receipt of Appellant's memorandum or brief, Respondent shall file and serve its responsive memorandum or brief. Thereafter, within 10 days of receipt of Respondent's memorandum, Appellant, as necessary, may file a reply brief.

Upon completion of the briefing schedule, the Court will schedule a final hearing in this matter.

AND IT IS SO ORDERED this 2 day of August, 2015.

  
\_\_\_\_\_  
Marvin H. Duker, III  
Master-In-Equity and Special Circuit Court Judge

Beaufort, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

John Alden Bauer, III,

Appellant,

v.

Beaufort County School Board,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

C.A. No.: 2015-CP-07-1343

**ORDER**

This matter came on for a hearing on October 13, 2015, to consider Respondent's Motion to Dismiss/Strike Appellant's Notice of Amended Civil Appeal. The motion asserted that Appellant's Amended Civil Appeal fails to comply with the Court's rulings at the August 19, 2015, hearing and subsequently embodied in its written Order filed September 3, 2015, regarding Appellant's initial appeal.

During the October 13, 2015, hearing, Appellant admitted that including William Evans, Chair, as a Respondent was in contravention of the Court's prior Order. Accordingly, William Evans, Chair, is stricken as a Respondent, and Appellant is reminded that the sole Respondent in this matter shall be either the Beaufort County Board of Education or the Beaufort County School District.

Further, at the October 13, 2015 hearing, the Court granted Respondent's motion, but indicated that Appellant would have ten (10) days from the date of the hearing, that is, on or before October 23, 2015, to file and serve a second amended notice appeal in compliance with the Court's earlier rulings and its Order of September 3. Respondent's counsel will accept

service by mail of any further notice of appeal. If the second amended appeal fails to comply in any manner with the Court's prior directives, upon motion by Respondent, the appeal will be dismissed with prejudice and without further hearing.

With the understanding and on the assumption that the Appellant will file a second amended notice of appeal which complies with its prior rulings, the Court hereby confirms the existing briefing schedule. On or before October 26, 2015, Appellant will file and serve any memorandum of points and authorities he wishes to submit to the Court regarding his substantive contentions on appeal. Appellant is again admonished that any memorandum, as well the further notice of appeal, may only address issues properly raised before the Respondent Board and preserved for review. Within 21 days of receipt of Appellant's memorandum, Respondent may file and serve its responsive memorandum or brief. Thereafter, within 10 days of receipt of Respondent's memorandum, Appellant, if he feels it is necessary, may file a reply brief.

IT IS SO ORDERED this \_\_\_\_ day of October 2015.

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Marvin H. Dukes, III  
Master-In-Equity and Special Circuit Court

Judge

Beaufort, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

John Alden Bauer, III,

Appellant,

v.

Beaufort County School District,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

C.A. No.: 2015-CP-07-1343

**ORDER**

These matters came before the Court for hearing on January 19, 2016. The pending motions were: Appellant's Motion to Disqualify David Duff as Respondent's Counsel; Appellant's Motion for Summary Judgement; Appellant's Motion to Preserve Claim of Error; and Respondent's Motion to Dismiss/Strike Appellant's Pre-Trial Brief and His Second Amended Civil Appeal. Based on the written submission by the parties or counsel and the arguments considered by the Court at the hearing, all motions were denied for the following reasons.

Appellant's Motion to Disqualify David Duff was denied, based on the submissions and argument, because it was clear to the Court that Mr. Duff did not participate in the matter before the School Board as a judge or other adjudicative officer, or as an arbitrator, mediator, or other third-party neutral within the meaning of Rule 1.12 of South Carolina Rules of Professional Conduct. He served as advice counsel to the School Board before, during, and after the hearing before the Board, but did not act in any capacity proscribed by Rule 1.12.

The Motion for Summary Judgement was denied for two reasons. First, the Court concluded that a summary judgement motion is procedurally improper in an appeal, such as the present action, of a determination by an administrative tribunal in which a court reviews that determination based on the substantial evidence standard of review. Second, based on the presentation by Appellant, it was apparent to the Court that Appellant's argument was based on assertions which clearly are in dispute, if not resolved against Appellant in the Board's written decision.

Appellant's Motion to Preserve a Claim of Error was denied because it addressed a matter that was unrelated to the reasons for the Board's decision regarding Appellant's employment.

Lastly, although the Court denied Respondent's motion to dismiss Appellant's second amended appeal, the Court made it clear to the parties that in rendering its decision on the merits of the appeal, the Court will only address the question whether substantial evidence exists in the record from the Board hearing to uphold the Board's decision. Furthermore, the Court will only consider contentions by Appellant that were presented to the Board and preserved for review, and which are supported by evidence found in the record that has been filed with the Court.

The final merits hearing in this appeal is set for March 4, 2016, at 9 AM, unless that schedule is altered by the Court.

AND IT IS SO ORDERED this \_\_\_\_\_ day of January, 2016.

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

Beaufort, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

John Alden Bauer, III,

Appellant,

v.

Beaufort County School District,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

C.A. No.: 2015-CP-07-1343

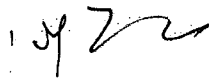
2016 MAR -2 PM 9:24  
JERRI ANN ROSENEAU  
BEAUFORT COUNTY, S.C.  
CLERK OF COURT

**ORDER**

These matters came before the Court for a hearing on February 29, 2016. The pending motions were: Appellant's Motion to Compel Forensic Analysis, dated February 9, 2016; Appellant's Motion to Compel Security Camera Footage, dated February 19, 2016; and Appellant's Motion to Compel Telephone Caller ID Information, dated February 23, 2016.

For the following reasons, the three motions are denied. This appeal was initially filed on May 29, 2015, nine months ago. It is an appeal of a decision by Respondent's Board of Education following an evidentiary hearing terminating Appellant's employment as a teacher. As the Court has previously noted, its review is limited to consideration of the Record created before the Board to determine whether substantial evidence of the record on the whole supports the Board's decision.

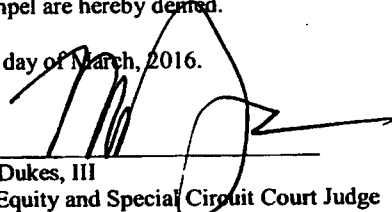
In its earlier order following the hearing on January 19, 2016, the Court made it clear to the parties that in deciding this appeal, it will only consider contentions by Appellant that were presented to the Board and preserved for review, and which are supported by evidence found in the record that has been filed with the Court. At the hearing on January 19, 2016, the Court established March 4, 2016, as the date for the final merits hearing in this appeal. The pending motions, which were filed shortly before this appeal is to be decided, seek to develop



evidence for Appellant's position that was not developed prior to or at the evidentiary hearing before the Board and thus which is not in the record that has been filed with the Court. Such an attempt by Appellant to develop new evidence, particularly at this late date, is not permissible in this type of appeal and is contrary to the Court's earlier order. For these reasons alone, Appellant's motions must be denied. In addition, there is a serious question regarding the relevancy and/or probative value of the information that Appellant now seeks to pursue.

Accordingly, Appellant's motions to compel are hereby denied.

AND IT IS SO ORDERED this 2 day of March, 2016.

  
\_\_\_\_\_  
Marvin H. Dukes, III  
Master-In-Equity and Special Circuit Court Judge

Beaufort, South Carolina

2 

FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF BEAUFORT  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
 CASE NO. 2015 CP-07-1343

John Alden Bauer, III

Beaufort County School District

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: David T. Duff	Attorney for : <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRCP;  Rule 41(a), SCRCP (Vol. Nonsuit);  Rule 43(k), SCRCP (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRCP;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other

- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

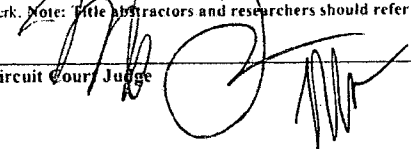
IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.  
 Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge  Judge Code 3069 Date 3/29/16

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
CLERK OF COURT

**Court Reporter: N/A**

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

John Alden Bauer, III,

Appellant,

v.

Beaufort County School District,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

C.A. No.: 2015-CP-07-1343

FINAL ORDER

APR 25 11 10 AM '16  
COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
SOUTH CAROLINA

This matter came before the Court for a hearing on the merits of this appeal on March 4, 2016. The Appellant, John Alden Bauer, III, ("Bauer") appeared *pro se*.<sup>1</sup> The Respondent, Beaufort County School District, was represented by David T. Duff, Esquire, of Duff, White & Turner, LLC. Having considered the record filed on appeal, extensive written submissions by the parties, and the arguments made at the March 4 hearing,<sup>2</sup> the Court denies the appeal and upholds the decision of the Beaufort County Board of Education terminating the employment of Appellant Bauer as a teacher with the Beaufort County School District. The reasons for the Court's decision are as follows.

**PROCEDURAL HISTORY**

This appeal is pursuant to the S.C. Teacher Employment and Dismissal Act, S.C. Code Ann. § 59-25-480, which provides, in pertinent part, that a decision by a school district board of trustees under the Employment and Dismissal Act shall be final unless within 30 days thereafter: an appeal is made to the court of common pleas of the county in which the district is

<sup>1</sup> Although Bauer appeared *pro se* at the hearing before the Court on March 4, at times prior to the hearing before the School Board and during the initial stage of this appeal, Bauer was represented by counsel.

<sup>2</sup> Bauer submitted extensive written material after the hearing in response to the proposed order submitted by Respondent's counsel. The Court has carefully considered this material. Most if not all of the material constitutes attempts to add factual matter, arguments, and rebuttals to evidence introduced during the School Board's hearing. The record before the Board has long been closed, as this Court has repeatedly reminded Bauer. Therefore, factual matter not contained in the record on appeal filed with this Court has not been considered.

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located. The written decision of the Beaufort County Board of Education is dated May 19, 2015. The initial appeal in this matter was filed by Bauer's then attorney on May 29, 2015. Subsequent to the filing of the initial notice of appeal, several amendments of the appeal notice were made so that only those issues which are proper in an appeal of this nature were presented for the Court's consideration. The appeal issues which are now properly before this Court are contained in Appellant's Notice of Second Amended Civil Appeal, filed on October 19, 2015. The Court will address below the seven issues presented in the second amended appeal.

It is clear from the record created at the School Board hearing, now filed with the Court, that Appellant Bauer chose not to testify on his own behalf at the Board hearing or put on any case in rebuttal, despite repeated efforts by the Board and its advice counsel to persuade him otherwise. It is not apparent from the record why Bauer chose not to testify, but it is clear he made that decision voluntarily and of his own free will. In declining the opportunity to testify, Bauer also relinquished the primary means by which he could seek to introduce documents which he believed supported his position. Consequently, the evidence which may have supported Bauer's defense at the hearing was limited to that testimony he believed was favorable to his position, which he obtained during his cross-examination of the administration's witnesses, and the few documents that were introduced without objection during that cross-examination.

Given the evidentiary posture of this case, as explained above, the Board made certain findings based on a record which contained evidence that was introduced in support of the administration's position, virtually without contradiction by evidence supporting Bauer's position.

**STATEMENT OF FACTS; FINDINGS BY THE BOARD**

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The facts determined by the Board, which are hereby upheld by the Court as supported by substantial evidence, are summarized below.

Bauer was employed by the District in 2002 as a physical education teacher at Hilton Head Island Elementary School ("HHIES" or "the School"). His performance as a teacher over the years was unremarkable, until the events of the 2013-2014 school year that led to his dismissal.

The first such event occurred on November 1, 2013. On that occasion, a 4<sup>th</sup> grade teacher reported to Michelle Brockway, an assistant principal at HHIES, that she observed a child alone outside of the school's gym, where Bauer was teaching the class in which that child was supposed to be. When Brockway investigated the matter and spoke with Bauer about the situation, Bauer at first expressed unawareness of the fact that the child was alone outside the gym, but later stated that he was aware of the child's location and that there was no reason for concern. Brockway was surprised and puzzled by Bauer's later explanation of the occurrence since it would have been impossible for Bauer to monitor and supervise students both inside and outside the gym. Brockway was also concerned about Bauer's attitude during their conversation, which she described as "argumentative, agitated, and uncooperative." Further, Brockway stated Bauer seemed unable to understand that an unattended, unsupervised child outside the gym building was a safety concern.

Brockway prepared a contemporaneous write-up of the November 2013 events but did not discuss the incident with her supervisors until February 2014, following a second more serious failure by Bauer to properly care for or supervise a student in his care. That incident occurred on February 5 and led ultimately to Bauer's dismissal.

The incident occurred when Bauer was leading a swimming class at the Island Recreation Center ("rec center"), a building located across the street from HHIES and which is

not affiliated with the school. At the conclusion of the class, Bauer led his class back to school, but he left one child behind. The child, a fifth-grader who was a gifted-identified student with a 504 behavioral plan, was left unattended at the rec center for approximately thirty minutes. An employee of the rec center ultimately returned the child to HHIES. Bauer has never disputed that he left the child at the rec center.

HHIES Assistant Principal Donald Clendaniel contacted Bauer about the incident after the student had been returned to the school. Bauer's emailed response to the news that he had left the child at the rec center was: "Thanks. It was pouring down raining and we were in a rush to get back." Clendaniel recalled being shocked by Bauer's apparent lack of remorse, concern, or acceptance of personal responsibility regarding his failure to supervise his students. Later that day, Clendaniel sent Bauer an email requesting he attend a meeting at 3:45 to discuss the incident, as well as parent concerns that children had been unsupervised and exposed to naked adults in the rec center's locker room the prior day. According to Clendaniel's contemporaneous write-up of the substance of that meeting, Bauer responded to the request for a meeting by calling Clendaniel and asking, "Isn't this something we can talk about on the phone? This is ridiculous. I have something after school today. . . This is absolutely ridiculous." Mr. Clendaniel insisted on the meeting. Bauer arrived at the meeting 15 minutes late, apparently after leaving campus to get a soda from a nearby convenience store. During the meeting, Bauer sat slumped in his chair, made no eye-contact, and continued to insist that the situation and the meeting about the matter were ridiculous because the incident was "a simple mistake." Mr. Clendaniel stated he believed Mr. Bauer's response to the incident was unprofessional. Bauer was called back to the School later that afternoon to meet with Clendaniel, HHIES principal, Jill McAden, and Alice Walton, the District's Chief Administrative and Human Resources Officer.

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Walton participated via conference call. Bauer admitted that he had left a child at the rec center but he continued to insist that the "concern" over the incident was "ridiculous," since the child returned unharmed. Bauer indicated to McAden that it was the student who was at fault, stating the child should have been written up for failing to follow directions. McAden was deeply concerned by Bauer's reaction and his overall demeanor because it indicated to her an inability or refusal on Bauer's part to understand the connection between his failure in supervising the child and the potential safety implications for the child. Walton placed Bauer on administrative leave with pay that day.

Principal McAden emailed Walton the next day indicating that she was shocked by Bauer's lackadaisical behavior, his defensive demeanor, and his failure to express remorse or accept responsibility for his omission. McAden noted that Brockway had witnessed a similar display of defensive behavior earlier that school year when she confronted Bauer about the student who was found hiding outside of the gym during one of Bauer's classes.

Walton met with Bauer, Clendaniel and Brockway on February 6, 2014. When Walton asked Bauer if he understood why she had placed him on administrative leave, she recalled that he responded, "I don't really see the big deal in all of this. The student got back to the building. He wasn't hurt. I really don't see why you are blowing this out of proportion." Walton testified at the School Board hearing she was concerned about Bauer's response because she did not get the sense that Bauer understood the gravity of leaving a student unattended off campus. Walton ultimately determined that Mr. Bauer had failed to comply with School Board Policy IS-2, which requires teachers to supervise their students at all times throughout the school day.

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On February 7, 2014, Walton wrote Bauer to memorialize the February 5 meeting, explaining her reasons for placing Bauer on administrative leave. She indicated the reasons for placing him on administrative leave were because of concerns over Bauer's negligent actions in leaving the student unattended at the rec center and unprofessional behavior toward the school administrative officials who investigated the incident.

On February 11, Walton met with Bauer in an attempt to work through the incident and reach a mutually acceptable resolution going forward. At the end of that meeting, Bauer again stated that he thought the situation was ridiculous. Bauer's continued apparent inability or unwillingness to grasp the seriousness of leaving a child unattended off campus prompted Walton to request that Bauer undergo a wellness check and have a physician certify that he was capable of carrying out the duties and responsibilities of his job. Walton required that Bauer submit the physician's certification to her on or before March 31, 2014, indicating whether the physician believed Bauer was "presently capable of performing the essential functions of [his] position . . . ." Walton testified that she has previously requested employees receive such assessments when, as in the case of Bauer, certain "red flags" exist, such as when an employee demonstrates an inability to recognize the seriousness of a situation or an employee refuses to accept responsibility for a matter.

On April 1, Walton emailed Bauer to let him know that she had not received the requested physician certification. A week later, Walton did receive an evaluation letter, in which the physician, Dr. Rosenbaum-Bloom, opined in a very general statement that Bauer was capable of performing the essential functions of his job and could return to work.

On April 23, Walton's office contacted Bauer to schedule a meeting for April 25 to discuss the physician's letter. On the afternoon of April 24, Bauer contacted Walton advising that

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he could not attend the meeting because he had pink eye. He requested the meeting be rescheduled. Walton agreed to and rescheduled the meeting for April 29. On April 28, Bauer wrote Walton the following email:

Hello Ms. Walton[:]

My eye is just about better. I believe it's just a severe case of allergies with all the pollen in the air. If you would like to schedule a meeting for reinstatement I am available any time after today. If our meeting is for anything other than reinstatement you will need to contact my attorney.

Walton responded by informing Bauer that he was required to attend the meeting, as he was on administrative leave and thus subject to reasonable demands of his employer. Walton also forwarded the email chain to Superintendent Moss, who responded to Bauer via email stating:

Mr. Bauer,

Ms. Walton is correct in informing you that while you are on administrative leave, with pay, you are to report as requested. This is no different than if you were reporting to work at a school location. Ms. Walton has requested you attend a meeting with her and failure to do so without a valid reason could be considered insubordination.

This is our personnel policy and our administrative rule. The topic for the meeting is decided by Ms. Walton, not you. If you are requesting a change to your leave status please let me know, otherwise I can expect you to meet with Ms. Walton at the designated time.

Shortly thereafter, Walton emailed Bauer stating: "After reading Dr. Moss's email, can I expect you in my office at 9:00 AM in the morning?" Bauer replied: "Is this for reinstatement?" Walton responded, "No." Dr. Moss, who was copied on the emails, also responded to Bauer, stating:

As your employer and your status is paid leave, I expect you to appear tomorrow at 9:00 AM to meet with Ms. Walton. You may

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bring whoever you like. If you fail to appear I will consider your action as an act of insubordination.

Bauer replied:

I do not wish to be insubordinate, but I feel that I need my attorney George McMaster with me. He is currently in Rock Hill on a case and I will be contacting him directly. Please reschedule.

Dr. Moss responded:

Mr. Bauer,

It appears you are unwilling to meet at the time which has been scheduled for tomorrow at 9:00 AM. I will Direct Ms. Walton to email you the letter in which we were planning to meet on. I will expect you to follow the directive in the letter within the identified time. Failure to do so will be considered an act of insubordination.

Bauer did not appear for the meeting.

