THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2012-213509

JACQUELINE SMITH...Appellant

v.

HORRY COUNTY SCHOOLS...Respondent

FINAL BRIEF OF THE RESPONDENT

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I. STATEMENT OF ISSUES ON APPEAL

Appellant's appeal from the decision of the Horry County School District Board of Education ("School Board") to terminate her employment under the Teacher Employment and Dismissal Act ("the Act"), S.C. Code Ann. §§ 59-25-410 through -530, presents the following issues for the Court's review:

1. Whether Appellant's termination hearing before the School Board satisfied the requirements of due process;
2. Whether the School Board's termination of Appellant's employment complied with its policies;
3. Whether the School Board's decision to terminate Appellant's employment is supported by substantial evidence; and
4. Whether the form of the School Board's decision to terminate Appellant's employment is proper under the Act.

II. STATEMENT OF THE CASE

This is an appeal under the Act from the Circuit Court's order affirming the School Board's termination of Appellant's employment with the Horry County School District ("District").

Pursuant to the Act, S.C. Code Ann., §§ 59-25-410 through -530, on January 5, 2011, the District's Superintendent, Dr. Elsberry advised Appellant that she was recommending her termination from employment for the reasons set forth in her letter. (R. pp. 231-234, Compl. Ex. 1.) Appellant was granted an adversarial hearing before the School Board on March 24, 2011. At the hearing on March 24, 2011, which lasted approximately 16 hours, Appellant took advantage of her right to be represented by legal counsel, her right to produce witnesses and other evidence, and her right to cross-examine the District's witnesses. Appellant was represented by legal counsel, Dr.

Elsberry was represented by legal counsel, and the School Board was represented by Kenneth S. Generette, Esq. Following the hearing, in the early morning hours of March 25, 2011, the Board issued its decision upholding the Superintendent's recommendation of termination. Appellant was notified of the Board's decision on that date, and the Board's decision was subsequently confirmed in writing on March 29, 2011. (R. p. 2 (Copy of the Board's decision letter).) Appellant filed her appeal to the Circuit Court under the Act on April 20, 2011, pursuant to § 59-25-480. (R. pp. 5-9, Notice of Appeal.) The District filed its Answer and Return to the appeal on May 3, 2011. (App. R. pp. 445-446.) Appellant's appeal was heard by the Honorable Benjamin H. Culbertson on September 13, 2012. Judge Culbertson entered judgment in favor of the District, affirming the School Board's termination of Appellant on September 20, 2012, which was filed with the Clerk of Court on October 26, 2012. (R. p. 1). Thereafter, Appellant appealed to this Court. (R. pp. 441-442.)

For the reasons set forth below, Appellant's appeal should be dismissed and the decision of the Circuit Court and the School Board affirmed.

III. STATEMENT OF FACTS

Appellant was employed by the District from 1999 until her termination from employment on March 29, 2011, following a full and adversarial evidentiary hearing before the School Board. (R. pp. 228-229; App. R. p. 471.) During the course of her employment with the District, Appellant was assigned to teach at four schools: North Myrtle Beach Intermediate School; Carolina Forest Elementary School; Ocean Bay Middle School; and Conway Middle School.

A. Assignment at North Myrtle Beach Intermediate School.

Appellant was assigned as a teacher at North Myrtle Beach Intermediate School ("NMBIS") from 2000 through February 21, 2008, when she was placed on administrative leave, with pay, and subsequently reassigned to Carolina Forest Elementary School ("CFES"), effective February 25, 2008. (R. pp. 246-249 (Compl. Exs. 10, 11).)

Beginning with the 2006-07 school year, Michelle Green-Graham was assigned as principal at NMBIS. (R. p. 105.) At the beginning of the 2006-07 school year, there were concerns with Appellant's teaching performance and some parents had expressed concerns. Since Ms. Green-Graham did not know a lot about Appellant and her teaching style, she took the opportunity to observe Appellant in the classroom. Ms. Green-Graham realized there were deficiencies with Appellant's teaching performance that needed to be addressed. (R. pp. 105-106.)

In November 2006, Ms. Green-Graham began placing her concerns with Appellant's performance in writing. On November 13, 2006, Ms. Green-Graham communicated to Appellant that she was granting the request of the parents of a male student to remove their son from Appellant's class for medical reasons based on anxiety the student was experiencing in her class. The parents presented a statement from their physician supporting the request. (R. pp. 106-107, 303; Compl. Ex. 25, p. 1).) According to Ms. Green-Graham the classroom environment created by Appellant "did not lend itself to the absence of threat." (R. p. 107.) Following up on these concerns, Ms. Green-Graham met with Appellant and sent her a letter from their conference dated November 20, 2006. In the letter, Ms. Green-Graham outlined several expectations for Appellant's performance. Among other things, she told her to model what she expects from her students; examine her procedures to be sure they are not too rigid and unforgiving; comply with reasonable parent requests; and watch her tone when talking to

students. Ms. Green-Graham stated, "Your students need to see you model compassion and understanding when things happen. Things can not be all or nothing when dealing with 10 year old children. Watch your tone when talking to students." (R. p. 250 (Compl. Ex. 12).) Ms. Green-Graham further stated in her letter that as of November 2006, she had received in excess of ten complaints regarding Appellant, and she felt the only way to resolve the issue was for Appellant to build relationships. (R. pp. 250, 107-110 (Compl. Ex. 12).)

Ms. Green-Graham notified Appellant of the parents and/or students who were making complaints about her and the substance of the complaints in order to provide her with an opportunity to address them. (R. pp. 111-112.) Ms. Green-Graham explained her standard practice for handling a parent complaint: first she listened to the parent and asked if they had spoken with the teacher, since usually issues could be handled at the teacher level; if she refers a parent to the teacher and the parent comes back to her, that is an indicator the issue was not resolved and that she needs to become involved. (R. pp. 123-124.) Ms. Green-Graham testified that not all students or parents that had complaints were moved. She discussed the complaints with Appellant and Appellant would tell her to send them to her. Ms. Green-Graham further testified, "And I did, until we got to number ten, and I couldn't just continue sending them to her because there was no resolve." (R. pp. 111-112.)

After Appellant received the November 2006 letter from Ms. Green-Graham, Appellant did not accept any of the responsibility for the situations or concerns. Instead, Appellant was often defiant, and Ms. Green-Graham found it was challenging just to have a conversation with Appellant. (R. pp. 112-113.) As a result of these problems, Ms. Green-Graham developed a teacher assistance plan for Appellant on January 8, 2008, and a meeting was held on that date to discuss the plan with her. (R. pp.

113-115, 301-302 (Compl. Ex. 24).) Ultimately, Appellant refused the assistance offered in the plan. Ms. Green-Graham testified:

> When we attempted to discuss the goals, the objectives, the areas of concern, Appellant often sat with her back to us. She never really pulled up to the table. If we read a sentence that she felt was not correct, she would correct us in a defiant type manner. In fact, by the time we got to the end, she got up and walked out and slammed the door and refused to sign it.

