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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

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APPELLATE CASE NO. 2016-000955

John Alden Bauer, III — Appellant

v

Beaufort County School District — Respondent

RECORD ON APPEAL

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1 fraudulent nature.
2 MR. BAUER: It's more than that. It's more than
3 an actual traffic violation.
4 MR. WILLIAMS: Well, just so Mr. Bauer knows, he
5 refers to it in his proposed exhibits to us as Exhibit 244
6 and 244-A, so we're all on the same page in terms of what
7 the -- what we're talking about, in terms of --
8 MR. JOHN BAUER: I can't hear him.
9 MR. WILLIAMS: In terms of what the offense is.
10 CHAIRMAN EVANS: Mr. Williams said that this
11 refers, he believes, to documents 244 and 244-A.
12 MR. WILLIAMS: Correct. Yes.
13 CHAIRMAN EVANS: Is that correct, Mr. Williams?
14 MR. WILLIAMS: Correct. In Mr. Bauer's proposed
15 exhibits, it's 244 and 244-A.
16 CHAIRMAN EVANS: And I guess the question that we
17 have is, are those the documents you're talking about, Mr.
18 Bauer?
19 MR. BAUER: I believe so. I can omit those.
20 That will -- that will be fine.
21 CHAIRMAN EVANS: Okay.
22 MR. BAUER: I'll be willing to omit them.
23 CHAIRMAN EVANS: Thank you. That will --
24 MR. BAUER: Okay.
25 CHAIRMAN EVANS: That will save us from making a

1 ruling on it.

2 MR. WILLIAMS: And just so we're clear, we would

3 omit the documents, as well as any reference to the

4 substance contained in the documents?

5 CHAIRMAN EVANS: That's it, as we understand it,

6 and if it comes up, then I will -- I will rule it as

7 inadmissible at that time, because I think we have an

8 agreement now that the document is -- is taken out of any

9 discussion or evidence.

10 MR. WILLIAMS: Thank you.

11 MR. DUFF: Mr. Bauer, do you understand that,

12 that since the document has been excluded, any testimony

13 related to the document also cannot -- any questioning can

14 also not be asked?

15 MR. BAUER: I understand. Yes, sir.

16 MR. DUFF: Okay.

17 CHAIRMAN EVANS: Are there any other motions,

18 pre-hearing motions, that anyone would like to make, either

19 of the parties?

20 MR. WILLIAMS: None from the administration.

21 CHAIRMAN EVANS: Okay. Thank you, Mr. Williams.

22 Mr. Bauer, anything?

23 MR. BAUER: No. No, sir.

24 CHAIRMAN EVANS: Okay. If that is the case,

25 then, we will start with opening statements and go with the

1 she looked out her window and to speak with him about what
2 happened, she quickly realized that it would have been
3 impossible for Mr. Bauer to monitor the second-grade class
4 when they were at stations both inside and outside the gym
5 and on the opposite side of the gym, on the other side of a
6 wall.
7 You will also learn of Ms. Brockway's concern
8 with Mr. Bauer's attitude and with his violation of school
9 policy by leaving the exterior doors to the gym open --
10 which, as you well know, is a safety concern -- and his
11 failure to supervise all of the children in his class;
12 again, a violation of district policy.
13 Next you will hear from Cy Clendaniel, another
14 assistant principal, and he will testify as to his
15 interactions with Mr. Bauer in February 2014, and he has
16 continued concerns with Mr. Bauer's attitude, with his poor
17 judgment, and failure to supervise properly.
18 Mr. Clendaniel will share with the Board about
19 the complaint of some parents regarding their third-grade
20 child, along with some his classmates, being exposed to an
21 unclothed, male adult while changing clothes after swimming
22 class. Not only were the parents upset about the incident,
23 but they expressed great concern about what they described
24 as Mr. Bauer's flippant attitude when the mother reported
25 the concerns.

1 You will also hear from this principal as to her
2 dismay and her shock at the manner in which Mr. Bauer
3 reacted to both Ms. Walton's and her concerns. He
4 continued to express that the administration was making too
5 big a deal of him leaving a child at an off-campus
6 facility.
7 Next, Ms. Walton will testify as to her direct
8 interactions with Mr. Bauer and her grave concern with his
9 poor judgment and confusion about the expectation of the
10 district administration. Unfortunately, as Ms. Bauer (sic)
11 continued to interact with Mr. Bauer -- as Ms. Walton
12 continued to interact with Mr. Bauer, he became
13 increasingly disrespectful and insubordinate. Despite
14 numerous efforts to have Mr. Bauer provide a second medical
15 opinion regarding his fitness for teaching, not only did he
16 refuse to cooperate, but he refused on multiple occasions
17 to come in and meet with Ms. Walton.
18 Ms. Walton will describe how this personnel
19 matter came to the attention of the superintendent, Jeff
20 Moss, and despite Jeff Moss's direct attempts to make
21 certain Mr. Bauer understood that he expects teachers to
22 adhere to the reasonable instructions of their supervisors
23 which were in accord with district policy -- Mr. Bauer was
24 to submit the second medical opinion, he was to meet with
25 Ms. Walton -- Mr. Bauer refused.

1 Bauer from employment. Thank you.
2 CHAIRMAN EVANS: Mr. Bauer?
3 MR. BAUER: Yes. What I have just heard, I would
4 fire that teacher, too, but I am not that teacher. In the
5 past few weeks, we have had many depositions. The
6 transcripts will show administration from Hilton Head
7 Island Elementary and from the district describe me as,
8 quote, an excellent teacher, good coach, excellent mentor,
9 friendly, courteous, and quick to volunteer. Again the
10 transcripts will show at the administration said in their
11 depositions they are willing to work with me again. Ms.
12 Walton said in her deposition that I had a reputation for
13 being an excellent teacher. I think that means if you
14 decide to return me to my job that it should not cause a
15 disruption. That was the good news.
16 I'm now pro se. So I can legitimately claim to
17 be an excellent teacher, but I am not a lawyer, excellent
18 or otherwise. How I wish that I had expert representation
19 at the moment, but fate decreed otherwise, and I must act
20 as my own attorney for this hearing, something which is
21 called "pro se." I just have to have faith that, in spite
22 of my legal knowledge, the merits will win the day. As
23 much as I dislike the role, I have worked hard to prepare.
24 I ask the Chairman to give me some freedom to
25 pursue the truth in my opening, since legal formalism can

1 be used as a disruptive weapon. I only want the truth to
2 be heard, and I ask you to give me a fair chance.
3 You should have notebooks in front of you, but I
4 do not see them. Do we have the notebooks? You will be
5 provided notebooks of evidence. These notebooks are a
6 little bit more awkward to manipulate than I had hoped. I
7 have divided them, but it's not ideal, in my opinion. In
8 the notebook is a list of likely files to be used for each
9 witness. That way, you can find -- or that way, you can
10 find your way a little easier, I hope.
11 On top of the notebooks is an introduction to the
12 files. That will reveal what I think are compelling
13 considerations for due process as they relate to the merits
14 that will be raised, and there will be more due process in
15 a moment.
16 But I'd like to give you a very brief resume to
17 introduce myself. I have a degree in business
18 administration cum laude with honors. I also have a
19 master's of arts in teaching degree cum laude with honors.
20 I was National Board certified, an achievement attained by
21 10 percent of the teaching profession. I accomplished
22 National Board certification on my first try, a reputed
23 rare accomplishment. I have taught seventeen years, and
24 I've been at Hilton Head Elementary for twelve and a half
25 years.

1 I will submit evidence of years of administrative
2 praise, up to and including the week that I was put on
3 leave. You will see lengthy testimonials from parents that
4 Dr. Moss dismissed as being solicited. When you see the
5 testimonials, you will conclude that writing 600 to 1,000
6 words is -- when you see the testimonials, will you
7 conclude that writing 600 to 1,000 words is spontaneous and
8 sincere?
9 Now, this is how to read my words. You will see
10 my words used against me, but words can be distorted by the
11 reading. For example, here are two of my words: please
12 reschedule. They will call it a demand, as you probably
13 heard just previously, as an example. But I meant to
14 please reschedule, as in pleading. If you want to see my
15 style while under great stress, take a look at the emails
16 in file 146, which will be in your notebooks.
17 Some strange things are about to happen. I will
18 show you that I had concerns about my gym and how the gym
19 was being misused before and after school. I will show how
20 I wrote about it and that, one day before I was sent home
21 on administrative leave, I sent pictures to the
22 administration, showing the mess and the vandalism. I will
23 show how, after I was sent home, the administration also
24 took pictures, but now blame me. So we will have a dueling
25 gym mess.

1 I will demonstrate through evidence that some of
2 the evidence that the opposing counsel will use is
3 misrepresented. Pay particular attention to what they
4 claim is my class record book.
5 But we are here for a reason, and it all started
6 with the pool event of Wednesday, February 5th, 2014.
7 There are charges against me, and I wonder if the School
8 Board has even seen the exact charges. Many of the facts
9 in this catalyst event are not in dispute.
10 Here's what you will learn about the pool event.
11 The charges are negligence and insubordination. Alden
12 Bauer, a PE teacher at Hilton Head Island Elementary,
13 escorted his fifth-grade class on Wednesday, February 5th,
14 2014, at 12:00 p.m., to the pool at the nearby Island
15 Recreation Center. Mr. Bauer arrived to the rec center --
16 and forgive me for speaking in third person, but it's kind
17 of how I wrote it.
18 Mr. Bauer arrived to the rec center with 23
19 students. I will show that Mr. Bauer conducted a formal
20 attendance, calling -- a call-out using PowerSchool
21 printouts, as students removed outer-layer clothing while
22 on the bleachers. Twenty-three students. The student in
23 question was marked absent. I will show that a student,
24 who happens to be the student in question, that was, quote,
25 left at the rec center, arrived to school at some time

1 during the day with an unexcused tardy.
2 I will show that a changed practice of the school
3 to allow tardy students to arrive late to a swimming class,
4 which is a safety-intense class, where the teacher may be
5 intent on a Red Cross checklist or some other demanding
6 procedure. I will show that the claim of a changed
7 practice or policy was never challenged by any of the
8 administration.
9 Mr. Bauer was in the pool and did not enter the
10 student in his roll book.
11 I will show that, before the class returned to
12 the school, Mr. Bauer conducted his protocol of checking
13 the locker rooms. A female student went through the
14 women's area, and Mr. Bauer went through and called out in
15 the men's locker room. I will show that there was no
16 answer and no one appeared in the locker room.
17 I will show that the tardy student then avoided
18 rejoining his class. I will show that he was not
19 questioned as to if he was hiding, where he was hiding, nor
20 why, so his motives are unknown.
21 I will show that Mr. Bauer returned with 23
22 students, the exact matching number he took to the pool. I
23 will show that surveillance footage has never been viewed,
24 nor has the administration asked for it. I will show that
25 the missing student's classroom teacher, who had not taken

1 roll that morning and did not submit an attendance report,
2 did not notice that, when I returned to class, her student
3 was missing. She was not reprimanded.
4 I will show that the superintendent charged
5 insubordination based on the pool event. Mr. Clendaniel,
6 who documented the event, testified there was no
7 insubordination, and that was the catalyst event to this
8 whole deal here. I will show through evidence that Ms.
9 Walton then accused me of leaving the child willfully, or
10 on purpose. I will show through evidence that the willful
11 part was never charged. As you will see, not being charged
12 does not matter. I do not believe that anyone believes
13 that I left the child behind on purpose, but because Ms.
14 Walton claims that it was a willful act, you will see that
15 it opened many avenues of legal loopholes and punishments.
16 As a theory in this case, I wish to advance the
17 thought that the administration reacted incorrectly. To do
18 that, I will ask you what you, as an imagined principal,
19 would have done. Would you have sat the teacher down and
20 explored what had happened? Would you have learned that,
21 at one time, the policy was that tardy students could not
22 come late to a safety-intense class? In the discussion,
23 would you have tried to determine where the student had
24 hidden? If there were no easy answers, would you have
25 checked surveillance footage?

1 In the end, would you have expressed concern for
2 the event and told the teacher that, due to his 17 years of
3 excellent service in the profession and 12 years of
4 exemplary service to Hilton Head Island Elementary, you
5 would give him a warning and return him to class? Would
6 you consider exploring the policy and how it may have
7 contributed to the event? Was the administrative reaction
8 a group-think, an overreaction? I thought it was an
9 overreaction.
10 Evidence of overreaction. Do you remember the
11 fourth grader at Hilton Head Island Elementary who was
12 suspended for having a broken pencil sharpener that made
13 national news -- and this was at Hilton Head Island
14 Elementary -- or in North Carolina in 2010, under Dr. Moss,
15 when a young, intelligent soccer star lost her senior year
16 because she picked up her father's matching lunch satchel
17 that had a paring knife in it?
18 I will ask if I was targeted, with reasons for
19 thinking I was targeted. If targeted, why? Due to long
20 service, credentials, et cetera, my salary could hire two
21 first-year PE teachers, according to Beaufort salary
22 schedules. But why spend hundreds of thousands of dollars
23 on lawyers to save thousands from one salary? I will
24 provide evidence that Hilton Head Island Elementary will
25 combine classes to illegal sizes to avoid using

1 substitutes. Is that to save money, I wonder.
2 One explanation that will be offered is that
3 salaries and legal fees in some districts are separate
4 budgets. The attorneys' budget in some places come from an
5 insured trust fund, so no cap. Should that be public
6 knowledge? To explore the possibility, I will -- that I
7 could show you separate funds, I got the budgets from
8 Richland County School District II and Beaufort County. I
9 used Richland II because that is where I went to school.
10 Richland II has more schools, a smaller budget, spends less
11 per student, has more student -- and has more students on
12 the assisted lunch program. The Richland II budget is six
13 pages for 26,000 students, and the Beaufort budget -- by
14 the way, here they are -- just hold up -- this is Beaufort.
15 This is Richland II. Six pages, 168 pages. And that's
16 Ricland II, six pages for 26,000; Beaufort, 168 pages for a
17 hundred an -- I'm sorry, 21,000 students.
18 I was stunned when I read in their evidence
19 notebook, Dr. Fawley and Mr. Williams' evidence notebook,
20 that they intend to show that I had not taken the pool
21 event seriously, and I think I understand why they thought
22 I did not take it seriously. You will see that, after 17
23 years, I had left a child, and I felt like a storm cloud
24 surrounded me. I could not comprehend it. The documents
25 will show that I was looking for support, but did not get

1 it, and I tried to defend myself. That is true. As you
2 will see, they accused me of being defensive, and I was
3 defensive. The tension made -- I'm sorry.
4 They also wrote that I was slouched in the chair
5 when I was speaking with them. That is not a normal
6 reaction for someone who feels remorse. They thought and
7 wrote that I was unremorseful. The truth is, I had extreme
8 remorse. I admitted my wrongdoing. I had left a student
9 behind. And that was not on purpose. As you will see,
10 they'll call it willful.
11 I'd like the Board to consider five things here.
12 There are really only five things for the Board to
13 consider: the four charges against me, and due process.
14 Charge number one, the first charge, was
15 negligence. A child was left behind. I was responsible
16 for that, and it bothered me a lot. It bothered me a lot.
17 Can one event be called persistent? Section 430 of the
18 Teacher Employment and Dismissal Act specifies persistent
19 negligence. For charge one, I can only pray for
20 forgiveness and plead that it was an isolated event.
21 The second charge was insubordination during the
22 pool event. Mr. Clendaniel, who wrote the pool
23 documentation, testified that there was no insubordination.
24 Those first two charges are what thrust this case forward.
25 I will show that, if you decide those two charges were not

1 egregious or willful, the case should end here.
2 The third charge was, you will request -- you
3 were requested to have an examination from a psychiatrist
4 and report back. You will see documentation that I
5 complied with that request in March. You will see a highly
6 positive evaluation. Ms. Walton rejected that evaluation
7 but gave no reason.
8 I will show that websites such as ada.gov, which
9 is part of the United States Department of Justice Civil
10 Rights Division, indicate that merely requesting a
11 psychiatric evaluation activates the American Disabilities
12 Act (sic). I will show that websites such as ada.gov
13 indicate that the ADA requires a choice of three unbiased
14 doctors. Also, I will show that I asked Ms. Walton and Dr.
15 Moss for clarification but got no response.
16 Sorry. (Retrieves water.) I'm not used to
17 talking this much.
18 After Ms. Walton required -- sorry. After Ms.
19 Walton required that I have a second evaluation, I will
20 show that I asked if I could have a choice of doctors. You
21 will see that Dr. Moss and Ms. Walton cited HRS-16 as the
22 authority for demanding a second psychiatric evaluation,
23 but they cited the sick leave section of HRS-16. I was not
24 on sick leave. I asked Ms. Walton and Dr. Moss for
25 clarification, received no response.

1 If HRS-16's requirement is to go to a doctor --
2 singular, not plural -- why should they think that
3 additional evaluations were authorized? I will show that,
4 at Dr. Moss's deposition, he admitted that administrative
5 leave and sick leave are different.
6 And the fourth charge is a refusal to attend a
7 meeting scheduled for April 25th to discuss the psychiatric
8 report. The April 25th meeting was actually to have been
9 held on April 29th. They refused to tell me the purpose of
10 the meeting.
11 I will indicate that, after already having met
12 with Ms. Walton for four meetings, I was stressed by her
13 hostility. I think that you will see that it bothered me
14 that she took so much pleasure in my pain.
15 I wanted someone to witness that. I wanted to
16 have a witness. I will show the letter that ordered that I
17 was not allowed to approach parents or teachers to find a
18 witness, after they had told me I could have someone there
19 later on. You will see in Ms. Walton's testimony that,
20 even on camera while somewhat restrained, that her attitude
21 toward me seemed disrespectful.
22 I will indicate that it seems strange that, in
23 the United States of America, you cannot have an attorney
24 at a meeting where you anticipate being abused, threatened,
25 or fired. I will show that Mr. George McMaster, the

1 attorney who was assisting me at the time -- he was not my
2 attorney, I was pro se at the time, but he was assisting me
3 -- made himself available later that day, but Ms. Walton
4 refused to speak to him about rescheduling. He happened to
5 be in Rock Hill on a case at the time -- to drive all the
6 way down here that day.
7 Ms. Walton testified that she does not like
8 communicating by email, that she prefers to meet one on
9 one, without witnesses or a written record. Ms. Walton
10 frequently said and wrote and will testify that, if she was
11 paying me, I was to be on call. That was not an issue with
12 me. I only wanted a witness, especially one with legal
13 knowledge. I will show that, the night before the meeting,
14 Dr. Moss wrote that I could bring anyone I wanted, anyone I
15 wished. Was he unaware that Ms. Walton had said that I
16 could not bring anyone?
17 I will show that Dr. Moss wrote that the purpose
18 of the meeting was to find a time to return to work. I
19 will show that Ms. Walton said that reinstatement was not
20 the purpose of the meeting.
21 Due process. At the front of your notebooks is a
22 document called "Introduction to the Case for John Alden
23 Bauer, III" -- and I see you still don't have that, so
24 we'll skip this part.
25 The deadline. This hearing was to have been the

1 weekend of July the 4th. Compelling is the November 4th,
2 2014, decision in Charleston County School District -- I'm
3 sorry, is Charleston County School District versus Shana
4 Washington-Middleton, that the Teacher Employment &
5 Dismissal Act statutes guarantee continuing contract
6 teachers with specific rights, including, number one,
7 written notice of reasons for dismissal from the school
8 board; and number two, the right to a hearing; and number
9 three, procedural due process, including the right to be
10 heard with 15 days.
11 You will see that Dr. Fawley, on June 26th,
12 incorrectly wrote that I had waived the 15-day legal
13 deadline. I was willing to do that, but only to avoid the
14 holiday and only if requested. Informally would've been
15 fine, if they were worried about technicalities, but I was
16 willing to do that. Nothing will indicate that a delay was
17 ever suggested, informally or otherwise. You will see that
18 Dr. Moss, on July the 3rd, wrote that Mr. McMaster
19 requested a delay in my name. Mr. McMaster denies that.
20 Dr. Moss offered no evidence. I will show you evidence to
21 the contrary, though. When the district learned that I had
22 not agreed to an extension, why not have the hearing soon,
23 or with 15 days, or a month, or at least a discussion of
24 dates?
25 You will learn that I was acting pro se, and yet

1 the attorneys would not consult with me. I will show that,
2 based on the imposed delay, a motion to reinstate was
3 submitted to me by the School Board on July the 7th, 2014.
4 I did not receive a response. I will show that, by October
5 21st, I was frustrated with no responses and again
6 petitioned the School Board. This petition asked to
7 restart the 15-day calendar.
8 I will show that the charges were not given by
9 the Board. They were written in prose form, everyday
10 language, in an email by Dr. Moss on May 29th. I will show
11 that his email -- in his email, Dr. Moss did not use the
12 word "charges." He used the word "bases." Dr. Moss's
13 attorney wrote on July the 22nd, "Neither the
14 superintendent nor you have the authority to establish the
15 Board's agenda." So why did the charges or bases come from
16 the superintendent and not the School Board?
17 Alice Walton, on May 29th -- informed me on May
18 29th in an email -- I'm sorry, not in an email -- in a
19 letter, that I was to be charged, no matter if I complied
20 with a June 2nd deadline, which you will hear more about
21 during the hearing. You'll also -- I will also show that
22 she said that Dr. Moss had already emailed the charges to
23 me. She said in her letter, "Once you present this
24 documentation, we will inform you of all the charges
25 against you." Contradictory.