The next day, April 29, Walton sent a letter to Bauer, which directed Bauer to seek an examination by Dr. Mary St. John Gay, a mental health professional to whom the District refers employees for further evaluation. Walton's directive was made pursuant to Board policy HRS-16, which allows the District to choose the physician that will evaluate an employee. Walton's office facilitated the scheduling of Bauer's appointment, informed him the District would pay for the assessment, and requested Bauer submit Dr. St. John Gay's opinion by May 16. At the School Board hearing, when asked by Bauer why she rejected the initial evaluation and requested Bauer be evaluated further, Walton explained that she felt Bauer was still apparently unable to understand the severity of his actions and the District's level of concern, as demonstrated by his refusal to meet with her about the initial evaluation.

By Walton's deadline of May 16, Bauer had not submitted the requested report.

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On May 29, Walton wrote Bauer, reminding him of her directive that he submit Dr. St. John Gay's opinion by May 16. She further indicated that if Bauer did not appear at a meeting on Monday June 2, 2014, with Dr. St. John Gay's written report, Dr. Moss would proceed with a recommendation for termination. Dr. Moss also emailed Bauer that day, noting Bauer's continued refusal to cooperate with administration and comply with their meeting directives during his period of administrative leave. Dr. Moss warned Bauer that failure to comply with prior directives by Monday, June 2, 2014, would cause him (Moss) to proceed with a recommendation for termination. In that email, Moss laid out the grounds then existing for termination, citing Bauer's negligence in leaving a student unattended off campus on February 5 and Bauer's subsequent insubordination in refusing to cooperate with District officials in their attempt to bring resolution to the situation.

Bauer never provided the requested evaluation by Dr. St. John Gay, and no evidence has ever been presented that he ever underwent such evaluation. Walton recommended to Superintendent Moss that Bauer's employment be terminated, citing the following reasons: Bauer's negligence in leaving a child at the recreation center on February 5; his inability to understand the severity of this act; and Bauer's multiple refusals to meet and provide the requested documentation.

On June 5, 2014, Dr. Moss recommended to the Board that Bauer be dismissed, subject to Bauer's right to an evidentiary hearing before the Board if requested. Dr. Moss informed Bauer of his decision by letter dated June 6, 2014, in which he cited his May 29, 2014, communication as containing the grounds upon which his recommendation was based.

At the hearing before the Board, Moss testified that he felt Bauer had been "extremely insubordinate," noting that in his 32 years of experience, this was his first time an

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employee refused to attend a meeting while on administrative leave. He also noted he gave Bauer multiple opportunities to satisfy the directives provided by Walton and, on several occasions, extended Bauer's deadline to comply with those directives. Moss stated the initial concerns he had about Bauer, which emerged during the investigation into Bauer's conduct on and just after the February 5 incident, coupled with Bauer's continual insubordination toward District officials, left him with no other choice but to recommend Bauer's employment with the District be terminated.

Bauer appeared *pro se* at the School Board's teacher dismissal hearing. At the hearing, Bauer made the critical error of choosing not to testify or otherwise present a case to the Board, despite being implored to do so by the Board and its advice counsel. Specifically, Bauer was warned that if he waived his right to testify, the only testimonial evidence in the record would be those concessions and the few documents the Board allowed him to admit during cross-examination. Bauer stated, "I understand and that is agreeable. Thank you." To the extent Bauer put forward any case at all, his effort to do so was limited to attempts to undercut the testimony of the Superintendent's witnesses. Bauer had compiled numerous documents, which were provided to the Board in several notebooks, but Bauer entered only a few of these documents into evidence during his cross-examination of witnesses for the administration. After Bauer informed the Board he would not testify, call witnesses, or make any statements under oath, counsel for the Superintendent moved to have all of Bauer's documents not admitted into the record during the hearing removed, and not considered by the Board. Bauer verbally agreed that the record would contain only those documents he successfully entered during his cross-examination of the Superintendent's witnesses and those entered into evidence by the Superintendent. Neither his cross-examinations nor the documents he entered into the record

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rebutted or undermined the testimony and other evidence supporting the Superintendent's allegations regarding Bauer's failure to supervise students and his acts of insubordination.

#### **DECISION OF THE BOARD**

On May 2, 2015, the Board voted unanimously to uphold the District Superintendent's recommendation that Bauer be dismissed from employment. The Board concluded that there were good and sufficient reasons for terminating Bauer because, by his conduct, he manifested an evident unfitness for teaching. See S.C. Code Ann. §§ 59-19-90(ii), 59-25-430. Those reasons were based upon Bauer's negligence in the supervision of students, particularly the incident of February 5, 2014, when he left a student unattended at the off-campus rec center, and on Bauer's continued insubordinate conduct subsequent to the incident on February 5, 2014. The Board issued a written Order dated May 19, 2015, setting forth in some detail the basis for its decision.

#### **RELEVANT STATUTES; STANDARD OF REVIEW**

The Teacher Employment and Dismissal Act ("the Act") governs the employment and dismissal of all public school teachers in South Carolina. Section 59-19-90(2) of the S.C. Code of Laws vests in the board of trustees the power and duty to employ and discharge teachers. Specifically, the statute states that the board shall "[e]mploy teachers and discharge them when good and sufficient reasons for so doing present themselves ...." S. C. Code Ann. § 59-19-90(2). "A school board has long had the power to discharge teachers 'when good and sufficient reasons for doing so present themselves.'" *Adams v. Clarendon Cnty. Sch. Dist. No. 2*, 270 S.C. 266, 272, 241 S.E.2d 897, 900 (1978). The

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Employment and Dismissal Act was not so much intended to limit this power as it was intended to prevent its abuse. *Id.*

The Act provides the procedures governing teacher dismissals, which meet the requirements of due process in providing a notice of the grounds for dismissal to the teacher as well as an opportunity for an evidentiary hearing before the school board. S.C. Code Ann. § 59-25-460. During the hearing, the teacher may be represented by counsel, cross examine the District's witnesses, and present his own testimony, witnesses, documents, and arguments in support of his case. § 59-25-460.

The Act also affords a dismissed teacher the right to appeal the Board's decision. S.C. Code § 59-25-480. South Carolina courts have long recognized that the scope of judicial review in such appeals must be limited to an examination of the record of the evidentiary hearing to determine whether there is substantial evidence to support the Board's decision. See *Laws v. Richland Cnty. Sch. Dist. No. 1*, 270 S.C. 492, 495, 243 S.E.2d 192, 193 (1978); *Kizer v. Dorchester Cnty. Voc. Educ. Bd. Of Trustees*, 287 S.C. 545, 548, 340 S.E.2d 144, 146 (1986); *Hendrickson v. Spartanburg Cnty. Sch. Dist. Five*, 307 S.C. 108, 110, 413 S.E.2d 871, 873 (Ct. App. 1992); *Felder v. Charleston Cnty. Sch. Dist.*, 327 S.C. 21, 25, 489 S.E.2d 191, 193 (1997). Specifically, this Court's review of the School Board's decision is limited to addressing the question of "whether the grounds given for termination of the [teacher's] employment are supported by substantial evidence." *Laws*, 243 S.E.2d at 193. Consequently, this Court is only concerned with the existence of such evidence, not its weight. *Barrett v. Charleston Cnty. Sch. Dist.*, 348 S.C. 426, 434, 559 S.E.2d 365, 369 (Ct. App. 2001).

Substantial evidence is that, which "considering the record as a whole, would allow reasonable minds to reach the conclusion the [school board] must have reached in order

to justify its action." *Hendrickson*, 307 S.C. at 110-11, 413 S.E.2d at 873. If substantial evidence exists, this Court may not substitute its judgment for that of the Board, and the decision must be upheld. *Id.* This scope of review is intended to preserve the "powers, functions, and discretion which must necessarily be vested in educational authorities if they are to execute the duties imposed upon them." *Laws*, 270 S.C. at 495, 243 S.E.2d at 193.

#### ISSUES ON APPEAL

As indicated, the issues on appeal are those set forth in Appellant's Notice of Second Amended Civil Appeal, filed on October 19, 2015. Those issues, as framed in the second amended appeal, are:

1. Bauer was improperly accused and/or terminated under § 59-25-430 and § 440.
2. The Board improperly found that good and sufficient reasons existed to discharge Bauer as provided under § 59-19-90(2).
3. The District repeatedly violated due process that is required in §§ 59-25-450, 460, and 470.
4. The Board improperly found that Bauer manifested an evident unfitness for teaching under § 59-25-430.
5. The Board improperly upheld objections to limit the testimony of witnesses.
6. The Board improperly considered the fact that Bauer did not testify on his own behalf during the evidentiary hearing.
7. Bauer was never properly charged.

#### DECISION

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**A. Substantial Evidence Supports the School Board's Determination That There Were Good and Sufficient Reasons for Terminating Bauer's Employment.<sup>3</sup>**

In addition to empowering local school boards with the broad authority to discharge teachers when "good and sufficient reasons" become apparent, the Act provides that a district may terminate the teacher's employment for behavior that demonstrates the teacher's evident unfitness for teaching. § 59-19-90(2); § 59-25-430; *see Hall v. Board of Trustees of Sumter Cnty. Sch. Dist. No. 2*, 330 S.C. 402, 406, 499 S.E.2d 216, 218 (Ct. App. 1998). "Evident unfitness for teaching may be 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." § 59-25-430 (emphasis added). Section 430, therefore, provides a non-exhaustive list of the reasons a teacher in South Carolina can be dismissed.

In the present case, the Board's decision upholding Bauer's dismissal was based on a) the instances when Bauer failed to properly supervise students, coupled with his apparent failure to understand and appreciate the seriousness and potential consequences of those actions, and b) Bauer's willful refusal to follow the directives of his superiors.

There is substantial evidence in the record supporting at least two instances in which Bauer failed to supervise his students as required by Board Policy IS-2 and seemed unconcerned about the child's wellbeing in both situations. Brockway testified that Bauer was unaware that a child, who was supposed to be in his gym class, was actually seen wandering alone and unsupervised outside the gym building. She also stated it was not possible for Bauer

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<sup>3</sup> Section A addresses the first, second and fourth grounds listed in Bauer's Notice of Second Amended Civil Appeal.

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to have monitored students both inside and outside the gym at the same time, and that Bauer seemed unable to appreciate the safety concerns involved. The Board also heard testimony from Brockway and Clendaniel about the more serious incident where Bauer left a child unattended off campus at the rec center. According to Clendaniel's testimony, the discovery that the child was missing only occurred after an employee from the rec center returned the child to the School, establishing that Bauer remained unaware of the missing student until he was returned to the School some 30 minutes after the class returned. Clendaniel stated Bauer's apparent lack of concern or acceptance of personal responsibility was shocking. According to McAden and Walton, Bauer continued to exhibit a similar dismissive attitude throughout the investigation of the incident, which they too found shocking and worthy of considerable concern.

Bauer's conduct, which was described as defensive and unprofessional, continued during the investigation and culminated in his apparent refusal to meet and comply with directives from District officials on three occasions. Bauer refused to attend the meeting scheduled with Walton for April 29, indicating that he would only come to the meeting if it were being held to reinstate him. Rather than taking steps to immediately recommend Bauer's termination based on his insubordination, Dr. Moss directed Bauer to comply with certain directives from Walton. The letter required a second evaluation before a decision would be made on reinstatement, which was to have been submitted by May 16, 2014. Bauer failed to provide a second report on May 16 as instructed. In a letter from Dr. Moss on May 29, 2014, Bauer was given an additional opportunity to comply with the District's directives and report for a meeting on June 2, 2014. Bauer never produced the second medical opinion and did not report for the June 2 meeting.

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Bauer was given numerous opportunities and several extensions to comply with the District's chosen process for resolving his suspension. Moreover, Bauer was warned repeatedly that his refusal to attend meetings and participate in the resolution of the matter would be considered insubordination. Despite these warnings, Bauer continued to refuse to cooperate with the District in resolving his suspension. Only after it became clear that Bauer refused to meet with District officials and comply with their directives, and by virtue of that fact, refused to engage in the process that could have led to a resolution and reinstatement, did Superintendent Moss recommend Bauer's employment with the District be terminated.

The Act expressly states that manifest unfitness for teaching is demonstrated by a willful violation of rules and regulations of district board of trustees. Here, Bauer willfully disobeyed orders from his superiors and in so doing, violated the District's rules requiring that employees act professionally.


Bauer's cross-examination of the Superintendent's witnesses and the few documents he entered into evidence do not contradict the facts that Bauer left a child unsupervised at the off-campus rec. center and thereafter refused to comply with certain directives by his superiors. For these reasons, the Court finds substantial evidence supports the School Board's decision that there were good and sufficient reasons for terminating Bauer's employment because his conduct manifested an evident unfitness for teaching.

**B. The District Complied With The Due Process Requirements in Sections 59-25-450, 460 and 470.<sup>4</sup>**

The record establishes that the District complied with the due process requirements of the Act as set out in §§ 59-25-450, 460, and 470. The only claims of due process violations properly before this Court are those ruled upon by the Board in its May 19

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<sup>4</sup> Section B addresses the third and seventh ground listed in Bauer's Notice of Second Amended Civil Appeal.

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Order. Those allegations are: 1) the hearing was not conducted within the statutory deadline specified in section 59-25-470, and 2) the "charges" or grounds for termination were not properly given to Bauer. The Board's opinion properly addressed both of these alleged due process violations and correctly concluded no such violations occurred. Any additional allegations of due process violations are not preserved for this Court's review because the Board's Order did not rule on them.

**1. Bauer failed to support his contention that he never waived the 15 day requirement for conducting the hearing.**

As noted in the Board's opinion, Bauer contacted the District through its advice counsel prior to the hearing to say that his attorney (George McMaster) never waived the statutory requirement that the teacher dismissal hearing be held within 15 days of the Superintendent's recommendation. Although Bauer, in his opening statement at the School Board hearing, remarked that he would demonstrate why no waiver had occurred, he failed during that hearing to produce any testimonial or documentary evidence in support of his contention. This failure, like others, was the result of Bauer's refusal to put up a case on any of his contentions. Therefore, in the absence of any record evidence on the issue, this Court must agree with the finding that a waiver of the statutory deadline occurred.

**2. Bauer was aware of the bases for the Superintendent's reasons for seeking dismissal.**

Bauer argues error in the manner in which he was informed of the reasons for the Superintendent's recommendation for termination. Bauer describes these reasons for his termination as "the charges" against him. In its May 19 Order, the Board correctly determined that the communications from Superintendent Moss to Bauer provided more than adequate written notice and an explanation of the reasons for his recommendation. The Board also correctly determined that the notice of the recommendation for dismissal was properly issued

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by the Superintendent, not the Board, as Bauer contends.

Under § 59-25-460, teachers facing dismissal are entitled to "written notice specifying the cause of dismissal . . ." as well as the opportunity for an evidentiary hearing before the school board. This statute is meant to satisfy the requirements of procedural due process. However, the statute does not provide any heightened standard for notice, as Bauer argues; that is, there is no requirement that the causes be listed in a particular format, no prohibition on listing those causes in prose form, and no requirement that the causes be marked as "official."

As the Board determined, the communications from Superintendent Moss—specifically Dr. Moss's email to Bauer on May 29 and Dr. Moss's subsequent letter dated June 6—provided adequate and sufficient written notice and explanation that Bauer was recommended for dismissal because of a failure to supervise students and behavior that amounted to insubordination. The May 29 email listed Bauer's infractions, which began on February 5 when he left a child in his care unattended at an off-campus facility for some 30 minutes. The email continues with a listing of the various meetings Bauer refused to attend and the directives issued by Walton and Dr. Moss that Bauer refused to follow. Dr. Moss's letter to Bauer on June 6—the official notice of Moss's intent to seek Bauer's termination—stated: "The bases for the recommendation include the grounds provided to you in my email dated May 29, 2014." Therefore, Bauer cannot gainfully say that he was unaware of the infractions which led Moss to recommend dismissal. In addition to the clear, linear explanation of Bauer's infractions while on administrative leave, as contained in Moss's May 29 email, Moss and Bauer exchanged multiple written correspondences between April and June, in which Moss reiterated on several occasions that Bauer's refusal to attend meetings and follow Walton's instructions would constitute insubordination.

18 of 22 m

Furthermore, the Court does not agree that the Board erred in considering Bauer's entire teaching record, including a prior instance of failing to supervise a student. This information was relevant to the question of Bauer's continued fitness as a teacher and necessary to explain the actions taken by Bauer's superiors. The fact that this and other incidents heard by the Board were not specifically referenced in Dr. Moss's email listing the reasons for Bauer's termination recommendation is inconsequential. It does not change the fact that Bauer was dismissed for the grounds listed in Moss's May 29 email and as referenced in the June 6 letter to Bauer—negligence and insubordination.

Finally, to the extent Bauer continues to believe that the recommendation for termination should have been issued by the Board, the Board's Order correctly states that the reasons for dismissal originate with the Superintendent. The Superintendent is the moving party in the case and presents its position to the Board, which sits as an impartial adjudicatory body. It does not make sense in terms of due process for the Board to be the body both bringing the charges against the teacher and the body hearing those charges.

**3. Bauer's employment was not terminated prior to his evidentiary hearing before the Board.**

Bauer maintains that he actually was terminated without the opportunity for a hearing, in violation of §§ 59-25-460 and 470, and contrary to the South Carolina Court of Appeals holding in *Brown v. James*, 389 S.C. 41, 697 S.E.2d 604 (Ct. App. 2010).<sup>5</sup> Initially, this issue was not supported by Bauer at the School Board's hearing by evidence or argument and was not preserved for appeal because the School Board did not rule on it. Secondly, Bauer's

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<sup>5</sup> The *Brown* decision is inapposite. In *Brown*, there never was a hearing before the school board regarding the teacher's termination. The case involved unusual procedural facts, but in the final analysis, the court decided that the teacher's rights under the Employment and Dismissal Act, as well as under due process, had been violated because a termination action was finalized without the teacher being afforded a hearing under the Act. Such circumstances clearly are not the case here.

contention is without merit because his employment with the District clearly was not terminated until the Board unanimously voted to uphold the Superintendent's recommendation on May 2, 2015.

Bauer's belief that he was terminated before the hearing is based on a continuing misunderstanding about the meaning and impact of two documents. First, Bauer points to his contract renewal letter dated April 2, 2014. The letter states that the District is issuing him a contract for the 2014-2015 school year, but that the contract would be rescinded should the District determine the termination of his employment is warranted and make that recommendation to the board. Bauer believes, incorrectly, that this letter indicated Moss assumed the power to non-renew a contract prior to a hearing.

Bauer points to Moss's June 6 letter and testimony surrounding the Board's conditional acceptance of Moss's recommendation to the Board on June 5 to terminate Bauer. The June 6 letter informs Bauer that the Board "conditionally accepted" Moss's recommendation, subject to a hearing as required by § 59-25-470. The letter further clarifies: "Please understand that the Board has not at this time reviewed or considered the merits of the recommendation so this action is not a final decision of the Board."

Moss's April 2, 2014 contract renewal letter may suggest that Bauer's contract would not be renewed upon the Superintendent's recommendation to the Board, rather than the Board's actual decision on the merits following a hearing. However, Moss's June 6 letter makes it clear that Bauer's employment will only be terminated after a hearing and a final decision by the board concerning the 2013-2014 contract. Therefore, to the extent Bauer's contention is properly before the Court, it is without merit.