(R. p. 115.)

In describing Appellant's conduct during conferences with parents, Ms. Green-Graham stated the following:

> I spent a lot of time being a buffer, I felt like, within the conferences. A parent might make an accusation such as, my daughter says that she did turn in her work or my daughter says you haven't given them their signed papers since before Christmas. And I was witness to a conference where she flat out told the parent that your daughter's lying, I give them every week, she must not have brought them home. And, of course, when you say such things, a parent immediately becomes defensive...She was very defensive of any action that they might have accused, and it was challenging to get through a parent conference.

(R. p. 116.) Another deficiency in Appellant's performance Ms. Green-Graham sought to address was that parents had difficulties scheduling conferences with Appellant. If parents had conferences with Appellant, the parents were not pleased with the outcome. Parents did not feel like Appellant heard what they had to say, and they did not feel like any changes were made as a result of what they had to say. (R. pp. 119-122.)

Appellant responded to Ms. Green-Graham's ongoing discussions with her in a memo in February 2007, in which she summarized her perspective of her own performance. Appellant concluded her memo by stating, "[a]n administrator does not

come up to you and state that there will be a meeting at a given time without asking me. Appointments could be scheduled elsewhere. Thank you for a reply. I know administrator have the power." (R. p. 304 (Compl. Ex. 25, p. 2).)

Additionally, Appellant repeatedly said, "[w]ell, nobody ever told me, nobody ever told me,..." Consequently, Ms. Green-Graham took every opportunity she could to sit down and tell her who said what about what. (R. p. 125.) However, when Ms. Green-Graham brought additional concerns about parent complaints to Appellant's attention in January 2008, Appellant responded in an e-mail by stating that she wanted to meet with all of the dissatisfied parents with Dr. Bobby Nalley present, who was the Interim Superintendent for the District at the time. (R. p. 305 (Compl. Ex. 25, p. 3).)

The District administration attempted to meet with Appellant in February 2008. The District's Executive Director of Human Resources, Ed Curlee, had been in touch with Ms. Green-Graham throughout the 2007-08 school year to assist her in dealing with concerns with Appellant's performance. Mr. Curlee met with Appellant in February 2008 to advise her of the importance of meeting with Ms. Green-Graham. At that point, Appellant was so hostile towards her supervisor, Ms. Green-Graham, that she was placed on administrative leave, with pay. (R. p. 249; App. R. pp. 449-454; Compl. Exh. 11).) Following the conference, Appellant was reassigned to another position for the remainder of the 2007-08 school year at Carolina Forest Elementary School ("CFES"). (App. R. pp. 450-457.) Mr. Curlee summarized the concerns with Appellant's performance as of that date in a letter dated February 26, 2008. (R. pp. 246-248 (Compl. Exh. 10).)

In addition to the problems in the classroom that dealt with parental and student concerns, other concerns dealt with the way Appellant did her work. These concerns dealt with her not turning things in when she was supposed to turn them in, as

well as her not following through with District and school-wide initiatives. (R. pp. 117-118.)

B. Assignment at Ocean Bay Middle School.

Appellant was assigned to Ocean Bay Middle School ("OBMS") for the 2008-09 school year for several reasons. The principal at OBMS was Connie Huddle. OBMS was experiencing tremendous growth and had several teacher vacancies. Appellant had also requested to be transferred to a middle school. (App. R. pp. 457-458.) While at OBMS, Appellant taught sixth grade as an English Language Arts ("ELA") teacher. She was assigned three regular ELA classes and one honors ELA class. (R. p. 326 (Huddle Dep. p. 6).) Ms. Huddle's testimony at the Board hearing was presented via her video deposition.

During the 2008-09 school year, there were again concerns and issues with Appellant's job performance that were brought to the administration from parents of students in Appellant's classes. After the first couple of weeks of the 2008-09 school year, Ms. Huddle contacted Mr. Curlee to report that she was receiving numerous complaints from parents about Appellant. Ms. Huddle reported to Mr. Curlee that the complaints involved the fact that students were not understanding assignments, the parents did not understand the grades, and a lot of grades were not being placed properly or not being reported. (App. R. pp. 459-460.) These concerns with Appellant's teaching were brought to the administration from the first part of the school year to the end of the school year. (R. pp. 326-327 (Huddle Dep. pp. 6-7).)

During the 2008-09 school year, Ms. Huddle moved approximately 28 students from Appellant's class at parent request. By the end of the school year, Appellant had only a total of approximately 63 remaining students assigned to her four classes; this is in comparison to the other ELA teachers, who by the end of the year had

approximately 90 or more students each. (R. pp. 327-328 (Huddle Dep. pp. 7-8).) The nature of the concerns brought by parents was that their children felt uncomfortable in the classroom, they were confused on assignments, and the classroom atmosphere was harsh. (R. p. 328 (Huddle Dep. p. 8).) Indeed, there were a number of claims that work was misplaced and students were not given credit for what they claimed to have handed in and completed. On one occasion, a child brought a paper that had been graded by Appellant that had comments on it, and there had been a zero in the grade book for that paper. (R. p. 330 (Huddle Dep. p. 10).) Further, students are not automatically removed from a class upon parental request, but the first usual contact is through guidance. If guidance receives a call from a parent requesting a change, guidance sets up a conference with the parent to discuss the matter. (R. pp. 330-331 (Huddle Dep. pp. 10-11).)

Ms. Huddle summarized in writing her concerns and efforts working with Appellant. (R. p. 300 (Compl. Ex. 22, Ex. 10).) At the conclusion of the 2008-09 school year, Ms. Huddle re-assigned Appellant to teach in the District's new language program, which was a highly structured and scripted program. Ms. Huddle advised Appellant of the re-assignment, and Appellant objected to the assignment. At the same time, student enrollment at OBMS had declined from the beginning of the 2008-09 school year. For these reasons, the decision was made to reassign Appellant to Conway Middle School ("CMS") for the 2009-10 school year, where there was an ELA teacher vacancy. (App. R. pp. 461-462.)

C. Assignment at Conway Middle School.

Appellant was assigned to CMS for the 2009-10 school and 2010-11 school years. Margaret Sordian was named principal at CMS at the beginning of the 2010-11 school year. Appellant was assigned as a seventh grade ELA teacher where she had one accelerated class, one honors class, and two regular education classes. (R. p.

158.) Ms. Sordian testified that when she receives complaints from parents about teachers, the first thing she does is she asks the parent to speak with the teacher. Parents generally bring their concerns to Ms. Sordian only after they are unable to get the problem solved directly with the teacher. (R. pp. 158-159.) Ms. Sordian received complaints regarding Appellant as early as September of the 2010-11 school year. (R. p. 159.) Ms. Sordian testified to the types of complaints she received about Appellant as follows:

> I had concerns from parents that students were having trouble getting clarity on assignments, knowing what was expected of them, what work they had to do and how they had to do it to know that their work was good enough. There was concern of grades that were missing for students where the parents said their children had turned in the work and not received credit for it. I had concerns about map testing being timed; other assessments given during map testing; children being told that they would have to stay after school if they didn't finish their map testing; and children concerns as well.