1 On February 5th -- I will show that on February
2 5th, Mr. Bauer's personal belongings in his office were
3 confiscated. According to Amendment Four, the right of the
4 people to be secure in their papers and effects against
5 unreasonable seizures shall not be violated, and no warrant
6 shall issue -- and no warrant shall issue but upon probable
7 cause, particularly describing the place to be and the
8 things to be seized. Mr. Bauer was not allowed access to
9 his office files, which contained items for his defense.
10 My computer -- his -- his computer -- home computer, sorry,
11 was blocked from retrieving the entirety of his work emails
12 needed for his defense, delayed for 412 days, until I
13 finally got some emails for my defense.
14 I will show evidence that, beginning on August
15 11th, after 193 days of denying access to emails, the
16 district suddenly began supplying some emails, but only for
17 the past year; whereas, Mr. Bauer was required to defend
18 himself at the deposition for the preceding years. A
19 calendar will show that, if the hearing had been in July, I
20 would have had five months to prepare the evidence for my
21 defense.
22 I'm almost done. But I will show through
23 evidence that a majority of my school emails to be used for
24 my defense were withheld until March the 21st, 2015. So,
25 instead of five months, I had five weeks to prepare.

1 Now, imagine this. Discovery ended on March
2 16th, 2015. On March 24th, 2015, eight days after the
3 discovery deadline, I received 1,018 emails that I had
4 asked for during discovery. That calendar will also show
5 that the emails arrived after 412 days, after my first need
6 for them, and they arrived too late to use in the
7 depositions.
8 This is a quote from districtadministration.com:
9 Failure to produce important email when prompted in the
10 discovery process, known legally as "e-discovery," could
11 mean an immediate loss of a case or a forced out-of-court
12 settlement.
13 You will see Ms. Walton's email informing me,
14 Alden Bauer, on June the 10th, 2014, that he could drive to
15 Beaufort and retrieve emails by making an appointment with
16 Ms. Lopatka. I contacted Ms. Lopatka on August the 3rd for
17 an appointment and got no response. You will hear Ms.
18 Walton's de bene esse testimony in the video where she says
19 that I had not contacted Ms. Lopatka soon enough, so access
20 was denied.
21 You will learn that I made a freedom of
22 information request on June the 18th, 2014. I received no
23 response. I will show you evidence that, by law, a
24 response is required within 15 working days. According to
25 one of my files, it will say no exact deadline is specified

1 by the law, but the law requires a timely response. When
2 the public body gets your FOIA request, it has 15 working
3 days to respond as to whether it will comply or claim an
4 exemption. I got neither.
5 You will hear about Brown vs. James. This is a
6 case very similar to mine, in Cherokee County, South
7 Carolina. Under this case, it was a due process issue. No
8 teacher shall be dismissed unless written notice specifying
9 the cause of dismissal is first given to the teacher by the
10 district board of trustees and an opportunity for a hearing
11 has been afforded the teacher.
12 I will show through evidence that the Board's
13 June the 5th meeting used the word "terminate." I will
14 show through evidence that Dr. Moss wrote on June the 16th,
15 "You are currently no longer an employee of the Beaufort
16 County School District." I will show through evidence that
17 the termination was ratified by the Board on September 2nd,
18 2014, and I will show through evidence that this
19 ratification was made public. I will show through evidence
20 that no opportunity for a hearing had been afforded.
21 I will show through evidence that the Cherokee
22 County School District made that same mistake, and it
23 resulted in the defeat for the district in Brown vs. James.
24 Specifically, in Brown vs. James, it stated, when an agency
25 has completed the process for reaching an initial decision

1 that has immediate legal effects on the petitioner, the
2 initial decision will be considered a final decision, even
3 though the original decision-maker may consider its
4 decision or the initial decision is subject to review
5 within the agency. And this is from Mr. David Duff's
6 website:
7 As a result of the court's decision in Brown vs.
8 James, it is clear that school boards may no longer make
9 initial decisions to accept or reject a superintendent's
10 nonrenewal recommendation prior to an evidentiary hearing,
11 if such a hearing is requested. What is not clear is
12 whether hearings must be conducted prior to April 15th or
13 simply the notice of non -- of the non-renewal
14 recommendation, and that the opportunity for a hearing is
15 to be given prior to April 15th.
16 I have watched Mr. Williams and Dr. Fawley
17 question witnesses, and they are excellent. They are
18 really good. But instead of waging warfare, they're going
19 to wage law-fare, until the witness gets brain paralysis.
20 When asked to describe something ineffable, I will probably
21 lose focus sooner than most, because it's not my nature to
22 be combative. I will leave it to you to know whether or
23 not the style is properly probative.
24 I can read the law, but after this experience, I
25 think lawyers read loopholes. No matter which law you want

1 to avoid, there seems to be a loophole. In the Teacher
2 Employment and Dismissal Act 450, an improvement
3 opportunity is required. I didn't get one. You will see
4 the loophole in the Teacher Employment and Dismissal Act
5 450, which only needs an opinion by the superintendent.
6 Do we defeat the meaning of law by using too many
7 words, or will we see the logic to defeat logic? Do people
8 gather the facts and reach a conclusion, or do they reach a
9 conclusion and select supporting facts? I ask the Board to
10 look at any cited loopholes with a bit of skepticism and
11 look at the intent of the law. Thank you.
12 CHAIRMAN EVANS: Okay. We'd like to begin the
13 presentation of the witnesses, if we could, and we'll start
14 with the administration.
15 MR. WILLIAMS: The administration's first witness
16 will be Michelle Brockway. Dr. Fawley is going to get her
17 now.
18 While she's going to get Ms. Brockway, both sides
19 have referred to exhibit notebooks in their presentations.
20 We have prepared an exhibit notebook, as we typically do in
21 cases of this nature, that includes all the documents we
22 intend to question witnesses about. And, additionally, at
23 the end of our exhibit notebook are the exhibits that Alice
24 Walton, who participated in a video deposition, was
25 questioned about. So the first 40 or so exhibits are for

1 document before we begin?
2 MR. WILLIAMS: They're in --
3 MR. BAUER: I thought -- I'm sorry.
4 MR. WILLIAMS: I can tell you that all documents
5 that we intend to use have been provided to Mr. Bauer in
6 advance of this hearing.
7 MR. BAUER: I just want a list of the actual
8 formal charges, just the charges, not exhibits.
9 MR. DUFF: Mr. Williams, are the charges
10 contained within the exhibits that you intend to introduce?
11 MR. WILLIAMS: Yes, sir, they are. As the
12 questioning continues, various witnesses will be asked
13 about documents, including -- Mr. Bauer used the term
14 "charging documents" -- the documents that put him on
15 notice as to why the recommendation that he be terminated
16 was being made.
17 MR. DUFF: So, Mr. Bauer, you will -- as the
18 documents are admitted, it will be -- I think it will
19 become clear to you what the administration's reasons are.
20 And, of course, on cross-examination and with -- and with
21 other documents that you may have, you may challenge any
22 aspect of the stated charges or reasons.
23 CHAIRMAN EVANS: Are we ready, Mr. Williams?
24 MR. BAUER: Sir, I have to object, I mean, to
25 this. I'm sorry. The documents should be clear before the

1 A There's a lot of line 6 through 17 on the --
2 Q Of page 36?
3 A Now, that was what initiated the investigation.
4 But after further investigation, did you conclude that the
5 child was hiding? He wasn't. He had left the station and
6 was upset. It was later explained to me that it's a rest
7 wall, which --
8 Q And that --
9 A -- I said it was later explained to me. It was
10 not explained to me on November 1st that it was a rest
11 wall. I had no idea that it was a rest wall on November
12 1st. When I first arrived at the gym, concerned that there
13 was a student that appeared to be hiding outside, I was
14 told that no students had been hiding or missing, to Mr.
15 Bauer's knowledge.
16 Q You're sure of that, that Mr. Bauer did not
17 explain this to you?
18 A I am absolutely sure.
19 Q You are sure of this. Okay.
20 MR. BAUER: Now I'm going to ask some
21 questions based on page 38. Should I give it to Mr.
22 Williams first, before we ask the question, or should
23 I ask the questions first?
24 MR. WILLIAMS: And I will have the same --
25 CHAIRMAN EVANS: Mister --

1 MR. WILLIAMS: -- same objection.
2 CHAIRMAN EVANS: Excuse me, Mr. Williams.
3 Mr. Bauer, we're trying to be somewhat lenient on the
4 fact that you're representing yourself, but there's --
5 this is the second document, if I understand properly,
6 that you're presenting that has not been presented to
7 the plaintiff's attorneys ahead of time, and it's my
8 understanding that they have a right to see all of the
9 documents that you're going to use to question
10 witnesses with.
11 MR. BAUER: These are part of the
12 transcripts of the depositions that both parties have
13 access to.
14 MR. WILLIAMS: And just so it's clear for
15 the record, Mr. Chair, my concern would be with the
16 way -- is with the way in which he's trying to use the
17 transcript. Again, he should present her with an
18 official copy of the transcript, to -- to the extent
19 he believes she has said something inconsistent with
20 what's in her transcript. He can then cross-examine
21 -- cross-examine her about that.
22 CHAIRMAN EVANS: I think the problem that
23 we're all having is, you're pulling pieces --
24 MR. BAUER: These are the --
25 CHAIRMAN EVANS: -- out of the official

1 transcript. Do you have a copy of the official
2 transcript?
3 MR. BAUER: In her hands. Those are
4 official transcripts, provided --
5 CHAIRMAN EVANS: But are they -- are they
6 entire transcripts, or are they only --
7 MR. BAUER: They are --
8 CHAIRMAN EVANS: -- selected segments of the
9 transcript?
10 MR. BAUER: They are entire parts of
11 transcripts. I mean, the entire transcripts? I mean,
12 the entire, thick -- yeah. Basically, yes. They are
13 part -- they are official transcripts. Yeah. I mean,
14 she's got the whole thing, really.
15 MR. DUFF: Mr. Bauer, wait. Let me -- let
16 me try to explain it this way. You can't have -- if
17 the witness is live and in person on the witness
18 stand, you can't have -- you can't have the witness
19 read from the witness's deposition.
20 MR. JOHN BAUER: I gave her the whole thing.
21 MR. WILLIAMS: Hold on -- hold on for a
22 second, Dr. Bauer. Mr. Duff, respectfully --
23 MR. BAUER: May I read from it?
24 MR. DUFF: No. No, you can't, because you
25 have the witness live here. So you can't use the

1 deposition from the past to put in -- put in evidence
2 and testimony.
3 What you can do with the deposition is point
4 out an inconsistency between what she says now and
5 what she may have said at her deposition, but the way
6 you have to set that up is to ask her a question and
7 hear what she says, and then if you think there's an
8 inconsistency from her prior testimony, you could
9 point that out. But you can't just enter -- you can't
10 just read the deposition, because you have her live
11 and in person on the witness stand. You have to deal
12 with inconsistencies between this evening's testimony
13 and what she may have said that you think is different
14 at her deposition. Is that your point?
15 MR. WILLIAMS: That's my point. And the
16 only other thing I would add is, the copy of the
17 deposition that she has does not have page numbers.
18 So to the extent he's saying, "On page 36, you said,"
19 et cetera, the copy that she has in front of her does
20 not have page numbers.
21 MR. DUFF: Do we have two complete copies of
22 the deposition somewhere, the transcript, the bound --
23 MR. BAUER: I have -- yes, I have one. Yes.
24 MR. DUFF: Is there another one?
25 MR. BAUER: We have two, yes. We have two,

1 two copies of her deposition, the official books.
2 MR. DUFF: All right. Well, then --
3 MR. WILLIAMS: So I would say, if he has
4 that, then, if he's asking her a question where he
5 believes there's an inconsistency, she should have the
6 official, bound copy.
7 MR. BAUER: I'll be glad to.
8 MR. DUFF: She needs to have the --
9 MR. BAUER: I've got it.
10 MR. DUFF: -- the bound transcript.
11 MR. BAUER: Do you have it with you here? I
12 mean, the actual book?
13 MR. JOHN BAUER: Use Vernie's.
14 MR. BAUER: He won't want me to. Basically,
15 I have it, and it's out in my truck, and I can get it,
16 if you want to take a break, and I'll bring it in.
17 I'll bring all the depositions in.
18 MR. DUFF: Well, you had them earlier, Mr.
19 Bauer, because you wanted to know if you should bring
20 them out.
21 MR. BAUER: The depositions?
22 MR. DUFF: The red, bound depositions. You
23 showed them to me earlier when you asked could you
24 just pass them out now.
25 MR. JOHN BAUER: The Brockway deposition, I

1 took off of the internet, because Mr. Nussbaum had not
2 supplied that one. So I went to his website and
3 printed it out. She has the printed copy from his
4 website, and it has all of his identifications in it.
5 It is identical with what Mr. Williams has, if he will
6 share it.
7 MR. DUFF: Does it show pages from the
8 transcript?
9 MR. BAUER: And I have the actual binder
10 that Mr. Nussbaum provided to me, so -- if that would
11 be better.
12 MR. WILLIAMS: Just so it's -- if I may
13 approach, just so I can show you what --
14 CHAIRMAN EVANS: Let me say one thing, and I
15 will -- I will say this, as a layman to a layman, Mr.
16 Bauer, because I'm not a lawyer either; okay? And if
17 I understand Mr. Duff -- and I think I understand him
18 properly -- what he's saying is, as you are
19 questioning any witness, if you ask them a question
20 and you think their response is different from a
21 response they made in their original deposition, then
22 that is the time to bring the deposition in and say,
23 "But, you know, Ms. Witness, you are not saying now
24 what you said then." And I just think maybe we're a
25 little backwards, I mean, that you're coming at it

1 from the deposition first.
2 MR. BAUER: The -- it's exactly -- you're
3 exactly right. That is exactly what I'm doing. When
4 I ask her to read something from the deposition, it's
5 based on previous questions. What I was asking her,
6 based on the hiding of the child, I asked her the
7 questions first. There was obviously, to me, an
8 inconsistency, and then I asked her to read something
9 from the deposition. That's what I'm trying to do.
10 MR. WILLIAMS: If I may be allowed, I
11 believe she has responded to this -- to his cross-
12 examination about whether or not this child was
13 hiding. And, again, my concern was, there's some
14 parts of the deposition that he has given her that
15 have page numbers at the top. There are others that
16 don't. So, to the extent he says page 36, line 9, you
17 can't determine that based on the copy of the
18 deposition that she has been given.
19 Which brings me back to my original point
20 that, to the extent he's going to ask her questions,
21 it should be the original, bound copy which would be
22 unsealed for the purposes of cross-examination.
23 MR. BAUER: I'll be glad to provide that.
24 I'll just need to go get it.
25 MR. DUFF: So we're going to take a break,

1 then, to get two copies of the transcript?
2 MR. WILLIAMS: That's fine.
3 CHAIRMAN EVANS: Sure. Yeah. Let's take --
4 is 15 minutes enough time, Mr. Bauer?
5 MR. BAUER: Yes. Yes, sir.
6 CHAIRMAN EVANS: Okay. Let's take a 15-
7 minute break real quick. We're going to expand that
8 to a half an hour so we can grab dinner.
9 (Brief recess.)
10 CHAIRMAN EVANS: Okay. I'd like to
11 reconvene the hearing, and just a piece of business
12 here. We plan to try and end about nine o'clock this
13 evening. Tomorrow will change. We will not start
14 until 9:30 tomorrow. Two of the Board members have
15 some personal things that they have to get completed
16 in the morning, so we will start a little bit later
17 tomorrow morning, and I'll remind everybody of that
18 again. So we were -- you were cross-examining Ms.
19 Brockway, Mr. Bauer?
20 MR. BAUER: We're ready?
21 CHAIRMAN EVANS: Yes.
22 MR. BAUER: Before we begin, though, I would
23 like to place on the record that I received charges
24 from Dr. Moss from the May 29th email specifically
25 omitting the testimony of November 1st, anything

1 regarding November 1.
2 MR. WILLIAMS: And, again, I would object to
3 him testifying at this stage of the proceeding. He
4 has a witness who he has been cross-examining. He can
5 certainly ask her questions, but it would be
6 inappropriate for him to testify.
7 CHAIRMAN EVANS: And as I said, I think,
8 before, Mr. Bauer, that is -- I think that's very
9 appropriate for when you present your own testimony or
10 during your summation, but I would like you to direct
11 your questions to the witness and move forward here.
12 MR. BAUER: I believe that I am entitled to
13 the Teacher Employment and Dismissal Act due process
14 of law, written charges from the Board, which I have
15 not received, and I move to motion for a dismissal and
16 striken from the record Ms. Brockway's testimony.
17 MR. WILLIAMS: Again, I'd --
18 CHAIRMAN EVANS: You have an objection, Mr.
19 Williams?
20 MR. WILLIAMS: Yeah, I would object to his,
21 again, testifying and making that motion at this stage
22 of the proceeding. He's got a witness. He's started
23 her cross-examination. It was my understanding we
24 took a break for him to get her sealed transcript
25 deposition.