**4. Bauer was not entitled to an improvement plan.**

20 4/26 u

Bauer believes he should have been provided an improvement plan pursuant to § 59-25-440. This issue is not preserved and therefore not properly before this Court, given that Bauer failed to offer any evidence or testimony on the matter and the Board did not rule on it. Furthermore, this contention is without merit. As the Board's written Order of May 19, 2015 makes clear, Bauer was dismissed under §59-25-430 of the Act for misconduct related to a serious (and repeated) failure to supervise students and behavior which amounted to insubordination in the aftermath of the precipitating incident. It is only in the case of termination for unsatisfactory performance that a teacher is entitled to what may be characterized as an "improvement plan" and an opportunity to improve poor teaching performance. See § 59-25-440 (where "a reason" exists "that may lead to . . . dismissal," the administration shall "bring the matter in writing to the attention of the teacher . . . and make a reasonable effort to assist the teacher . . . and allow reasonable time for improvement."). In short, this is a misconduct case under § 59-25-430, not an unsatisfactory performance case under § 59-25-440. An improvement plan was neither indicated nor required.

**C. The Board Did Not Abuse Its Discretion in Ruling on the Parties Objections.**

Bauer asserts that "[t]he Board improperly upheld objections to limit the testimony of witnesses." (Second Amended Notice of Appeal, fifth ground). Bauer does not explain which specific rulings by the Board he believes were erroneous, what exactly the errors were, or how those rulings were prejudicial to him. See *Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 557, 658 S.E.2d 80, 86 (2008) (stating the general rule that to warrant reversal based on the admission or exclusion of evidence, the appealing party must show both the error of the ruling and prejudice). Additionally, Bauer's assertion that all objections by Complainant's attorneys were sustained is not sufficient to sustain this as an appeal issue. See

21 *gjm v*

*Ellie, Inc. v. Miccichi*, 358 S.C. 78, 99, 594 S.E.2d 485, 496 (Ct. App. 2004) (stating where an issue is stated as only a short conclusory statement, it is abandoned on appeal); Rule 208, SCACR (requiring that each issue be addressed and followed by discussion and citation of authority). Therefore, the Court cannot consider these claims of error.

**D. The Board's Consideration of Bauer's Failure to Testify Was Proper.**

To the extent there is any alleged error on appeal regarding the Board's consideration of Bauer's refusal to testify, this issue is not preserved because that claim of error was never presented to the Board for consideration; nor was that concern specifically addressed in the Board's May 19 Order. At the conclusion of the hearing before the Board, one of the trustees asked what evidence the Board might consider on Bauer's behalf, given Bauer's decision not to offer testimony. Bauer raised no objection to this inquiry and instead claimed that he had presented a "strong" case through his cross examination and the few documents he presented. Although Bauer has offered various explanations for his decision not to testify, the fact remains that he freely and by his own decision chose not to present a case before the Board, leaving the record virtually devoid of any facts in support of his position.

Bauer asserts error in the Board's consideration of his decision not to testify. The Board's opinion references Bauer's failure to testify on several occasions, primarily to explain that his refusal to present testimonial evidence and the introduction of minimal documentary evidence through cross-examination prevented him from offering any significant rebuttal to the Superintendent's case against him.

There is no indication the Board drew any adverse inference against Bauer as a result of his failure to testify, even though such inference would not have been improper. *Cf. Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976) (holding the Fifth Amendment does not

22 *dyb*

forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them). The Board simply had little, if any, evidence before it in support of Bauer's position, and none which successfully undermined the administration's case.

**CONCLUSION**

Based on the Court's review of the record and consideration of Appellant Bauer's contentions on appeal, the Court concludes that there is more than substantial evidence in the record supporting the Board's findings and its decision to terminate Bauer's employment because, by his conduct, Bauer manifested an evident unfitness for teaching. The Court determines that, considering the record as a whole, reasonable minds could conclude that Bauer's termination was justified. Accordingly, the Board properly concurred with the Superintendent's recommendation of dismissal, and the Court hereby upholds the Board's decision and dismisses this appeal.

AND IT IS SO ORDERED this 29<sup>th</sup> day of March, 2016.

  
\_\_\_\_\_  
Marvin H. Duke, III  
Master-In-Equity and Special Circuit Court Judge

Beaufort, South Carolina

**Corrections (Suggested)  
to The Proposed Order  
That Was Submitted by David Duff**

3/4/2016

Post Note

There were eight (8) pages remaining to the Duff Proposed Order that need a rebuttal, but Appellant will end this Detailed Document which I believe should already have compelled a more nearly accurate and thoughtful Order.

The proposed Final Order on the merits of the appeal hearing on March 4, 2016, prepared by David Duff, of Duff, White and Turner has significant flaws that must be addressed. Some of the errors are simple careless inaccurate repetitions, with a lack of attention to detail. Others seem to be willful falsehoods.

Appellant will discuss specific errors in the proposed Order, but first some misperceptions that are difficult to address since they involve personalities.

The numerous accusations of a bad attitude are difficult to defend. Appellant ("I", if first person is allowed) has no believable defense against the nebulous, but well rehearsed and finally exaggerated testimonies that had evolved from one to the many. I ask the Judge, the attorneys, or any observers of the hearings, who have seen me over the past two years if these accusations comport with what they have observed.

Mr. Duff used the word "ridiculous" in quoting me. Also the attorneys at the hearing used it repeatedly. I only used the word one time and once again in my apology. Yes I thought it was *ridiculous* to make something sinister out of an event for which I had no control. When the

administrators asked me to repeat what I had said I did so, and added, *"I'm sorry. That was silly and unnecessary."*

The apology was not included in their documentation.

I asked if they (Administrators) had recordings of our meetings, since they used quotation marks. I also asked them to either produce the recordings or allow me to submit my own. There was no response. (Letters will be provided if requested) That seemed so simple. Would my recordings be allowed--apparently not if it indicated duplicity from administrators? Who decided that--Administrators or attorneys? No response.

There are unsolicited testimonials to the Board that were sent to Moss and Evans, but never delivered to the Board. Here are a few excerpts. (See exhibit 100)

Commander Gregory Hall, Parris Island

*"If Mr. Bauer has been accused of disrespectful or disruptive behavior, that is certainly contrary to my own experience. I absolutely believe he has been a positive influence on my three children and their attitudes toward Physical Education and school in general. I would be happy to discuss my own experiences regarding this matter over the telephone or in person if necessary."*

Dr. Hall was never contacted.

*(Name) "has felt a tremendous loss since Mr. Bauer's departure. She loves Mr. Bauer, and so do we! It's impossible not to, when we measure the positive impact that he's had in our daughter's life. We miss Mr. Bauer, and our greatest wish is that he'll be back to teaching this year!"*

*Sincerely,"*

*Renee and Todd Fox*

*"Our child thinks he has some pretty amazing qualities for a PE teacher: funny, makes everyone laugh, includes everyone, can tell when someone is upset/sad, knows their names,*

*creates new and fun activities and always makes them feel like “trying” new things. Once Mr. Bauer left the school, I can’t tell you how many and how often many different students asked and wanted to know where he was and when he would be back! His being away affected many many students at our school. I have yet (in dealing with many students on a weekly basis) to find a student who doesn’t “miss him and want him back”!*

Tammy Downing, President PTO, (wrote 1004 words)

It is true that I have tenaciously defended myself against false accusations. The event at the pool has been mis-represented so often that it has a life of its own, but without any evidence against me. Evidence was available that would have cleared me, if it had been preserved, as agreed.

There are 30 pages of testimonials from administrators, including during the week that Appellant was placed on Administrative Leave.

**Tue 1/4/2011 9:30 AM**

**From:** Chen, Xinfang

**To:** Owen, Sarah

**Cc:** McAden, Jill M; Bauer, John A

**Subject:** Thank you, Mr. Bauer

Dear Mrs. Owen,

I had a great talk with Mr. Bauer, our PE teacher this morning. He is so nice and wonderful. I will start to observe his PE lesson next Monday. As a part of the Chinese immersion program, our PE lessons will incorporate some traditional Chinese games/sports and Chinese language/instructions...

I am very excited. Thank you so much, Mr. Bauer for your cooperation and what you have done.

Sincerely,

Xinfang(Jane)Chen  
CLIMB Project Manager/Program Coordinator

**From:** McAden, Jill M  
**Sent:** Thursday, January 09, 2014 8:25 AM  
**To:** Bauer, John A; Lofton, Lakeisha S  
**Subject:** RE: PE club

Yes, your club is always so popular.....you attract the masses. We wanted to support you and not let the kiddos down! I think this will work.

Has your gym been clean to your satisfaction?

Page 8, Assistant Principal Clendaniel Deposition 2/16/2015

*Q “..At the deposition of Ms. McAden, in December, she referred to Mr. Bauer as an excellent teacher, a good coach, an excellent mentor and that he was liked by all of the children; does this sound like a fair description of Mr. Bauer to you?  
A Yes.”*

Assistant Principal Clendaniel, Board Hearing, page 126

*“Well, he was a good teacher. He seemed to love what he did, love children.”*

The accusation that I refuse to admit to serious wrong-doing is true. But if the facts are actually believed, one should conclude that I did my job properly. Belief that planted evidence, falsified documents, and false evidence actually happened is hard to understand. Why would they? Very confusing--but it is the truth. Why was I so important as to cause such an extreme reaction?

I can only say that no concrete evidence exists that I did anything wrong, and there is the withheld technological data that would clear me.

Why should I not have defended myself as strongly as I did? What innocent person would accept the death penalty to his career without resistance?

### Charges

As a core to this case is the perception that there were more than two charges involved, made into a problem by the fact that no charges were ever issued in print and were only verbally stated on the third day of the Board Hearing. That is apparently not taken as a serious problem--but it was to the Appellant.

In my opening statement I defended against what I thought might be four charges, not knowing that it had been reduced to two charges.

What trial was ever conducted without knowing the charges? Only one that Appellant has heard of: Moss v. Bauer

Unfortunately TEDA 470 was not enforced and the District did not confine itself to "*substantiation of the charges*". In addition I was not allowed to present "*any and all defenses*" also required in TEDA 470.

### The False and Misunderstood

Page 2

*"It is not apparent from the record why Bauer chose not to testify"*

Mr. Duff has a mono-thematic claim which is deceptive on a number

of counts. That is the fact that Bauer did not testify. That is true---BUT it would not have mattered. Duff apparently blocked, during deliberations, my relevant and “*substantial*” evidence that was presented during cross examinations. Note the following exchange.

Board Hearing (Emphasis mine)

Page 568

MR. RIVERS: So, if we don't have anything to consider, how can we -- what will we have to -- you know, to deliberate on, if there isn't anything --

MR. JOHN BAUER: Deliberate on the cross-exams.

MR. BAUER: Yes, the witness testimony that --From the witnesses -- from the five witnesses can be considered, I believe, if I'm correct.

MR. DUFF: You are correct.

MR. BAUER: And I note that there were a number of exhibits that were not presented due to my inexperience in questioning, but I feel that what has been presented is-- has merits to it, basically.

MR. DUFF: Okay.

MR. BAUER: Okay.

CHAIRMAN EVANS: And there was a substantial amount of -- evidence put into the record under cross-examination.

MR. BAUER: Exactly.

MR. RIVERS: Okay.

CHAIRMAN EVANS: Okay.

MR. BAUER: Thanks.

In addition

- In one cross examination Childs and Halligan objected 226 times. They were never overruled by Duff, Evans, or the Board.
- Essential evidence had been withheld by the District: Grade book, 10,000 emails, security camera footage, and telephone records.
- Bizarre Manufactured evidence was *knowingly* accepted by Duff and Evans. (December 10, 1013 (sic), and February 4, 2014 pre-dated documents, and false grade book)
- The strategy was to not allow Bauer to get evidence admitted in order to protect against appeal.
- Duff and Evans allowed Attorneys to successfully object to Bauer using Deposition testimony to impeach witnesses.
- Duff and Evans allowed attorneys to use an improperly introduced, and flawed in form, Motion in Limine to block all relevant evidence.
- The Board Order, allegedly written by Duff, never dealt with laws that were cited by Appellant.
- Board bias became apparent. The Board resented being exposed as having violated Brown v. James, and violating TEDA, on repeated occasions.
- Note that the Board wrote a false set of minutes in February 2015 to replace the minutes of June 5, 2014.
- In addition the Board was angry with Bauer concerning the terms of a possible settlement, that was requested by Childs and Halligan.
- Evans and Duff allowed new allegations to be entered, that were not exposed during Discovery and that had not been accused nor charged, but would not allow Appellant time to prepare a rebuttal.\*\*\*

- The above again exposes the necessity of charges *before* a trial and the value of Discovery.
- Whatever law Bauer cited while witnesses were under oath was not considered to be admissible by Duff and Evans.

Mr. Duff attended the deliberations of the "jury".

We allege that Mr. Duff wrote the error prone Board Order.

- In deliberations, we allege, that Mr. Duff decided which laws could be considered-- dismissing law, and case law, as not being cited under oath.
- In deliberations, we allege, that Mr. Duff decided what evidence could be considered to be the Record negating rulings by Mr. Evans.

CHAIRMAN EVANS: "...but we will recognize that all these letters are in the booklet you gave us, so we can take them under advisement when we deliberate."

*\*\*\*MR. BAUER: "Thank you. My plan of proving my case through opposing witnesses has been-- been rejected, respectfully: I thought that my approach would give continuity to the subject matter through most -- through the most appropriate witness.*

*I have heard new allegations against me.*

*I cannot organize a narrative of logical context while sitting here all day and working all night. If you will allow it, we can continue while I gather my thoughts for my testimony and closing. My questions for Dr. Moss are written out. I would like someone to read my questions..."*

I had thought that my father--or someone else could read my questions in order to get the answers on the record, and that I could prepare a rebuttal to new accusations that had not been disclosed.

Page 3 of Proposed Order

"His performance as a teacher over the years was unremarkable"

My Response:

Seventeen years unblemished record

Appellant taught 917 students; Legal limit was 500 students. Appellant did not complain

Appellant was awarded a \$1000 Special Olympics Project Unify Grant.

Appellant set records for raising money for the SC Heart Association.

Note: Bauer's mother was SC Heart Mother of the Year.

Appellant was a Project Unify Mentor Teacher for troubled students.

Appellant was a 2nd grade and 5th Grade Math Tutor and Mentor.

Appellant developed and grew an early morning Walking and Running Club.

Appellant developed and grew an after school PE Club. The after school program was popular and was consistently filled to capacity.

Funds that were used to pay Bauer for the after school club were donated back to the school.

Appellant arranged for Olympic Gymnast Zuzana Sekerova (Slovakia, 2000 Sydney Olympics) to teach a week of classes for all students from 2008-2012-IB Integration

Appellant arranged Volleyball Lessons--Hilton Head High School Volleyball Coach (Jolanta Graham) from Poland-IB Integration

Appellant arranged Lacrosse lessons from Head Coach and Athletics Director Joseph Monmonier (Hilton Head High School)-IB Integration

Appellant arranged tennis lessons from the Clint Van Eswegan International Tennis Academy student teachers who hailed from Japan, Korea, Mexico, Brazil, Australia, etc. IB Integration

Appellant was Mentor Cooperating Teacher for Student Teachers

Appellant was mentor for high school Teacher Cadet Program.

Appellant had no prior documented discipline referrals in his career.

Teacher of the Month 2003

National Board Certified in 2003

Page 3. Proposed Order (Brockway November 1)

This incident was not accused nor charged in the only document that was proffered as anything resembling charges--the May 29, 2014, email from Moss. (“*Bases*” for Recommendation)

This is the event where an inexperienced Assistant Principal had no idea how to proceed, but found nothing wrong.

February 16, 2015, Brockway Deposition.

*Q So maybe five minutes altogether to  
21 assess that that's the student that she was  
22 referring to and that that student wasn't hiding  
23 or missing?  
24 A Give or take a few minutes, yes.*

Proposed Order (same event)

*“...impossible for Bauer to monitor and supervise students both inside and outside the gym.”*

False. I was standing in the doorway to monitor students, by prior arrangement with the office. (Phone calls verified by McAden in her Deposition)

McAden Deposition, page 122-123 (same event)

Q Okay. Do you have any phone records  
0123

1 MARTEL - MCADEN (DIRECT EXAMINATION)

2 where Mr. Bauer would have been calling

3 Ms. Jurgenson and asked to have the doors open?

4 A I -- I don't have phone records, but

5 I'm -- I'm aware that -- that he called

Page 3, (Proposed Order, same event)

*"argumentative, agitated, and uncooperative."*

The same Assistant principal did not understand what a Rest Wall was, and then took me away from my class (admitted in her deposition) --leaving the class unsupervised. She then verbally abused my student. The crying student was a second grader, not fluent in English, who did not understand why he was told that following my class procedures was wrong.

The Assistant Principal accused me of defending the student. Of course I did. She thought that my defending the student and that my trying to explain the Rest Wall to her was being uncooperative.

Page 3, Quoted from Brockway Document

*"Mr. Bauer interrupted the conversation saying the child did nothing wrong and that I (Brockway) did not understand how things worked in his class."*

Her statement is correct. Her interpretation is wrong. Defending an innocent child who is being aggressively accused by an assistant principal is the right thing to do. Unfortunately, it has cost me dearly.

Page 3, of proposed Order (same event)

*"unattended, unsupervised child"*

False. The child was at an assigned place--the Rest Wall. I was standing in the child's line of sight, in the doorway by prearranged permission from the office. Security cameras would have confirmed that, but that data was withheld.

Page 4, of proposed Order (Pool event)

*“Bauer has never disputed that he left the child at the rec center.”*

Anyone paying attention should know that I went to and returned from the center with the same number of students. When I admitted that I left him behind it was clear that I was claiming responsibility, but not blame. The subtleties of language are willfully being used to blame me for something about which I had no knowledge.

No one knows when the student came to the pool, if or when he joined the class, or why he had an unexcused tardy, why his mother was en route to the school, if medication was needed, or where he was hiding.

The child's behavior on that day was an anomaly. The child was always well behaved, and never a problem, but he was not interviewed to see what had happened that day. Perhaps something to do with his 504 status? Knowing the child, I would surmise that there was something involved beyond his control.

Remarkably, not only was the child not interviewed, nor was the parent interviewed, and available security camera data was not consulted, nor preserved, in spite of testimony, by principal McAden that it was preserved.

Page 209 Board Hearing (McAden)

A "Ms. Walton asked me to secure Mr. Bauer's laptop and to make sure everything was kept in -- intact..."

Q Did she specify anything besides laptop, like computer -- anything electronic besides computers?

A The laptop with his email correspondence, phone messages, everything was to be preserved --

Page 5 of Proposed Order

*"Bauer indicated to McAden that it was the student who was at fault, stating the child should have been written up for failing to follow directions."*

False

What Bauer actually said:

*Child's name "...did everything he was supposed to do, and -- he's an awesome kid. I mean, I love the kid to death. I've never had a discipline issue with him. Ever. And -- and he did the exact right thing he should have. He went up to the employee, who walked him over, and I thought that was really great of him to do that, you know?"*

Page 151, Line 3, Bauer Deposition-- August 28, 2014

Careless with Facts

a. *"Walton met with Bauer, Clendaniel and Brockway on February 6, 2014."*

One paragraph later (same meeting)

b. *"On February 7, 2014, Walton wrote Bauer to memorialize the February 5 meeting."*

That contradiction of dates for the same meeting met with four objections from Bauer during the hearing. Objections went for naught.