(R. p. 160.) Ms. Sordian attempted to meet with Appellant to discuss the concerns she had received as of September 10, 2010. Ms. Sordian testified that the administration had received concerns from children and their parents in all Appellant's classes from Appellant's accelerated, honors, and regular education classes. (R. pp. 161-162.) On September 16, 2010, Ms. Sordian attended a meeting with Appellant along with a parent and another administrator regarding concerns raised by the student's parent. In her testimony, Ms. Sordian described Appellant's conduct during the parent conferences as follows:

> A: In the conferences that Appellant attended, for the most part she seemed to fumble around with papers, didn't look directly at the parents and often did not answer the question that the parent was posing.

> Q: Did you have any concerns with the way Appellant conducted herself in those meetings?
>
> A: Yes, sir, I did.
>
> Q: Did you express those concerns to Appellant?
>
> A: At one point during two of the meetings, I had to remind everyone in the room that we needed to stay calm.

(R. p. 163.)

Ms. Sordian also described concerns with the grades Appellant gave to her students. She testified as follows:

> Well, from looking at her grades, we were very concerned that two of her regular classes that as many as 45 percent of the children in one class were receiving unsatisfactory grades of D's and F's and in another class as many as 47 percent. In the accelerated class, we have 11 percent that were failing and that's very unusual for an accelerated group of students.

(R. p. 164.)

On October 11, 2010, Ms. Sordian sent a letter to Appellant in follow up to a conference with her summarizing their meetings. (R. p. 245 (Compl. Ex. 8).) Notes were taken summarizing conferences held with parents, Appellant, and members of the administration. (R. pp. 251-266 (Compl. Ex. 14).) Ms. Sordian summarized the parent concerns and told Appellant she would like to implement an individualized teacher assistance plan to assist her in improving her performance. Appellant, like before at NMBIS, was adamantly opposed; she refused, and she did not agree to an assistance plan. (R. pp. 165-166.) Ms. Sordian testified, "In all my years in education, I've never had a teacher refuse to accept assistance." (R. p. 166.)

Ms. Sordian described Appellant's relationships with students as follows:

> I felt like a good number of Appellant's students were afraid of her, fearful of asking questions in her class for fear of embarrassment or humiliation, and many, many times very unclear of what to do with their assignments. There was no clear example or clarity of assignments and many were confused as to what they should do.

(R. p. 170.)

Several more letters were written to Appellant in October 2010 in an effort to address the concerns raised by parents and to try to meet with her. (R. pp. 243-244 (Compl. Exs. 6, 7).) Several attempts were made to reschedule the meeting with Appellant. Mr. Curlee had to become involved in scheduling the meeting. The meeting was finally scheduled for October 28, 2010. (R. pp. 240-242 (Compl. Exs. 4, 5).) Appellant refused to come to the meeting and did not show up for it. (R. pp. 167-169.)

Ms. Sordian summarized her concerns about Appellant's performance as follows:

> In all my years as an educator, I've been in a lot of situations where there have been students that are confused or parents that were confused and we know that usually we can come to a resolve in any situation. And teachers are there to teach our children and affect our future. There was no building of relationships that I could see. I had children that did not feel comfortable in a classroom. And in all of my years, I've never had a teacher refuse assistance for help. And as an instructional leader responsible for what goes on in your building, I'm baffled as to how I can possibly help an educator who refuses to accept assistance.

(R. p. 171.)

Yvonne Williams, the department chair for ELA at CMS during the 2009-10 school year, testified and expressed concerns about Appellant to Ms. Sordian. (R. pp. 270-273 (Compl. Ex. 18).) Ms. Williams testified regarding occasions in which she

observed Appellant act harshly towards students. Ms. Williams was attempting to assist the students on her Step team with their class work. A student had asked for her assistance on an assignment from Appellant, and Ms. Williams was not clear herself what the assignment required. Ms. Williams then approached Appellant in the school cafeteria to get clarification on the assignment. (R. pp. 150-155.) Ms. Williams testified about her conversation with Appellant as follows:

> A: And I said, Appellant, these ladies, they have questions about homework. I was going to help them, but I wasn't sure, you know, what needed to be done and so I was asking her, and she said they know what to do, they know what to do, and so she proceeded past me. She went to the table and she said, y'all, you know what to do. It's not like this is something new. Open up the book, it's the same thing. And so I didn't say anything else and one of the girls was left literally in tears and it was frustrating for me because I still didn't really have an answer to be able to help them.
>
> Q: So did Appellant ever respond to you and provide the information that you had asked so you could help the girls?
>
> A: Not at all.
>
> Q: Okay. And how would you describe the reaction of the girls once Appellant had that exchange with them?
>
> A: Some were angry. Some were angry, but some were -- I wouldn't say scared, but totally intimidated where, like I said, to tears. It was one specifically and I just -- I don't know, it was very awkward.

(R. pp. 154-155.) Additionally, based on her personal observation and interactions with Appellant, Ms. Williams described Appellant as: "...rough around the edges. I mean, if I, as a student, I probably too would be a little hesitant to ask a question." (R. p. 156.)

Finally, when Ms. Williams was asked at the hearing whether she would want her children to be in Appellant's class, she testified, "I would not be comfortable at all with that, no." (R. p. 157.)

In addition to Ms. Williams, the parents of two students who were in Appellant's class, testified at the hearing regarding their concerns with Appellant. The parent of a sixth grade, female student in Appellant's class during the 2010-11 school year described her daughter, who had enjoyed ELA as her favorite class in prior years and wanted to be an English teacher, as a student who now had severe anxieties with Appellant's ELA class. The parent testified:

> After about the first week of school we noticed that she had some anxieties that we'd never noticed in the past....There were tears at night, do I have to go to school tomorrow. There were tears in the morning, do I have to go to school today.

(R. p. 127.) She stated her daughter had a panic attack on the way to school one morning and her husband had to pull her daughter out of the car. She stated that, after her daughter had the panic attack, she discovered that her daughter was extremely anxious over Appellant's class. (R. pp. 126-133.) The parent further testified her daughter was concerned that more attention might be brought to her by Appellant, since her parents had spoken with Appellant. (R. pp. 134-135.) The parent described a phone call she received from her daughter at school who was frantic because she had forgotten to get a stems test signed and if she didn't have it returned, she would receive a referral. (R. p. 136.) The parent described her observations of her daughter as follows: "There were tears every night. Tears, fear for the next day, what she would walk into in her first period class [Appellant's class]." (R. pp. 137-138.) Her daughter was concerned she may be singled out and embarrassed or humiliated in front of her peers. (R. p. 138.) The parent

communicated her concerns to the school administration. (R. pp. 279-280 (Compl. Ex. 20).)