1 MR. BAUER: Yes.
2 MR. WILLIAMS: I would ask that we reconvene
3 from that point.
4 MR. BAUER: Okay. Now, I want to --
5 CHAIRMAN EVANS: Would you hold on just a
6 minute, please?
7 MR. BAUER: Yes.
8 (Board discussion.)
9 CHAIRMAN EVANS: I think, after -- I want to
10 go back to the motion you just made, Mr. Bauer, and
11 after discussing it with Mr. Duff, we're going to set
12 it aside right now.
13 MR. BAUER: Okay.
14 CHAIRMAN EVANS: We think there might be an
15 appropriate time for you to bring this up later; okay?
16 MR. BAUER: Yes, sir.
17 CHAIRMAN EVANS: But let's proceed with your
18 cross-examination of Ms. Brockway, please.
19 BY MR. BAUER:
20 Q Ms. Brockway, I believe I asked you earlier if
21 you knew what a rest wall was. Did I ask -- is a rest wall
22 -- did I ask you if it was an assigned place? I can't even
23 remember. Do you know anything about a rest wall?
24 A I'm sorry. Can you clarify what you're asking
25 me?

1 MR. BAUER: I agree. Thank you.
2 MR. WILLIAMS: And also give --
3 MR. BAUER: Thank you.
4 MR. WILLIAMS: And also give me a full
5 opportunity to state my objection.
6 BY MR. BAUER:
7 Q Okay. All right. I'll move on here. So, as you
8 stated before, you were not aware that Mr. George McMaster,
9 an attorney, requested --
10 MR. WILLIAMS: I'm going to object. To the
11 extent he prefaces a question with "as you've stated
12 before," then the question has been asked and
13 answered.
14 BY MR. BAUER:
15 Q All right. Did anyone come to you -- or did
16 anyone inform you that we need to preserve electronic data?
17 A No, I was never told to preserve electronic data.
18 Q I would like you -- file 165.
19 MS. ANDERSON: File 165?
20 THE WITNESS: Yes, ma'am.
21 MR. WILLIAMS: And my objection here would
22 be, the witness has already testified she is not
23 familiar with this request. This is just
24 documentation of the request that he's already asked
25 the witness if she knew about, and she said no.

1 foremost, I'm an instructional leader. I also hold the
2 title of test coordinator for the building. I'm also in
3 charge of our immersion program there, the Chinese and
4 Spanish immersion program.
5 Q And do you know Mr. Alden Bauer?
6 A Yes, I do.
7 Q And how did you come to know Mr. Bauer?
8 A I came to know Mr. Bauer when I was first
9 employed in the summer of 2010.
10 Q If you met Mr. Bauer when you were initially
11 employed as an administrator at Hilton Head Island
12 Elementary, then you've known Mr. Bauer for about four and
13 a half years; is that right?
14 A That's correct.
15 Q During the 2010-11 school year, your first at the
16 school, what was your opinion of Mr. Bauer as a teacher?
17 A Well, he was a good teacher. He seemed to love
18 what he did, love children.
19 Q And did you have any supervisory concerns about
20 Mr. Bauer in the 2010-11 school year?
21 A No, ma'am, no concerns.
22 Q How about in '11-12? Any changes -- any changes
23 from your initial impressions of Mr. Bauer as a teacher?
24 A No changes. We did have a couple of student
25 injuries that took place that year, and I do remember one

1 Mr. Bauer's inability to adequately relay information via
2 those Motorola radios. As I stated before, we did a lot of
3 training --
4 MR. BAUER: Objection. This is not in the
5 evidence. There is nothing regarding this in the
6 evidence.
7 MS. FAWLEY: This goes to Mister -- this
8 goes to Mr. Bauer's conduct in the year 2013, which is
9 the year in which the lack of supervision and the
10 inability to understand directions and insubordination
11 and disrespect began.
12 MR. BAUER: Insubordination? The radio?
13 MS. FAWLEY: Mr. Bauer, I'm not going to --
14 MR. BAUER: I object.
15 MS. FAWLEY: -- be arguing with you, but
16 I've placed my --
17 CHAIRMAN EVANS: The objection is noted, but
18 we overrule it.
19 MR. BAUER: Yes, sir.
20 BY MS. FAWLEY:
21 Q Mr. Clendaniel, if you would proceed?
22 A Sure. As I was saying, let's see, that was the
23 year that I did notice Mr. Bauer's inability in
24 professional radio etiquette with our radios. In a fleet
25 of 16 radios with a school of just over 900 students, it's

1 MR. BAUER: Objection. Not charged.
2 MS. FAWLEY: And, again, this is a part of
3 negligent supervision. We respectfully ask that the
4 witness be able to finish his testimony on this issue.
5 CHAIRMAN EVANS: Your objection is
6 overruled, Mr. Bauer. Go ahead and finish your
7 testimony.
8 BY MS. FAWLEY:
9 Q And Mr. Clendaniel, briefly, what was the second
10 incident?
11 A Sure. The second incident was regarding a fifth-
12 grade student who was left at the Island Rec Center
13 unattended for 30 minutes. That student was a gifted-
14 identified student. He was also a student that had a 504
15 plan.
16 Q Now, when did these incidents occur, these two
17 incidents?
18 A The first incident would've occurred on February
19 4th, and the second would've been February 5th.
20 Q If you would please refer to Complainant's
21 Exhibit 10 and state what this writing is, please?
22 A Sure. This is my document that I drafted,
23 documenting the phone call that I received from the parent.
24 I have to apologize. There is a typo. This parent
25 would've contacted my desk, left a voice mail on my desk

1 CHAIRMAN EVANS: -- the Board understands
2 that we have pull-out programs. I'm not sure how this
3 relates to the charges.
4 MR. BAUER: All right.
5 CHAIRMAN EVANS: I mean, if you want to
6 explain that to us --
7 MR. BAUER: I understand. Withdrawn. Thank
8 you.
9 BY MR. BAUER:
10 Q Okay. Mr. Clendaniel, were you told to preserve
11 evidence, especially electronic evidence?
12 A Everything that I document, I save. You know, I
13 keep multiple files, for -- for testing, for discipline, I
14 mean, attendance. I keep documents. I've never -- I've
15 never been told to, quote, archive any -- any documents. I
16 just naturally save things so I can refer back to them, if
17 that's the question.
18 Q Who would be considered the administrative staff
19 at Hilton Head Island Elementary?
20 A The administrative -- the administrative team
21 right now is Ms. McAden, myself, and Ms. Brockway.
22 MR. BAUER: Okay. I think that's all I've
23 got. Thank you.
24 MS. FAWLEY: No questions on redirect.
25 CHAIRMAN EVANS: Mr. Clendaniel, you're

1 Q All right. If you could turn to -- and this is a
2 little tricky also. It's Exhibit Number 2 from Ms.
3 Walton's deposition, so it's after the 40-or-so exhibits.
4 A Yes.
5 Q There is a second set of exhibits, and it's
6 labeled Number 2. Do you see that?
7 A Yes.
8 MR. BAUER: I object to this exhibit because
9 this is not the roll book that was provided to Ms.
10 McAden on February the 11th at the meeting.
11 MR. WILLIAMS: We're talking about the
12 February 6th meeting, but we also, obviously, for the
13 purpose that we couldn't make -- we have a photocopy
14 of the roll book, but we also have the actual roll
15 book that Mr. Bauer provided to us through the
16 discovery process, if the Board wishes to see that
17 document, as well.
18 MR. BAUER: The roll book was submitted on
19 February 11th along with a binder with PowerSchool
20 attendance sheets. The roll book that you have in
21 your possession is not the correct grade book. It is
22 one that was submitted to placate the opposing
23 counsel, but Ms. McAden has the official grade book in
24 her possession, or the district does. Therefore, I
25 object to this exhibit.

1 aware by Mr. Earnest on May 23rd, 2013, that cameras were
2 being installed in the gym?
3 A Yes, this email from David Earnest states that
4 this is bringing everybody up to the scope of the work
5 going on at school.
6 Q Therefore, you were informed; is that correct?
7 A Yes.
8 Q Thank you. All right. Do you agree that this
9 email from Mr. Earnest was sent to you around nine months
10 before the pool event of February 5th and before I was
11 placed on administrative leave?
12 A This email was sent on May 23rd of 2013.
13 Q Okay. Thank you. Now, are you aware that Mr.
14 Bauer's consultant attorney sent a letter on May 21st,
15 2014, to Ms. Alice Walton, stating that all electronic data
16 be preserved?
17 A This was correspondence to Ms. Walton. I have
18 not been made privy to correspondence to Ms. Walton.
19 Q Okay. Did Ms. Walton contact you regarding the
20 preservation of all electronic data?
21 A Ms. Walton asked me to secure Mr. Bauer's laptop
22 and to make sure everything was kept in -- intact for Mr.
23 Bauer upon the time that he went on administrative leave.
24 Q Did she specify anything besides laptop, like
25 computer -- anything electronic besides computers?

1 A The laptop with his email correspondence, phone
2 messages, everything was to be preserved --
3 Q Okay.
4 A -- that was relating to Mr. Bauer's email address
5 and correspondence.
6 Q Okay. And did you inform Mr. Clendaniel or Ms.
7 Brockway of that?
8 A I don't recall. I don't recall.
9 Q Would you have been the one that informed the
10 opposing counsel that Hilton Head Island Elementary took
11 the appropriate steps to preserve data on computers and
12 other electronic devices?
13 A I'm sorry. Would you repeat the question?
14 Q Yes. Were you the one that informed Dr. Fawley
15 and Mr. Williams that you had preserved all data?
16 A I don't recall.
17 Q If I were to say that -- okay. Sorry. I'll
18 rephrase. Scratch that. All right. Now I'd like to move
19 on to trucks; truck email, specifically. I asked for truck
20 -- I asked for any emails for discovery evidence regarding
21 my truck, and Mr. Williams answered on March 20th, and this
22 is file 261. Please refer to file 261. This is from Mr.
23 Williams.
24 MR. WILLIAMS: To the extent he's asking her
25 about correspondence that I sent to him, we would

1 A Can you rephrase the question?
2 Q Yes, I sure will. I was confusing. Do you
3 remember the meeting where you and Dr. -- or Ms. Walton
4 questioned me about the appropriateness or the -- just
5 questioned me about my substitute plan?
6 A I remember, with Alice Walton, discussing the
7 date that his substitute plan was written. As I recall, it
8 was about three years old. There was something in his sub
9 plan about a snow day, a snowman's day. I do recall
10 addressing the sub plan and how old it was.
11 Q And do you remember presenting that plan to Mr.
12 Bauer in this meeting?
13 A To the best of my knowledge, I do remember
14 presenting the sub plan -- the old sub plan to Mr. Bauer.
15 Q Do you remember complimenting Mr. Bauer for the
16 medical information included in a plan about certain
17 students?
18 A Absolutely not. To the contrary, I remember
19 stating that the medical plan that was provided in his sub
20 plan was for a present student at our school who, at that
21 time, was in the third grade. However, in his sub plan,
22 the medical information was when the student was in the
23 first grade, which was a concern, being that it was a very
24 serious medical situation.
25 Q Yes. True. So, as you said, you remember

1 THE WITNESS: This is a question for me?
2 CHAIRMAN EVANS: Yes.
3 THE WITNESS: Okay. I'm sorry.
4 MR. RIVERS: Yes, ma'am. The letter that you
5 were talking about that was dated December 10th that was
6 supposed to be --
7 THE WITNESS: 2013?
8 MR. RIVERS: Yes, ma'am. I was just curious. Do
9 you use scanners at -- I guess my question would be, why
10 wouldn't be on letterhead from you?
11 THE WITNESS: I -- you know, there are many
12 documents in this notebook that are not on letterhead. I
13 don't know if this is the original form. I don't know if
14 it's been scanned. This particular copy, I don't know.
15 MR. RIVERS: Okay. I was just curious, because
16 -- with the letterhead, because without the letterhead,
17 anyone could -- anyone could write it, or it could be post
18 -- post -- I mean, it could be written --
19 THE WITNESS: Right.
20 MR. RIVERS: -- after the time it says it's
21 written, and I was just curious.
22 THE WITNESS: Right. I understand.
23 MR. RIVERS: It's curious.
24 MR. BAUER: I'm sorry. Was he referring to the
25 December 10th -- which -- yes.

1 CHAIRMAN EVANS: December 10, 2013.
2 MR. RIVERS: It has a signature, but I was used
3 to seeing them with the letterhead from the principal, or
4 something, just to authenticate where it came from.
5 THE WITNESS: Um-hum. Um-hum.
6 MR. RIVERS: Okay. Thank you.
7 CHAIRMAN EVANS: Ms. Anderson?
8 MS. ANDERSON: I just had a question with regard
9 to the medical document and how -- how are the medical
10 documents updated, and whose responsibility is it to
11 provide that packet to the teachers, or is it the teachers'
12 responsibility to make their own medical packets?
13 THE WITNESS: It is not the teachers'
14 responsibility to make their own medical packets. Our
15 school nurse typically makes all medical packets. This
16 particular student, who we cannot name, the parent of this
17 particular student works at our school, and the parents --
18 plural -- like to get together with all the specialists who
19 see their child to update on any changes with the child's
20 diagnosis or treatment plan.
21 The reason that they had a photograph of their
22 daughter on the front -- their child on the front page is
23 so, in the event that a substitute is in the building, they
24 did want substitute teachers to know of that child's
25 condition and diagnosis and how to handle it. Does that

1 resolve any objection from our motion. Okay? Everybody
2 kind of understand the ground rules here?
3 MR. WILLIAMS: That's fair. And just in the
4 interest of efficiency, I can tell you that, for the most
5 part, even if I object, if Ms. Walton gives a verbal
6 response, I'm really not that concerned about the answer
7 that she gave in terms of -- in terms of the Board seeing
8 whatever her answer was.
9 It's more, if there are documents that she's
10 cross-examined on that I object to on the basis of
11 relevance, I'd want a ruling on the admissibility of the
12 document, not so much whatever verbal response she gave, if
13 that helps.
14 CHAIRMAN EVANS: Mr. Bauer, do you have anything
15 you want to bring up in regards to this testimony that
16 we're about to get?
17 MR. BAUER: No, sir, I don't. I don't believe
18 so.
19 CHAIRMAN EVANS: Okay. Thank you, and let's get
20 Ms. Cushingberry to start the video.
21 (VIDEO testimony begins.
22 WHEREUPON, ALICE WALTON, having been first duly
23 sworn, was examined and testified as follows:)
24 MR. WILLIAMS: In light of Mr. Bauer's
25 statement regarding his desire to place an objection

1 A Yes.
2 Q Other than the February 5th, 2014, incident
3 involving the Island Recreation Center, did you discuss any
4 other incidents regard Mr. Bauer and supervision concerns?
5 A I did, because there was an incident that Ms.
6 McAden brought up. I wasn't aware of that incident until
7 that meeting.
8 Q Okay.
9 A Ms. McAden brought that up.
10 Q And what did you discuss about the other incident
11 that -- of which you were not aware until that time?
12 A It was another question about Mr. Bauer's
13 supervision of students and leaving students unattended,
14 and I believe we talked about a rest wall that students go
15 to --
16 MR. BAUER: Objection. Sorry. Not charged.
17 (LIVE discussion begins.)
18 CHAIRMAN EVANS: Okay. What is your
19 objection?
20 MR. BAUER: Basically my same point is,
21 November 1st is not, in my opinion, part of the May
22 29th charges provided by Dr. Moss. His charges are
23 based on the February 5th incident, and that's pretty
24 much it. November 1st was never mentioned or charged
25 in the four charges by Dr. Moss.

1 (Brief recess to redact exhibits.)
2 CHAIRMAN EVANS: Okay. And we're ready to
3 proceed with the video?
4 MR. WILLIAMS: Yes. Yes, sir.
5 CHAIRMAN EVANS: Mr. Bauer?
6 MR. BAUER: Yes.
7 CHAIRMAN EVANS: Thank you.
8 (VIDEO testimony resumes.)
9 BY MR. BAUER:
10 Q All right. Do you know if school board minutes
11 are public?
12 A They are public.
13 Q Do you know if there's a requirement the board
14 minutes be public --
15 A Yes.
16 Q -- on the website?
17 A Yes.
18 Q And is there a law? Is that the law?
19 A I think it is. Yes, I think it is.
20 Q Now, if the Board removed already published
21 minutes, would this be a violation of the law?
22 A I don't -- I can't answer that question. I don't
23 know for sure.
24 Q Okay. Because I noticed the Board removed the
25 minutes from March 17th, March 25th, March 31st, 2015, from

1 Employee A does not remain the same from meeting to
2 meeting.
3 CHAIRMAN EVANS: Exactly. From any --
4 MR. BAUER: Okay.
5 CHAIRMAN EVANS: In any given year, we may
6 have a number of employee As who are all different
7 employees, but because it's a different meeting, we
8 refer to them as "employee A" for that meeting. Hold
9 on a minute.
10 (Board converses quietly.)
11 CHAIRMAN EVANS: I think one of the things
12 that Mr. Duff and I have discussed over the last two
13 days is our concern that everybody understand the
14 relationship that the Board has to the superintendent;
15 okay? The Board does not hire and fire personnel;
16 okay? We accept or reject recommendations from the
17 superintendent.
18 MR. BAUER: Yeah.
19 CHAIRMAN EVANS: Our charge, at least in
20 this district, is that we hire the superintendent to
21 make those decisions about hiring and firing; okay?
22 Or dismissing. And he makes recommendations to us.
23 Sometimes, they're individuals. I mean, in our last
24 board meeting, we took an individual recommendation
25 from him on a principalship; okay? And sometimes they

1 Q -- on the April -- I'm sorry.
2 A No.
3 Q Do you believe that the district handled this
4 properly, based on that law?
5 A Yes.
6 Q Is it true that much the Teacher Employment and
7 Dismissal Act deals with the rights of a teacher?
8 A Yes.
9 Q Does that include the right of a hearing before
10 termination of a contract?
11 MR. WILLIAMS: You may answer to the extent
12 you can. To the extent that you're asking her for a
13 legal conclusion, I would object to that.
14 THE WITNESS: Yeah, I can't. I cannot
15 answer that question.
16 BY MR. BAUER:
17 Q Do you believe that there's a loophole in the
18 employment -- Teacher Employment and Dismissal Act that
19 empowers the superintendent to terminate a contract without
20 a hearing?
21 MR. WILLIAMS: Same objection, but you can
22 answer if you know.
23 THE WITNESS: I can't answer that. I don't
24 know.
25 /// ///

1 BY MR. BAUER:
2 Q And if a teacher is terminated without a hearing,
3 does that violate Brown versus James?
4 A I'm not familiar with Brown versus James.
5 Q Okay.
6 MR. WILLIAMS: Same objection. Just so
7 we're clear, to the extent you're asking her to form
8 legal conclusions or give a legal analysis, I would
9 have a continuing objection to that.
10 MR. BAUER: Okay. Here we go. Now --
11 MR. WILLIAMS: Are you offering this as --
12 MR. BAUER: Yes.
13 MR. WILLIAMS: -- as an exhibit? Can we
14 have it numbered?
15 (WHEREUPON, a document was marked as
16 Defendant's Exhibit Number 3 for Identification to the
17 Walton Deposition.)
18 BY MR. BAUER:
19 Q Now we go to file -- just a minute -- you were
20 asked if the superintendent can terminate a contract on his
21 own without a hearing. Here's what you said on February
22 5th, 2015. Your answer, "He can." The question, "Under
23 what scenario?" Your answer, "Policies give him that
24 authority." Were you to provide to us copies of those
25 policies?