Board Hearing held April 30 to May 2, 2015, page 289

MR. BAUER: *“There was no meeting on February 6th. There was a meeting on February 5th, February 7th, February 11th, and March the 5th. On February 6th, I was given one day off, and to go see Ms. Walton on February 7th --”*

This seemingly insignificant error indicates a larger problem.

The wrong date, uniformly misstated by each witness, indicates much rehearsal time and a master plan. These same witnesses refer to *“ridiculous”* and *“lack of remorse”* with the same uniform discipline and inaccuracy.

However, there is an arrogant hazard in my pointing out small errors since a pro se former PE Teacher will not be error free, but his ambition is not to make errors out of carelessness.

To paraphrase a well known proverb:

*“One who is careless in the little will be careless also in the much.”*

Page 5 of Proposed Order

*“leaving a student unattended off campus.”*

Mr. Duff is ignoring the obvious facts, stated many times.

The student was not unattended--in fact an attendant returned the child.

Page 5 of Proposed Order

*“Off Campus”*

The Recreation Center is on the campus, a campus that includes three schools and the Recreation Center. The Center is 22 yards from the Elementary School front.

Mr. Duff does not explain why easy and, obviously, desirable data from security cameras were not observed, nor preserved--as per agreement and guaranteed by attorneys for the District.

### Psychiatric Evaluation

Page 7 of Proposed Order

*"Dr. Rosenbloom, (sic) opined in a very general statement that Bauer was capable of performing the essential functions of his job and could return to work.*

How can this be difficult? The Doctor, by law, can only give a general statement. (see below for law\*\*\*)

Dr. Rosenbaum-Bloom's name is only slightly difficult, but Mr. Duff has not named her correctly in any document that I can remember. (Duff cannot blame Deborah Thomas, the Court Reporter, who recorded it the way he mis-said it.) Why does Mr. Duff not have the pro forma respect of calling Dr. Rosenbaum-Bloom by her correct name?

Dr. Rosenbaum-Bloom is a woman who has many honors, an Ivy League Degree, and who donated a kidney to her husband.

Mr. Duff is, apparently, unfamiliar with laws that control psychiatric evaluations. I risk repetition, but Mr. Duff has not, perhaps, read the laws. If I am wrong why does he not respond?

\*\*\*One should consult: Title One ADA Section 902, Vol 2, Compliance Manual.

*The U.S. Equal Employment Opportunity Commission*

- *“The ADA's requirements.... apply to all of the employees of a covered employer, whether or not they have disabilities.”*
- *“Any inquiries or examination, however, must be limited in scope to what is needed to determine whether the employee is able to work”.*
- *“If an employer decides to make that referral, the basis -- why the organization feels the exam is needed -- must be documented.”*

All of these points, and more, were made repeatedly to the administration, and to Childs and Halligan, since May of 2014. But Childs and Halligan dismissed the observations by saying that Bauer was acting more like a lawyer than as a PE Teacher. (Why was “*acting like a lawyer*” a negative epithet from lawyers?)

Bauer agreed to meet with Dr. Gay, but could get no response from Walton to that email. While I was awaiting their response they moved forward with my termination. Then, unbelievably, the District paid Dr. Gay \$200 for an appointment that was never made.

Who would approve such a payment? Why would Ms. Walton not respond to Bauer’s willingness to see Dr. Gay, or his agreeing to see someone else acceptable to all concerned?

(Exhibit 46)

Proposed Order, page 7

*“On April 23, Walton's office contacted Bauer to schedule a meeting for April 25 to discuss the physician's letter.”*

Mr. Duff, or someone, has substituted “physician's letter” for “the Report”.

“The Report” was thought to deal with Work Status and Reinstatement. This is one time that Mr. Duff has a right to be confused, so were we. Appellant will include a few quotations to identify the contradictions between Walton and Moss.

Adding to the confusion was that Ms. Walton does not allow witnesses, and wishes for there to be no written record. When asked about this she responded.

- 5 Q Why did this go unresponded to?  
6 A Because I was waiting to meet with  
7 Mr. Bauer. I like to talk to employees in  
8 person. Not through E-mails.

References to April 23, 2014, in the Proposed Order.

Communication was by telephone though a secretary. References were contained in the Walton letter on April 29. Walton makes no reference to a physician’s letter to be discussed at the meeting.

There are other confusions. Walton says that Dr. Rosenbaum-Bloom is on vacation in Atlanta. Emory is not a resort--it is a hospital, and Dr. Rosenbaum-Bloom had donated a kidney to her husband.

Ms. Walton refused to say what the meeting was about.

*“The topic for the meeting is decided by Ms. Walton, not you.” Moss.*

The following will indicate the confusion and contradictions by the upper administration.

■ Moss: *"Please note there has been no conversation or direction toward terminating...the meeting to follow would have been to discuss the report and the appropriate time to report back to work."*

Bauer: *"I can be there at 2:00PM if this is for reinstatement."*

Bauer also indicates that for anything other than reinstatement he would like to have his attorney present.

Bauer to Walton: *"Is this for reinstatement?"*

Walton to Bauer: *"No"*

Note: At first Ms. Walton refused to answer the question.

■ Attorney George McMaster writes several emails on his availability, and contact information.

Bauer: *"I am available anytime after today" (Recovering from conjunctivitis)*

Walton: *"If you would prefer I will place you on administrative leave without pay and then we can operate on your schedule and demands."*

Bauer: *"I do not wish to be insubordinate, but I feel that I need my attorney George McMaster with me."*

Moss: *"You may bring whoever you would like."*

Walton: *"I will not be contacting your attorney."*

If anyone wishes to read all of the email messages from this time period, in chronology, they will be available. But Walton tended not to communicate.

Since the action against Bauer had moved from Performance to Punishment a lawyer is now permitted, if the employee requests it. (This information comes from a consulting lawyer who will supply the citation shortly. Apparently this has to do with Employment Law)

Other contributing factors:

- All of the Administrators testified that they were not familiar with The Employment and Dismissal Act. (Ms. Walton testified both ways)
- Walton was not aware that she was the lead Investigator and was responsible for “The Report”.
- Moss testified that Bauer could see “The Report” in his personnel file, maintained by Walton.
- The Report does not exist.
- Administrators were also not familiar with ADA requirements that they were violating in this case.

Should a case be made for claiming out of control incompetence by the Administration?

Page 8, Proposed Order

*“HRS-16, which allows the District to choose the physician that will evaluate an employee.”*

The section of HRS 16 cited by the Administration was for Sick Leave. Bauer was on Administrative Leave.

*“Physician”* is singular, not plural.

In any case the Administration is bound by ADA. To wit

*The U.S. Equal Employment Opportunity Commission*

- *“The ADA's requirements.... apply to all of the employees of a covered employer, whether or not they have disabilities.”*

- *“Any inquiries or examination, however, must be limited in scope to what is needed to determine whether the employee is able to work”.*

- *“If an employer decides to make that referral, the basis--why the organization feels the exam is needed -- must be documented.”*

Page 10, Proposed Order

*“On June 5, 2014, Dr. Moss recommended to the Board that Bauer be dismissed, subject to Bauer’s right to an evidentiary hearing before the Board if requested.”*

False

*“Out of executive session the board made a motion to approve the superintendent’s recommendation to terminate the employment of employee A. approved.”*

The rights of “Employee A” were not stated in the minutes.

Moss confirmed the non-conditional termination on June 16 *“You are current (sic) no longer an employee...”*

The June 6, 2014, Moss letter that cited Employee rights was a form letter, which he nullified on June 16.

The Board ratified the non-conditional termination and illegally published the document in September 2014.

Page 10, Proposed Order

*“...noting that in his 32 years of experience, this was his first time an employee refused to attend a meeting while on administrative leave.”*

Care should have been taken to accurately quote what Moss said, and that Moss then gave evolving and false versions.

- Moss claimed that he recommended dismissal after Appellant refused to meet with him. (Page 68, Deposition, and quoted in Hearing)

- Bauer did not refuse to meet with Moss. He was never asked to meet with Moss. District failed to find any evidence to support Moss' claim.
- Moss testified that he would produce the email invitations. (Page 66, 39-40 of deposition) He did not.
- Moss changed '*meeting with him*' to '*meeting with the administration*'. Again no emails of the invitations from him OR from the Administration.
- While Moss did not produce email invitations, he falsely testified that he had done so. (Pages 543 and 546 of Board Hearing)
- Evans and Duff did not require Moss to show any invitatory evidence.
- Moss again changed his story, through attorneys, from claimed invitations by email, to claiming that they were by phone calls.
- Telephone records reveal that there were no calls. (Telephone records were available in the notebook for the Board's deliberation)

Page 10, Proposed Order

*"...critical error of choosing not to testify"*

Bauer did not testify. That is true---BUT it would not have mattered. What was "*substantially*" \*\* admitted by Evans during testimony was suddenly not to be considered in deliberations.

- In one cross examination Childs and Halligan objected 226 times. They were never overruled by Duff, Evans or the Board.
- Essential evidence had been withheld by the District: Grade book, 10,000 emails, security camera footage, and telephone records.
- Bizarre Manufactured evidence was *knowingly* accepted by Duff and Evans. (December 10, 1013 (sic), and February 4, 2014 pre-dated documents, and false grade book)

- The strategy, I believe, was to not allow Bauer to get evidence admitted in order to protect against appeal for a case week on the merits.
- Duff and Evans allowed Attorneys to successfully object to Bauer using Deposition testimony to impeach witnesses.
- Duff and Evans allowed attorneys to use an improperly introduced and form-flawed Motion in Limine to block all relevant evidence.
- The Board Order, allegedly written by Duff, never dealt with laws that were cited by Appellant.
- There was evident bias by the Board, i.e., Board resented being exposed as having violated *Brown v. James*, and violating TEDA, on repeated occasions.
- The Board wrote a false set of minutes in February 2015 to replace the minutes of June 5, 2014, to hide the *Brown* violation.
- The Board was angry with Bauer concerning the terms of a possible settlement, that had been requested by Childs and Halligan.
- Evans and Duff allowed new allegations to be entered, that were not exposed during Discovery and that had not been accused, nor charged, but would not allow Appellant time to prepare a rebuttal. (details are covered below\*\*)
- The above again exposes the necessity of charges *before* a trial and the value of Discovery.
- Whatever law Bauer cited while witnesses were under oath was not considered to be admissible by Duff and Evans.

Mr. Duff attended the deliberations of the “jury”.

We allege that Mr. Duff wrote the error-prone Board Order.

- In deliberations, we allege, that Mr. Duff decided which laws could be considered--by dismissing law, and case law, as not being cited under oath.
- In deliberations, we allege, that Mr. Duff decided what evidence could be considered to be the Record negating rulings by Mr. Evans.

Page 553

CHAIRMAN EVANS: “...but we will recognize that all these letters are in the booklet you gave us, so we can take them under advisement when we deliberate.”

**\*\*Re: Substantial evidence not considered during deliberation**

Page 568

CHAIRMAN EVANS: And there was a substantial amount of -- evidence put into the record under cross-examination.

MR. BAUER: Exactly.

MR. RIVERS: Okay.

CHAIRMAN EVANS: Okay.

MR. BAUER: Thanks.

Page 15, Proposed Order

*"Those reasons were based upon Bauer's negligence in the supervision of students..."*

Mr. Duff simply refuses to believe testimony, given repeatedly under oath, that the allegation involved one student----and only one student.

Moss, Board Hearing, page 528

*"No what I said was 'Your leave began -- your administrative leave began on February 5th for leaving a special needs student off campus.'" ("Student" is singular)*

Walton, Deposition page 42, Exhibit 49

Q *"One incident?"*

A *"The incident that he was placed on administrative leave for was negligence to one student in his class."*

Perhaps Mr. Duff realizes that one event with one student does not meet the “*pattern of neglect*” required by 59-25-430

Page 14, Proposed Order  
Decision

*“Evident unfitness for teaching may be 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.”*

Mr. Duff uses “*not limited to*” as an open loophole. What was that conduct that was commensurate with 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? None was ever named.

Page 15, Proposed Order

*“...to be in his gym class, was actually seen wandering alone and unsupervised outside the gym building.”*

No, the child was in an assigned place, and the Investigator concluded that ‘*nothing was amiss*’.

If the investigator found nothing wrong what is the rationale for Duff’s claim?

This incident was not accused nor charged in the only document that was proffered as anything resembling charges--the May 29, 2014, email from Moss. (“*Bases*” for Recommendation)

This is the event where an inexperienced Assistant Principal had no

idea how to proceed, but found nothing wrong.

February 16, 2015, Brockway Deposition.

Q So maybe five minutes altogether to  
21 assess that that's the student that she was  
22 referring to and that that student wasn't hiding  
23 or missing?  
24 A Give or take a few minutes, yes.

Needless repetition of accusations by Duff creates needless  
repetition in rebuttal.

Proposed Order (same event)

*"...impossible for Bauer to monitor and supervise students both inside and outside the gym."*

False.

I was standing in the doorway to monitor students, by prior arrangement with the office.

(Phone calls verified by McAden in her Deposition)

McAden Deposition, page 122-123 (same event)

Q Okay. Do you have any phone records  
0123  
1 MARTEL - MCADEN (DIRECT EXAMINATION)  
2 where Mr. Bauer would have been calling  
3 Ms. Jurgenson and asked to have the doors open?  
4 A I -- I don't have phone records, but  
5 I'm -- I'm aware that -- that he called

The same Assistant principal did not understand what a Rest Wall was, and then took me away from my class (admitted in her deposition) --leaving them unsupervised. She then verbally abused my student. The crying student was a second grader, not fluent in English, who did not understand why he was told that following my class procedures was wrong.

The Assistant Principal admits that I defended the student. She thought that my defending the student and that my trying to explain the Rest Wall to her was being uncooperative.

Page 3, Quoted from Brockway Document

*"Mr. Bauer interrupted the conversation saying the child did nothing wrong and that I (Brockway) did not understand how things worked in his class."*

Her statement is correct. Her interpretation is wrong. Defending an innocent child who is being abused by an assistant principal is the right thing to do. Unfortunately, it has cost me dearly.

The child was at an assigned place--the Rest Wall. I was standing in the child's line of sight, in the doorway by prearranged permission from the office.

Security cameras would have confirmed that, but that data was withheld.

Page 16, Proposed Order

*"...indicating that he would only come to the meeting if it were being held to reinstate him."*

False. Bauer never "*indicated*" that.

Duff omits that Bauer wished to bring a witness to the meeting--preferably his attorney, George McMaster. Ms. Walton denied his request, after Moss has approved the request.

Bauer to Walton: *"Is this for reinstatement?"*

Walton to Bauer: *"No"*

Note: At first Ms. Walton refused to answer the question.

■ Attorney George McMaster writes several emails on his availability, and contact information.

Bauer: *"I am available anytime after today" (Recovering from conjunctivitis)*

Walton: *"If you would prefer I will place you on administrative leave without pay and then we can operate on your schedule and demands."*

Bauer: *"I do not wish to be insubordinate, but I feel that I need my attorney George McMaster with me."*

Moss: *"You may bring whoever you would like."*

Walton: *"I will not be contacting your attorney."*

Page 16, Proposed Order

Duff: *"The only claims of due process violations properly before this Court are those ruled upon by the Board in its May 19 Order."*

Mr. Duff ignores the Board Hearing Transcript which, by law, is the only document listed for consideration at the COURT OF COMMON PLEAS. TEDA 480

Mr. Duff wrote and/or approved the Order, an order which was quite dishonest. The Board and the administration routinely violated both TEDA and Case Law. Unethically blocking the truth does not make it untrue.

Page 17, Proposed Order

*"Here, Bauer willfully disobeyed orders from his superiors and in so doing, violated the District's rules requiring that employees act professionally."*

Not true.

Mr. Bauer agreed to do everything asked of him and only asked clarification regarding the request for a second psychiatric opinion to comport with ADA, and the right to have a lawyer accompany him to a meeting.

There are eight (8) more pages to the proposed Order, but I will end this Detailed Document which I believe has already compelled a more nearly accurate and thoughtful Order.

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

JOHN ALDEN BAUER III

Appellant

v.

BEAUFORT COUNTY  
SCHOOL DISTRICT

Respondent

IN THE COURT  
OF COMMON PLEAS

C. A. NO.: 2015-CP-07-1343

APPELLANT'S PRE-TRIAL  
BRIEF

Appellant John Alden Bauer III ("Bauer") pro se, as of October 13, 2015, prepared and submits this Pre-Trial Brief, October 26, 2015, as follows:

### STATEMENT OF THE FACTS

John Alden Bauer III, a seventeen-year veteran educator (National Board Certified 2003, cum laude Master of Arts in Teaching Degree) began his employment as a Physical Education Teacher at Hilton Head Island International Baccalaureate Elementary School on February 5,

2002. Twelve years later, on February 5, 2014, he was placed on paid administrative leave. Superintendent Jeffrey C. Moss ("Moss") recommended Bauer's termination under S.C. Code Ann. §59-25-430 for reasons that he called "*bases*" in an *email* (no letter) dated May 29, 2014. (The emailed "*bases*" were non-itemized, and in prose form, Exhibit 11, page 2)

On June 5, 2014, the Board of Education approved "...*the superintendent's recommendation to terminate the employment...*" of Bauer. There had been no hearing (Exhibit 5). Moss' June 6, 2014, letter called it a "*conditional recommendation for suspension*", in contradiction to the termination wording in the minutes of the meeting. On June 16, 2014, Moss clarified the wording by emailing Bauer "*You are current (sic) no longer an employee...*" (Exhibit 6)

The request by Bauer for a hearing was dated June 21, 2014, and was sent with an FOIA Request for work emails, to be used in his defense. The hearing was not scheduled. On July 3, 2014, Moss emailed Bauer that Bauer's former attorney had requested a hearing delay (Exhibit 3). There was no evidence for that claim. The attorney, George McMaster, answered verbally and later in an email, that he had not asked

for the delay and, in fact, *“was no longer practicing law”* That is evidence from the principally cited person. (Exhibit 4).

*“..take everything on evidence. There’s no better rule.”* (Dickens)

Bauer submitted a Motion/Petition to the Board, on July 7, that since no hearing had been scheduled within the legal time frame that he should be reinstated (Exhibits 12, 15). There was no response.

The FOIA Request (Exhibit 13) was ignored. Jennifer Staton (“Staton”), Risk Management Coordinator in Human Resources, who is responsible for FOIA Requests, testified in a deposition on March 26, 2015, that the FOIA Request was properly drawn, but was never forwarded to her by Moss, nor by Alice Walton (“Walton”), the Human Resources Officer. (Citations will be in the Arguments)

Bauer applied for unemployment benefits in August of 2014, and was denied on August 12, 2014, due to the wording of the termination supplied from Human Resources to the South Carolina Employment and Work Force offices (Exhibit 14).