Likewise, the parent of a male student also testified at the School Board hearing. The parent testified regarding concerns with Appellant's non-responsiveness to missing grades. The father of the student notified Appellant of his concerns in an e-mail, and he did not receive a timely response. He then attended a meeting with Appellant, Ms. Sordian, and Dr. Sherilynn Duquette, assistant principal. He testified Appellant came to the conference with a laptop, and she spent a lot of time dealing with the computer and not really paying attention to what they were trying to discuss. The parent did not believe Appellant's demeanor was appropriate for what they were doing and that she seemed distracted, both by the computer, and overall from what was going on in front of her. (R. pp. 141-145.) The parent wanted to communicate with Appellant, but he did not believe he had an effective relationship with her as the teacher of his son. (R. pp. 147-148.) The parent communicated his concerns to the school administration. (R. pp. 281-288 (Compl. Ex. 21).)

Additionally, Appellant called Anita Chestnut, a teacher at CMS and the parent of a student in Appellant's class, as a witness at the Board hearing. However, Ms. Chestnut testified that she herself had an issue with a grade or a score that her son was given by Appellant, and the issue was never resolved. (R. pp. 186-187.) Ms. Chestnut also testified that she had personal knowledge of students complaining of Appellant, since they were on the same teaching team and taught all the same students. She testified that when students came to her room, they would talk and complain to her about Appellant, but she would tell them they were not going to talk about Appellant. Ms. Chestnut testified this happened just about every day in every class. (R. pp. 187-188.) In describing how many of her students complained about Appellant, she stated that one or

two would start and then another one would want to say something, but they were all very much in agreement. (R. pp. 189-190.)

Mr. Curlee was involved in dealing with concerns with Appellant's performance over a period of several school years during which she was assigned to teach at four different schools with several principals. As a result of his ongoing concerns and involvement with Appellant's performance, Mr. Curlee recommended to Dr. Elsberry that Appellant's employment with the District be terminated. In his testimony, Mr. Curlee summarized the basis for his recommendation as follows:

> ...we've actually placed Appellant in several different locations under different principals with different leadership styles. Students have some similarities but in different parts of the District but yet we were still seeing some of the initial problems that we had a North Myrtle Beach Intermediate School in all of the other locations as well. ... And during that time, we had various forms of assistance that had been given or offered to Appellant to try to assist her in certainly becoming more effective to address some of the concerns that we were getting from parents and complaints. But from my perspective in my dealings with Appellant, Appellant would never acknowledge that there were any issues. When I met with her, she consistently said that she was unaware of any problems, that if there were problems with parents, the parents should be sent to her and she would deal with it. But basically she was aware that there were problems and if you'd look at the emails that were going back and forth between Appellant and the administration, you'd know that she was aware that there were complaints coming in on a regular basis. ... So for these reasons and the patterns that I mentioned earlier, and the fact that we had tried in this case four different schools and we were still having these problems, I think you can see what our problems were as far as continuing with her employment.

(App. R. pp. 463-464.)

D. Dr. Elsberry's Termination Recommendation.

After receiving the termination recommendation from Mr. Curlee, Dr. Elsberry met personally with Appellant on December 1, 2010, to provide her with an opportunity to respond to the concerns prior to her making a decision. Dr. Elsberry testified:

> I just felt the offenses rose to the level that we could no longer tolerate. The reports from the parents were just reprehensible and something that I didn't want to allow in our schools. So I needed to hear from Appellant. I needed to hear – you've heard a lot about improvement plans and assistance. I needed to know if there was a chance that we could offer something else that might provide – would allow Appellant to be successful.

(R. pp. 179-180.)

Dr. Elsberry described Appellant's comments during her December 1 conference with her as follows:

> ...I asked her about the parent concerns and she said that she wasn't aware of parent concerns except for the eight conferences that she had had since the beginning of the school year. And I asked her what she would have done – what she could do differently, what she could change to address the concerns that the parents were expressing in the eight conferences that she was aware of and she said she didn't know of anything. That she was not aware of anything she could have done that would have changed the concerns that the parents had. And I asked her after the conferences, after she heard what they had shared, did she do anything differently, did she change her behavior, did she change her communication style and she said no, she did not change anything. And I was taken aback by that. ... I was very concerned about almost half of her students making D's or F's and her comment was I don't know why you consider that failing. A D is not a failing grade and I didn't feel like I was able to communicate with her that that is

> not acceptable. That when a teacher's students, when more than almost half of them make a D or an F, that is not acceptable. And I didn't - I didn't get any perception that Appellant saw that that was a concern or an issue that she needed to address as a teacher and that was just unacceptable to me.

(R. p. 180; App. R. pp. 465-466.)

Dr. Elsberry asked Appellant during their conference on December 1, 2010, if there was anyone else she wanted Dr. Elsberry to speak with regarding the District's investigation. Dr. Elsberry stated that Appellant gave her no names during the conference, and she never gave her any additional names to speak with as of the date of the Board hearing. (App. R. pp. 466-467.) Additionally, Appellant acknowledged during the conference with Dr. Elsberry that she had made a call to a mental health counselor regarding a student during class time, with other students present, in order to discuss concerns she was having with a student in the class not doing his work. Appellant stated that she turned her back to the class and she spoke quietly. (App. R. pp. 467-468.) This incident was another issue of concern with Appellant's judgment noted in Dr. Elsberry's letter recommending her termination. (R. pp. 231-234.)

Finally, when Dr. Elsberry asked Appellant during the conference why she wrote on the bottom of the assistance plan that Ms. Sordian had prepared for her that no assistance was needed, Appellant replied that she did not need any help. Dr. Elsberry testified that Appellant stated that, because there were no issues, there was nothing that needed to be provided to her. (App. R. pp. 468-469.) Specifically, at the bottom of a letter that Ms. Sordian sent to Appellant dated October 11, 2010, in which she advised her an assistance plan may become necessary, Appellant wrote, "Not in agreement with individualized assistance plan." (R. p. 245 (Compl. Ex. 8).)

For all of the above-referenced reasons, Dr. Elsberry advised Appellant by letter dated January 5, 2011, that she was recommending to the Board that Appellant's employment with the District be terminated. Dr. Elsberry stated in her January 5 letter that much of the conduct described in the letter Appellant received on February 26, 2008, regarding her performance at NMBIS was reoccurring in her treatment of parents, students and members of the administration at CMS. She also referred to concerns at OBMS. (R. pp. 231-234 (Compl. Ex. 1).) Dr. Elsberry testified at the hearing that concerns with Appellant's job performance at all of the schools formed the basis for her termination recommendation. (App. R. p. 470.)