1 A I don't remember if I were or not.
2 Q Does policy trump law?
3 A No.
4 Q Does the law say that a teacher cannot be
5 terminated without a hearing?
6 MR. WILLIAMS: Again, to the extent you're
7 asking for a legal conclusion, I'd have the same
8 objection I previously made.
9 BY MR. BAUER:
10 Q You can answer.
11 A And your question was?
12 Q Does the law say that a teacher cannot be
13 terminated without a hearing?
14 A I specifically can't answer yes or no to that.
15 Q Okay. You were asked on February 5th, 2015, if
16 Mr. Bauer was terminated by the Board without a hearing,
17 and your answer is -- was, "That is correct." Now, please
18 see file 59. That's --
19 MR. WILLIAMS: Is this the exhibit?
20 MR. BAUER: Yes, 59 -- oh, yeah. I'm sorry.
21 This is a different exhibit coming up.
22 MR. WILLIAMS: Are you offering it as an
23 exhibit?
24 MR. BAUER: Yes. Here we go. It's --
25 sorry. I keep handing it over here. Okay.

1 (VIDEO testimony resumes.)
2 BY MR. BAUER:
3 Q I'm sorry. It's actually page 6. It would be
4 the second page, but it's page 6. All right. We'll come
5 back to that. I'm sorry. I'm a little mixed up here.
6 All right. I think we'll need to come back to
7 this. I'm going to skip over -- now, the so-called charges
8 were sent in an email from Dr. Moss, in prose form, at
9 least four days prematurely. That's four days before the
10 deadline of June the 2nd for Mr. Bauer to comply with your
11 directives. Is that correct?
12 A I'm not -- I can't verify those dates.
13 Q Okay. And I know I asked you this previously,
14 but do you believe that an email is appropriate in
15 seriousness for the ending of a career?
16 MR. WILLIAMS: As you acknowledged, I'd
17 object on the basis that the question has been asked
18 and answered.
19 BY MR. BAUER:
20 Q By law, do the charges come from the school
21 board?
22 MR. WILLIAM: I'd object to the extent
23 you're asking her for a legal conclusion or a legal
24 opinion, but you may answer if you know.
25 THE WITNESS: The charges, in my opinion,

1 comes from Dr. Moss.
2 BY MR. BAUER:
3 Q Okay. Here's the actual statement from the
4 school board as far as -- I'm sorry, from the Teacher
5 Employment and Dismissal Act. "No teacher shall be
6 dismissed unless written notice specifying the cause of
7 dismissal is first given the teacher -- to the teacher by
8 the district board of trustees and an opportunity for a
9 hearing has been afforded the teacher." Do you believe the
10 Board specifically authorized the superintendent to act in
11 their place with the charges, avoiding a hearing, and
12 dismiss Mr. Bauer?
13 MR. WILLIAMS: I object to the question.
14 Again, you can answer to the extent you understand it.
15 THE WITNESS: I don't. I think you're
16 asking me to make an opinion on someone else's
17 actions, and I can't do that.
18 BY MR. BAUER:
19 Q Do you think that a hearing was still available
20 after the Board's actions?
21 A I don't understand that question.
22 Q Okay. I'll go to the next -- 59-A. Okay. Would
23 you please read, on 59-A, the red part out loud?
24 A "As a result of the court's decision in Brown, it
25 is clear that the school boards may no longer make initial

1 decisions to accept or reject a superintendent's nonrenewal
2 recommendation prior to an evidentiary hearing, if such a
3 hearing is requested, or simply the notice of a nonrenewal
4 recommendation and of the opportunity for a hearing is to
5 be given prior to May 15th."
6 Q Notice the words "nonrenewal," the same wording
7 as the April 1st minutes, and, quote, Mr. Chairman -- we
8 need 60-B.
9 (LIVE discussion begins.)
10 MR. BAUER: And if you wish to skip over
11 this, this is exactly what you explained to me.
12 CHAIRMAN EVANS: Yes. Okay.
13 MR. BAUER: And that's fine with me.
14 CHAIRMAN EVANS: Thank you, Mr. Bauer.
15 MR. BAUER: Yes.
16 CHAIRMAN EVANS: Can we go ahead and, with
17 somebody's supervision, skip over this part?
18 MR. WILLIAMS: I have a transcript that may
19 help us move it along.
20 CHAIRMAN EVANS: Okay. Thank you. Why
21 don't we take a quick 10-minute break while we're
22 going through this?
23 (Brief recess.)
24 MR. DUFF: Mr. Williams and Mr. Bauer, will
25 you make it clear by verbalizing your agreement that

1 some portion of the tape can be skipped or fast-
2 forwarded?
3 MR. WILLIAMS: And during the break, Mr.
4 Bauer and I, along with Mr. Duff, were trying to have
5 a discussion, in the interest of efficiency, to fast-
6 forward parts. Mr. Bauer acknowledged some parts that
7 he did not have an objection to us fast-forwarding to
8 prior to the break.
9 But in the break, we also referred to his
10 Exhibits 22 and 23, which related to an out-of-state
11 case, a case out of, I think, the state of Illinois,
12 and as was explained to him, that type of information
13 is not proper to be introduced into evidence. If he
14 wants to ask the Board as part of his closing or his
15 testimony to consider that, that's something that he
16 can do, but we all agree that, in terms of testimony
17 of the witness and including them in the evidence
18 book, that those are not proper documents to be
19 included or referred to by the witness.
20 CHAIRMAN EVANS: And we would agree. Mr.
21 Duff and I had this discussion two days ago, about
22 some of the in limine motion, and that was certainly
23 part of it, introducing case -- cases from other
24 states, that it's not appropriate in this phase, but
25 if he wants to introduce them in his summation --

1 ignore this directive as well.
2 "All of these directives have occurred while you
3 were still a Beaufort County school employee and receiving
4 pay.
5 "I must now direct you to complete all
6 requirements by May -- by March -- by Monday, June 2nd,
7 2014, or I will proceed with a recommendation for
8 termination based upon the facts to date."
9 Q Thank you. Now, do you see that willful neglect
10 -- I'm sorry, willful negligence was not charged?
11 A Are we talking about the word "willful" now?
12 Q Yeah, partly.
13 A Or are we talking about "neglect," or are we
14 talking about the two of them together?
15 Q The two of them together.
16 A I do not see the adjective "willful" in front of
17 neglect in Dr. Moss's letter.
18 Q Therefore, since "willful" was not included with
19 "negligence" -- was not charged -- why should that
20 accusation continue to damage me?
21 A I don't --
22 MR. WILLIAMS: I object to the extent you're
23 asking her for information that she couldn't possibly
24 know.
25 /// ///

the case?

A Yes, leaving a child unattended off campus brought me to the scene.

Q Without those two accusations, the case would have never reached you; is that correct?

A It would have -- it wouldn't have been a case had the student not been left off campus.

Q Are you aware that Mr. Clendaniel testified that the charge of insubordination during the pool event was not true?

11 A No, I'm not aware, because I wasn't at his
12 deposition.

13 Q Would you recommend to the Board that they drop
14 the pool insubordination charge?

15 MR. WILLIAMS: I object, and more broadly
16 the objection is, although the term "insubordination"
17 has been used, it's about more than the -- relates to
18 more than the pool incident.

19 BY MR. BAUER:

20 Q Was the charge of neglect one count?

21 A I'm not so sure I can answer that. It was a
22 charge.

23 Q How can one accident meet the requirements of the
24 employment and dismissal act, section 430, which states,
25 "Persistent neglect"?

1 A I don't know. I don't remember.
2 Q All right. If you -- okay. Let's see. Was
3 there a problem with, actually, delivery or receiving this
4 evaluation, as far as getting it to you on time?
5 A A problem?
6 Q Yeah. Was there a delay, maybe technical
7 difficulties, getting the evaluation?
8 A Well, it was a delay from the time that I
9 requested it until the time that I got it. What the issues
10 were, I'm not -- I couldn't specifically say.
11 Q Do you think the problem could have been at your
12 end, that you blamed me because -- I'm sorry. Let me --
13 I'll let you finish. Do you think that the technical
14 problem could have been on the end of the school
15 district's?
16 A It's possible it could have been.
17 Q Okay. The fax number provided by human resources
18 -- and let me -- we need that file. Okay. I'll get it.
19 MR. WILLIAMS: It's here if you want it.
20 MR. BAUER: Okay.
21 MR. WILLIAMS: You're welcome to use them.
22 MR. BAUER: Yeah. I'll go --
23 BY MR. BAUER:
24 Q The fax number provided by human resources was
25 833 -- or 843-322-2371, but that number did not work. They

then sent me 843-322-2330, which is Dr. Moss's fax. Why would Dr. Moss not forward it to you?

MR. WILLIAMS: I'm going to object to the extent you're testifying, and also to the extent you're asking her about what someone else did or did not do.

BY MR. BAUER:

Q Did you ever receive it from Dr. Moss?

A I don't remember. I know I received it.

Q Also, when did you receive the handwritten copy?

A I don't know.

Q Okay.

A It's always time stamped when it comes to my office.

Q Okay. Yeah. At my -- at my deposition, the question from Dr. Fawley was, "I just want the handwritten note," and the answer from me was, "I don't have that. Ms. Walton would have it." And then the statement from Dr. Fawley was, "All right. She doesn't have it. Okay." Do you believe that Mr. Bauer, me, had made an effort to get the evaluation to you, at least handwritten, at first?

A Do I believe that you made an effort to get --

Q Yes.

A I do believe you made an effort to get it to me.

Q Are you aware of why there was a delay at all?

1 A I don't remember.
2 MR. BAUER: Okay. All right. File, let's
3 see, 97. Thank you.
4 (WHEREUPON, a document was marked as
5 Defendant's Exhibit Number 15 for Identification to
6 the Walton Deposition.)
7 MR. BAUER: Here we go. There.
8 BY MR. BAUER:
9 Q And please identify file 97 -- I'm sorry I keep
10 calling it my file -- third paragraph, first sentence.
11 That would be, "On March 5th, we met again with Ms.
12 McAden," and dot, dot, dot. And let me remind you of what
13 you said before I give you the question. "Mr. Bauer did
14 not come back. He did not even come back to even discuss
15 the improvement plan." The question from Ms. Martel is,
16 "Was he invited back?" And answer was, "Yes, he was,
17 several times." And you continued later, dot, dot, dot --
18 or, I'm sorry, quote, dot, dot, dot, put down what you
19 think you can do to improve, and when we get back together,
20 we will discuss it. He never came back.
21 Since I had sent the plan to both you and Ms.
22 McAden in February, would March the 5th have been a good
23 time to discuss it?
24 A I don't know if it would have been or not. I
25 don't know what the circumstances were.

Q So can you tell me, why did you not discuss the improvement plan 22 days after asking for it?

A Because it wasn't a -- you had not convinced me that we needed to be talking about --

Q Okay.

A -- an improvement plan at that point.

Q When you make big mistakes like that -- okay. Let me change this. All right. I'll get back to this. Do you believe that I was concerned that you would not allow -- actually, we're going to go back to file 49. I'm
11 sorry I'm jumping, but please refer to file 49.
12 MR. WILLIAMS: Okay.
13 MR. BAUER: I'm sorry.
14 MR. BAUER: You didn't -- I was going to
15 object to both questions you started to ask, but since
16 you didn't complete either question, I did not object.
17 BY MR. BAUER:
18 Q Please refer back to file -- not file 49. It's
19 file -- Exhibit 13. I have to -- I'm not used to legal
20 jargon, and so on. Was I concerned, in your opinion, that
21 I would not -- that you would not allow me time to consult
22 with an attorney?
23 MR. WILLIAMS: I'm going to object to the
24 extent you ask her any question about what your state
25 of mind is or was.

1 Q Okay. I know you've answered this in a number of
2 different ways, but I'd like to hear it again. Would no
3 response, no response from you to my professional
4 improvement plan, be a warning signal to me that possibly
5 the Teacher Employment and Dismissal Act requires a
6 response?
7 MR. WILLIAMS: Objection on several bases.
8 You're asking what you would have -- what signal you
9 would have received.
10 MR. BAUER: Uh-huh.
11 MR. WILLIAMS: And also asking for legal
12 conclusions, and also stating --
13 MR. BAUER: That is --
14 MR. WILLIAMS: -- facts not in evidence.
15 MR. BAUER: Okay. And my response to that
16 would be, I would assume that the head of the human
17 resources would know all of the legal aspects of the
18 Teacher Employment and Dismissal Act, as well.
19 BY MR. BAUER:
20 Q But, basically, would no response to a
21 professional improvement plan be a warning signal to me,
22 since the employment and dismissal act requires a response?
23 MR. WILLIAMS: Same objection.
24 MR. BAUER: Okay. You can answer if you
25 wish.

1 THE WITNESS: So it's all right for me to
2 answer?
3 MR. WILLIAMS: If you can.
4 BY MR. BAUER:
5 Q If you can. If you can.
6 A No, I really can't answer that, but I can tell
7 you what my opinion is. It was not -- we weren't dealing
8 with an employment dismissal act. We were dealing with an
9 employer-employee action, to place an employee on a plan
10 for improvement.
11 Q I see.
12 A So we weren't dealing with anything but placing
13 you in a plan, and until we came to a conclusion as to what
14 that plan would look like, and implemented that plan,
15 officially, on the correct documents, providing a
16 beginning, a middle, and an ending date for that plan, it
17 was not an official improvement plan.
18 Q I see. So you would feel no need to involve
19 attorneys as -- you wouldn't submit this to an attorney
20 right when you received the improve plan?
21 MR. WILLIAMS: Objection to the relevance,
22 but you may answer.
23 MR. BAUER: Well, okay. The relevance is,
24 she admitted this to Childs & Halligan on February
25 18th, two hours after it was delivered to her. And my

1 question is, why did you feel the need to send it to
2 Connie P. Jackson at Childs & Halligan on February
3 18th?
4 MR. WILLIAMS: And I'd object both to
5 relevance and that you're seeking attorney-client
6 information, and this is a question I would advise you
7 not to answer.
8 THE WITNESS: Okay.
9 BY MR. BAUER:
10 Q All right. Now, this is from the employment and
11 dismissal act, section 440, code of laws title 59, quote,
12 School administrator required to make a reasonable effort
13 to assist teacher in corrective measures. Reasonable time
14 for improvement required. Is it possible that this whole
15 situation of the school losing a good teacher, and a good
16 teacher losing his career, comes down to confusion between
17 the principal and the human resources officer not knowing
18 who was supposed to respond to an improvement plan?
19 MR. WILLIAMS: Objection on a number of
20 bases, including your testifying and assuming facts
21 not in evidence.
22 BY MR. BAUER:
23 Q Okay. Is it -- I'll rephrase that, then. Is it
24 possible that there could have been confusion between the
25 principal and the human resources officer as to who was to

1 respond to the improvement plan?
2 A I can't answer that.
3 Q Okay. Now, section -- do we have -- yeah,
4 section 440 of the Teacher Employment and Dismissal Act
5 requires a reasonable time for improvement, and I need file
6 42-A.
7 (WHEREUPON, a document was marked as
8 Defendant's Exhibit Number 18 for Identification to
9 the Walton Deposition.)
10 BY MR. BAUER:
11 Q All right. Now, please refer to section 440, and
12 that would be on page nine of this document; section
13 59-25-440.
14 MR. WILLIAMS: You said page nine?
15 MR. BAUER: It is on mine. I think she's
16 got it. Yes.
17 THE WITNESS: He's got them, yeah.
18 MR. BAUER: Yours is different?
19 MR. WILLIAMS: I don't -- I have pages 1
20 through 5.
21 MR. BAUER: Oops. Okay. I have him -- all
22 right. Just find section 440. It's, I believe, on
23 that somewhere.
24 MR. WILLIAMS: I see section 440, but just
25 so I, at some point, have what you have, do you have

1 an extra copy of the exhibit that the witness has?
2 MR. BAUER: Yeah, let me write it down.
3 Okay. Yes, we'll make sure we get it.
4 MR. WILLIAMS: May I look at it?
5 MR. BAUER: Yeah. Sure. Okay.
6 MR. WILLIAMS: Hold on for a second.
7 MR. BAUER: Yeah. Sure.
8 BY MR. BAUER:
9 Q Would you please read out loud section 440, Ms.
10 Walton?
11 A Written notice to teacher of possible dismissal?
12 Is that what you're looking at?
13 Q Yes.
14 A School administrator required to make a
15 reasonable effort to assist teacher in corrective measures.
16 Reasonable time for improvement required.
17 Q Okay. That's -- all right. If Ms. McAden, in
18 her deposition, says that the improvement plan was your
19 responsibility for a response, and you say that it was Ms.
20 McAden's responsibility for a response, and nobody
21 responded, could that be a problem?
22 A No.
23 MR. WILLIAMS: I'd object to, again, stating
24 facts that aren't in evidence, but you can respond if
25 you know.

1 evidence relevant to the case. Your answer was yes. Now,
2 do you consider 13 months to be a delay in the process
3 after having received the emails on March 24th?
4 A My delay in the supreme court process?
5 Q I'm sorry. Do you consider that to be in the
6 early stages -- okay. Would you say that receiving emails
7 after 13 months would be a delay, based on the supreme
8 court ruling?
9 MR. WILLIAMS: I would object to the extent
10 you're asking her to interpret what is meant by a
11 supreme court ruling.
12 BY MR. BAUER:
13 Q Okay. Before the Board hears your testimony,
14 they will be -- have been informed about Shana Washington-
15 Middleton, whose case was reversed on the grounds of delay.
16 Did you testify that you could make my emails available to
17 me in three minutes at your deposition?
18 MR. WILLIAMS: Object to the extent you're
19 testifying about another case. She can -- she
20 certainly is free to answer any questions related to
21 testimony that she offered at her deposition. So to
22 the extent he asks you about providing --
23 BY MR. BAUER:
24 Q Did you -- did you testify that you could make my
25 emails available to me in three minutes?

1 A On August 3rd, you made an attempt.
2 Q August the 3rd. That's correct.
3 A After I made an attempt on June 10th.
4 Q Now, I obviously tried to make an appointment,
5 but there was no response. Why was there no response to
6 this?
7 A I can't answer that, Mr. Bauer.
8 Q Okay.
9 A Did you ask me on August the 3rd that -- to give
10 you access because you didn't get any response?
11 Q I'm basing this on your asking me to contact --
12 A Here again, when I offered that --
13 Q -- Ms. Lopatka.
14 A Okay. Here again, when I offered you that option
15 in June to provide you access to your email --
16 Q Um-hum.
17 A -- I didn't hear -- or I don't even -- this went
18 to Ms. Lopatka, not me. So the sense of urgency couldn't
19 have been too great.
20 Q So since --
21 A From June to August --
22 Q So what you're --
23 A -- is not any urgency.
24 Q -- saying is, since it didn't seem urgent, you
25 wouldn't respond? Is that what you're saying?

1 I would -- I could say I was the lead. It was a team
2 effort." So what it appears to me is, you're saying that
3 you -- you're saying you're not the team leader, and Dr.
4 Moss is saying you are. If you were actually the team lead
5 investigator, why would you not have known that?
6 A Well, Mr. Bauer, as human resource officer --
7 Q Uh-huh.
8 A -- in theory, I am the team leader in all
9 investigations, but I can't very well do a comprehensive
10 investigation without the school-level administration. So,
11 therefore, it is a team effort. They're on site. They
12 deal with the staff, and in this instance, they dealt with
13 you. I did not. So that's why it was a collaborative
14 effort.
15 Q Okay. Right. Yeah. All right. Now we'll go on
16 to the pool. During the several depositions -- I'm sorry,
17 during -- yeah, we asked all of the investigators what they
18 investigated. So, all of the people that were involved in
19 a deposition, Ms. Martel asked them what they investigated,
20 and you will remember, probably, most of these questions, I
21 think. Number one was, was there a child who did not
22 return with his class from the pool on February 5th, 2014?
23 That's -- that's my question. Was there a child who did
24 not return to his class from the pool on February 5th,
25 2014?