The Board ratified the termination and illegally published the report on September 2, 2014. (Exhibit 7). The published ratification remained on

the BCSD website for 5½ months. No hearing had been held, nor scheduled. Walton admitted that publishing the ratification was a violation of law (Exhibits 18 and 19)

Moss unilaterally non-renewed (terminated) Bauer's new contingent contract without a Board hearing and without telling Bauer, some time after April 2, 2014. (Exhibits 1 and 18) Walton testified that Moss had the authority to terminate a contract, and she twice swore that she would supply the state law and policies that gave Moss that ability. She did not supply the information. (Exhibits 34 and 35)

On October 21, 2014, Bauer again petitioned the Board to schedule a hearing and requested a de novo 15 day calendar time frame compatible with the guideline in §59-25-470 (Exhibit 15). There was no response.

The "*hearing*" was held April 30 - May 2, 2015, 312 days after the hearing request.

Bauer and his former attorney, Lauren Martel who was attending the hearing, were appalled at the lack of decorum and/or organized procedure. Ms. Martel rose, as an officer of the court, to complain about the lack of due process. She was told to sit down and be quiet. (Exhibit

58) Inappropriate side comments by the Board indicated that the June 5, 2014, unconditional termination was not about to be challenged. (Exhibit 5) One member of the Board made a derisive comment loud enough for all to hear "*He does not know what he is up against*". All of that as the hearing had hardly begun.

Security cameras can confirm, in general, the above.

Opposing counsel and the Board made extensive statements about the fact that Bauer did not testify. This is an important point and an entire section will be devoted to that subject—after the formal Arguments. (Page 59)

The Board Order, without review by Bauer, was sent by email, in an attachment, to Bauer on May 20, 2015. Bauer filed an appeal nine days later on May 29, 2015. All interested parties were served.

## STANDARD OF REVIEW

The review of the school board decision terminating a teacher's contract will involve issues of due process and whether the decision was based on "*substantial evidence*".

Due process requires "*due notice and an opportunity to be heard*" South Carolina Constitution, Article 1, Section 22. Also the South Carolina Supreme Court requires "*(1) Adequate Notice; 2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses.*" *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008).

A long delay (in this case of 293 days) does not meet that standard of "*adequate opportunity*". (*Middleton v. Charleston County*.)

*"To delay justice, is injustice"*. (William Penn, 1693)

*"When the Board voted unanimously on April 24th to terminate Brown's contract, it clearly affirmed the notice of dismissal and this constituted a final decision."* 4674 *Brown v. James*, THE STATE OF SOUTH CAROLINA, in The Court of Appeals. July 2010.

*“Additionally, in Idaho Watersheds Project v. Hahn, 307 F.3d 815, 825-28 (9th Cir. 2002), the Ninth Circuit held that under certain circumstances, an agency's initial decision can be considered final for exhaustion purposes. Specifically, when an agency has completed the process for reaching an initial decision that has immediate legal effects on the petitioner, the initial decision will be considered a final decision, even though the initial decision-maker may reconsider its decision or the initial decision is subject to review within the agency.”* 4674 Brown v. James, THE STATE OF SOUTH CAROLINA, in The Court of Appeals. July 2010.

A school board decision terminating a teacher's employment requires a decision that is based on substantial evidence. *Felder v. Charleston County School Dist.*, 327 SC 21, 25 (1997). *“Substantial Evidence is evidence that allows reasonable minds to reach the same conclusion as the board.”* *Laws v. Richland County School Dist. No. 1*, 270 SC 492 (1978). The Administrative Practices Act allows for court reversal of an agency decision *“made upon unlawful procedure”* or in excess of *“statutory authority”*. *Adamson v. Richland County School Dist. No. 1*, 332 SC 121 128 (1998)

**Violations and Errors**  
by the Board of Education of the  
Beaufort County School District  
in the matter of John Alden Bauer III.

- It was acknowledged by the Board that the Board considered the fact that Bauer did not testify to be important.
- It is on the record that evidence against the District was not admitted by Duff/Evans at the hearing. (Exhibit 24)
- David Duff, Advice Attorney to the Board, (“Duff”) indicated prior to the hearing that evidence impeaching a Moss affirmation would not be admitted at the hearing. (Exhibit 8)
- The Board allowed attorneys for the District to imply inaccuracies as fact. (Exhibit 16)
- The Board allowed Moss to contradict his own testimony and to give perjurious testimony that may have influenced the Board’s decision. (Exhibit 17)
- The Board voted on June 5, 2014, to terminate Bauer, *without a hearing*, from his PE Position at Hilton Head Island Elementary School. (Exhibits 5 and 2) (TEDA Section 59-25-460; Case Law: Brown v. James; Duff Article, Exhibit 2)

- The June 6, 2014, Moss letter states the board action as *“it should have been”* not the way that it was, and Moss clarified that contradiction on June 16, informing Bauer that he was no longer employed. (Exhibit 6)
- Board Chairman William Evans (“Evans”) repeatedly ruled using the words *“conditionally terminated”*. The June 5, 2014, minutes that were posted in June 2014, through February 2015, did not use the word *“conditional”*. (Exhibit 5)
- The Board ratified the termination of Bauer in August of 2014, and allowed the ratifying document to be published on September 2, 2014, (Exhibit 7) Walton admitted that it was a violation of law. (Exhibits 18 and 19)
- The Board allowed Walton to give obvious false testimony. It is clearly evident from transcript pages 375 - 378 (Exhibit 20). *“capable of performing the essentials of your position”* vs. not *“talking about a job description”*. More below (Exhibits 45, 63)
- The Board action was based on a retaliatory recommendation by the administration, as explained by the administrators and by Vernie Williams in his closing statement. (Exhibit 21) (Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Equal Pay Act, and the Fair Labor Standards Act)

- The Board failed to schedule a hearing within 15 days of Bauer's appeal. It delayed 293 days. (TEDA Section 59-25-470)
  
- The Board failed to consider, and to vote, on Bauer's Motion and Petition of July 7, 2014. (Exhibits 12 and 15)
  
- The Board failed to consider, and to vote, on Bauer's Motion to Schedule a Hearing, dated October 21, 2014. (Exhibit 15)
  
- In February 2015, the Board substituted, on its website, false minutes for the June 5, 2014, minutes, an admission of error.
  
- No official '*causes*' or *charges* were ever issued by anyone. There is only an *email* from Moss stating "*bases*" for his recommendation. (May 29—Exhibit 11)  
 (TEDA Section 29-25-460) These '*bases*' arrived before Walton wrote that Bauer would be charged after June 2. (Exhibit 22) Bauer was never charged.
  
- The Board did not know the '*bases*', '*causes*', or '*charges*', and Duff replied that the charges would become known as the hearing progressed. It turned out that the four (4) bases had been reduced to two (2) charges The two (2) charges were never sent. (Exhibits 23 and 41)

- The Board allowed consideration of the Motion in Limine although that motion was not properly introduced, nor served (at least not in the spirit SC Rule 6(d) which should be observed) (Exhibit 64) Receiving a motion 23 hours before a hearing does not allow time for reaction or preparation. In addition they got the name of the board wrong and the name of the appellant wrong.

- The Board allowed de bene esse testimony by a key witness in spite of objections by Bauer (transcript pages 267-269). Williams mis-represented the de bene esse as being "*exactly the same*" as the hearing except for the camera. Bauer learned that there would be no judicial officer and Bauer believed that testimony without a judicial officer would lend itself to chaos. Mr. Williams objected during the cross examination 225 times and caused chaos. This hearing could have been scheduled at a time when the witness was available, between July 6, 2014, and April 30, 2015. (The travel plans of the witness were known in November of 2014)

The Board voted to terminate Bauer, effective May 2, 2015. Since the procedure was delayed by the administration Bauer's pay should not have stopped before the effective termination date. (TEDA 59-25-430)

## **Additional Considerations regarding David Duff, Advice Attorney to the Board.**

Bauer repeatedly tried to explain how he was damaged by the district not meeting the Discovery Deadline. Duff interrupted Bauer six times in a row, allowing Bauer a 2.3 word average, and declared: *"It wasn't withheld....you say you received it a few days late."* Partial delivery of emails was eight (8) days late. (Exhibit 24)

Fact: All the evidence, especially emails, was withheld 429 days (1.17 years) and delayed 279 days after the FOIA Request. At least 79% of the email evidence has never been sent. (Those are figures from the administration and Vernie Williams, i.e. 6,000-12,000 emails promised; 1,081 delivered; Exhibits 25, 26)

Duff and Evans would not allow questions going to credibility of the witness and challenged the relevance of Bauer's questions to specific 'bases' ("charges").

(Transcript pages 236, 256-259 among others)

*"... Rule 611(b)... A witness may be cross-examined on any matter relevant to any issue in the case, including credibility."* (also Rule 609 goes to honesty)

Duff announced (ruled?), immediately before deliberation and then repeated after being queried, that Bauer's Opening Statement citations (of law) could not be considered by the Board since they were "*not in the form of sworn testimony*" and that it was "*not legally competent evidence*". [Citations of Law need not be under oath, attorneys do it routinely] (Exhibit 27)

Duff advised Bauer, ex parte, during the Walton de bene esse deposition to cancel the remaining portion of the cross examination.

Duff initiated a conversation, ex parte, with Bauer's father in a parking lot in which they discussed the case. (July 15, 2015)

## **Errors in the Order**

by the Beaufort County Board of Education  
in the matter of John Alden Bauer III

### Paragraph 2

*"Steadfastly refused to take the stand"*. (Accusation against Bauer)

Bauer wished to take the stand but the Board voted not to allow him time to prepare. (Exhibit 26) This is explained on page 59 of this document.

### Paragraph 3

RE: Delay of hearing. The 'Board' wrote that Bauer did not offer evidentiary support that his attorney did not ask for a delay. Bauer offered evidence from George McMaster, but Duff indicated before the hearing that the McMaster message would not be admitted. (Exhibits 4, 8)

The Board order refers to a 'basis' being "*negligence in supervising students.*" Plural. (Page 2, paragraph 3, also other pages including 10 and 11) The 'basis' (Exhibit 11) mentioned *student* (singular). Since it was a singular event the *basis* violates TEDA 59-25-430. ("*Pattern of Neglect*")

Walton testified that it was one student and one incident. (Exhibit 49)

The student is referred to as "*a section 504 disabled student.*" (pages 2 and 6) The student was Gifted and Talented, and had no physical disability.

The Board order states "*the board cannot, and should not, be the party issuing the specifications of causes for dismissal.*" TEDA 59-25-460 states, "*No teacher shall be dismissed unless written notice specifying the cause of dismissal is first given the teacher by the District Board...*" The

author has confused the '*bases*' for recommending dismissal with '*causes*' for dismissal.

The Board Order repeatedly indicates that they took into consideration that Bauer did not testify. Bauer wished to testify but rulings of the board made it unwise. A detailed discussion of this issue begins on page 59.

The Order falsely refers (page 5) to "*unnumbered documents from Mr. Bauer's exhibit notebooks.*" All documents in Bauer's notebooks were numbered.

The order states that Bauer did not attend a meeting with Walton "*for various reasons, including the fact that he (Bauer) was attempting to make arrangements for his lawyer to participate in any meetings.*" Walton refused to allow any witness at any meeting, or any written record of any discussion. (Walton Deposition, Exhibit 30)

The Order states "*became apparent...Mr. Bauer was not going to comply with directives...*" To the contrary, Moss testified that he reached the decision to recommend dismissal when Bauer "*refused to meet with me as superintendent*". (Moss Deposition, Exhibit 31) Moss testified that he would provide emails to support this accusation. He did not, and he

could not, but testified at the hearing that he had provided “*everything asked of him*”, a false statement. (Board transcript, Exhibit 32)

“*The Board accepted the Superintendent’s recommendation on a conditional basis.*” (Order page 10) The false word is “*conditional*”.

The minutes of June 5, 2014, (Exhibit 5) terminated Bauer without “*condition*” and without a hearing. In February 2015, the Board substituted a new set of minutes for June 5, 2014—an admission of error.

Walton testified that “*termination*” and “*conditional termination*” are not the same thing. This distinction was not considered. (Exhibit 18)

The Decision in the Order repeats the error of ‘students-plural’ vs. ‘student-singular’. (Exhibits 11 and 49)

The carelessness in the details, even minor details, of the Order including inaccurate approbation of academic credentials, makes the order

implausible.

## **INTRODUCTION TO THE ARGUMENTS**

Valued Teacher, Administrative Praise, Parent Testimonials

The administrative staff at Hilton Head Elementary and Walton

testified during depositions that Bauer was *"An excellent teacher, good coach, excellent mentor", "friendly", "courteous", "quick to volunteer", and "liked by the students"*. They also testified that they were willing to work with him again. (Depositions: Clendaniel, page 31; Brockway, page 13; McAden, page 33, page 54, page 134; Walton, page 51) Exemplar exhibit 33.

At the Board Hearing Assistant Principal Donald O. Clendaniel ("Clendaniel") said, *"Well he was a good teacher. He seemed to love what he did. Love the children."* (Exhibit 33)

Bauer was involved in *"Student Intervention"* tutoring. These were 'at risk', low scoring students in math, and Bauer got excellent results. He received an email December 10, 2013, from Maureen Kecmer, the Numeracy Coach, that began *"These are fabulous scores."* (Exhibit 62)

There were numerous and lengthy testimonials from parents and colleagues addressed to the Board (File 148), but not delivered to the Board. There are also copious notes and memos of praise for Bauer from the administration throughout his 12 years at the school, including during the week that he was put on leave.

Shirley Fawley (“Fawley”) of Childs and Halligan, attorney for Moss, wrote to Attorney George McMaster, who for a time was advising and assisting Bauer, that “*Vernie (Williams) and I will confer with you ..... a possible ‘alternate resolution’ to the situation.*” Bauer had been pro se since May 22, but nevertheless hoped that the offer to discuss an ‘alternate resolution’ would be honored. Eight months later, in February 2015, Bauer was invited to propose a settlement in writing. He complied. There was no response, other than a dismissive and disrespectful verbal quip.

## **ARGUMENTS**

### **Due Process**

#### **Compound Violations (a listing)**

Moss falsely applied HRS-16 “*Sick Leave*” to apply to Administrative leave, Human Resources illegally published a report ratifying the termination, Human Resources reported erroneous information to the SC Employment Office that caused Bauer to lose benefits, the Board gave no response to Bauer’s motions and petitions, administration’s failure to forward the FOIA request for proper handling, failure to respond to FOIA

request, delayed providing emails for 422 days, and then only provided between 10% and 21% of the emails (their figures), no notice of charges was ever issued, improperly drawn "*bases*" (presumed charges) from Moss, "*bases*" from Moss sent by email only, and then changed from four (4) *bases* to two "*charges*" not discovered until the third day of the hearing, no investigation report, no preservation of technological evidence in spite of affirmation from Fawley that it was being preserved, did not respond to an improvement plan, administration's failure to produce evidence under the rules of E-Discovery, also was 8 days late providing (partial) discovery, unequal treatment by the administration, (the classroom teacher who did not account for her missing student was not disciplined), retaliation by the administration, and the Board in its Order considered it to be important that Bauer did not testify, termination without a hearing, Moss altered policy for non-renewal, Moss falsified an alleged request for delay from McMaster.

The cost of inappropriate and unnecessary review of emails by attorneys for the District, hiring and payment to attorneys for the school district, use of district employees for this case with public money, however managed, including trusts, etc., and the methods of remittance should be

published. The retainer was reported, by the Island Packet, as being nearly \$500,000. Additional money spent in this case— estimated to be in excess of \$1M, (based on district data) should be public record.

### Termination Without a Hearing

***“SC CODE: SECTION 59-25-430. Dismissal of teachers; grounds; opportunity for hearing; suspension pending resolution of charges.***

*“Any teacher may be dismissed at any time who shall fail, or who may be incompetent, to give instruction in accordance with the directions of the superintendent, or who shall otherwise manifest an evident unfitness for teaching; provided, however, that notice and an opportunity shall be afforded for a hearing prior to any dismissal.”*

***“SC CODE: SECTION 59-25-460. Notice of dismissal; conduct of hearing.***

*No teacher shall be dismissed unless written notice specifying the cause of dismissal is first given the teacher by the District Board of Trustees and an opportunity for a hearing has been afforded the teacher.”*

Board Meeting Minutes, June 5, 2014

Source: [http://www.beaufort.k12.sc.us/pages/BCSD/Links/School\\_Board/](http://www.beaufort.k12.sc.us/pages/BCSD/Links/School_Board/Board_Meetings/1108173481404768018/2014_Board_of_Education_Meeting)

[Board\\_Meetings/1108173481404768018/2014\\_Board\\_of\\_Education\\_Meeting](http://www.beaufort.k12.sc.us/pages/BCSD/Links/School_Board/Board_Meetings/1108173481404768018/2014_Board_of_Education_Meeting)

*"The Board then went into executive session to discuss a personnel matter. Out of executive session, the board made a motion to approve the superintendent's recommendation to terminate the employment of Employee A. Approved.*

The meeting was adjourned at 6:15 p.m."

- Employee A was identified by Walton as Bauer

The following are from Brown v. James.

*"When the Board voted unanimously on April 24th to terminate Brown's contract, it clearly affirmed the notice of dismissal and this constituted a final decision." 4674 Brown v. James, THE STATE OF SOUTH CAROLINA, in The Court of Appeals. July 2010.*

and

*"Specifically, when an agency has completed the process for reaching an initial decision that has immediate legal effects on the petitioner, the initial decision will be considered a final decision, even*

*though the initial decision-maker may reconsider its decision or the initial decision is subject to review within the agency.” 4674 Brown v. James*

The words ‘Immediate *termination*’ are used in the letter from Fawley, September 19, 2014, “...*the superintendent...when he recommended your immediate termination from employment to the Board of Education.*” (No thought of “conditional”)

In Moss’ letter June 6, 2014, he used the word ‘*conditional*’ but on June 16, he emailed: “*You are current (sic) no longer an employee of the Beaufort County School District.*” (Exhibit 6)

The Board substituted in February 2015, minutes for June 5, 2014. Removing minutes and substituting fictional minutes eight (8) months after the event is an admission of error.

### **Non-Renewal of Contract Without a Hearing**

Moss offered a contingent contract to Bauer on April 2, 2014, which Bauer signed. The final sentence of Moss’s letter was: “*However, please understand this contract will be rescinded should the District determine*

*the termination of your employment is warranted and make that recommendation to the Board.” (Exhibit 1)*

Moss did not inform Bauer, as required by law, that he had the right to appeal within 15 days. (Exhibit 2).

Moss has assumed the power to non-renew a contract prior to a hearing, which is specifically forbidden in law. (Exhibit 2; Brown—see below)

*“Further, when the Board voted to accept James' recommendation for the no-renewal of Brown's teaching contract prior to conducting a hearing, its decision had an immediate effect on Brown's legal rights.<sup>[12]</sup> Sections 59-25-460 and 59-25-470 of the South Carolina Code (2004) make it expressly clear that before the Board makes a final decision regarding the acceptance or rejection of a recommendation for non-renewal of a teacher's contract, the teacher must be afforded the opportunity to be heard. The observance of the procedural requirements of the Employment and Dismissal Act is mandatory and not a matter of discretion.” 4674 Brown v. James, THE STATE OF SOUTH CAROLINA, in The Court of Appeals. July 2010.*

From the website of Duff, White and Turner:

*“As a result of the Court’s decision in Brown, it is clear that school boards may no longer make initial decisions to accept or reject a superintendent’s non-renewal recommendation prior to an evidentiary hearing.”* (Exhibit 2)

Note: David Duff, of Duff, White and Turner, was counsel for James, in Brown v. James, and was Advice Attorney to the Board during Bauer’s hearing.