Following the hearing before the Board and arguments by legal counsel, the Board deliberated in executive session, and thereafter voted to approve Dr. Elsberry's recommendation of termination. (R. pp. 228-230.)

IV. LEGAL ARGUMENT

A. Standard Of Review

The Act governs the employment and dismissal of all teachers in the traditional public schools of South Carolina. S.C. Code Ann. § 59-25-410 et seq. Additionally, Section 59-19-90(2) of the South Carolina Code of Laws vests in the school board of trustees the power and duty to employ and discharge teachers. Specifically, the board of trustees shall "[e]mploy teachers and discharge them when good and sufficient reasons for so doing present themselves...." § 59-19-90(2). In enacting the Act, the General Assembly did not intend to limit the power of the board of trustees, but to prevent its abuse. *Adams v. Clarendon County Sch. Dist. No. 2*, 270 S.C. 266, 272, 241 S.E.2d 897, 900 (1978).

In considering appeals from decisions of school district boards of trustees under the Act, the scope of judicial review is limited to an examination of the record to

determine whether there is substantial evidence supporting the decision of the board of trustees.

> Consistency with relevant precedent requires that the scope of judicial review [in the Teachers Employment Dismissal Act appeals] be a limited one. In view of the powers, functions, and discretion which must necessarily be vested in educational authorities if they are to execute the duties imposed upon them, this court cannot substitute its judgment for that of these authorities.

Laws v. Richland County Sch. Dist. No. 1, 270 S.C. 492, 495, 243 S.E.2d 192, 193 (1978). *See also, Kizer v. Dorchester County Vocational Educ. Bd. of Trs.*, 287 S.C. 545, 548, 340 S.E.2d 144, 146 (1986); *Hendrickson v. Spartanburg County Sch. Dist. No. Five*, 307 S.C. 108, 112, 413 S.E.2d 871, 874 (Ct. App. 1992). Accordingly, the appropriate standard of review for this appeal is "whether the grounds given for termination of the [appellant's] employment are supported by 'substantial evidence'." *Laws*, 270 S.C. at 495, 243 S.E.2d at 193. Substantial evidence is that, which "considering the record as a whole would allow reasonable minds to reach the conclusion the administrative agency must have reached in order to justify its action." *Hendrickson*, 307 S.C. at 110-11, 413 S.E.2d at 873. If substantial evidence exists, a court may not substitute its judgment for that of the School Board, and the decision must be upheld. *Id.*

As discussed below, there is substantial evidence in the record supporting the School Board's decision to terminate Appellant's employment with the District, and, therefore, the decision must be affirmed.

B. Appellant's Termination Hearing Satisfied the Requirements of Due Process.

Section 59-25-470 of the Act requires that a teacher who has been recommended for termination of employment is entitled to a hearing before the school board, to be represented by legal counsel, depose witnesses before the hearing, subpoena witnesses to the hearing, examine and cross-examine witnesses, offer other evidence, and to present any and all defenses to the recommended termination of employment, among other due process rights. Appellant was given an adversarial due process hearing before the School Board, including all of these rights, on March 24, 2011. The hearing lasted approximately 16 hours. Prior to the hearing, Appellant deposed witnesses, and at the hearing on March 24, 2011, Appellant exercised her rights to be represented by legal counsel, to present witnesses and other evidence on her behalf, and to cross-examine adverse witnesses.

Following the hearing on March 24, 2011, the School Board issued its decision affirming the Superintendent's notice of suspension and recommendation of dismissal. Appellant was notified in writing of the Board's decision on March 29, 2011.

Appellant now contends that the School Board's hearing violated her right to due process because hearsay or incompetent evidence was presented against her, thereby denying her the opportunity to effectively cross-examine and confront witnesses adverse to her[1]. Contrary to Appellant's position, competent evidence supports the School Board's decision.

School Board hearings under the Act are quasi-judicial, administrative hearings. *See, e.g., Laws v. Richland County Sch. Dist. No. 1*, 270 S.C. 492, 243 S.E.2d 192 (1978). Unless otherwise specifically provided by statute, the rules of evidence do not strictly apply to quasi-judicial, administrative hearings. *Richards v. City of*

[1] This issue, though raised by Appellant before the Circuit Court below was not ruled on by the Circuit Court, and therefore is not appropriate for review on appeal to this Court. *Kiawah Resort Assocs. v. S. C. Tax Comm'n*, 318 S.C. 502, 458 S.E.2d 542 (1995); *Food Mart v. S. C. Dep't of*

Columbia, 227 S.C. 538, 552, 88 S.E.2d 683, 689-90 (1955) ("even without the aid of statute it is held that an administrative or quasi-judicial body is not governed by the ordinary legal rules of evidence"); *Jacoby v. S.C. State Bd. of Naturopathic Exam'rs.*, 219 S.C. 66, 90, 64 S.E.2d 138, 149 (1951) ("[a]n administrative or quasijudicial body is allowed a wide latitude of procedure and not restricted to the strict rule of evidence adhered to in a judicial court.").

Here, Appellant chiefly complains of alleged hearsay statements of students and/or their parents critical of her job performance. Even assuming arguendo that hearsay evidence was admitted into evidence, it would not warrant reversal of the School Board's decision. The issue of the admissibility of hearsay in teacher termination hearings, particularly with regard to student statements, was discussed in *Hinkle v. Garrett-Keyser-Butler Sch. Dist.*, 567 N.E.2d 1173 (Ind. Ct. App. 1991). The *Hinkle* court explained the general rules with respect to both the right to confront witnesses and hearsay evidence of students in the context of a teacher termination hearing.

First, the court made clear that, under circumstances like Appellant's, the right to confront and examine witnesses was not denied.

> If a teacher wishes to confront and cross-examine a particular witness, that teacher must request that the particular witness appear at the hearing. As the trial court correctly noted, [teacher] could have performed the typical cross-examination of his accusers, who would have been properly classified as hostile witnesses. [Teacher] made no request for his accusers to appear at the hearing, although they were known to him at the time. Moreover, [teacher] does not contend that he was denied the opportunity to confront and cross-examine the witnesses who testified. There was no deprivation of [teacher's] right to confront and cross-examine his accusers in this case.

Health & Envtl. Control, 322 S.C. 232, 471 S.E.2d 688 (1996).

Id., 567 N.E.2d at 1177.

Likewise, with respect to hearsay, the *Hinkle* court noted the formalities of school board hearings need not comply with the state's administrative procedures act, and that:

> Moreover, the interest to be protected, that of avoiding the likelihood that students would have to testify on such matters in the presence of their peers or teachers, is more compelling than in the typical administrative adjudication.