1 MR. WILLIAMS: Again, to the extent you're
2 testifying, you can ask her what she knows, but I
3 would object to any testimony you're offering.
4 BY MR. BAUER:
5 Q If no one can answer these questions, was it a
6 good investigation? If none of the investigators could ask
7 -- or answer these questions, was it a good investigation?
8 A I think you're asking me to answer a question
9 based on someone else's actions.
10 Q Okay. All right. At the deposition of Ms.
11 McAden in December, she referred to me as an excellent
12 teacher, a good coach, an excellent mentor, and that I was
13 liked by the children. You, Ms. Walton, testified that I
14 had an excellent reputation. Others called me courteous
15 and quick to volunteer. On -- and this is the lead up.
16 Would you agree -- I'm sorry. Where's the question?
17 MR. WILLIAMS: That's what I was thinking.
18 BY MR. BAUER:
19 Q I'm sorry. It's like, where's the question? I
20 forgot what the question was. I didn't write it down.
21 I'll get back to this. My apologies. It's getting to be a
22 late, long day. On February 5th, 2015, were you asked what
23 happens if a teacher becomes sick at school? And this was
24 at your deposition.
25 A I don't remember being asked that question.

1 A The district has approximately 1,500 certified
2 staff and another 800 support staff.
3 Q If legal documents arrive at district offices,
4 are you set up -- is the school district set up to deal
5 with them efficiently?
6 MR. WILLIAMS: I object on relevance, but if
7 you know, you can answer.
8 BY MR. BAUER:
9 Q Okay. This is dealing with FOIA, F-O-I-A. Is
10 the school district efficient in dealing with FOIA
11 documents, in your opinion, I guess?
12 A In my opinion, yes.
13 Q Okay. If legal documents arrive for both the
14 district administration and the school board -- all right.
15 I'm going to skip that. Did I submit three legal documents
16 that were designed by counsel and submitted properly pro
17 se? I was pro se.
18 MR. WILLIAMS: I'd object to the extent
19 you're asking her about whether or not something you
20 submitted was designed by counsel or -- yeah, or
21 legal.
22 BY MR. BAUER:
23 Q This was -- all right. Let's start with FOIA, a
24 FOIA request. Was a FOIA request submitted to the school
25 district by John Alden Bauer, III, on June 18th, 2014?

1 A I couldn't affirm that.
2 Q Okay. Now, in your deposition, did you say that
3 a FOIA request would go to Jennifer Staton, Dr. Moss, and
4 the attorneys?
5 A Yes.
6 Q And since Dr. Moss said that the FOIA request,
7 quote, would have gone through Jennifer Staton, can we
8 assume that Jennifer Staton handled it?
9 A You can assume that. She does handle FOIA
10 requests.
11 Q Excellent. All right. Are you aware that the
12 law requires some sort of response within 15 days and that
13 failure to do is a misdemeanor? This is file -- do you
14 want these files?
15 MR. WILLIAMS: Object to the form, but you
16 can answer if you know.
17 THE WITNESS: No, I can't reply to 15 days.
18 BY MR. BAUER:
19 Q Okay. If Ms. Staton testified on March 26th,
20 2015, that she never saw the FOIA request, what -- I'm
21 trying to think of a way to ask this. Ms. Staton testified
22 on March 26th, 2015, that she never saw the FOIA request.
23 Do you believe that is true?
24 A I can't answer for Ms. Staton.
25 Q Okay. By June, I had asked for my emails for

1 four months, and then came a FOIA request, and then another
2 nine months. Did you testify that you could get these
3 emails to Mr. Bauer in three months? I realized you've
4 asked -- answered this before.
5 A I've answered that question.
6 Q Yes. Okay. And when you -- do we have file 248?
7 Okay. Actually, I think we've -- these questions have been
8 -- oh, yes. Why would it take 412 days to produce
9 something that the supreme court says should be made
10 available early?
11 MR. WILLIAMS: I object in that he's
12 assuming facts that are not in evidence, but you can
13 answer if you know.
14 THE WITNESS: I don't know. I can't answer
15 that.
16 BY MR. BAUER:
17 Q Okay. We're getting towards the end. All right.
18 Am I correct in imagining -- now we're going through some
19 truck emails. Am I imagine --
20 MR. WILLIAMS: I'm sorry. You said some
21 what?
22 MR. BAUER: I'm sorry. Truck. Truck
23 emails. These are referring to truck.
24 MR. WILLIAMS: T-r-u-c-k?
25 MR. BAUER: T-r-u-c-k, yes, believe it or

1 Q So it mattered how soon? Is that your opinion,
2 that I should have done it in June, not August?
3 A No.
4 Q Okay.
5 A You could have done it any time you wanted to,
6 Mr. Bauer.
7 Q Any time I wanted? So August 3rd would have been
8 okay? Why -- I just am wondering why I didn't receive a
9 response from Ms. Lopatka --
10 A I can't answer that question.
11 Q -- even if it was August 3rd. Okay. Now, are we
12 going to -- all right. Here is the background for my next
13 question to you. This was a question to Ms. McAden at the
14 deposition on December 16th, 2014: Do you have surveillance
15 cameras in the gym? Her answer was no. What if there are
16 10 e-mails to and from Ms. McAden stating that she was
17 aware of the cameras and -- the cameras in the gym?
18 MR. WILLIAMS: To the extent you're asking
19 her about Ms. McAden and what Ms. McAden knew --
20 MR. BAUER: Yes.
21 MR. WILLIAMS: -- then I would object to her
22 ability to answer on Ms. McAden's behalf.
23 (WHEREUPON, a document was marked as
24 Defendant's Exhibit Number 28 for Identification to
25 the Walton Deposition.)

1 BY MS. FAWLEY:
2 Q If you will now turn to Complainant's Exhibit 26,
3 and I believe this is another email on that same day, April
4 28th, as the prior two. What is this?
5 A And I'd also like to point out, on the previous
6 exhibit, the time on that is 8:24 p.m. on the 28th. This
7 is 8:31 the same day -- so, essentially, seven minutes
8 later -- from Mr. Bauer to me, telling me he doesn't wish
9 to be insubordinate, but he wanted his attorney to
10 accompany him and that he would be contacting his attorney.
11 Q And did he say anything about showing up the next
12 day, or what did he ask?
13 A He asked us to reschedule.
14 Q If you will turn to Complainant's Exhibit 27,
15 what is this document?
16 A This is on the same day, essentially, 17 minutes
17 later, and it's an email from myself to Mr. Bauer,
18 identifying -- again, reminding him of the meeting tomorrow
19 at 9:00, and I'll direct Ms. Walton to send him an email in
20 writing on what we were planning to meet on, and that I
21 expected him to follow the directives within the letter,
22 within the time identified, and failure to follow through
23 with the written directives, I would consider that an act
24 of insubordination.
25 Q Please turn to Complainant's Exhibit 28, and what

1 what we do. That's a violation of confidentiality.
2 I also identify again that we are following
3 HRS-16. I also talk about his delay. Any rumors -- I
4 truly believe any rumors that may be out there are his
5 doing. He could have easily followed through with the
6 directive and brought closure to this much quickly (sic),
7 but he decided not to follow through with any of the
8 directives from administration. I let him know what HRS-16
9 says and states so that, if there is again any
10 misunderstanding, he has another copy of what it is we're
11 asking him to do.
12 This is May 28th, and this has been going on now
13 for months, and there is still no movement on Mr. Bauer's
14 part to follow through on the directive.
15 Q Please identify Complainant's Exhibit 36 for the
16 Board.
17 A This is the same day, just a few minutes later,
18 saying he did not understand. We do not speak to
19 employees, which is the sentence in which I said that there
20 were some words missing. So he's asking for clarification,
21 which I clarify very shortly.
22 Q And is that in Complainant's Exhibit 37?
23 A It is. I wrote back to him very quickly that
24 what it was to say is, we do not speak about employees. So
25 a word there was missed out of my typing.

1 Q And, sir, is it still your recommendation today
2 that Mr. Bauer's employment with Beaufort County School
3 District be terminated, as originally recommended to the
4 Board on June 5th, 2014?
5 A It is.
6 MS. FAWLEY: Thank you, Dr. Moss, if you
7 will now answer any questions Mr. Bauer may have for
8 you?
9 MR. BAUER: Mr. Chairman, may I offer a
10 motion for the consideration of the School Board?
11 CHAIRMAN EVANS: Yes.
12 MR. BAUER: Thank you. My plan of proving
13 my case through opposing witnesses has been initially
14 -- or has been rejected, respectfully. I thought that
15 my approach would give continuity to the subject
16 matter through most -- through the most appropriate
17 witness. I have heard new allegations against me. I
18 cannot organize a narrative of logical context while
19 sitting here all day and working all night.
20 If you will allow it, we can continue while
21 I gather my thoughts for my testimony and closing. My
22 questions for Dr. Moss are written out. I would like
23 someone to read my questions and be able to ask
24 follow-ups who is familiar with my case. My father,
25 who has no ambition at 82 to practice law, could

1 nonetheless ask my questions and give me time to
2 prepare. Instead of cross-examination, maybe you'd
3 refer to it as questioning of the witness. Here is my
4 motion, Mr. Chairman. I move that the questioning of
5 Dr. Moss be conducted by Dr. John Bauer.
6 CHAIRMAN EVANS: Dr. Fawley?
7 MS. FAWLEY: Mr. Chairman, we respectfully
8 request that the Board deny this motion. First of
9 all, the Board never rejected Mr. Bauer's ability to
10 cross-examine any witness. All the Board indicated to
11 him is that, at times, because the witnesses were not
12 substantiating what his position is, he ought to
13 consider making certain that he covers it in his
14 presentation when it is his time to present every fact
15 that he believes occurred.
16 Secondly, to have a non-lawyer participate
17 in an administrative hearing is the unauthorized
18 practice of law. The only reason Mr. Bauer is able to
19 ask questions and proceed in such a hearing is that he
20 is acting pro se, and under South Carolina Law, he is
21 permitted to do that. But for someone else to
22 practice law who is not a licensed attorney, it is
23 against the law.
24 And thirdly and most importantly -- I think
25 your own legal counsel can attest to this -- this

1 did engage in conduct here in the examination of the
2 witness that that would be considered the unlawful
3 practice of law. So your denial of the motion is
4 really removing a serious legal cloud that would fall
5 upon Dr. Bauer, if the -- if the motion were allowed.
6 MR. BAUER: Thank you. I understand.
7 CROSS-EXAMINATION
8 BY MR. BAUER:
9 Q Dr. Moss, how many charges are there against Mr.
10 Bauer?
11 A There are two charges: neglect of duty and
12 insubordination.
13 Q How did you send these charges?
14 A They were communicated to you in written format.
15 Q Was that email?
16 A Both email and written.
17 Q It is in written form? Was it through a letter?
18 A The last letter I identified, June 6th,
19 identifies, again, bringing everything forward on the
20 statutes that were involved, and that you were being term
21 -- conditionally terminated based upon those allegations.
22 Q So you say -- okay. There were two charges. Is
23 that what you're saying?
24 A Two charges.
25 Q May I -- can we refer to file 225, 225-A?

1 25th, 2014. I sent you a directive to attend"?
2 A As that leads to insubordination, yes, that is --
3 Q Okay.
4 A Insubordination is a charge.
5 Q All right. I just wanted to be clear on that.
6 So we're look -- what you're saying is two charges. Is
7 that -- am I --
8 A Two charges.
9 Q Thank you. Now, originally, did you state in
10 that email that the negligence was based on the pool event?
11 A No, I did -- the negligence, yes, was based --
12 Q On --
13 A Not on the pool event. The pool event triggered
14 you being placed on administrative leave.
15 Q I see. Then --
16 A And that -- that was -- that began February 5th.
17 The negligence was a compilation of what I had found out
18 during the investigation.
19 Q I see. In that May 25th email --
20 A May 29th?
21 Q Or 29th. Sorry. You stated that, "You left a
22 special needs student unattended off campus. This is
23 characterized as negligence and insubordination?"
24 A No, what I said was, "Your leave began -- your
25 administrative leave began on February 5th for leaving a

1 special needs student off campus." That's one sentence.
2 Q This was categorized as negligence and
3 insubordination?
4 A Everything leading up to May 29th.
5 Q Okay.
6 A We're now months down the road. Everything
7 leading up to May 29th is now falling under two categories,
8 negligence and insubordination.
9 Q Okay. Is it possible that that student you're
10 referring to was special needs and gifted and talented?
11 A It is possible.
12 Q Okay. When did insubordination occur during the
13 pool event?
14 A That's not what I'm testifying to. I'm
15 testifying you were insubordinate to each directive I gave
16 you, beginning in April.
17 Q I'm sorry, but I'm having trouble understanding
18 this, and I'm going to need to ask you, please read the
19 first three sentences of your May 29th email again for us.
20 A "I've been extremely patient with you while
21 you've been placed on administrative leave," the first
22 sentence.
23 Q Right.
24 A "Your leave began on February 5th, 2014, for
25 leaving a special needs student unattended off campus,"

1 second sentence. "This is categorized as negligence and
2 insubordination," third sentence. "You were requested to
3 have an examination from a psychiatrist and report back,"
4 next sentence. "The date of the meeting to discuss the
5 results was scheduled for April 25th." Next sentence, "You
6 refused to attend --
7 Q That's fine.
8 A "-- the scheduled meeting while still receiving
9 pay from Beaufort County schools."
10 Q That's fine.
11 A Do you want me to continue?
12 Q Thank you. I just -- you stated -- I'm sorry.
13 Did you state when I was terminated that the bases for my
14 termination were based on this May 29th email, that the
15 charges were in this?
16 A No, you were terminated for two charges, neglect
17 of duty and insubordination.
18 Q And where --
19 A Those --
20 Q -- are the charges --
21 A Those are the two charges.
22 Q So the charges are based on this email; is that
23 correct?
24 A Negligence and insubordination are the two
25 charges.

1 Mr. Bauer?
2 MS. FAWLEY: Again, Mr. Chairman, he can't
3 use the deposition, asking questions of --
4 CHAIRMAN EVANS: Will you --
5 MS. FAWLEY: If he asks --
6 CHAIRMAN EVANS: Let me -- let me rule. We
7 discussed this previously, that you cannot introduce
8 the transcript from the deposition. You need to ask a
9 question and then contrast it with the deposition.
10 BY MR. BAUER:
11 Q Did you meet with Mr. Bauer?
12 A No, I've not met with Mr. Bauer. He refused to
13 meet with -- with anyone in administration from all -- each
14 of my directives.
15 Q Did you -- how did you ask Mr. Bauer to meet with
16 you?
17 A I gave directives to Mr. Bauer to meet with Ms.
18 Walton, continually, through the process.
19 Q So you're stating -- what you're stating is, is
20 that it wasn't you, personally? Mr. Bauer didn't refuse to
21 meet with you, personally? He refused to meet with Ms.
22 Walton; is that correct?
23 A Mr. Bauer refused every directive provided by his
24 employer.
25 MR. BAUER: May I, Mr. Chairman, refer to

1 CHAIRMAN EVANS: Would you instruct him
2 again what page you're on?
3 BY MR. BAUER:
4 Q Page 93, line 5 through 9.
5 A Do you want me to read it?
6 Q Yes, please.
7 A "He refused to meet with me on one occasion, on
8 any occasion. He would not meet with me, as superintendent
9 of the schools. I have never in my 30-plus years had a
10 teacher refuse to meet with me."
11 Q Thank you. So does it say that he refused to
12 meet with you, as superintendent of schools?
13 A No, in that context, meeting with me is meeting
14 with Beaufort County School District. What I said, as
15 superintendent, that in my 30 years, I've never had a
16 teacher refuse to meet with me.
17 Q Did you say that you would provide emails,
18 referring to this quote?
19 A I've provided everything requested.
20 Q You did? So you provided emails -- am I correct
21 in stating that you provided emails showing where you asked
22 Mr. Bauer to meet with you as superintendent of education?
23 A What I'm saying is, I've provided everything, to
24 my knowledge, requested.
25 Q Please read page 39 of your deposition, line 21;

1 Q Yes.
2 A -- no idea what the attorneys told you.
3 Q Did you call Mr. Bauer and speak to him on the
4 phone?
5 A I don't recall if I spoke to Mr. Bauer on the
6 phone. I know I spoke to Mr. McMasters (sic) on the phone
7 one time.
8 Q Concerning Mr. Bauer's termination on June 5th,
9 did you say -- I'm going to -- I'm going to rephrase this.
10 I have a question first. Did you say -- did you reach a
11 conclusion to terminate Mr. Bauer because he refused to
12 meet with you, or was that the culminating event -- the
13 refusal to meet with you, was that the culminating event to
14 the termination?
15 A The termination was embedded in two actions,
16 neglect of duty and insubordination.
17 Q Okay. Was there a written report based on the
18 February 5th pool event, a written investigation report?
19 A I don't recall receiving a written investigation
20 report because there was never a dispute as to whether or
21 not Mr. Bauer left the student. Mr. Bauer voluntarily
22 admitted leaving the student.
23 Q Is there a Beaufort County School District swim
24 policy regarding protocol in monitoring procedures?
25 A I'll be happy to look at a document if you'd like

1 CHAIRMAN EVANS: Okay. Let's -- let's agree
2 to this, Mr. Bauer, if we would. I will permit Dr.
3 Moss to read this one section of this letter that you
4 want, but we will recognize that all these letters are
5 in the booklet you gave us, so we can take them under
6 advisement when we deliberate.
7 MR. BAUER: Sure.
8 CHAIRMAN EVANS: So let's -- let's go from
9 there.
10 MR. BAUER: Thank you.
11 CHAIRMAN EVANS: But it's -- it's fine if
12 Dr. Moss reads this one piece of this one letter that
13 you're interested in.
14 MR. BAUER: Thank you.
15 THE WITNESS: Can I also say that I don't
16 know who the originator of the letter is? It's not my
17 testimony, and it -- I have no idea of the individual
18 or what role they play in this hearing.
19 MR. DUFF: Well, which letter are we looking
20 at here?
21 MR. BAUER: It's on page 5.
22 CHAIRMAN EVANS: You're referring to the
23 letter that's headed Dr. Gregory Hall, USN retired?
24 MR. BAUER: Yes.
25 CHAIRMAN EVANS: Thank you.