### **Ratification of Termination—Illegally Published**

The Board ratified Bauer’s termination, without a hearing, and published the Ratification document on the BCSD Human Resources website on September 2, 2014, and it remained on the site until February 2015. (Exhibit 7) Walton admitted that publishing the Ratification was illegal. (Exhibits 18 and 19)

### **Delay of Hearing**

TEDA\_SECTION 59-25-470.

*“The hearing shall be held by the board not less than ten nor more than fifteen days after the request is served, and a notice of the time and place of the hearing shall be given the teacher not less than five days prior to the date of the hearing.”*

Bauer requested a hearing on June 21, 2014. The latest the hearing could be started was July 6, 2014.

Letter from Fawley and Vernie Williams (“Williams”) of Childs and Halligan, attorneys to Moss, July 22, 2014, page 3:

*“Please note that under the Act, only the teacher may waive the statutory deadline.”*

On June 26, 2014, Fawley and Williams wrote to George McMaster *“...thank you for agreeing to waive the statutory deadline...”*

McMaster said that there was no agreement to delay the hearing and in fact McMaster was no longer assisting Bauer, who was pro se, and McMaster was no longer practicing law. (Exhibit 4)

McMaster, April 21, 2015 at 5:12 PM: *"I assisted John Alden Bauer, III, who was acting pro se with respect to certain matters regarding his employment at Hilton Head Elementary."* (Exhibit 4)

On May 20, 2014, Bauer's father, Dr. John Bauer ("Dr. Bauer") wrote to McMaster, *"Feel free to bail from Alden's case—BUT—I ask you to do two things before you exit."* Dr. Bauer then asked McMaster to write a letter to preserve technological evidence, which he did. The last sentence from Dr. Bauer is, *"I guess pro se is not recommended—but maybe we can pull it off."*

Bauer and his father were concerned about the Board's reaction to being required to hold a hearing on the July 4 weekend and exchanged the following email messages on June 28, 2014: (File 131)

Bauer, 7:45 AM: *"I could be wrong and I know we talked about this before but I believe the hearing has to start either Friday July 4 Saturday July 5 or Saturday July 6 based on when they give us notice."*

Dr. Bauer: *"...they don't want to be here on a holiday. If we object we lose points for cooperation. If they ask, we nicely say that we prefer not to delay, but whatever Mr. Evans wants."*

McMaster email April 21, 2015. *"I am informed that Mr. Bauer and his father Dr. Bauer exchanged emails outlining their willingness to extend the deadline, as to avoid a conflict with July 4th, but by no more than 7 days."*

(Exhibit 4)

Complainant's Motion in Limine submitted the day before the hearing, objected to admitting the emails between the Bauers. (They also objected to any case law from outside of South Carolina) Exhibit 64.

All objections by complainant's attorneys were sustained.

The Board did not ask, or suggest that Bauer waive the deadline of the hearing, nor did anyone else. The District imposed the delay unilaterally.

On July 3, 2014, Bauer emailed Moss *"Since no hearing was scheduled may I assume that I will be going back to work? I pledge to fully cooperate with the administration at HHIE, and do my best for the children."*

Moss answered, *"You are not correct. Your attorney has requested an extension from the deadline established."* (Exhibit 3)

Moss offered no evidence of such a request and has never explained the false assertion.

McMaster, on April 21, 2015, wrote, "...Dr. Jeffrey Moss in an email on July 3, claimed that I had asked for a delay to the hearing. I did not make any request of any nature regarding a delay and, in fact was no longer practicing law." (Exhibit 4)

Also on July 3, 2014, Bauer emailed Moss, "We are not requesting an extension, nor have we ever asked for one. We expect to follow the wording and requirements of 59-25-470."

There was still time (July 3) to have the hearing within the designated legal time frame, and the attorneys for the district had had 5 months to prepare.

There are many more such communications but the important issue was that it should have been clear that Bauer wished to have the hearing soon in order to be able to return to work in August for the start of school at Hilton Head Elementary, or to have an opportunity to try to find employment in time to start the term at another school. The hearing was held 292 days later.

The Board Order states:  
*"There was further indication that the statutory deadline for waiving the hearing was waived by an attorney, who indicated in writing to*

*counsel for the complainant that he represented Mr. Bauer. Mr Bauer did not pursue this objection at the hearing, at least not with evidentiary support and for the reasons mentioned above the record is devoid of any evidence supporting Mr. Bauer's contention."*

McMaster had written: *"I did not make any request of any nature regarding a delay and, in fact was no longer practicing law."* The email from the attorney that was referred to in the order, George McMaster, was not allowed into evidence. Duff had indicated that it would not be admitted into evidence in a email April 22, 2015. (Exhibit 8)

The Complainant's "Motion in Limine" (Exhibit 8), inappropriate to the spirit of [SC Rule 6(d)] was offered one day before the hearing, and indicated that they would object to such a letter, and Duff wrote on April 22, 2015, that McMaster's email was not in "evidentiary form". *"George, all this may be nice, but it is not in an evidentiary form that is likely to be admitted."* (Exhibit 8) Such exactitude in negativism requires that I again observe that they got the name of the board wrong and the name of the appellant wrong.

Again, all objections by complainant's attorneys were sustained.

In the Court of Common Pleas, Case No. 2013-CP-10-7094 Shana Washington-Middleton v. Charleston County School District the decision includes the following page which addresses the issue of delay.

The District has argued that the lateness of the hearing was "harmless." This argument ignores the reality of Ms. Washington-Middleton's status as a teacher in limbo, awaiting exercise of her statutory right to be heard prior to termination. To suggest that Ms. Washington-Middleton was required to seek and accept other employment due to the Board's delay would lead to the absurd result of rewarding districts for violating statutory rights. Additionally, this argument ignores the mandatory nature of TEDA acknowledged by the Supreme Court in Johnson v. Spartanburg Co. School Dist. No. 7, 314 S.C. 340, 444 S.E.2d 501 (1994) and the Court of Appeals in Brown. The Board's failure to meet the statutory requirements renders its decision *per se* invalid. Young v. Charleston County School District, 397 S.C. 303, 725 S.E.2d 107 (2012) (statutory violations alone support reversal of a teacher termination)

It is a well-established legal principle that where the terms of a statute are clear, courts must apply those terms according to their literal meaning without resort to subtle or forced construction to limit or expand the statute's operation. Moody v. Dairyland Ins. Co., 354 S.C. 28, 30-31, 579 S.E.2d 527, 529 (Ct. App. 2003) The plain language of Section 470 states that "[t]he hearing [of a teacher appeal] shall be held by the board not less than ten not more than fifteen days after the request is served." (Emphasis added). Regardless of the wisdom or folly of this mandate, the Court is barred from imposing another meaning to this provision. Hodges v. Rainey, 341 S.C. 79, 85, 454 S.E.2d 578, 582 (2000) The Court's conclusion conforms to controlling law affirming the mandatory nature of the requirements of TEDA. For example, in 2010, the Court of Appeals held that the language of TEDA is unambiguous and "the observance of the **procedural requirements** of the Employment and Dismissal Act is **mandatory** and not a matter of discretion." Brown v. James, 389 S.C. 14, 697 S.E.2d 604, 611 (Ct. App. 2010) (Emphasis added) Because there is controlling precedent affirming the mandatory nature of

The court ordered the reinstatement of Washington-Middleton.

## **Emails and FOIA Request**

Under Rule 34a of the Federal Rules of Civil Procedure;

*“A party may serve on any other party a request within the scope of Rule 26(b): (1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party’s possession, custody, or control:*

*(A) any designated documents or electronically stored information... stored in any medium...”*

*(i) A party must produce documents as they are kept in the usual course of business...”*

After Bauer was placed on Paid Administrative Leave he asked repeatedly for his work emails. During the Spring of 2014, Bauer asked 14 times for access to his emails. Thirteen times there was no response and once there was a one word negative reply (“denied”). On September 19, 2014, Fawley wrote:

*“...the Superintendent has already informed you that any access you had to Beaufort County School District (“District”) technology ended when he recommended your immediate termination from employment to the Board of Education.”*

There are two problems with Fawley’s statement. 1) It does not explain denial of his emails from February 5, 2014, to June 5, 2014, and 2) The Superintendent never told Bauer that his access to District technology had ended, contrary to the claim in the letter.

Bauer noted that between February 5, 2014, and June 18, 2014, the administration had not responded to his request for his work emails which he needed for the preparation of his defense. On June 18, 2014, Bauer sent a Freedom of Information Act Request to Moss and Evans to receive the emails. (Exhibit 13) There was no response (a misdemeanor; see below).

FOIA, as amended by Public Law No. 104-231, 110 STAT 3048, updated August 13, 2014 (File 301) states:

*“(3) (B) In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the*

*agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.”*

*“(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall--*

*(i) determine within ~~ten days~~ **twenty days** (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination;...”*

The reference above to “twenty days” is Federal. In South Carolina the response window is 15 days according to Staton. The Citizen’s Guide to SC FOIA includes “*Any person or group of persons who willfully violates the provisions of [FOIA law] shall be deemed guilty of a misdemeanor...*”

Moss testified on December 16, 2013, that FOIA requests are handled by the Risk Manager, Jennifer Staton. Walton, on February 5, 2015, also testified that Staton would have handled the request.

In a letter from Fawley and Williams on December 17, 2014, (six (6) months after the FOIA request) the attorneys stated that Bauer's request was not valid. *"This is not a valid discovery request or South Carolina Freedom of Information demand."*

Bauer made six (6) status requests about FOIA between June 23, 2014, and December 5, 2014. No response.

Staton testified on March 26, 2015, that the FOIA Request from Bauer was never given to her. (Deposition, page12) She examined the request during her deposition and was asked if it was acceptable. She answered, *"It looks fine."* (page12, line 9)

### **FOIA Continued. How Many Emails?**

- 12,000 emails promised (2,000 per year) First email is dated January 2008. (Exhibit 25) (Numbers from the district)
- 1,081 emails delivered (180 per year)

Where are the other 11,000 emails?

On August 11, 2014, Williams wrote, "*It appears that there are hundreds of pages of emails for each month. We are continuing to review approximately several thousand pages....*" (Exhibit 26)

It is inappropriate for complainants to review *defendant* evidence and to determine what to give to the respondent/defendant.

And where are those "*several thousand pages*" of emails?

According to Walton's deposition on February 5, 2015, she could have provided the emails in three (3) minutes (page 252, line 14) and she estimated that there were 6,000 emails in three (3) years (page 259, line 11), an estimated 2,000 per year. (Exhibit 25)

Review emails? Bauer only asked for his emails that could be "*provided in three minutes*" with no other access to district data, just as had been the case when he was employed. How much public money was wasted in those meaningless months of inappropriate reviews by Childs and Halligan?

Of the 12,000 estimated six-years of emails, the District provided a thumb drive with 1,081 emails on March 24, eight (8) days after the

Discovery Deadline, a deadline date set by the District. The thumb drive was also received 279 days after the FOIA Request. Partial compliance with evidentiary requirements came too late for use in depositions.

Bauer was harmed by this since 1) he did not have access to the information, such as work orders, names—“Wayne v. Wane”, etc., in time to use in the depositions, and 2) by being late Bauer did not have adequate time to prepare to use the emails in the long delayed hearing. (Non-cooperation from attorneys for the district has been a problem in other areas as well). 3) Principal Jill McAden (“McAden) testified that there were no security cameras in the gym. The numerous emails proving her knowledge of the cameras came after her false testimony and altered the questioning

effectiveness. (Exhibit 53)

### **Problems With The “Charges”**

Bauer noted the lack of knowledge exhibited by Evans and Duff in reference to any “*charges*”. They had no idea that there were no official *charges*, what they were, and that they were not being addressed (Exhibit 59).

Duff stated that Bauer would understand the charges as the Hearing progressed (Exhibit 23).

Duff then asked Williams if the charges were in the exhibits. Williams falsely answered that they were. It would have been simple, "*Let's see the charges*". There were none (Exhibit 59).

Evans then ordered Ms. Brockway sworn, who testified for 14 pages about a child hiding, not in the *bases (charges)* and she concluded:

1. "*No student was hiding*" (Brockway Deposition page 53, line 12-24)
2. *But wanted to "make sure it did not happen again"* (Brockway Deposition page 24, line 20)

The Board assumed that the four *bases* that Moss wrote on May 29 were the "*charges*", but Moss testified that there were only two (2) charges (Exhibit 41) Those two (2) '*charges*' were never sent to anyone, and the Board did not hear about them until the third day of the hearing.

The Board, the Chairman of the Board, the attorneys for the District, the Advice Attorney to the Board, and the appellant were not aware of the specific causes or "*charges*" involved in this case, although that document

is required to come *from* the Board (See **Section 59-25-460 below**). The confusion is evident in the Board Hearing transcript, pages 45 to 48.

(Exhibits 59 and 63)

The Order from the Board (page 3) confuses Suspension (59-25-450), with Dismissal (59-25-460) Suspension may be determined by the superintendent if he believes that there is cause for dismissal, but dismissal is to be determined in a hearing, after the charges, "*causes*", are *noticed* in writing from the Board.

**"SECTION 59-25-460.** Notice of dismissal;....

*"No teacher shall be dismissed unless written notice specifying the cause of dismissal is first given the teacher by the District Board of Trustees and an opportunity for a hearing has been afforded the teacher."*

The '*cause*' for dismissal, or '*charges*', or '*bases*' (Exhibit 11) were presumed in an email from Dr. Moss, non-itemized, in prose form. No letter was sent. (Moss (later) called the so-called charges '*bases*'. May 29, 2014, Walton, was asked if the '*bases*' were sent certified mail she answered, "*I believe they were...because everything we sent to him was certified mail.*" (Exhibit 37)

Can the Superintendent act in place of the Board? On July 22, 2014, the attorneys for Moss wrote, "*Neither the Superintendent nor you have the authority to establish the Board's agenda.*"

After Duff had stated that Bauer would understand the charges as the hearing progressed Bauer objected. His objections were ignored.

Lauren Martel asked to speak to the issue as an officer of the court and as the legal advisor to Bauer who was pro se. She was denied.

(Exhibit 58)

It is doubtful that the Board will be well-informed when they only hear from the Superintendent prior to a motion for dismissal, followed by a co-mingling of attorneys for the Superintendent and the Board, and a Superintendent executing a task assigned to the Board. Add that the teacher was not allowed to present "*any and all defenses*", the result was flawed.

Walton testified that Moss presented his case to the board and that Evans "*asked questions*", even though he was to be the "*unbiased*" presiding officer at the hearing. (Pages 31 and 32, Walton Deposition)

Note: Moss had never met Bauer

## Bases 1 & 2

There are difficulties with the 'presumed charges' themselves.

"Bases" 1 and 2 in the Moss email are: (Exhibit 11, page 2) *"Your leave began on February 5, 2014 for leaving a special needs student unattended off campus. This was categorized as Negligence and Insubordination."*

The child was not unattended, and was on school district property (The locker room is a very short distance from the school entrance area). The child within minutes was discovered and returned to the school. Security footage was vital, but data was not preserved, in spite of assurances by Childs and Halligan.

Concerning the insubordination at the pool event: Clendaniel wrote the documentation for the February 5 event, and did not claim 'insubordination'. At Clendaniel's deposition he was asked if he had ever accused Bauer of insubordination. He answered, "No." (page 48, Clendaniel Deposition, Vol. 1)

Bauer was not allowed to cross examine Clendaniel on the issue of his document being misinterpreted in the “bases” (Page 147, Board Hearing)

Clendaniel’s testimony caused a problem for Moss. Referring to the February event Moss had emailed, “*This was categorized as Negligence and Insubordination.*” But at the hearing Moss insisted that he did not mean insubordination at the pool event. He was repeatedly asked to explain “*this*” was characterized as ...*Insubordination*”. He was unmoved.

Moss also referred to the student as “*special needs*” and the Board, in its Order, called the child “*disabled*”. The student was a 504 student and categorized as “*Gifted and Talented*”. He had no physical disability.

The Negligence Charge involved one child and one event, which does not meet the requirement of the law, as stated in 59-25-430, which states “*persistent neglect*” for evident unfitness for teaching. The Board Order incorrectly referred to “*repeated incidents of failure to supervise students.*”, and “*because of his negligence in supervising students.*” Not charged nor accused. One student. One incident. (Exhibit 49)

Williams was able to parry questions by repeatedly objecting that we were asking for a “legal conclusion”. The law called TEDA is routine, short, and easy to read. Should not administrators be required to know and be trained in the law that they are applying? (Exhibit 16) In any case when administrators get it wrong it should not cost the career of an acknowledged good teacher.

Walton claimed that Bauer had “*willfully*” left the child behind (Deposition, page 134) and that she did not take into consideration his 17 year teaching history. (Deposition page 89)

The questions of “*unfitness, and uncharged accusations*” will be discussed separately from the charges. (pages 47 and 57 herein)

(Bases 3 & 4 overlap, but 4 seems to naturally precede 3)

Basis 4

The fourth ‘basis’ (fourth sentence of the May 29 Moss email) was:

*“You were requested to have an examination from a psychiatrist and report back.”*

Bauer did precisely what was asked and saw Dr. Rosenbaum-Bloom on March 28, 2014, who was approved by the district. The doctor wrote that after reviewing his job description and discussing the situation with Bauer that: *"It is my medical opinion that John Bauer is indeed capable of performing the essential functions of his job and return to all of his duties as soon as possible."*

Walton had provided a general job description and wrote that she wanted a statement: *"...indicating whether she (doctor) believes you are presently capable of performing the essentials of your position with or without reasonable accommodation."* (Exhibits 45 and 63)

Nothing else in this area was "charged", but the Board was concerned that the doctor's evaluation: *"...indicated in a general manner only that Mr. Bauer was capable of performing the essential functions of his job."*

Compare:

Walton Requirement (email 3/25/14; Exhibit 63):  
*"capable of performing the essential functions of..."*

and

Board Criticism (page 8): *"... only...."*

capable of performing the essential functions of...”

Walton had provided a general job description for the doctor’s guidance; the doctor complied. (Exhibits 45, 63)

At the Board Hearing Walton testified that she was not *“talking about a job description”*. Page 375, line 12. (Exhibit 44) The document that Ms. Walton supplied to the doctor was simply a job description, and only a job description (Exhibits 45, 63).

At this point Bauer had met the requirement cited to see a *“psychiatrist and report back”*.

But Walton then asked Bauer to get a second opinion from a psychiatrist used by the district. Bauer raised questions about this and asked for clarification of several issues—and then agreed that he would see *“Dr. Gay, or someone else acceptable to the district”*. (Exhibit 46)

Moss wrote on May 29, 2014, that the directive to see a psychiatrist was *“allowable under our policy.”* (Exhibit 225d) Bauer wondered if Moss was inventing policy ad libitum.

The issues: ADA guidelines and HRS-16. Bauer had read that ADA required a choice of 3 unbiased doctors and that ADA kicked in when he

was asked to see a psychiatrist because it assumes the possibility of a disability. Bauer asked for a clarification; there was no response.