Id., 567 N.E.2d at 1178. In affirming the teacher's termination despite finding some hearsay evidence had been admitted, the *Hinkle* court reiterated the general rule applicable to teacher termination hearings that, although the admission of hearsay in a school board administrative hearing is not without limitation, as long as the school board's decision is not based solely on hearsay evidence it will be affirmed. *Id. See also Giles v. Schuyler-Chemung-Tioga v. Bd. of Coop. Educ. Servs.*, 199 A.D.2d 613, 614 (N. Y. Sup. Ct., 1993) ("...it has long been held that hearsay is admissible in administrative hearings and may be used to support a finding of substantial evidence as long as it is 'believable, relevant, and probative'." (citation omitted)); *Merchant v. Bd. of Trs. of the Pearl Mun. Separate Sch. Dist.*, 492 So.2d 959, 964 (Miss. Sup. Ct. 1986) ("When hearing teacher dismissal matters, school boards proceed informally and are not bound by the Mississippi Rules of Evidence. School boards are not 'courts'.").

Here, the evidence apparently objected to by Appellant is either not hearsay at all, or subject to an evidentiary exception under Rules 803(2), (3), (4), (6) and (8), SCRE.

For example, the South Carolina Supreme Court has directly addressed the issue of whether out of court statements regarding poor job performance are hearsay in *Baber v. Greenville County*, 327 S.C. 31, 488 S.E.2d 314 (1997). The Court held that

testimony offered to show an employee had notice of poor job performance was not hearsay. "Testimony to show notice of a fact and not the fact itself is not hearsay." *Id.*, 327 S.C. at 41, 488 S.E.2d at 319. Appellant's notice of her performance deficiencies is of course relevant to her termination under the Act, § 59-25-440, though not necessarily relevant to her dismissal under § 59-25-430. However, assuming arguendo it is hearsay, in viewing the record as a whole, as the Court must do under the substantial evidence standard of review, it is plain that the School Board's decision is not based solely on inadmissible hearsay and that sufficient competent evidence supports the School Board's ruling affirming the Superintendent's recommendation of Appellant's dismissal. Indeed, Appellant's insubordinate refusal to accept an improvement plan, alone, justifies her termination. *See, e.g., Cole v. Illinois,* 562 F.3d 812, 815-16 (7th Cir. 2009). Moreover, at least three parents, two teachers, and three school principals all testified based on their personal and direct observations and dealings with Appellant to facts showing both her unfitness to teach and job deficiencies, which she failed to rectify over a six-year period.

Accordingly, Appellant was afforded due process of law in her termination hearing, and she was neither denied the opportunity to confront witnesses against her, nor unduly prejudiced by the admission of hearsay evidence.

C. The School Board's Termination of Appellant's Employment Complied with Applicable Policies.

The District complied with its policy concerning the termination of teachers with regard to Appellant's termination. Although it is true that in some circumstances a school district's failure to comply with its own policies in taking adverse employment action can amount to a violation of due process, this is only the case where the policy violated establishes a property right in the plaintiff or aggrieved party. *See*, *Henry-Davenport* v. *Sch. Dist. of Fairfield County*, 832 F. Supp. 2d 602 (D.S.C. 2011).

Importantly, the District did comply with its policies applicable to the termination of professional staff. The District Policy regarding Discipline, Suspension and Dismissal of Professional Staff provides in relevant part:

> Therefore, it is the policy of the Superintendent to recommend to the Board the removal from employment of any teacher (or administrator) who shall fail, or who may be incompetent, to give instruction (or provide administration of a school or a program) in accordance with the directions of the Superintendent or who shall otherwise manifest an evident unfitness for teaching (or administration), as determined by the Superintendent.
>
> Evident unfitness for teaching or administration is manifested by conduct including, but not limited to, the following: persistent neglect of duty; willful violation of the policies, rules, regulations, or procedures of the District....

(R. pp. 361-362.) By complying with the Act, the District and School Board complied with applicable policy. District policy permits the termination of teachers who manifest evident unfitness for teaching under the Act.

Appellant's employment was terminated both for "evident unfitness for teaching" under the Act, § 59-25-430, as well as for performance deficiencies and shortcomings other than "evident unfitness," after notice of such deficiencies and an opportunity to improve, under § 59-25-440. Accordingly, the Court only needs to find the procedures for either § 59-25-430 or §59-25-440 were met to uphold the School Board's decision that Appellant's conduct justifies termination of her employment.

Appellant's argument that the School District failed to follow its policies relates only to the issue of her termination under the Act, § 59-25-440, i.e., that Appellant was not properly given notice of her performance deficiencies and an opportunity to improve.

1. Appellant Was Repeatedly Provided Notice Of Performance Deficiencies And Ample Opportunity To Improve.

At least as far back as the 2006-2007 school year, serious concerns with Appellant's teaching were noted and addressed with her by the Principal at NMBIS, Ms. Green-Graham. These serious concerns included the nature of Appellant's instructional interactions with both students and parents. Appellant was offered an assistance plan, but refused it. Ultimately, Appellant was placed on administrative leave during the 2007-2008 school year due to her hostility towards the administration, unsatisfactory teaching performance, and refusal to change her teaching methods.

Again, in the 2008-2009 school year, the Principal of OBMS, Ms. Connie Huddle, advised Appellant of deficiencies in her performance. These deficiencies included poor instructional performance and a hostile or harsh classroom atmosphere.

Yet, again, in the 2010-2011 school year, Appellant was notified by the Principal at CMS, Ms. Margaret Sordian, of performance deficiencies. And, again, these deficiencies included poor instructional performance and a hostile or harsh classroom environment, as well as poor communication with parents. Again, Appellant was offered an assistance plan, but she refused it.

In light of these consistent facts and concerns over a period of several years, schools, and administrators, it is clear that Appellant was fully and fairly notified of deficiencies in her performance. It is further undisputed that Appellant was at least twice offered assistance plans, and both times she refused them. Likewise, Appellant had ample opportunity to improve her performance over the years, but simply failed or refused to do so. Appellant was, therefore, afforded notice of her performance deficiencies and an opportunity to improve, including opportunities for assistance plans, but refused to avail herself of these opportunities. The District fully complied with any

obligations it had with respect to its policies and the Act, § 59-25-440, to provide Appellant notice and an opportunity to improve. The fact that Appellant failed to take advantage of her rights to improve under §59-25-440 or District policy in no way constitutes the District's failure to comply with either.

2. The District's Student Grievance Policy Confers No Rights On Appellant.

Appellant contends the District failed to comply with its Student Grievance Policy regarding student complaints against her. (App. R. pp. 447-448.) However, the Student Grievance Policy is designed to protect student's rights, it is not a mandatory or exclusive procedure for addressing student concerns and creates no contractual or due process rights for teachers. Rather teacher's employment rights are protected by the Act. *See Henry-Davenport* v. *Sch. Dist. of Fairfield County*, 232 F. Supp. 2d 602 (D.S.C. 2011.) Moreover, student complaints were brought to Appellant's various supervisors and principals precisely because Appellant was not addressing parent or student concerns. Ultimately, however, Appellant was repeatedly made aware of student concerns and provided ample opportunity to address these concerns and improve her performance, which she failed to do. Consequently, the District complied with policies applicable to Appellant's dismissal.