1 Mr. Chairman --
2 CHAIRMAN EVANS: Let me just clarify that I
3 only say that because this is not a product of Dr.
4 Moss's --
5 MR. BAUER: I see.
6 CHAIRMAN EVANS: -- nor was it sent to Dr.
7 Moss, you know, or that he responded to any of this.
8 So I think it's appropriate under your testimony, but
9 I don't know how Dr. Moss would have any knowledge of
10 any of this.
11 BY MR. BAUER:
12 Q Dr. Moss, is it true that only the teacher can
13 ask for a hearing delay?
14 A Are you referring to a dismissal hearing?
15 Q Yes, sir. Yes.
16 A A dismissal hearing can be requested by the
17 employee or the agent of the employee, who typically is an
18 attorney.
19 Q If your -- if your attorneys copied that
20 information to you -- okay. Strike. Will you please refer
21 to file 229?
22 A Again the big book?
23 Q Volume 2, I believe. I'm sorry. Strike that.
24 We don't need to go to 229. Okay. It only -- Dr. Moss, if
25 only the teacher can -- all right. I'm going to strike

1 MR. JOHN BAUER: No.
2 MR. BAUER: -- week, or what?
3 MR. JOHN BAUER: She's talking about new
4 testimony. You're not testifying.
5 MR. BAUER: Oh, I understand. Then strike that.
6 Okay.
7 MR. DUFF: Well, first of all --
8 MR. BAUER: I misunderstood.
9 MR. DUFF: -- do the parties agree on what
10 portions of Mr. Bauer's notebooks have been entered? Does
11 the court reporter having a listing of that, because I --
12 MR. JOHN BAUER: I can give him a list.
13 MR. BAUER: Yes, I do have a list. Yes. Sorry.
14 MS. FAWLEY: Mr. Chairman, the exhibits that we
15 did not -- in other words, Mr. Bauer presented to every
16 witness certain exhibits. You've heard us request that a
17 particular exhibit or exhibits be removed. Those were
18 done. The court reporter has on the record the very few
19 exhibits that we did not object to. Everything else, we
20 object to, because there is no foundation, no testimony, to
21 introduce those documents onto the record.
22 MR. BAUER: That's agreeable.
23 MR. DUFF: As long as the transcript will
24 indicate clearly what you describe as the relatively few
25 pages or filed files that were entered into the -- without

1 objection, without any objection -- as long as we can
2 figure it out from the transcript, then that will become
3 the record. And again, you know, Mr. Bauer, if you waive
4 your testimony, then the only testimonial evidence in
5 support of your position will be whatever concessions you
6 were able to -- to get on cross-examination.
7 MR. BAUER: I understand, and that is agreeable.
8 Thank you.
9 CHAIRMAN EVANS: Does anybody have anything?
10 MS. ANDERSON: Can I ask a question --
11 CHAIRMAN EVANS: Yes. Please go ahead.
12 MS. ANDERSON: -- so I understand? So does that
13 mean, anything that Mr. Bauer has said, like, in his
14 opening statements and stuff, we cannot consider?
15 MR. DUFF: Well, technically, that is true. I
16 mean, you know, you've heard things, and you can't erase it
17 from your memory. But, legally, it's not competent legal
18 evidence in the record. The opening statement from either
19 side is not evidence.
20 MS. ANDERSON: Okay.
21 MR. DUFF: The only evidence will be -- as I
22 said, the testimonial evidence would be whatever Mr. Bauer
23 has been able to accomplish through his cross-examination
24 sessions, in other words, and the few documents that were
25 admitted without objection, which I think is a very few

1 documents. So that -- Mr. Bauer, that's going to be the
2 evidentiary record in this case.
3 MR. BAUER: I understand.
4 MR. DUFF: Okay.
5 CHAIRMAN EVANS: And to follow up to Ms. Fawley,
6 as we went through all three of these books, whether it was
7 your book or Mr. -- I marked documents that were either
8 entered into evidence by you all on direct or by Mr. Bauer
9 on cross, so I hope you accept that as a record of what's
10 come in, because there are literally, I think, dozens of
11 documents in here, particularly in Mr. Bauer's booklets,
12 that were not introduced, and just in my simple way of
13 categorizing, I mean, I circled documents that were
14 discussed and --
15 MS. FAWLEY: We're comfortable with that, Mr.
16 Chairman.
17 CHAIRMAN EVANS: Okay. Thank you, Ms. Fawley.
18 MR. DUFF: And you are, too, Mr. Bauer?
19 MR. BAUER: Yes, sir, I am.
20 MR. DUFF: You're comfortable with the -- with
21 the Chair's, the presiding officer's, notes as to what was
22 admitted and what was not?
23 MR. BAUER: Yes, I certainly am.
24 MR. DUFF: Okay.
25 CHAIRMAN EVANS: Ms. Bush, you had a question?

1 MR. BAUER: I believe so, yes.
2 MR. RIVERS: So, if we don't have anything to
3 consider, how can we -- what will we have to -- you know,
4 to deliberate on, if there isn't anything --
5 MR. JOHN BAUER: Deliberate on the cross-exams.
6 MR. BAUER: Yes, the witness testimony that --
7 MR. JOHN BAUER: From the witnesses.
8 MR. BAUER: -- from the five witnesses can be
9 considered, I believe, if I'm correct.
10 MR. DUFF: You are correct.
11 MR. BAUER: And I note that there were a number
12 of exhibits that were not presented due to my inexperience
13 in questioning, but I feel that what has been presented is
14 -- has merits to it, basically.
15 MR. DUFF: Okay.
16 MR. BAUER: Okay.
17 CHAIRMAN EVANS: And there was a substantial
18 amount of --
19 MR. BAUER: Yes.
20 CHAIRMAN EVANS: -- evidence put into the record
21 under cross-examination.
22 MR. BAUER: Exactly.
23 MR. RIVERS: Okay.
24 CHAIRMAN EVANS: Okay.
25 MR. BAUER: Thanks.

1 Number four, the fourth charge, "The date of the
2 meeting to discuss the results of the psychiatrist was
3 scheduled for April 25th, 2014. I sent you a directive to
4 attend." I requested a schedule change of a few hours to
5 allow a witness who was in Rock Hill on an attorney case at
6 the time (sic). Ms. Walton refused.
7 If the Teacher Employment and Dismissal Act had
8 followed the lesser accusations -- I'm sorry. If the
9 Teacher Employment and Dismissal Act had been followed, the
10 lesser accusations would not have been admitted.
11 Complainants to, quote, give -- I'm sorry, to give, quote,
12 evidence in support of the charges, unquote. This is from
13 TEDA, the employment and dismissal act, 59-25-470.
14 Still, I had to explain that a child at an
15 assigned place is not hiding, and that while trying to
16 explain a rest wall, I was not being discourteous. I
17 interrupted the assistant principal not to be discourteous,
18 but to protect a child being yelled at. If I was this
19 parent's -- this child's parent, I would hope that another
20 teacher, or someone, would come to his or her defense.
21 It was not my policy that children change in the
22 public locker room, and the solution of shower curtains
23 seems ineffective. The children don't shower, and the
24 adults don't change in the shower. Administration sets
25 policy.

EXHIBITS
in this order

6. Brown v James
7. TEDA (Teacher Employment and Dismissal Act)
12. Motion to Compel. Video Evidence
16. Grade Book. False
25. Dr. Rosenbaum-Bloom evaluation 3/28/14
27. Alice Walton General Job Description 3/25/14 (Human Resources)
31. George McMaster 5/21/14. Litigation Hold letter to preserve evidence

delay

6.1 Brown v James Decision

LINK:

http://www.judicial.state.sc.us/opinions/displayOpinion.cfm?caseNo=4674

South Carolina

JUDICIAL DEPARTMENT

4674 - Brown v. JamesP

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Sharon Brown, Appellant,v.

William B. James, Superintendent for Cherokee County School District, Respondent.

Appeal From Cherokee County
J. Derham Cole, Circuit Court Judge

Opinion No. 4674
Heard October 13, 2010 – Filed April 12, 2010
Withdrawn, Substituted and Refiled July 21, 2010

REVERSED AND REMANDED

Fletcher Smith, Jr., of Greenville, for Appellant.

M. Jane Turner, David Duff and Kiosha A. Hammond, all of Columbia, for Respondent.

GEATHERS, J.: Sharon Brown (Brown) appeals the circuit court's decision granting District Superintendent William B. James' (James) motion for summary judgment in the matter she brought against him alleging a violation of her rights under the South Carolina Teacher Employment and Dismissal Act (Employment and Dismissal Act).[1] Brown asserts that (1) the circuit court abused its discretion when concluding she had not exhausted her administrative remedies; (2) the circuit court misinterpreted the Employment and Dismissal Act; (3) she had a legal right to appeal directly to the circuit court because the Board of Trustees (Board) had already reached a final decision regarding the nonrenewal of her contract; and (4) the circuit court abused its discretion when concluding that her motion to amend her complaint to add parties was moot. We reverse and remand.

FACTS

Brown was a teacher, assigned to Limestone Central Elementary School (Limestone) in Cherokee County, South Carolina, for the 2006-2007 school year. Brown had been a teacher at Limestone for eight years before she filed this action. On April 10, 2007, Brown was called

to the Cherokee County School District (District) office to meet with Mr. William A. Jones (Jones), Chief Administrative Officer/Director of Personnel for the District. Jones and Brown discussed an "improvement letter" Brown had received from Limestone's Principal, Sharon Jefferies (Jefferies), and the fact that Brown had filed a sexual harassment complaint with the Equal Employment Opportunity Commission against Jefferies.[2] Brown informed Jones that she had planned to file the sexual harassment complaint even before she received the improvement letter.[3] Jones told Brown she could either go back to work or take leave under the Family Medical Leave Act due to the "hostile/threatening" work environment. Brown chose to take the leave because Jones told her she would be paid until the end of her contract year, which was July 2007. Jones then informed Brown that he was going to recommend that her teaching contract not be renewed and advised her to resign.

Subsequently, Brown received a letter dated April 12, 2007, from James, stating that at Jefferies' recommendation, her contract for the upcoming year would not be renewed. Brown retained attorney Theo W. Mitchell (Attorney Mitchell), and within fifteen days of the April 12, 2007 notice, she submitted a written request for an opportunity to be heard under the Employment and Dismissal Act. The Board received Brown's request on April 27, 2007. However, on April 24, 2007, the Board took up James' April 12th "notice of intent not to renew" letter and voted to terminate Brown's contract that same day. The Board did not inform Brown of its decision.

Even though the Board had already made its final determination regarding Brown's contract, the Board asked Attorney Mitchell if Brown would waive the fifteen-day requirement for scheduling the hearing to give it an opportunity to discuss the matter. Brown agreed to the waiver. The Board then notified Attorney Mitchell that it wanted to depose Brown before the hearing.

Subsequently, Attorney Mitchell informed the Board that Brown would not be available for a deposition prior to a hearing. Thereafter, on two separate occasions, the Board informed Attorney Mitchell that if it did not receive a response from either Brown or him regarding the scheduling of a deposition, it would consider Brown's noncooperation as a voluntary withdrawal of her request for a hearing, and the case would be closed. Brown did not participate in a deposition. On November 27, 2007, an attorney for the Board sent Attorney Mitchell a letter stating, "As I have had no contact from you since September 25, 2007, the District now considers the request [for a hearing] to be withdrawn and the matter closed." The Board did not schedule or give notice of a hearing. Consequently, on November 29, 2007, Brown filed an action in the circuit court against James for violation of the Employment and Dismissal Act.

PROCEDURAL HISTORY

Brown filed her initial complaint in circuit court because she believed her due process rights were violated under the Employment and Dismissal Act in that her contract was not renewed and she was never afforded an opportunity to be heard. Specifically, in her complaint against James, Brown alleged breach of contract, fraud, breach of contract accompanied by a fraudulent act, negligence and/or negligent misrepresentation, breach of duty of good faith and fair dealing, and intentional infliction of emotional distress. In the case before us, Brown asserts the Board made a final decision regarding her employment before she was afforded an opportunity to be heard as required by the Employment and Dismissal Act. Brown also asserts that she could not comply with the Employment and Dismissal Act's thirty-day appeal process regarding the Board's final determination as she did not have knowledge of the Board's final determination until eleven months after the decision.[4] James did not file a formal answer that addressed any of the issues Brown raised in her complaint. Instead, on January 18, 2008, fifty days after the complaint was filed and served, James filed a motion to dismiss under Rule 12(b)(6), SCRCP, or in the alternative, a motion for summary judgment under Rule 56, SCRCP.

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On February 13, 2008, Brown filed a motion to add the Board as a defendant. On March 7, 2008, James renewed his motion, stating only that Brown had not exhausted her administrative remedies. During February and March 2008, Brown filed a request for production of documents and requests to admit. During March and April, James answered the requests. After Brown received the responses to the request for production, she sought to amend her complaint to add the Board's attorneys as defendants predicated on their knowledge of and involvement in what she perceived to be a fraudulent act.

On April 28, 2008, the circuit court heard Brown's motion to amend and James' motion to dismiss. On May 5, 2008, the circuit court issued an order granting James' motion to dismiss, [5] concluding that Brown had not exhausted her administrative remedies. The court also concluded that based on the dismissal, Brown's motion to amend was rendered moot. On May 12, 2008, Brown filed a motion for reconsideration, which included a request that if the court upheld the dismissal, that it be without prejudice. On June 20, 2008, the circuit court issued an order denying Brown's motion. This appeal followed.

ISSUE ON APPEAL

The issue presented in this case is whether the circuit court erred in granting James' motion for summary judgment because it concluded that Brown failed to exhaust her administrative remedies.

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, an appellate court applies the same standard of review as the circuit court under Rule 56, SCRCP. Wogan v. Kunze, 379 S.C. 581, 585, 666 S.E.2d 901, 903 (2008). The circuit court should grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; Russell v. Wachovia Bank, N.A., 353 S.C. 208, 217, 578 S.E.2d 329, 334 (2003); Knox v. Greenville Hosp. Sys., 362 S.C. 566, 569-70, 608 S.E.2d 459, 461 (Ct. App. 2005); B & B Liquors, Inc. v. O'Neil, 361 S.C. 267, 270, 603 S.E.2d 629, 631 (Ct. App. 2004).

LAW/ANALYSIS

I. Exhaustion of Administrative Remedies

Brown argues the circuit court erred in concluding that her claims were not properly before it due to her failure to exhaust her exclusive statutory remedy under the Employment and Dismissal Act. We agree.

Initially, we address the applicability of the doctrine of exhaustion of administrative remedies to local school boards. Whether under the Administrative Procedures Act (APA),[6] general administrative law standards, or the fundamental principles of administrative law, Brown was required to exhaust her administrative remedies before seeking judicial review. Moreover, the Board was also subject to the limitations and exceptions to the exhaustion doctrine.

The doctrine of exhaustion of administrative remedies requires that where a remedy before an administrative agency is provided, relief must be sought by exhausting this remedy before the courts will act. This doctrine is well established, is a cardinal principle of practically universal application, and must be borne in mind by the courts in construing a statute providing for review of administrative action.

2 Am. Jur. 2d Administrative Law § 595 (1962) (citing Bustos-Ovalle v. Landon, 225 F.2d 878 (9th Cir. 1955); James v. Consol. Steel Corp., 195 S.W.2d 955 (Tex. Civ. App. 1946); Bowen v. Dep't of Soc. Sec., 127 P.2d 682 (Wash. 1942)) (footnotes omitted);[7] see also 2 Kenneth Culp Davis & Richard J. Pierce, Jr., Administrative Law Treatise § 15 (3rd ed. 1994) (quoting Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41, 50-51 (1938)) ("[It is] the long-settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted.").

Under the APA, section 1-23-380 specifically states, "A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1." Our courts have applied the APA standards to certain local school board administrative decisions. In Lee County School District Board of Trustees v. MLD Charter School Academy Planning Committee, a case involving a local school board's decision regarding a charter school application, our Supreme Court established that the standard of judicial review was the APA standard of review. 371 S.C. 561, 565, 641 S.E.2d 24, 26 (2007). Also, and more notably, the Court referred to its analysis in Porter v. South Carolina Public Service Commission, 333 S.C. 12, 507 S.E.2d 328 (1998), as establishing the requirements for administrative agencies when presenting their findings. The Court stated: "[a]lthough Porter addresses the Public Service Commission, we find it applicable to all administrative agencies, including local school boards." Lee County Sch. Dist., 371 S.C. at 567, 641 S.E.2d at 28. (emphasis added).

Further, in McWhirter v. Cherokee County School District No. 1, 274 S.C. 66, 261 S.E.2d 157 (1979), our Supreme Court referred to the actions of a local school board in language that indicates that the board is held to the standards of an "agency" as defined in the APA. In McWhirter, similar to the case at hand, an elementary school teacher sought to enjoin the school district from terminating her under the Employment and Dismissal Act. The Court stated:

In Law v. Richland County School District No. 1, 270 S.C. 493, 243 S.E.2d 192 (1978), we held that if any of the charges against a teacher are supported by substantial evidence, the school board's decision to dismiss must be sustained. We defined "substantial evidence" as "evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action." (citation omitted).

McWhirter, 274 S.C. at 68-69, 261 S.E.2d at 158 (emphasis added).

Additionally, there has also been a decision from this Court interpreting the power of the circuit court under the APA when dealing with a local school board's discretion in teacher terminations under the Employment and Dismissal Act. In Adamson v. Richland County School District One, this Court stated: "S.C. Code Ann. § 1-23-380(6) (Supp. 1997) [an APA provision] gives the circuit court authority to reverse an agency decision 'made upon unlawful procedure' or in excess of 'statutory authority.'" 332 S.C. 121, 128, 503 S.E.2d 752, 755-56 (Ct. App. 1998) (emphasis added).

Hence, the aforementioned authorities militate the conclusion that the parties in the instant action are subject to the exhaustion of administrative remedies doctrine of the APA. And although the standards of the APA apply in this case, the application of the Employment and Dismissal Act primarily informs the analysis and renders its outcome.

In this case, Brown received notice that her teaching contract was recommended for nonrenewal.[8] In order to fully exhaust her administrative remedies, Brown was required to request a hearing before the Board within the time frame prescribed by the Employment and Dismissal Act. Section 59-25-420 of the South Carolina Code (2004) states, "Any teacher,

receiving a notice that he will not be reemployed for the ensuing year, shall have the same notice and opportunity for a hearing provided in subsequent sections for teachers dismissed for cause during the school year."

In order to secure her opportunity for a hearing, Brown was required to make a written request to the Board within fifteen days of the notice of nonrenewal pursuant to section 59-25-460 of the South Carolina Code (2004). Here, there is no dispute that Brown timely requested a hearing after receiving the Board's April 12, 2007 notice. The analysis of this matter is convoluted for two reasons: (1) the Board officially voted to terminate Brown's contract on April 24, 2007 (unbeknownst to Brown) prior to affording her the opportunity for a hearing, and (2) the Board dismissed her appeal on November 27, 2007, because she refused to submit to a deposition. We will address each of these issues in turn.

A. Finality of an Agency Action

Brown asserts that the April 24, 2007 vote by the Board constituted a final action. We agree. The minutes of the April 24, 2007, Board meeting show a final decision regarding the termination of Brown's contract was made even before her fifteen-day period to request a hearing had expired.[9] On appeal, James admits a final determination regarding Brown's contract was made on April 24, 2007, but argues that the Board accepted the recommendation "subject to the [Employment and Dismissal] Act's procedural protections, particularly [Brown's] right to a Board hearing."[10] Yet, there is no language in the Employment and Dismissal Act that states a final decision of the Board is subject to a teacher's right to a hearing after the fact.

Our Supreme Court has expounded upon the exhaustion of administrative remedies with regard to an agency's final decision. In South Carolina Baptist Hospital v. South Carolina Department of Health & Environmental Control, the Court held:

An agency decision which does not decide the merits of a contested case . . . is not a final agency decision subject to judicial review . . . It would be premature for a court to decide the merits of a dispute when the agency responsible for making the decision has not yet had an opportunity to decide the merits of the case.