Walton was using the HRS-16 Sick Leave section as the authority for requiring a second opinion. Bauer was on Administrative Leave, not on Sick Leave, and Bauer asked for clarification and wrote that he would then agree to see Dr. Gay, or someone else acceptable to the district. (Exhibit 46) Again, there was no response.

Moss did not "*charge*" in reference to asking for a second opinion.

### Basis 3

*"The date to discuss the results was scheduled for April 25, 2014".*

(‘Results’ had to do with the psychiatric report.) Moss was claiming insubordination concerning the meeting.

Bauer had met with Walton four times, often with other members of the administration in attendance. He was concerned about the hostility from Walton, the lack of a written record, and he asked for the attendance by a witness. Walton did not wish to communicate *"important matters by email"* and would not allow a witness at the meeting. *"Because I was*

*waiting to meet with Mr. Bauer. I like to talk to employees in person. Not through E-mails.”* (Walton Deposition, page 191)

In view of the hostility from Walton, Bauer believed that she might be enjoying his discomfort, possibly engaging in a set-up, (more on this below) and Bauer asked to have a witness at the meeting. George McMaster, his pro bono attorney, was assisting and was available later in the day of the scheduled meeting, but Walton refused to alter the time. *“I will not be contacting your attorney” email, April 28, 2014.*

In the meantime, while refusing to allow a witness, Walton refused at first to answer if the meeting was for reinstatement, finally saying “no”. Contrarily Moss said that Bauer could bring anyone to the meeting that he wished and that the meeting was to find a time to return to work. Moss and Walton seemed to be on different pages. Bauer was caught in the middle.

Also on May 29, 2014, Walton wrote: *“Dr. Moss is asking you (to) schedule an appointment and present the written report to me in my office by June 2, 2014. Once you present this documentation, (from Dr. Gay) we will inform you of the charges against you.”* (Exhibit 22)

The deadline was June 2; the '*bases/charges*' could not be official on May 29. When Bauer presents the psychiatric report, no matter what it says, Walton asserts that he will be charged, which is illogical. (Exhibit 22)

The four *bases*, which became two (2) "*charges*" were never properly drawn, nor were they delivered, nor discovered until the third day of the hearing.

The word "insubordination" does not appear in SC Code Section 59 TEDA), the controlling act. The Uniform Code of Military Justice needs three articles, over 8,000 words, to deal with the subject of Insubordination.

Insubordination used as a '*compelling charge*' is complicated, dependent on the substance and legality of the command, or the legitimacy of the demand. Moss admits that it may be valid to disobey. (email April 28, 2014)

## **Uncharged Accusation Used by the Board**

From Section 59-25-470:

*“The complainants shall initiate the introduction of evidence in substantiation of the charges.”*

The Negligence Charge involved one child and one event (Exhibit 49). The Board Order incorrectly refers to *“repeated incidents of failure to supervise students”*, and *“because of his negligence in supervising students.”* The word ‘students’ in the Order was plural. This was not ‘accused’.

Walton was asked if there was *“persistent neglect”* (59-25-430)

*“I believe I was dealing with one case of neglect, and that was a child being left at the pool.”* (Exhibit 49)

There were uncharged and groundless accusations made at the Board Hearing. One involved an assistant principal investigating a child that *“was hiding”*. The assistant principal found *“everything fine”* within a *“few minutes”* (Brockway Deposition, page 52) and that no child was hiding (Brockway Deposition, page 53).

Finding nothing wrong is not *“evidence in substantiation of the charges”* nor evidence of unfitness.

Additionally the event had already been investigated by Lakeisha Lofton and Lofton had found nothing wrong.

Yet the Board allowed the uncharged groundless accusation to go on for 14 pages and would not allow documents to show that she had not preserved data that the attorney's for the district had written that the school's three administrators had agreed to preserve.

Surveillance footage was available and could, and should, have been observed by Brockway before writing her document.

Another uncharged accusation involved Motorola Radios Clendaniel (Board Hearing page 127, line 16—). This was not charged and was never included in the Discovery Phase, and had nothing to do with "*substantiating the charges.*" This accusation was weak and the other person involved was an assistant principal.

When Moss was asked if there were any other previous reasons to investigate Bauer, Moss answered: "*...I don't know if there were any issues in previous years.*" (Moss Deposition, page 38, lines 18-19)

## **Investigation Into the Pool Event**

The conduct and quality of the “investigation” was flawed. No effort was made to consult security footage. We now know that the cameras that could have cleared Bauer are digitized; the cameras can store footage up to 5.4 years. The footage may still be available. The District has never made an effort to find the truth, through available technological data in spite of promising to do so (Exhibit 52).

Moss was asked at his deposition if he could provide a copy of the investigation report. He answered, *“Mr. Bauer's been told multiple times he can have access to his personnel file at any point in time.”* (Page 41, Moss Deposition)

Moss' reply implies that there is an investigation report. Walton testified that there was no report. (Deposition pages 115 and 117)

There was confusion among the witnesses as to who investigated and who the lead investigator was. On page 48 of her deposition, Walton said that there was no lead investigator. On page 115 Walton said that she was the lead investigator.

Clendaniel, who was named by Walton as one of the investigators, was asked a series of questions including 1) who were the investigators, 2) how could we find out (who the investigators were), 3) when did the investigation start, and 4) when did the investigation end? His answer to each, "I don't know." (Clendaniel Deposition page 118). Clendaniel was also not certain if he was part of the investigating team (page 118).

Clendaniel wrote the documentation for the pool event. His document and accusations started what has become this case, therefore, it was thought that he would be a valuable resource for fact-finding. Clendaniel said the three words "*I don't know*" 226 times in his deposition. That does not count the times he used synonyms for "*I don't know*" or the times that he was evasive, including "*I don't remember*", 22 times.

Clendaniel's document referred in detail to the pool event for part of 3 pages. Such time observations as 3:44, 3:59, etc. indicate a resource for accuracy, and yet he transferred references of "silly and unnecessary" from the apology to another accusation. Time details suggest an office recording. Bauer wrote to Fawley on August 8, 2014, asking if there were a recording and said that he would welcome the recording into the hearing, and asked if he (Bauer) could have the same consideration. The

answer was that Clendaniel did not have a recording—but to the request that Bauer be welcomed to submit his own recording went unanswered.

At the meeting at 4:00PM Bauer was asked to repeat what he had said to Clendaniel about being documented for this event. Bauer answered *“I said that it was ‘ridiculous’. I’m sorry, that was silly and unnecessary.”* That apology was not reported. If a recording could be produced under the Preservation Letter (see below) it would settle the issue. But data was not preserved.

### **Preservation of Data for the Investigation**

On May 20, 2014, Dr. Bauer asked McMaster to do one last thing prior to Bauer going totally pro se. The last thing was to write a letter to preserve electronic data which Bauer feared was not being protected.

The letter, May 21, 2014, (Exhibit 52) was extensive (more than a single page) and asked for preserving “all data, electronic data, including but not limited to....” etc.

Fawley answered, 37 days later, on June 26, 2014, *“We checked with the administration and have been assured that the staff has taken appropriate steps to preserve the data contained on District-owned*

*computers and other electronic devices at the district level and at Hilton Head Elementary School, which are applicable to the matter involving your client.”*

Clendaniel was asked if he was aware of the request to preserve data. He answered, “No”. (Deposition I, Page 107)

Assistant Principal Brockway was asked if she was asked to preserve data. She answered: “*I do not know.*” (Brockway Deposition page 85) Brockway was also asked if surveillance tapes had been preserved ‘as instructed’. She answered, “*I have no idea.*” (Deposition Page 84)

McAden has written and received many emails about the surveillance cameras, including in the gym (Exhibit 53). On December 16, 2014, at her deposition McAden was asked if there were surveillance cameras in the gym. She answered, “No.” (Page 124)

There were many questions about the pool event that needed investigating: Questions: Did the weather play a part, how did a child go undetected while Bauer performed his usual safety protocols, why was the child tardy (unexcused) to school, was he the same child who came

late to the pool, why did Moss say that the child was unattended, why was someone late to the pool, why was policy changed to allow tardy students to come late to a safety-intense class, did someone bring the student to the pool, was the child hiding after the class, and if so—why, was the student trying to avoid returning to school, was the child having a difficult day, why was the child’s mother on the way to the school, did the mother’s impending presence indicate an earlier problem with the student, why did the child’s classroom teacher not notice his absence, and why did the classroom teacher not take roll that morning? If Bauer was admonished why was the other teacher not treated the same way?

An adequate investigation would have conducted the appropriate Interviews, viewed surveillance footage, and reported the results, but.....

Williams in his closing statement said that there was no need for an investigation.

### **Improvement Plan**

*“SECTION 59-25-440. Written notice to teacher of possible dismissal; school administrator required to make reasonable effort to assist teacher in corrective measures; reasonable time for improvement required.*

*“Whenever a superior, principal, where applicable, or supervisor charged with the supervision of a teacher finds it necessary to admonish a teacher for a reason that he believes may lead to, or be cited as a reason for, dismissal or cause the teacher not to be reemployed he shall: (1) bring the matter in writing to the attention of the teacher involved and make a reasonable effort to assist the teacher to correct whatever appears to be the cause of potential dismissal or failure to be reemployed and, (2) except as provided in Section 59-25-450, allow reasonable time for improvement.”*

Between February 5, and August 5, 2014, the Superintendent never invoked Section 59-25-450, therefore, the Improvement Plan should have been implemented in February. (Moss was unfamiliar with TEDA, see next page)

Bauer was asked on February 11, 2014, to submit an Improvement Plan. On February 13, he submitted a PE Teacher Career Improvement Plan (Exhibit 9). McAden acknowledged receipt for her and for Walton on February 18, 2014. (Exhibit 9) That same day Walton forwarded her copy to Connie P. Jackson of Childs and Halligan, attorneys for Moss.

There was no response to Bauer's Improvement Plan, in spite of 59-25-440. (59-25-450 will also be discussed separately under "*Evident Unfitness*" page 57) The principal is the primary person to deal with the Improvement Plan, according to Section 59-25-440 of TEDA. When McAden, as principal, was asked if she had talked with Bauer about his plan she answered, "No", and then added falsely that "*This plan was not turned in to me.*" (Exhibit 9)

As noted above the plan was received by McAden on February 18, 2014. When McAden was asked what policies she used when she decided to call a teacher's conduct into question she answered, "*In- -in my common sense.*" (McAden Deposition, page 18) McAden was shown a copy of the Teacher Employment and Dismissal Act, specifically 59-25-430 and she was asked if she was familiar with it. After examining the document she answered, "No." (Deposition page 17)

Moss also indicated that he was unfamiliar with TEDA because he had spent so much time in North Carolina. When asked the law he cited 325, the North Carolina statute. When asked the equivalent law in South Carolina he answered, "*I'd have to look at the statute book.*"

(Moss Deposition Page 16)

Since both Moss and McAden were not able to recognize the relevant statute (Section 59, TEDA) governing this case it is unlikely that they were using the exception for dealing with the Improvement Plan cited in 59-25-450. (59-25-450 will be dealt with under "*Evident Unfitness*")

Walton had met with Bauer three (3) times between February 5 and February 11, (and would meet again 22 days later on March 5, 21 days after submitting the Improvement Plan).

When asked if the District should have given Bauer a chance to improve, she answered, "*Mr. Bauer never came back after he submitted his document (f)or improvement.*" (Walton Deposition, Page 271) and "*Mr. Bauer did not come back. He did not come back to even discuss the improvement plan.*" (Page 271)

But in April Walton wrote "*On March 5, 2014, we met again with Mrs. McAden....*" April 29, 2014,

## **"Evident Unfitness for Teaching"**

Immediate termination of a teacher has been upheld in SC appellate courts only where evident unfitness was "undeniably and abundantly

present.” Kizer v. Dorchester Vocational Edu, Bd. of Trustees, 287 SC 545 (1986)

Administrators testified during depositions that Bauer was “An excellent teacher, good coach, excellent mentor”, “friendly”, “courteous”, “quick to volunteer”, and “liked by the students”. They also testified that they were willing to work with him again. (Depositions: Clendaniel, page 31; Brockway, page 13; McAden, page 33, page 54, page 134; Walton, page 51)

Nothing in the ‘charges’ claims to substantiate unfitness to teach as being “undeniably and abundantly present.” No witness testified as to unfitness.

Examples in S.C. Code Ann. §59-25-430 of unfitness for teaching include “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.”

Since the list is non-exclusive other evidence of unfitness may be considered as long as it suggests a similar seriousness. As cited in Hall and Kizer “turmoil, tension, conflict, fear”, etc. may be considered. (Kizer v. DORCHESTER CTY. VOCA. EDUCA. BD. OF TRUST. 287 S.C. 545 (1986) 340 S.E.2d 144,

SC Supreme Court. Hall v. The Board of Trustees. Adams 270 S.C. at 272.)

The District did not cite, nor claim, any evidence that would preclude an opportunity for improvement, especially in a 17 year career in which Moss and Walton said that they were unaware of any previous problems. (Moss Deposition, page 38)

In *Hall*, the Appeals Court states that *“the Act was also intended to prevent the abuse of a school board’s power of termination.”*

Also in *Hall*: *“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.”* *Hall v. The Board of Trustees. Adams 270 S.C. at 272.*)

As noted in the *“Improvement Plan”* Section, Moss and McAden both testified that they were unfamiliar with TEDA (McAden Deposition, page 18; Moss Deposition, page 16)

Not knowing the law is not an valid excuse.

Leadership Matters

## **Bauer Did Not Testify. Why?**

A few weeks before the hearing Bauer's attorney had a death in the family. Since the delay was now nine months, Bauer decided not to ask for a delay and elected to participate in the hearing pro se.

Since Bauer was pro se the Board would have ample opportunity to become familiar with him, and his disposition. Therefore, testifying would not have mattered in that regard.

As the hearing began it became apparent that the Board considered that the June 5, vote to terminate was final, and that they were not about to be a jury that changed its mind after the verdict.

Bauer had planned to introduce evidence in two ways.

1) A copy of the Opening Statement was provided as the first document in the notebooks, and was intended to introduce all of the relevant evidence, (Rules 402, 56) to be later reinforced from the complainant's witnesses. As Bauer would introduce his subjects the identification numbers would be prominent. Since the opposing attorneys had the same document they could rebut at the appropriate time. The advantage was to have a narrative to present the case without the constant interruptions that had punctuated the deposition process.

(Williams had objected 225 times during the de bene esse cross exam. Each objection caused the video to be interrupted in order for the Board to consider the objection and vote. It was predictably chaos)

The Board was not given the notebooks before the opening statement and could not follow the sequence. Off the record Dr. Bauer asked about the notebooks. Mr. Bauer was told to proceed.

The citations of evidence in the opening statement included sworn testimony from depositions, citations of law, and evidence from the claimant's evidentiary file. These should be allowable whether or not Bauer was under oath. Fed.R. Civ. P. 56(c)(4). Fed.R. Civ. P. 56(c)(1)(A), Rule 32(a)(8); 28 U.S. Code § 1746, *Fraser v. Goodale* 342 F.3d 1032, 1036 (9th Cir. 2003). The Trial Evidence Committee of the ABA lists many more examples.

Duff announced (ruled?), immediately before deliberation, that Bauer's Opening Statement citations (of law) could not be considered by the Board since they were "*not in the form of sworn testimony*" and that it was "*not legally competent evidence*". (Exhibit 27)

2) Bauer's plan was also to use the testimony of the District's witnesses, and to use the sworn testimony from depositions to further his

case. Less than one day preceding the hearing, counsel for Moss inappropriately presented a Motion in Limine in which they proposed to challenge every key piece of evidence that Bauer was relying on. (Exhibit 64)

Duff and Evans discussed the Motion in Limine two days prior to the hearing, and before Bauer had received a copy. (Hearing Transcript, page 361)

As the hearing progressed it became clear that Moss' counsel were being sustained by Duff/Evans on every objection and Bauer was unable to present evidence through the District's witnesses. (Rules 402, 56, and other rules cited above)

Duff urged Bauer to testify and Bauer considered doing so. Bauer had not prepared an additional organized presentation since his original plan was comprehensive, but he considered that with a few hours of thought he might be ready to shift his long considered procedure. Bauer asked the Board to consider letting Bauer's father read the questions that Bauer had prepared for the Moss' cross examination, while Bauer gathered his thoughts for testifying. Denied. (Exhibit 54)

From June 2014 to November, it was expected that Bauer would be pro se at the hearing and that his father, Dr. Bauer, would do all of the cross examinations. For 5 months there was no objection to having Dr. Bauer conduct the cross examinations.

After extensive consultation with Duff, Evans ruled that Dr. Bauer could not read the questions, Bauer then realized that the previous 3 days of vainly trying to get evidence into the record would turn into an additional 2 days of testimony if he were to fully present his case.

The negative attitude of the board was evident.

An extra few days was not a happy prospect for the Board, who had already listened for 3 days to uncharged accusations. Bauer had a notebook of over 300 pieces of evidence on over 700 pages. Counsel for the district had pledged, through their untimely Motion in Limine, to challenge everything that *'they'* considered to be *'not relevant'* and the Chair's rulings had consistently gone against Bauer.

Bauer could not ask McAden if she would submit her letter of December 10, 1013 (sic) to forensic analysis. Williams quoted Duff to say that Bauer deal with that during his own testimony (They did not explain how McAden would answer the question) There was no ruling, but the

demeanor of Duff and Evans made it clear to Bauer that they would not allow Bauer to proceed. That objection, combined with the Motion in Limine that eliminated all germane evidence that Bauer wished to use, made for a proceeding that disregarded verifiable truth.

Rather than attempting to lengthen the hearing in order to receive a dubious adjudication, Bauer decided to take a page from *Brown v. James* and go directly to the Court of Common Pleas.

We contend that the Board, by restricting “*any and all defenses*”, and by focusing on the fact that Bauer did not testify, did not have good and sufficient reason to terminate his employment.

As such Bauer’s termination should be reversed.

## **Concerns About Board Hearing Procedures**

1. Evidence that was not included in Discovery was allowed to be presented by the District. (Board Hearing Transcript, page 127, line 16—) Bauer objected and was overruled. (page 128. lines 4-19)

2. “Rules of Procedure”.

Beginning in June 2014, Bauer requested information on hearing procedures. There was only cursory information; the first mention of

*“Rules of Procedure”* was after the Hearing began. (Page 12 of the Hearing

Transcript)

3. Duff appeared to be running the hearing (pages 164-165—24 lines) and told Bauer that he should not be questioning witnesses on the evidence relating to their deposition testimony. When Bauer cited several legal points including TEDA *“any and all defenses”*, Duff responded, *“..that doesn’t really relate to evidence.”* How can that ruling be serious? (Exhibit 56)

4. *“present any and all defenses to the charges”* implies a large leeway for the appellant. Bauer was restricted. (59-25-470)

5. Re: complainants *“evidence in substantiation of the charges”* implies testimony that applies to the two *“charges”*. Duff and Evans did not require the District to stay with testimony related to the two *“charges”*. (59-25-470)

6. Accusations not revealed during Discovery, should not have been allowed at the hearing.

7. If appellant notebooks are not allowed during an appellant's opening presentation, it should be known ahead of time.

8. If Board members are going to write on the evidence instead of on notepads, it should be known ahead of time.

9. If notebook contents are to be shredded after the hearing, it should be known ahead of time.

10. If appellant will not be allowed to leave with his back-up notebook, it should be known ahead of time.

11. When evidence was offered to indicate that a witness had lied during a deposition, Duff and Evans would not allow the evidence, a criminal record—in spite of Rule 609, and in fact had the evidence removed from all notebooks. Destroying evidence at the Board Hearing level infers, or at least implies, that a court would rule the same as the Board.