D. The School Board's Termination Of Appellant's Employment Is Supported By Substantial Evidence.

Appellant argues, as grounds for reversal of the School Board's decision, that the decision of the School Board is not supported by substantial evidence. The School Board's decision upholding the dismissal of Appellant is clearly supported by substantial evidence from which reasonable minds can conclude that her termination was appropriate and permissible under South Carolina law.

In *Adams v. Clarendon County Sch. Dist. No. 2*, 270 S.C. 266, 272-73, 241 S.E.2d 897, 900 (1978), the South Carolina Supreme Court stated that "the Act has clearly separated the circumstances for which a teacher may be discharged for cause into two categories. One of these categories is explicitly set out in § 59-25-430 and the other is implicit in § 59-25-440."

Section 59-25-430, which governs dismissals based on "evident unfitness for teaching," requires only that notice and an opportunity for a hearing be afforded the teacher prior to any dismissal. On the other hand, § 59-25-440, which governs dismissal based on deficiencies or shortcomings other than incompetence, failure to provide instruction in accordance with directions of the superintendent, and unfitness, requires that notice and an opportunity to improve be afforded the teacher prior to any dismissal. Significantly, this Court only needs to find that the procedures for one section of the Act were met in order to uphold the Board's decision. A review of the record on appeal demonstrates that there is substantial evidence to support the Board's determination that Appellant's conduct justifies termination of her employment pursuant to both §§ 59-25-430 and -440.

1. Appellant's Conduct Manifests An Evident Unfitness For Teaching

Section 59-25-430 provides that "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...." The statute goes on to cite examples of conduct evidencing an unfitness for teaching. The examples include persistent neglect of duty and willful violation of rules and regulations.

Here, substantial evidence in the record supports the finding of Appellant's evident unfitness to teach, insubordination, and persistent neglect of duty. As far back as

the 2006-07 school year, serious concerns with Appellant's teaching were noted and addressed with her by the administration at NMBIS, including concerns with her instructional interactions with both students and parents. Instead of agreeing with the administration to address these concerns, Appellant refused to agree with the school administration's assistance plan. (R. pp. 301-302 (Compl. Ex. 24).) Nevertheless, the school's principal, Ms. Green-Graham, continued to try and address with Appellant the ongoing concerns with her performance throughout the 2006-07 and 2007-08 school years. Following attempts to meet with Appellant in January and February 2008, which met with opposition from Appellant, Appellant was placed on administrative leave, with pay, based chiefly on the hostility she displayed towards Ms. Green-Graham, her unsatisfactory teaching performance, and her refusal to change her teaching methods.

Appellant was reassigned to CFES for the remainder of the 2007-08 school year and to OBMS for the 2008-09 school year. OBMS Principal, Connie Huddle advised Appellant of complaints expressed to the administration by parents about her instruction and classroom management throughout the school year. Approximately twenty-eight students were moved from Appellant's classes based on parent complaints during the school year. The nature of the complaints by parents included that their children felt uncomfortable in Appellant's class, they were confused by her instructions, and the classroom atmosphere was harsh. (R. pp. 327-329 (Huddle Dep. pp. 7-9).)

Subsequently, Appellant was reassigned to CMS for the 2009-10 and 2010-11 school years. Ms. Margaret Sordian, CMS's principal beginning with the 2010-11 school year, received similar complaints from parents regarding Appellant as early as September 2010. These complaints included placing students in the hall during class; making inappropriate comments to students; yelling at students; embarrassing students; failing to communicate effectively with students and parents regarding work, testing, re-

testing, grades and assignments; humiliating students in front of others during class time; unprofessional behavior when conferencing with parents; breaking student confidentiality; and students being afraid of Appellant and having anxiety about attending class. As she had four years before, Appellant again refused an assistance plan proposed by the school administration. Most telling in regard to Appellant's unfitness as a teacher, however, is the fact that during the 2007-08 school year, 45% of her students had Ds or Fs (R. pp. 314-320 (Compl. Ex. 26)), and by the 2010-11 school year, over half of her regular education students, or twenty-five of her forty-one regular education students, had Ds or Fs. (R. pp. 267-269 (Compl. Ex. 17).) Even aside from her refusal to accept an assistance plan, the hostile and intimidating classroom environment, and her poor communications with parents, these poor instructional results make evident Appellant's unfitness to teach.

In short, Appellant has: (1) been insubordinate over a period of years, refusing to follow through with required changes to her classroom management, instruction, and communications, as well as refusing to accept assistance plans (R. pp. 246-248, 314-320 (Compl. Exs. 10, 26)); (2) created a hostile and threatening classroom environment that has caused students undue fear, embarrassment, and anxiety (R. pp. 251-266, 270-273, 274-278, 289-300, 314-320 (Compl. Exs. 14, 18, 19, 22, 26)); and (3) achieved poor instructional results with an excessive number of her students receiving Ds and Fs (R. pp. 267-269, 314-320 (Compl. Exs. 17, 26)).

These performance concerns with insubordination, classroom atmosphere, hostility, and instructional quality are well recognized grounds for termination. In *Green v. Clarendon County Sch. Dist. Three*, the Federal District Court for South Carolina found that a teacher's inappropriate actions revealed such serious concerns about her

judgment as to warrant the teacher's discharge. The explanation for the discharge follows:

> The grounds upon which this action is based include your recent conduct toward your immediate supervisor, Mrs. Connie Dennis, whereby you made direct personal threats toward her in an apparent attempt to intimidate her into refraining from addressing her concerns about your performance as a teacher, and you later attempted to confront her again about the matter in the presence of another teacher. As I understand it, this is not the first occasion that you have expressed an unwillingness to accept direction from Mrs. Dennis as your supervisor. It is also not the first incident where you have acted inappropriately toward or around others, or attempted to threaten and intimidate others. Additionally, it has come to my attention that you recently made inappropriate comments to a member of the Board of Trustees. I have concluded that your conduct has been highly insubordinate and unprofessional and is, at best, indicative of a serious lack of judgment on your part, warranting the termination of your employment pursuant to S.C. Code Ann. §§ 59-25-430 and 440.

923 F.Supp. 829, 843 (D.S.C. 1996).

Likewise, in *Adams v. Clarendon County Sch. Dist. No. 2*, the Supreme Court upheld the dismissal of a teacher whose low level of both oral and written communication rendered him ineffective as a teacher. The Court noted that "[d]eficiency in such a basic skill is proof of 'evident unfitness for teaching'...." *Adams*, 270 S.C. at 274, 241 S.E.2d at 901. Here, too, Appellant's inability to effectively instruct her students, manage her classroom, communicate with parents, and accept direction from school administrators renders her ineffective as a teacher.