291 S.C. 267, 270, 353 S.E.2d 277, 279 (1987).

In that case, the Court did not find judicial review of an interlocutory decision to be appropriate. Id. Conversely, judicial review would have been appropriate if an evidentiary hearing was conducted and a final decision was made regarding the merits of the case. Id. [11] Additionally, in Canteen v. McLeod Regional Medical Center, 384 S.C. 617, 624, 682 S.E. 2d 504, 507 (Ct. App. 2009), the Appellate Panel of the Workers' Compensation Commission reversed the findings of the single commissioner regarding a brain injury and remanded the case for a determination of permanency to body parts other than the claimant's brain. The claimant immediately sought judicial review and the employer filed a motion to dismiss, arguing the Appellant Panel's decision was interlocutory because it had remanded the case for further proceedings. Id. However, this Court held, "because the appellate panel ruled on [the only issue before it], there was a final agency decision on the merits in this case and [the claimant] exhausted all of her administrative remedies." Id.

In the case at hand, whether or not to terminate Brown was the only issue to be determined, and when the Board unanimously voted to terminate Brown, it reached a final decision on the merits. Section 59-25-480 of the South Carolina Code (2004) specifically states, "The decision of the district board of trustees shall be final, unless within thirty days thereafter an appeal is made to the court of common pleas of any county in which the major portion of such district lies."

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Further, when the Board voted to accept James' recommendation for the nonrenewal of Brown's teaching contract prior to conducting a hearing, its decision had an immediate effect on Brown's legal rights.[12] 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 nonrenewal 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.

With regard to what Board action constituted a final agency decision, James inaccurately interprets the procedure outlined in section 59-25-470 and improperly conflates the requirements of section 59-25-410 with those of section 59-25-470.[13]

Section 59-25-410 of the Employment and Dismissal Act instructs the Board to decide and notify the teachers "in their employ concerning their employment for the ensuing year." According to the statute, by April 15th of each year, the Board or its designee,[14] must notify the teachers in writing of the recommendations for non-renewal. James notified Brown with an April 12th letter of his intent not to renew her contract for the ensuing year. This satisfied the April 15th notice requirement of section 59-25-410. Thereafter, pursuant to section 59-25-470, the Board must afford the adversely affected teachers a hearing based on the notice of dismissal that was recommended by the superintendent. After the hearing is completed, the Board is required to either affirm or withdraw the notice and that action will translate into its final decision. See S.C. Code Ann. § 59-25-470 (2004); see also Adamson, 332 S.C. at 128, 503 S.E.2d at 756 (explaining the Board is free to reject the superintendent's recommendation, and, until then, there is no final board action).

Contrary to James' argument, there are no inconsistencies or conflicts between section 59-25-410 and 59-25-470. 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. Consequently, there was nothing left procedurally under the Employment and Dismissal Act for Brown to do except appeal to the court of common pleas pursuant to section 59-25-480. The fact that an administrative hearing was not conducted below rests with the Board's failure to follow procedure as prescribed in the Employment and Dismissal Act, and not in any failure of Brown to exhaust her administrative remedies.

B. Exceptions to the Requirement of Exhaustion

Brown asserts that even if she failed to exhaust her administrative remedies before the Board, exhaustion was not required because her case satisfied one of the exceptions to the exhaustion requirement. We agree.

South Carolina, like most jurisdictions, recognizes exceptions to the exhaustion of administrative remedies requirement. The general rule is that administrative remedies must be exhausted absent circumstances supporting an exception to application of the general rule. Andrews Bearing Corp. v. Brady, 261 S.C. 533, 536, 201 S.E.2d 241, 243 (1973); Ex parte Allstate Ins. Co., 248 S.C. 550, 567, 151 S.E.2d 849, 855 (1966). A commonly recognized exception to the requirement of exhaustion of administrative remedies exists when a party demonstrates that pursuit of administrative remedies would be a vain or futile act. Moore v. Sumter County Council, 300 S.C. 270, 273, 387 S.E.2d 455, 458 (1990); Ward v. State, 343 S.C. 14, 19, 538 S.E.2d 245, 247 (2000); Video Gaming Consultants, Inc. v. S.C. Dep't of Revenue, 342 S.C. 34, 39, 535 S.E.2d 642, 645 (2000). "Futility, however, must be demonstrated by a showing comparable to the administrative agency taking 'a hard and fast position that makes an adverse ruling a certainty.'" Law v. S.C. Dep't of Corr., 368 S.C. 424, 438, 629 S.E.2d 642, 650 (2006) (citing Thetford Props. IV Ltd. P'ship v. U.S. Dep't of Hous. & Urban Dev., 907 F.2d 445, 450 (4th Cir. 1990)). Another exception to the exhaustion requirement is recognized when an agency has acted outside of its authority. Responsible

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Econ. Dev. v. S.C. Dep't of Health & Envtl. Control, 371 S.C. 547, 553, 641 S.E.2d 425, 428 (2007).

Brown argues she was not required to participate in a hearing after a final determination had already been made regarding the nonrenewal of her teaching contract, as such a pursuit would constitute a futile act. Consequently, she asserts that she was within her legal right to appeal directly to the circuit court. We agree.

Article 1, section 22, of the South Carolina State Constitution states:

No person shall be finally bound by a judicial or quasijudicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard . . . and he shall have in all such instances the right to judicial review.

Further, section 59-25-470 states that after the hearing has taken place and the Board has had the opportunity to determine "whether the evidence showed good and just cause for the notice of suspension or dismissal," or in this case, nonrenewal of Brown's teaching contract, the Board "shall render its decision accordingly, either affirming or withdrawing the notice of suspension or dismissal." In his brief, James cites this section of the Code and admits "recommendations, when adverse to a teacher, are subject to the [Employment and Dismissal] Act's procedural protections, particularly the right to a Board hearing pursuant to § 59-25-470."[15]

Plainly, the procedure is set in place to afford the teacher a meaningful review of the evidence prior to the Board making a final determination, as a review of the evidence after the fact would be futile. "The elementary and cardinal rule of statutory construction is that the Court ascertain and effectuate the actual intent of the legislature." Horn v. Davis Elec. Constructors, Inc., 307 S.C. 559, 563, 416 S.E.2d 634, 636 (1992). Where, as here, the terms are clear and unambiguous, "the Court must apply them according to [their] literal meaning." Anders v. S.C. Parole & Cmty. Corr. Bd., 279 S.C. 206, 209, 305 S.E.2d 229, 230 (1983).

Our research has not revealed any specific South Carolina case law addressing whether a teacher must participate in a hearing after the Board has made a final determination regarding the nonrenewal of her contract. However, courts in other jurisdictions have analyzed issues similar to the case at bar. Specifically, the Indiana Court of Appeals has held:

[T]he notice by the school corporation to the tenure [sic] teachers was not sufficient, as it did not comply with the statutory requirements for the dismissal of a tenure teacher and such failure to comply with the statutory requirements did not require a tenure teacher to go forth with the burden of requesting a hearing for cause.

Joyce v. Hanover Cmty. Sch. Corp., 276 N.E.2d 549, 564 (Ind. Ct. App. 1971) (finding that the school board's action was arbitrary and capricious as it pertained to tenured teachers), overruled on other grounds by Myers v. Greater Clark County Sch. Corp., 464 N.E.2d 1323 (Ind. Ct. App. 1984); see also Tippecanoe Valley Sch. Corp. v. Leachman, 261 N.E.2d 880, 887 (Ind. Ct. App. 1970) (holding that "evidence . . . was sufficient to sustain an implied finding by the trial court that the procedure provided by the contract for the removal of the plaintiff from his position as teacher was not followed and that failure to follow it was a gross abuse of discretion").

The statutes interpreted in the Pennsylvania case of In re Swink, 200 A. 200 (1938), are very similar to South Carolina law in that they afford a teacher who has been notified that her contract has been recommended for nonrenewal an opportunity to present her case to the local school board before a final decision on termination is made.[16] In that case, the

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Pennsylvania Superior Court held the Board of School Directors failed to comply with the statutory requirements and reversed the board's actions, stating that the observance of the prescribed procedure "is not a matter of discretion." Id. at 203. The court further held, "[T]he purpose of the procedure prescribed by the act for the dismissal of a teacher . . . is to prevent arbitrary action by the board, to afford a fair hearing to the teacher . . . before dismissal, and to provide for full, impartial, and unbiased consideration by the board of the testimony produced." Id. (emphasis added).

Similarly, the North Dakota Supreme Court has held that in order for a teacher to benefit from a hearing, she must be allowed to present her case in an atmosphere where even though there exists a contemplated recommendation for nonrenewal, the ultimate decision of termination has yet to be made. Henley v. Fingal Pub. Sch. Dist. #54, 219 N.W.2d 106, 110 (N.D. 1974). Furthermore, the Supreme Court of Connecticut has explained:

Notice before termination and notice after termination are not two sides of the same coin. Once the board has committed itself by its action to a particular result it may be too late in the day to suggest a change of direction; at that stage the urge to proceed along its committed course is compelling. But before the die is cast it is still possible for persuasion to affect the result.

Petrovich v. New Canaan Bd. of Educ., 457 A.2d 315, 318 (Conn. 1983).

Analogous to the cases cited above, in the present case, a hearing after the fact would have likely proven futile. Sections 59-25-420 and 59-25-430 of the South Carolina Code (2004) provide for a hearing prior to a final decision of the Board to avoid futility and allow for a meaningful and fair administrative hearing. Section 1-23-380 of the South Carolina Code (2005 & Supp. 2009) states in part, "A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy." Id., see also Jean Hoefer Toal, et al., Appellate Practice in South Carolina 49 (2d ed. 2002).

Brown did all that was required of her under the Employment and Dismissal Act. Consequently, as a matter of law, Brown was entitled to have her case proceed before the circuit court, and the granting of James' motion for summary judgment was improper.

C. Procedures for Compelling Participation in a Deposition

Brown argues the circuit court incorrectly concluded that because she did not participate in a deposition as requested by the Board, she essentially abandoned her right to a hearing and the Board was justified in dismissing her case. We agree.

James argues Brown was required to participate in a deposition prior to a hearing and uses section 59-25-490 of the South Carolina Code (2004) to support his position. Section 59-25-490, in pertinent part, states, "Any party to such proceedings may cause to be taken the depositions of witnesses . . . ." (emphasis added).

However, the Employment and Dismissal Act does not authorize the Board to dismiss actions for lack of participation in a deposition. Instead, it outlines the procedure the Board should have taken. Specifically, the pertinent portion of section 59-25-490 states:

Such depositions shall be taken in accordance with and subject to the same provisions, conditions and restrictions as apply to the taking of like depositions in civil actions at law in the court of common pleas; and the same rules with respect to the giving of notice to the

opposite party, the taking and transcribing of testimony, the transmission and certification thereof and matters of practice relating thereto shall apply.

(emphasis added).

Here, when the Board did not receive any response from Brown or her attorney regarding her participation in the requested deposition, it should have served Brown with a subpoena in an effort to compel her attendance at a deposition pursuant to section 59-25-500 of the South Carolina Code (2004). Moreover, the Board could have moved before the circuit court to enforce such a subpoena under section 59-25-520.

The record does not indicate, nor was it asserted at oral argument, that the Board issued a subpoena or that one was served on Brown in an effort to compel her attendance at the requested deposition. Further, the record does not indicate that Brown was ever served with notice of the deposition or notice of a hearing before the Board. Section 59-25-520 of the Employment and Dismissal Act does not vest the Board with authority to dismiss Brown's request for a hearing based on her nonparticipation in a deposition;[17] rather, it prescribes procedural mechanisms including seeking sanctions from the circuit court to compel participation in a deposition. However, the Board did not avail itself of this; instead, it presupposed to dismiss her case, which is not sanctioned under South Carolina law.

II. Dismissal of the Motion to Amend

Brown argues the circuit court abused its discretion when it dismissed her motion to amend her complaint to add parties on the grounds that her motion was moot in light of the fact that the court granted James' motion for summary judgment. We agree.

Rule 15(a), SCRCP, states in part, "[A] party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party." Rule 15(c), SCRCP, further states, "Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading."

"It is well established that a motion to amend is addressed to the sound discretion of the trial judge, and that the party opposing the motion has the burden of establishing prejudice." City of N. Myrtle Beach v. Lewis-Davis, 360 S.C. 225, 232, 599 S.E.2d 462, 465 (Ct. App. 2004). "Courts have wide latitude in amending pleadings and '[w]hile this power should not be used indiscriminately or to prejudice or surprise another party, the decision to allow an amendment is within the sound discretion of the trial court and will rarely be disturbed on appeal.'" Berry v. McLeod, 328 S.C. 435, 450, 492 S.E.2d 794, 792 (Ct. App. 1997). "The trial judge's finding will not be overturned without an abuse of discretion or unless manifest injustice has occurred." Id.

Here, Brown attempted to add the Board's attorneys as defendants based on responses she received from discovery requests. Brown asserted the alleged improper conduct of the attorneys arose out of the same transaction or occurrence set forth in her original pleading. Because the circuit court erred in concluding that Brown had not exhausted her administrative remedies and in granting James' motion for summary judgment, Brown's motion to amend her complaint should have been considered. We, however, do not address the merits of her motion to amend her complaint and we remand the issue of whether Brown should be allowed to amend her complaint to the circuit court.

III. Automatic Renewal of Contract

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Brown contends that because the Board did not recommend the nonrenewal of her contract before the April 15th deadline, her termination was illegal and her contract was automatically renewed. James argues the Board complied with the Employment and Dismissal Act's April 15th deadline as prescribed in section 59-25-410 of the South Carolina Code (2004) in that Brown received a letter on April 12, 2007, notifying her of his intention to recommend nonrenewal of her contract to the Board. Brown did not raise the issue of automatic renewal to the circuit court; thus, this issue is not preserved for our review. Staubes v. City of Folly Beach, 339 S.C. 406, 412, 592 S.E.2d 543, 546 (2000).

CONCLUSION

The wording of the Employment and Dismissal Act is unambiguous regarding procedure, and the record fails to show the Board complied with its requirements. As a result, the circuit court erred in concluding Brown did not exhaust her administrative remedies. The circuit court also erred in interpreting the Employment and Dismissal Act, as Brown was not required to request a hearing of the Board after a final decision had been made regarding the nonrenewal of her contract; and, as a matter of law, Brown was entitled to appeal directly to the circuit court. Accordingly, the circuit court erred when it granted James' motion for summary judgment and when it concluded that Brown's motion to amend her complaint to add parties was moot.

Based on the foregoing, the circuit court's order is

REVERSED AND REMANDED.

SHORT and WILLIAMS, JJ., concur.

[1] S.C. Code Ann. §§ 59-25-410 to -530 (2004).

[2] The record does not explain what an improvement letter is, but it can be inferred that it is a letter outlining a plan to improve the teacher's performance. Section 59-25-440 of the South Carolina Code (2004) states:

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 5925450, allow reasonable time for improvement.

[3] Brown's initial pro se complaint and her sworn affidavit make reference to her EEOC complaint, which she filed based on claims of sexual harassment, racial discrimination, and retaliation.

[4] The Board never sent Brown a formal notification of its final decision regarding her termination. She became aware of the date of the final decision through the Board's discovery responses to the case before the circuit court.

[5] James filed a motion to dismiss the complaint pursuant to Rule 12(b)(6), SCRCP, or, in the alternative, a motion for summary judgment pursuant to Rule 56, SCRCP. Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action. Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d

869, 874 (2006). In considering such a motion, the trial court must base its ruling solely on allegations set forth in the complaint. Id. In the order granting the dismissal, the circuit court considered "the record in this case, the applicable law, and the argument of counsel and Brown." In doing so, it effectively treated James' Rule 12(b)(6) motion to dismiss as a Rule 56 motion for summary judgment as it based its ruling on allegations and information set forth outside the complaint. Baird v. Charleston County, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999); Gilbert v. Miller, 356 S.C. 25, 27, 586 S.E.2d 861, 862-63 (Ct. App. 2003).

[6] S.C. Code Ann. §§ 1-23-310 to -400 (2005 & Supp. 2009).

[7] Although the current version of 2 Am. Jur. 2d Administrative Law does not include the quotation, the cases cited for its propositions are still binding.

[8] The notice did not inform Brown of the cause for the nonrenewal of her contract, as required by sections 59-25-420 and 59-25-460 of the South Carolina Code (2004).

[9] The Agenda for the April 24, 2007 Cherokee County School District No. 1, Board of Trustees, Board Meeting is replete with separate and distinct categories that address personnel recommendations; however, the reference to the nonrenewal of Brown's contract is titled "Terminations."

[10] James makes these assertions on pages 8 and 9 of the Final Reply Brief of Respondent.

[11] In Darby v. Cisneros, 509 U.S. 137, 144 (1993), the United States Supreme Court held that "the finality requirement is concerned with whether the initial agency decision maker has arrived at a definitive position on the issue that inflicts an actual, concrete injury . . . ." 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.

[12] During oral argument, the Court stated, "Her [Brown's] contract was terminated on the 24th," to which counsel for James interjected, ". . . effective on June 7th." Consequently, in order for there to be an effective date of termination, there had to have been a decision to terminate Brown in the first place.

[13] "All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." Georgia-Carolina Bail Bonds, Inc. v. County of Aiken, 354 S.C. 18, 23, 579 S.E.2d 334, 336 (Ct. App. 2003). "It is well settled that statutes dealing with the same subject matter are in pari materia and must be construed together, if possible, to produce a single, harmonious result." Joiner ex rel. Rivas v. Rivas, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000).

[14] In this case, the Board's designee was Cherokee County Superintendant James.

[15] James makes this assertion on page 9 of the Final Reply Brief of Respondent.

[16] See 24 P.S. § 1121 (1937) and note, and §§ 1126, 1161, 1201, and 1202 (1937).

6.12 Brown v James Decision

[17] James contends that the Board did not dismiss Brown's request for a hearing for a lack of participation in a deposition. However, in the November 27, 2007 letter to Brown's then attorney, Theo W. Mitchell, James' attorney states:

I am writing to follow up on my letter to you dated October 25, 2007, in which I informed you that it is our position that because Ms. Brown is unable or unwilling to appear for a deposition, she has withdrawn her request for a hearing regarding her non-renewal. . . As I have had no contact from you since September 25, 2007, the District now considers the request to be withdrawn and the matter closed.

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Teacher Employment and Dismissal Act

TEDA 430 to 480

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. 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 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.

Notwithstanding the provisions of Section 59-25-450, when any teacher is charged with a violation of the law of this State or the United States which upon conviction may lead to, or be cited as a reason for, dismissal, such teacher may be suspended pending resolution of the charges and receive his usual compensation during the suspension period, such compensation not to exceed the term of his teaching contract. If the teacher is convicted, including pleading guilty or nolo contendere to the charges, he may then be subject to dismissal proceedings. If no conviction results, his suspension shall be terminated.

HISTORY: 1962 Code Section 21-363, 1974 (58) 2343; 1976 Act No. 634, Section 2.

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.

HISTORY: 1962 Code Section 21-364; 1974 (58) 2343; 1976 Act No. 634, Section 3.

SECTION 59-25-450. Suspension of teachers; reinstatement.

Whenever a superintendent has reason to believe that cause exists for the dismissal of a teacher and when he is of the opinion that the immediate suspension of the teacher is necessary to protect the well-being of the children of the district or is necessary to remove substantial and material disruptive influences in the educational process, in the best interest of the children in the district, the superintendent may suspend the teacher without notice or without a hearing. The superintendent shall notify the teacher in writing of the suspension. Such written notice shall include the cause for suspension and the fact that a hearing before the board is available to the teacher upon request provided such request is made in writing within fifteen days as prescribed by Section 59-25-470.

The salary of a suspended teacher shall cease as of the date the board sustains the suspension. If sufficient grounds for suspension are not subsequently found, the teacher shall be reinstated without loss of compensation.