12. When a witness testified at the Board Hearing in contradiction to her deposition, the attorneys objected to the deposition testimony being allowed—challenging the authenticity of the edit-protected electronic copy, etc. This debate went on for 7 pages during the appearance of the

first witness. (Board Transcript pages 77-91) This witness was testifying about a *non-charged* event. (i.e. not in the '*bases*')

13. Williams asked to have sealed, unopened transcripts of deposition that were to be used in cross examinations. Are the edit protective practices of the Twentieth Century still relevant today with PDF, etc? Is it possible to change anything in a modern electronically produced transcript?

14. Notebooks, after shredding contents, should be protected and returned to the appellant. Nine (9) out of the twenty (20) notebooks volumes were not returned by the district. Everything was shredded.

## CONCLUSION

The appalling violations of law, and of due process by the district to condemn an acknowledged "*excellent*" teacher to a career death penalty must be corrected.

Respectfully Submitted

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October 26, 2015

Beaufort, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

JOHN ALDEN BAUER III

Appellant

v

BEAUFORT COUNTY SCHOOL  
DISTRICT

Respondent

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

C.A. NO. 2015-CP-07-1343

**MOTION TO DISQUALIFY DAVID  
DUFF AS RESPONDENT'S COUNSEL**

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Between April 30 to May 2, 2015 Mr. David Duff of the law firm of Duff, White and Turner served as Advice Counsel for the Beaufort County School Board during my teacher termination hearing. He represented himself as a third party neutral.

Duff is now representing the Beaufort County School District.

According to the :

### **South Carolina Rules of Professional Conduct**

#### **Rule 1.12 Former Judge, Arbitrator, Mediator or Other Third-Party Neutral**

*“Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.” (Ex.6)*

I have not given consent to this, and ask that Mr. Duff be recused.

Respectfully Submitted,

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October , 2015

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

John Allen Bauer, III  
Movant

Beaufort County School District  
Respondent

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

C.A. No. 2015-CP-07-1342

MOTION FOR SUMMARY JUDGMENT

RECEIVED  
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OCT 19 AM 9:08

The Movant should be granted Summary Judgment, pursuant to Rule 56 of the SC Rules of Civil Procedure, as to the within action, as alleged in the Appellant's Motion, and his Appeal, for the reason that there is no genuine issue of material fact and the Appellant is entitled to judgment as a matter of law.

This motion is based upon the evidence and transcripts filed with the court, the pleadings, and the common and statutory laws of South Carolina, together with other evidence that the court deems proper.

There are many compelling reasons for a Summary Judgment reversal of the May 19, 2015, Board of Education of the Beaufort County School District

Four factual issues so one-sided that they need not be tried

- 1 Jeffrey Moss unilaterally changed policy for non-renewal
- 2 Jeffrey Moss falsely claimed that George McMaster, formerly the counsel for Bauer, asked for delay of hearing
- 3 Board terminated Bauer without a hearing (Ratified and Published)
- 4 Hearing failed to claim unfitness for teaching, and failed to consider administration's disregard of Bauer's Improvement Plan.

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Respectfully Submitted,

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October 19, 2015

Appellant Memorandum

Motion for Summary Judgment

C.A. No. 2015-CP-07-1343

OCT 19 AM 9:56

STATE OF NORTH CAROLINA  
SUPERIOR COURT

A reference, such as TP 1, is a page from official transcripts retained by interested parties. TP entries are included with exhibits for convenience.

1. Moss Changed Policy

Moss changed the policy for non-renewal of a contract to give the authority to himself, rather than to the Board. He unilaterally implemented this change. (Exhibits 1 and 2)

At the hearing Alice Walton testified that policies allow the superintendent to terminate an employee without a hearing. (Page 34, line 11 —, Walton Deposition; Hearing transcript page 350, lines 19-25, TP 1 and TP 1.5)

There are seven (7) references in the Brown v. James decision that nullify Walton's policy claim.

Walton also testified that she would provide a copy of those policies that gave Moss the right to unilaterally terminate a contract. She did not, and could not. (Deposition page 34, line 20. Again, at de bene esse Deposition, page 350, line 19, TP 1 and TP 1.5)

Moss testified that after 18 months in Beaufort, he was still not familiar with TEDA. (Moss Deposition page 13, line 25 — TP3)

When Bauer tried to question Moss or Walton about TEDA , or any other controlling law, Vernie Williams, counsel for Moss, objected. (Hearing page 380, line 22, TP4)

2. Moss falsely claimed that Bauer's attorney asked for a delay. (Exhibit 3)

George McMaster (pro bono counsel to Bauer until May 22) wrote "...Dr. Jeffrey Moss in an email on July 3, claimed that I had asked for a delay to the

hearing. I did not make any request of any nature regarding a delay and, in fact was no longer practicing law." (Exhibit 4)

Duff, Advice Counsel to the Board, indicated that he would not admit Mc- Master's email. (Exhibit 8)

3. Board Terminates without a hearing

The Board voted (without condition) to terminate Bauer, without a hearing, on June 5, 2014 (Exhibit 5). Moss temporarily called the termination *conditional* on June 6, but Moss confirmed the *unconditional* termination on June 16, 2014, (Exhibit 6) "You are current (sic) no longer an employee..."

The Board ratified the termination, without a hearing, and illegally published the termination on September 2, 2014. (Exhibit 7)

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"Yet, there is no language in the Employment and Dismissal Act that states that a final decision of the Board is subject to a teacher's right to a hearing after the fact." (Brown v. James)

In February 2015, the Board substituted a new set of minutes for June 5, 2014, adding the word 'conditional', an admission of error.

But the damage was done.

"When the Board voted unanimously...to terminate Brown's contract, it clearly affirmed the notice of dismissal..." (Brown v. James)

4. Unfitness for teaching, not claimed except in opening statement.

No witness testified as to unfitness for teaching.

The Board Order incorrectly states in plurality that Bauer did not properly supervise *students*. The accusation involved *one* student. And there was no evidence that Bauer did not follow all of his protocols. (59-25-430 "persistent neglect")

A change in policy allows a tardy student to slip into a safety-intense class.

The “*investigation*” did not consult surveillance footage, nor interview individuals, to determine what had happened. (McAden Deposition pages 18 and 19. TP 2)

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The Board Order states that *insubordination* indicated unfitness for teaching. Case law is clear about this, and in fact TEDA does not use the word ‘insubordination’. Hall 330 S.C. 402, 409; Shell 362 S.C. 408 (2005); Kizer 287 SC 545 (1986)

The administration gave no opportunity for improvement. Ms. McAden, Principal, testified that she was unaware of the statute that required this. (McAden Deposition Page 16, line 19 to page 17, line 17; Section 59-25-440; Improvement Plan, Exhibit 9)

In Addition:

Evans, a former administrator, acting as Judicial Officer at the Board Hearing was inappropriate since he is publicly an avid supporter of Jeffrey Moss.

On January 9, 2015, the Board voted that hearings to dismiss teachers should be conducted by trained hearing officers, who will be impartial. Passed 9-1.

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Respectfully Submitted,

October 19, 2015

---

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

John Alden Bauer III  
Appellant

v.

Beaufort County School District  
Respondent

IN THE COURT OF COMMON  
PLEAS

FOURTEENTH JUDICIAL CIRCUIT  
C.A. No.: 2015-CP-07-1343

MOTION TO COMPEL  
FORENSIC ANALYSIS  
VIDEO FEBRUARY 5, 2014

Appellant asserts that recorded video from the surveillance cameras at Hilton Head Island Elementary and the Island Recreation Center between 10 AM and 1:30 PM on Wednesday, February 5, 2014, will exonerate or would have exonerated the Appellant.

Appellant is informed and believes that this withheld evidence had a damaging negative influence on the decision of district officials to continue the Appellant's paid administrative leave indefinitely.

Appellant is informed and believes that the withholding of this evidence in the school board hearing had a damaging negative influence on the school board members deliberation and ultimate decision.

**PARTIES AND JURISDICTION**

Appellant, John Alden Bauer III, complaining of the Defendant Beaufort County School District, would respectfully show unto the court:

Appellant is a resident of Beaufort County, South Carolina and was employed by Defendant Beaufort County School District ("District") as a physical education teacher at Hilton Head Island Elementary ("HHIE")

Respondent the school district in the County of Beaufort, in the state of South Carolina. Hilton Head Island Elementary is located within the District.

The events giving rise to the following causes of action occurred in Beaufort County, and jurisdiction is proper.

### **APPELLANT BACKGROUND INFORMATION**

1. Plaintiff is a veteran, 17 year physical education teacher (12.4 years at HHIE)
2. Plaintiff had a Continuing Contract. (Similar to tenure)
3. Plaintiff has a Bachelor of Science (*cum laude*) in Business Administration with a focus in Marketing and Management from the University of South Carolina (1987).
4. Plaintiff has a Master of Arts in Teaching-Physical Education (*cum laude*) from the University of South Carolina (1996).
5. Plaintiff is a National Board Certified Teacher (2003), one of the highest achievements in the field of education.
6. Plaintiff received positive evaluations throughout his career as a physical education teacher.

## **ALLEGED HISTORY/FACTS**

1. On Wednesday, February 5, 2014, Plaintiff took a 5th grade class of 23 students across the street to the Island Recreation Center for swim classes and returned with 23 students at the end of class.
2. The Island Recreation Center grounds are 22 yards from the campus grounds of Hilton Head Island Elementary. (See Exhibit)
3. During the course of the class, a male, a Gifted and Talented student member in this class, arrived late to school and snuck over into his assigned swim group, taught by certified swim instructor Jesse, an employee of the Island Recreation Center.
4. The 5th grade regular classroom teacher had not taken attendance or submitted an attendance report. (See Exhibit)
5. At the conclusion of the class session period, the student in question stayed behind, apparently hiding in the dressing room of the Island Recreation Center.
6. He returned to school 25 minutes later with an Island Recreation Center employee.
7. Plaintiff was accused of negligence for leaving a student in the dressing room and was placed on paid administrative leave.
8. Video surveillance cameras are located throughout the Hilton Head Island Elementary school campus as well as the Island Recreation Center. Cameras are located indoors and outdoors.
9. Principal Jill McAden of Hilton Head Island Elementary said at her deposition on Tuesday, December 16, 2014, that there were no video surveillance cameras.

10. On Wednesday, May 21, 2014, attorney George McMaster, of Tompkins and McMaster, LLP in Columbia, SC sent a Litigation Hold Letter to the Beaufort County School District stating that all documentations and recordings of any nature, electronic or otherwise be preserved.

11. On Thursday, June 26, 2014, the law firm of Child and Halligan, representing the Beaufort County School District, sent a letter to attorney George McMaster stating that the administrative staff had taken all the necessary steps to preserve data on district own computers and other electronic devices.

*“We checked with the administration and have been assured that the staff has taken appropriate steps to preserve the data on district owned computers and other electronic devices at the district level and at Hilton Head Island Elementary School, which are applicable to the matter involving your client.”* (See attached)

12. On Thursday, September 17, 2015, Appellant’s attorney Lauren Martel, of the Martel Law Firm in Hilton Head Island, SC requested information on video surveillance cameras at Hilton Head Island Elementary, from David Ernest, IT Project Manager, of the Beaufort County School District. There was no response.

13. On Wednesday, October 7, 2015, Appellant requested information on video surveillance cameras at Hilton Head Island Elementary, to Jennifer Staten, Risk Management Coordinator, of the Beaufort County School District. No response.

14. On Thursday, October 22, 2015, Appellant requested information on video surveillance cameras at Hilton Head Island Elementary, from David Grisham, Protective Services Coordinator at the Beaufort County School District. Grissom refused to provide information

15. As of Friday, February 19, 2016, the Beaufort County School District has not provided Appellant any preserved video camera surveillance nor any other information.

Appellant prays that judgment will compel the Defendant to a computer forensic analysis of any recorded video camera surveillance of Wednesday, February 5, 2014, from 12 pm-1:30PM

I state under penalty of perjury that the above is correct and truthful.

Respectfully Submitted,

---

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Hilton Head Island, SC 29926

(843) 384-1506

February 19, 2015

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

John Alden Bauer III  
Appellant

v.

Beaufort County School District  
Respondent

IN THE COURT OF COMMON  
PLEAS

FOURTEENTH JUDICIAL CIRCUIT  
C.A. No.: 2015-CP-07-1343

MOTION TO COMPEL  
FORENSIC ANALYSIS

### **PARTIES AND JURISDICTION**

Appellant, John Alden Bauer III, complaining of the Defendant Beaufort County School District, would respectfully show unto the court:

Appellant is a resident of Beaufort County, South Carolina and was employed by Defendant Beaufort County School District (“District”) as a physical education teacher at Hilton Head Island Elementary (“HHIE”)

Respondent the school district in the County of Beaufort, in the state of South Carolina. Hilton Head Island Elementary is located within the District.

The events giving rise to the following causes of action occurred in Beaufort County, and jurisdiction is proper.

### **APPELLANT BACKGROUND INFORMATION**

16. Appellant is a veteran, 17 year physical education teacher (12.4 years at HHIE)
17. Appellant had a continuing contract at Hilton Head Island Elementary at the time of his administrative leave.
18. Appellant has a Bachelor of Science (*cum laude*) in Business Administration with a focus in Marketing and Management from the University of South Carolina (1987).
19. Appellant has a Master of Arts in Teaching-Physical Education (*cum laude*) from the University of South Carolina (1996).
20. Appellant achieved status as a National Board Certified Teacher in 2003.

## FACTS

1. On Feb 5, 2014, appellant was placed on administrative leave by the Beaufort County School District.
2. On July 10, 2014, appellant received exhibits from the law firm of Child's and Halligan, representing the Beaufort County School District. These were exhibits that the school district and counsel intended to use in support of their decision to terminate the appellant's employment.
3. Included in these exhibits was a letter purportedly written by Principal Jill McAden of Hilton Head Island Elementary dated December 10, 2013 (Sic)
4. The document falsely states that the appellant failed to attend a specialist teacher meeting, and lost or misplaced at least three student confidential 504 plans, according to assistant principal Michele Brockway. But according to assistant principal Michelle Brockway, in her deposition, the appellant has never been accused of losing a 504 plan. Appellant asserts he has never missed a specialist meeting.
5. This document was admitted into evidence at the appellant's school board hearing termination hearing which was held between April 29 and May 2, 2015.
6. Appellant asserts he never received such a document.
7. Appellant asserts this document is not authentic.
8. The authenticity of this document was questioned by school board member Michael Rivers at the school board hearing held between April 29 and May 2, 2015
9. Appellant asserts that this document and the testimony in the hearing had a damaging negative influence on the decision of the school board members.

10. Appellant has repeatedly asked for the Beaufort County School District to have an independent computer forensic analyst examine the document at the appellant's expense but the requests have been ignored. Requests were on the following dates:

March 18, 2015

April 4, 2015

May 1, 2015 at Board Hearing

August 3, 2015

August 27, 2015

November 11, 2015

Dec 27, 2015

Appellant prays that judgment will compel the defendant to a computer forensic analysis of the computer of Principal Jill McAden to determine the authenticity of the document aforementioned.

I state under penalty of perjury that the above is correct and truthful.

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MOTION TO PRESERVE  
CLAIM OF ERROR

The Advice Counsel to the Beaufort County School District Board of Education, David Duff (Duff, White, and Turner) and William Evans, Chairman of the Board, during the Board Hearing of April 30 to May 2, 2015, *knowingly, willfully, and negligently*:

- Admitted into evidence a false “Grade Book” (Class Record) used to imply unfitness to teach.
- Withheld the authentic Grade Book.
- Incorrectly Implied Unfitness and Negligence by indicating that the false Grade Book was official and that it had been mis-used by the teacher.

- After notification Childs and Halligan, and Duff, White, and Turner, were obligated to learn the truth, to not allow false evidence, and to take remedial measures, if necessary.

(SCRCP and/or SCRPC Rules 3.3(3), 1.2(d), 8.4(b), 1.0(f), 1.6)

Respectfully Submitted,

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(843) 384-1506

January 4, 2016

Appellant Memorandum

Motion to Preserve Claim of Error

C.A. No.: 2015-CP-07-1343

History of the “Real Grade Book”: (Grade Books are exhibits 50 and 51)

- The “Real Grade Book” was demanded by the administration on February 11, 2014, and confiscated, as is common at the end of a term, or of active employment.
- The “Real Grade Book” was placed in a file cabinet by Jill McAden, Principal of Hilton Head Island Elementary School, along with un-redacted confidential student files. (McAden testified that she secured the documents in a file cabinet, along with other items previously used by Bauer. Deposition, page 131)

Attorneys knew of the falsification

- Exhibit 39: Notification to Childs and Halligan about false grade book
- Exhibit 40: Notification to Duff about false grade book (page 2)
- Exhibit 42: Notification, again, to Childs and Halligan of false grade book (page 2)
- Exhibit 47: Hearing Transcript: Bauer vigorously objects to false Grade Book and explains why it is the wrong evidentiary exhibit.

- Bauer explained in his Opening Statement, page 29 of hearing transcript, that the attorneys were planning this dubious maneuver.

The attorneys from Childs and Halligan knowingly, willfully, and negligently introduced the false grade book and David Duff and William Evans knowingly, willfully, and negligently admitted the false grade book as true evidence.

#### The Authentic Grade Book is Returned

On July 2, 2015, the District returned 11 of 20 binders (the other 9 are unaccounted for). The District also sent computer equipment belonging to the District, and illegally sent 13 unredacted confidential student files, *sent the genuine grade book*, and inadvertently sent a set of Master keys (!) for the District Offices, all to Professor Bauer, father of the appellant, in Columbia.

*[The confidential student documents being sent to an unauthorized recipient violates federal law (FERPA). The attorneys, and each member of the Board, have been apprized of their responsibilities and after 7 months, inexplicably, have taken no appropriate or remedial actions.]*

With the claim that the complainants were using false evidence, Childs and Halligan were obligated to learn the truth, to not allow false evidence, and to take remedial measures, if necessary.

(SCRCP and/or SCRPC Rules 3.3(3), 1.2(d), 8.4(b), 1.0(f), 1.6)

Respectfully Submitted,

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January 4, 2016

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

JEFFREY C. MOSS, Ed.D., )  
 )  
Petitioner, )  
-versus- )  
JOHN ALDEN BAUER, III, )  
 )  
Respondent. )  

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S.C. Code of Laws 59-25-470  
Hearing

Hearing before the Beaufort County  
School District Board of Trustees held April 30th  
through May 2nd, 2015, at the Main Offices of the  
Beaufort County School District, 2900 Mink Point  
Boulevard, Beaufort, South Carolina, commencing  
at approximately 4:35 p.m.

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**Bettye Anderson & Associates**

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