In *Laws v. Richland County Sch. Dist. No. 1*, the Supreme Court again upheld the dismissal of a teacher whose teaching methods were inappropriate and refused to reasonably respond to the school administration's recommendations made to him to

improve his method of instruction and classroom atmosphere. *Laws*, 270 S.C. at 497-498, 243 S.E.2d at 194. *See also Hendrickson v. Spartanburg County Sch. Dist. No. Five*, 307 S.C. 108, 112-13, 413 S.E.2d 871, 874 (Ct. App. 1992) (upholding termination based on teacher's "general inability to control her class and on the specific incident of slapping one of her handicapped students."); *Adamson v. Richland County School District One*, 332 S.C. 121, 129, 503 S.E.2d 752, 756 (Ct. App 1998) (noting inefficiency in teaching and classroom management as appropriate grounds for discharging a teacher).

Ultimately, like the situations in *Green, Adams* and *Hendrickson*, Appellant's insubordination, hostile acts towards students, parents, and administrators, inefficiency and incompetence, and lack of any meaningful or reasonable response to the District's efforts to help her improve her teaching, justify her dismissal under both §§ 59-24-430 and -440. Indeed, with respect to § 59-25-440, Appellant was provided years of notice of administrators', parents', and students' concerns. The administration repeatedly sought to provide her an assistance plan, but Appellant repeatedly refused to accept them. Accordingly, the record as a whole provides substantial evidence supporting the Board's decision to terminate Appellant's employment.

E. The Form Of The School Board's Decision To Terminate Appellant's Employment Is Proper.

Appellant contends the School Board's written decision of March 29, 2011 (R. p. 2) does not comply with the standard for decisions of administrative bodies, inasmuch as it does not set out findings of facts and conclusions of law. *See, Lee County Sch. Dist. Bd. of Trs. v. MLD Charter Sch. Acad. Planning Comm.*, 371 S.C. 561, 567, 641 S.E.2d 24, 27-28 (2007); *Porter v. S.C. Pub. Serv. Comm'n.*, 333 S.C. 12, 507 S.E.2d. 328 (1998). Here, however, the School Board's decision does comply with the express requirements of the Act, § 59-25-470, respecting the form of the School Board's decision to either affirm or withdraw the Superintendent's notice of suspension and

dismissal, and in doing so it is consistent with Act. Moreover, the Superintendent's notice of dismissal dated January 5, 2011, which was affirmed by the School Board's decision, sufficiently details and sets forth the relevant findings of fact and conclusions of law. (R. pp. 231-234.)

The Act sets forth the "mode of procedure" to be followed by school boards and administrators in teacher employment termination, including that:

> Within ten days following the hearing, the board shall determine whether the evidence showed good and just cause for the notice of suspension or dismissal and shall render its decision accordingly, either affirming or withdrawing the notice of suspension or dismissal.

§ 59-25-470. *See also Young v. Charleston County Sch. Dist.*, 397 S.C. 303, 307-08, 725 S.E.2d 107, 109 (2012). The School Board issued on March 29, 2011 its decision letter stating that it affirmed the recommendation of the Superintendent to terminate Appellant's employment. The School Board, therefore, affirmed the Superintendent's notice of suspension and dismissal, consistent with the Act. The Superintendent's January 5, 2011, notice of suspension and recommendation of dismissal sets out in four, single-spaced pages the factual basis for and the conclusions of law supporting the dismissal.

As noted in *Porter*, "[a]n administrative agency is not required to present its findings of fact and reasoning in any particular format, ..." *Porter*, 333 S.C. at 21, 507 S.E.2d at 332. The format of affirming the Superintendent's notice of suspension and recommendation for dismissal as set out in § 59-25-470, fully satisfies the purpose for a written order presenting findings of fact and reasoning. As discussed in *Porter:*

> An administrative body must make findings which are sufficiently detailed to enable this Court to determine whether the findings are supported by the

> evidence and whether the law has been applied properly to those findings.

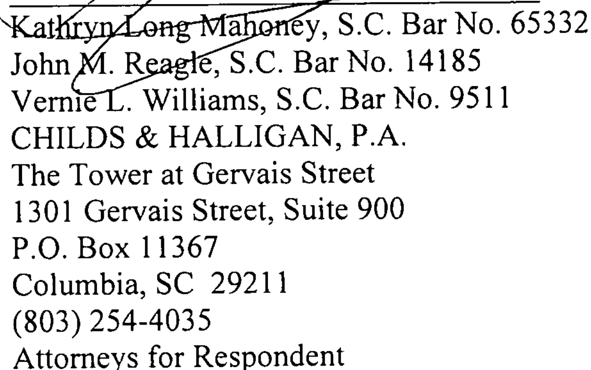
Id. The Superintendent's detailed notice of suspension and recommendation of dismissal serves this purpose of affording judicial review; it is sufficiently detailed to enable this Court to determine whether the findings are supported by the evidence presented at the hearing before the School Board, and whether the Act has been applied properly to those findings.

Finally, the issue of the sufficiency of the form of the School Board's decision was neither raised before nor relied upon by the Circuit Court, and accordingly, it should not now be addressed by this Court. *USAA Prop. & Cas. Ins. Co. v. Clegg,* 377 S.C. 643, 661 S.E.2d 791 (2008); *Kiawah Resort Assoc. v. South Carolina Tax Comm'n,* 318 S.C. 502, 458 S.E.2d 542 (1995); *Food Mart v. South Carolina Dep't of Health and Envtl. Control,* 232, 471 S.E.2d 688 (1996).

V. CONCLUSION

For the foregoing reasons, the Respondent respectfully asks the Court to affirm the judgment of the Circuit Court and the decision of the School Board terminating Appellant's employment.

Respectfully submitted,



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July 10, 2013
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COUNTY
Horry County Court of Common Pleas

Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2012-213509

JACQUELINE SMITH..Appellant

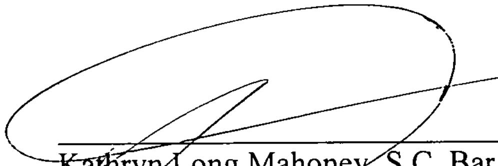
v.

HORRY COUNTY SCHOOLS..Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

July 10, 2013



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COUNTY
Horry County Court of Common Pleas

Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2012-213509

JACQUELINE SMITH...Appellant(s)

v.

HORRY COUNTY SCHOOLS.. Respondent(s).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served Respondent's Final Brief by hand delivering a copy of the same as follows:

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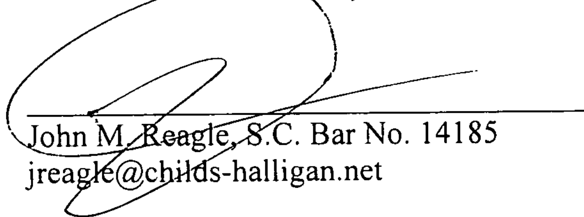
July 10, 2013

CHILDS & HALLIGAN, P.A.



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