HISTORY: 1962 Code Section 21-365; 1974 (58) 2343; 1976 Act No. 634, Section 4.

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. Such written notice shall include the fact that a hearing before the board is available to the teacher upon request provided, such request is made in writing within fifteen days as prescribed by Section 59-25-470. Any such hearing shall be public unless the teacher requests in writing that it be private. The District Board of Trustees may issue subpoenas requiring the attendance of witnesses at any hearing and, at the request of the teacher against whom a charge is made, shall issue such subpoenas, but it may limit the number of witnesses to be subpoenaed in behalf of the teacher to not more than ten. All testimony at any hearing shall be taken under oath. Any member of the board may administer oaths to witnesses. The board shall cause a record of the proceedings to be kept and shall employ a competent reporter to take stenographic or stenotype notes of all of the testimony. If the board's decision is favorable to the teacher, the board shall pay the cost of the reporter's attendance and services at the hearing. If the decision is unfavorable to the teacher, one-half of the cost of the reporter's attendance and services shall be borne by the teacher. Either party desiring a transcript of the hearing shall pay for the costs thereof.

HISTORY: 1962 Code Section 21-366; 1974 (58) 2343; 1976 Act No. 634, Section 5.

7.3 TEDA (Teacher Employment and Dismissal Act)

SECTION 59-25-470. Request for hearing; time and place of hearing; rights of teacher; determination by board.

Within fifteen days after receipt of notice of suspension or dismissal, a teacher may serve upon the chairman of the board or the superintendent a written request for a hearing before the board. If the teacher fails to make such a request, or after a hearing as herein provided for, the District Board of Trustees shall take such action and shall enter such order as it deems lawful and appropriate. 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. The teacher has the privilege of being present at the hearing with counsel and of cross-examining witnesses and may offer evidence and witnesses and present any and all defenses to the charges. The board shall order the appearance of any witness requested by the teacher. The complainants shall initiate the introduction of evidence in substantiation of the charges. 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.

HISTORY: 1962 Code Section 21-367; 1974 (58) 2343; 1976 Act No. 634, Section 6.

SECTION 59-25-480. Appeals; costs and damages.

The decision of the district board of trustees shall be final, unless within thirty days thereafter an appeal is made to the court of common pleas of any county in which the major portion of such district lies.

Notice of the appeal and the grounds thereof shall be filed with the district board of trustees. The district board shall, within thirty days thereafter, file a certified copy of the transcript record with the clerk of such court. Any appeal from the order of the circuit court shall be taken in the manner provided by the South Carolina Appellate Court Rules. If the decision of the board is reversed on appeal, on a motion of either party the trial court shall order reinstatement and shall determine the amount for which the board shall be liable for actual damages and court costs. In no event shall any liability extend beyond two years from the effective date of dismissal. Amounts earned or amounts earnable with reasonable diligence by the person wrongfully suspended shall be deducted from any back pay.

HISTORY: 1962 Code Section 21-368; 1974 (58) 2343; 1999 Act No. 55, Section 54.

Alden Bauer <aldenbauer706@gmail.com>

Jeffrey C. Moss, Ed.D., Complainant v. John Alden Bauer, III, Respondent

1 message

Dave Duff <dduff@dwtlawfirm.com> Wed, Apr 22, 2015 at 12:32 PM To: Alden Bauer <aldenbauer706@gmail.com>
Cc: Shirley Fawley <sfawley@childs-halligan.net>, "Vernie L. Williams" <vwilliams@childs-halligan.net>

Mr. Bauer:

The basic procedure is as follows. Please understand that this is a basic, most usual overview of what happens. There could be some variation to what I am describing.

First, each side, starting with the administration, followed by you, will be permitted to make an opening statement to the Board, outlining its position in the case. Any preliminary objections to the process or anticipated evidence could also be made at that time. (Objections also can be made or renewed during the hearing itself to particular examination questions or offers of proof.) After the opening statements, the complainant, i.e., the administration, presents its case first, calling the witnesses it has listed in whatever order it wishes. Each witness presented by the administration is subject to being cross examined by you. There also can be re-direct examination by the presenting party. After the administration rests its case, you present your case. Since, as I recall, you listed the very same persons as witnesses as did the administration, you should be prepared to ask ALL your questions of each of witnesses during your cross examination of each witness when they are presented by the administration. Normally, witnesses are not recalled in the respondent's case, unless there is a compelling reason to do so for a limited purpose. There also is the matter of your failure to list yourself as a witness. I don't know what the administration's position on your testifying is. Probably, I would advise the Board that you should be permitted to testify even though you did not list yourself. On the assumption that you testify, after being sworn to tell the truth like all witnesses are, you will simply give a narrative without anyone asking you questions. However, after your narrative, you will be subject to cross examination questioning by the attorneys for the administration. After you rest your case, there may be a limited opportunity for rebuttal by the administration, but presumably it would only be in rebuttal to something you said if you testify.

After all the evidence is presented, each side is permitted to offer a brief summation or closing argument to the Board. After those closings, the Board will deliberate in executive session for however long is necessary. The Board will then vote in public session to render its decision.

The hearing will be in the multi-media room at the District's central office, 2900 Mink Point Blvd., Beaufort. I am sure there will be facilities or means to secure the evidence notebooks.

11.3 Bauer email 4/22/15, not on witness list

From: Alden Bauer [mailto:aldenbauer706@gmail.com]
Sent: Wednesday, April 22, 2015 7:51 AM
To: Dave Duff
Subject: procedures

Mr. Duff
By procedure I mean the formula.

What comes first?

What comes second?

What comes third?

etc.

Also, what order are the witnesses to be?

Exact location.

Is there a place to store the notebooks?
There are 9 notebooks—two inch thick volumes each.
X How do I call myself as a witness? Do I ask myself questions? Or do I do a solo narrative?

Are there other procedures that I may not know about?

etc. etc.

12.1 Motion to Compel. Video Evidence

STATE OF SOUTH CAROLINA | IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT | FOURTEENTH JUDICIAL CIRCUIT
C.A. No.: 2015-CP-07-1343

John Alden Bauer III
Appellant

MOTION TO COMPEL
FORENSIC ANALYSIS
VIDEO FEBRUARY 5, 2014

v.

Beaufort County School District
Respondent

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")

12.2 Motion to Compel. Video Evidence

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

11. Plaintiff is a veteran,17 year physical education teacher (12.4 years at HHIE)

12. Plaintiff had a Continuing Contract. (Similar to tenure)

13. 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).

14. Plaintiff has a Master of Arts in Teaching-Physical Education (*cum laude*) from the University of South Carolina(1996).

15. Plaintiff is a National Board Certified Teacher (2003), one of the highest achievements in the field of education.

16. 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.

12.4 Motion to Compel. Video Evidence

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

12.5 Motion to Compel. Video Evidence

X 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.

X 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,

John Alden Bauer III
5 Gumtree Road
E-11
Hilton Head Island, SC 29926
(843) 384-1506

February 19, 2015

15.1 Short Proposed Final Order Portion (Corrections to proposed Duff Order)

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	FOURTEENTH JUDICIAL CIRCUIT C.A. No.: 2015-CP-07-1343
John Alden Bauer III Appellant v. Beaufort County School District Respondent	SHORT PROPOSED FINAL ORDER PORTION

The formal opening and ending would be the same as in my Long Order.

This matter came before the Court for a hearing on Friday, March 4, 2016. The Appellant, John Alden Bauer, III, ("Bauer") appeared pro se.[1] The Respondent, Beaufort County School District,

ETC.

[1] 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.

15.2 Short Proposed Final Order Portion (Corrections to proposed Duff Order)

Findings

Disputed Action
June 5, 2014. Board Minutes
"Out of executive session the board made a motion to approve the superintendent's recommendation to terminate the employment of Employee A. Approved"

Case law is clear

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

"The observance of the procedural requirements of the Employment and Dismissal Act is mandatory and not a matter of discretion." Brown v. James

The Action of the Board constituted a violation of Due process.

In the Board Order the subject of delay of the hearing is broached. The statute requires a hearing within 15 days of an appeal; in this case 5 months after the accused event. Even if the district had offered evidence as to why the hearing was not held in the prescribed time frame, which it did not, there was no excuse for delaying the hearing an additional 10 months.

This section from Washington-Middleton vs. Charleston County is clear. Case No. 13-CP-10-7094

"The district has argued that the lateness of the hearing was harmless. This argument ignores the reality of ...a teacher in limbo.... Additionally this argument ignores the mandatory nature of TEDA, acknowledged by the Supreme Court in Johnson vs Spartanburg County School District Number Seven 314 S.C. 340 444 SE 2D 501 (1994) and the court of appeals in *Brown*."

The letter of the Act must be followed.

The Board Order is vague on the subject of charges and the District never offered a

Notice of Charges. The Record offers only confusion. Accordingly, the Appellant defended against four presumed charges, assumed to be contained in one email, plus other accusations. But there were only two charges. Those two charges were not revealed until the third day of the hearing. Additional accusations are invalid, according to TEDA 470, in which Complainants are to address the charges.

There is no excuse to have a hearing without understandable formal charges.

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."

The Record shows that the District gave no evidence that the Board stated a "cause" for dismissal, nor did it offer a hearing before the dismissal. This constitutes a violation of Due Process.

The accusation against appellant refers to one "*student*" in one incident. The Order refers to "*students*". The exhibit cited by the district (Walton testimony, Compl.

Supp. Exh. 3.) is a letter from Alice Walton, February 7, 2014, but she contradicts the District. (*"negligent actions with a student*", singular.)

It is clear in 59-25-430 negligence must be a "pattern of neglect". One student in one debatable incident does not constitute a pattern of neglect, especially with a veteran teacher.

Again the District failed to follow the intent and letter of the act, a violation of Due Process.

The Board Order states *"ReadingSection 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."*

This court disagrees. Section 59-25-450 (TEDA) deals with suspension, 59-25-460 deals with dismissal.

TEDA 450:

"the superintendent may suspend the teacher without notice or without a hearing."

TEDA 460 states:

"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 Board failed to specify the "cause" and failed to give the opportunity for a hearing before dismissal as defined in *Brown*. The hearing in April to May of 2015

was "*after the fact*", again as defined by *Brown*, and constituted a violation of Due Process.

The Board Order raises the issue of the psychiatrist. The Order claims that Bauer did not meet the deadline of March 31, 2014, to complete the process. The evaluation is dated April 28, therefore, Bauer met his responsibility for the deadline. Communication issues stemming from the District are not relevant.

In addition the Order complains that the evaluation is "*general*". Anything other than general would have been a violation of law. The District was also obligated to document the reason for the examination, which it failed to do. The District cited HRS-16 as giving it authority to require an examination. The HRS-16 section on a Return from Sick Leave was an inappropriate authorization since the appellant was on Administrative Leave.

The mis-handling of this issue by the District was a violation of Law (see below) and of Due process.

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."*

15.6 Short Proposed Final Order Portion (Corrections to proposed Duff Order)

Finally the District submitted no evidence of complying with the requirements of Section 59-25-440 regarding the Professional Improvement Plan--a violation of Due Process.

The Beaufort County School District failed in its responsibility and this case is reversed.

16. Grade Book. False

6th WEEK	7th WEEK	8th WEEK	9th WEEK	10th WEEK
M T W T F	M T W T F	M T W T F	M T W T F	M T W T F

24. Alice Walton (Human Resources) letter 2/7/14. "Student" is singular.

February 7, 2014

VIA HAND DELIVERY, REGULAR U.S. MAIL AND
CERTIFIED RETURN RECEIPT REQUESTED

Mr. John Alden Bauer
5 Gumtree Road – E-11
Hilton Head, SC 29926

Dear Mr. Bauer:

The purpose of this letter is to summarize our discussion of February 5, 2014 in which I advised you that you were being placed on administrative leave with pay effective February 6, 2014. This action is being taken because of concerns of negligent actions with a student and unprofessional behavior toward administration at Hilton Head Elementary School.

A full inquiry regarding these claims will be conducted. I am unsure when this inquiry will be concluded; however, we will move forward as expeditiously as possible. In the meantime, you are not to return to Hilton Head Elementary School for any reason or to attend any school-related functions. Further, since it will be necessary for the administration to contact you as part of the inquiry, I ask that you remain available by telephone during normal school hours, between 7:00 am until 3:30 pm, while you are on administrative leave. As I understand it, your telephone number is 384-1505. Please contact me immediately if this contact number is incorrect.

Finally, you are not to have direct or indirect contact with any of your students or their parents while you are on administrative leave, and I encourage you not to contact Hilton Head Elementary School staff regarding this situation.

Very truly yours,

Alice W. Walton
Chief Administrative and Human Resources Officer

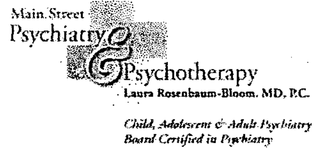
c: J. McAdee

I acknowledge receipt of this letter.

John Alden Bauer 2/7/14
John Alden Bauer Date

Post Office Drawer 309
[illegible]

25. Dr. Rosenbaum-Bloom evaluation 3/28/14



Child, Adolescent & Adult Psychiatry
Board Certified in Psychiatry

March 28, 2014

Re: John Bauer

To whom it concerns:

I saw John Bauer on March 28, 2014. We discussed his current situation and reviewed his job description. He takes his job very seriously and is very conscientious. His role as a Physical Education Instructor means the world to him and he values each student.

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.

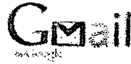
Please do not hesitate to contact me on this matter if you require further assistance.

Best regards,

Laura Rosenbaum-Bloom, MD

4101 Main Street, Suite C • Hilton Head Island, SC 29926 • 843-342-6000 • fax: 843-342-6001 • drlaurarb@hargray.com

27. Alice Walton General Job Description 3/25/14 (Human Resources)



John Bauer <jabpe23@gmail.com>

Medical Request
2 messages

Walton, Alice W <Alice.Walton@beaufort.k12.sc.us> Tue, Mar 25, 2014 at 9:12 AM
To: "John Bauer (jabpe23@gmail.com)" <jabpe23@gmail.com>

Alden,

X

I am requesting that you provide your physician a copy of your job description (attached) and that your doctor review it and submit a written statement to me on or before March 31, 2014, indicating whether she believes you are presently capable of performing the essential functions of your position, with or without reasonable accommodations.

If you have any questions, please don't hesitate to call.

Regards,

Alice W. Walton

Chief Administrative and Human Resources Officer

Beaufort County School District

843-322-2419 | Office

843-812-8374 | Mobile

IMPORTANT: The contents of this email and any attachments are confidential. They are intended for the named recipient(s) only.
If you have received this email in error, please notify the system manager or the sender immediately and do not disclose the contents to anyone or make copies thereof.
***** Barracuda Networks scanned this email for viruses, vandals, and malicious content. *****

PE Job Description.pdf
73K

December 10, 1013

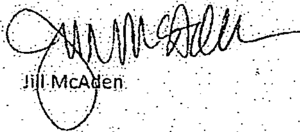
Dear Alden,

When I met with Mrs. Perdue to ask how her regularly scheduled meetings with staff members were going. She shared that you did not come to the specialist meeting last week, and furthermore, when a specialist came to get you in your office, you seemed shocked and said, "I got the invitation, but it was just an invitation. I didn't think I needed to come."

Alden, these Outlook invitations are used throughout the building to invite faculty and staff members to important scheduled meetings. They are used for literacy and math meetings, PYP meetings and IEP meetings. If you are having any difficulty with Outlook, please submit a help ticket for assistance.

On another note, Mrs. Brockway has shared that you have lost or misplaced at least three 504 plans. Alden, as you well know, these are confidential documents that need your signature, but should always be stored in a secured location. Your three drawer file cabinet is suited for this. Please make sure that these documents are secure and when you receive a 504 plan, it is critically important to read it, sign it and get the top copy back to Mrs. Brockway. The 504 plan that she provides you with is for your files.

Thank you,



Jill McAden

31.1 George McMaster 5/21/14. Litigation Hold letter to preserve evidence

TOMPKINS AND MCMASTER, LLP

ATTORNEYS AND COUNSELORS AT LAW
1701 RICHLAND STREET (29201)
POST OFFICE BOX 7337
COLUMBIA, SOUTH CAROLINA 29202
TELEPHONE: (803) 799-4499
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WWW.TMMLAW.COM

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JOHN GREGG MCMASTER
GEORGE HUNTER MCMASTER **
FRANK BARNWELL MCMASTER

**ALSO ADMITTED IN TEXAS

FRANK G. TOMPKINS
1874-1958
FRANK G. TOMPKINS, JR.
1906-1973
ELIZABETH ELDRIDGE
1894-1972

May 21, 2014

Via Courier
Ms Alice Walton
Chief Administrative and Human Resources Officer
2900 Mink Point Blvd
Beaufort, South Carolina 29902

RE: John Alden Bauer

Dear Ms. Walton

This Firm represents John Alden Bauer.

We have been involved in this matter for some time so I am fully aware of those efforts to create a file and a cause, as one does not exist, for the termination of Mr. Bauer.

This letter is to serve notice, as this matter should now be considered an issue arising related to pending or threatened litigation, and that all documentation or recordings of any nature, as set out herein below, should be preserved by the you, your office and those persons at the Hilton Head Island Elementary School or any other person with whom there has been any communication referring or relating to Mr. Bauer

We advise, specifically, and put you on notice as to the preservation of, *inter alia*, all data, electronic data, including an not limited to archived electronic mail, documentation, wherever found, including but not limited to:

a. Personal computers or those provided by the Beaufort County School District or Hilton Head Island Elementary School, servers, social media, storage media, laptops or personal data assistants: such as PalmPilot, Blackberry, or other Windows CE-based or Pocket PC devices or mobile phones, in whatever form (word processing documents, e-mail, text messages and voice mail);

b. that, further, all such date should be preserved, and not deleted or destroyed, or should any attempt be made to destroy or delete any part of that data above described and, further, that those persons in your office or at the Hilton Head Island Elementary School, should maintain those devices, as applicable to this matter, which shall be regularly charged and, further, cease the regular use and rotation or reuse of those devices as described above until all relevant data can be copied from that form of storage available in the device now used by the you,

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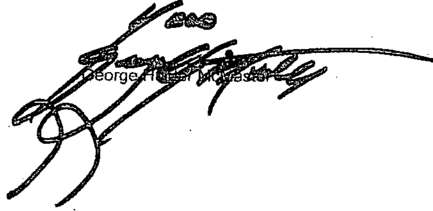
TOMPKINS AND MCMASTER, LLP

your office, or the Hilton Head Island Elementary School, and, further, you are to preserve a complete and verified copy of the files on back-up tape, via printouts or pictures of texts of all electronic data as described above.

I remain,



George Hunter McMaster

Cc;
John Alden Bauer
Via Courier
Jeffery C. Moss, Superintendent
Ms. Jill McAden, Principal

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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

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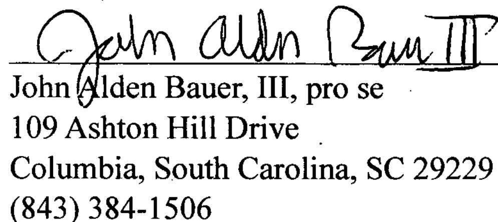
APPELLATE CASE NO. 2016-000955

John Alden Bauer, III		Appellant
	v	
Beaufort County School District		Respondent

CERTIFICATE OF RECORD ON APPEAL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by the Appellant and not any other material.

November 23, 2016



John Alden Bauer, III, pro se
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(843) 384-1506

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