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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Dr. Agnes M. Slayman, Appellant, vs. South Carolina Department of Education, Respondent.	Docket No. 19-ALJ-30-0337-AP **FINAL ORDER**

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or court) pursuant to a Notice of Appeal filed on October 4, 2019, by Dr. Agnes M. Slayman (Appellant). The Appellant challenges the decision of the South Carolina State Board of Education (State Board) to issue an Order of Public Reprimand following a disciplinary action brought by the South Carolina Department of Education (Respondent or Department) for unprofessional conduct. After careful consideration of the parties' briefs, the record, and the applicable law, the State Board's Order of Public Reprimand is affirmed.

BACKGROUND

Dr. Slayman was employed with the Chester County School District (District) as Superintendent from 2012 until September 30, 2015,[1] when she resigned following allegations of unprofessional conduct from members of her senior staff. She holds a valid South Carolina professional educator certificate, #134958, and has over thirty years of experience in the field. Dr. Slayman has no prior history of disciplinary action with the State Board, and, aside from this matter, an accomplished career in education.

In late August 2015, the District School Board (District Board) Chair, Mrs. Denise Lawson, and/or a District Board Member, Dr. Rick Hughes, purportedly became aware of allegations from five cabinet-level employees – Dr. Charles King, Mr. Jeff Gardner, Ms. Shawn Williams, Mrs.

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[1] As discussed *infra*, the Appellant continued employment with the District in a consulting capacity until June 30, 2016.

Anna Stroud, and Mrs. Brooke Clinton – that Dr. Slayman had created a hostile work environment and engaged in unprofessional conduct.[2]

On August 25, 2015, Mrs. Lawson contacted Dr. Slayman to inform her that "something bad is going on" and to request that she take a few days off work for her own protection.

On August 27, 2015, a special District Board meeting was called in Dr. Slayman's absence to discuss "employment matters and receive legal advice related to employment matters" from the District's counsel. As a result of that meeting, the District Board hired Ms. Betty Bagley, an educator and former superintendent, to investigate the complaint. Ms. Bagley was instructed to limit the scope of her investigation to interviewing senior staff members only, as well as Dr. Slayman and her administrative assistant, Ms. Callie McConnell. Thereafter, Ms. Bagley conducted her investigation and compiled her findings in what came to be referred to as the "Bagley Report."[3]

On August 31, 2015, Dr. King was named Acting Superintendent, effective August 28, 2015.

On September 3, 2015, Ms. Bagley presented her findings to the District Board during a meeting. Specifically, Ms. Bagley found that: (a) "the staff [] accurately explained and described their work environment"; (b) "[t]he hostile work environment has escalated over the past 2 years"; (c) "the Superintendent has the ability to show different faces to different groups of people in order to manipulate outcomes and serve her own purpose"; (d) "the Superintendent's ongoing conduct and pattern of comments have possible serious legal ramifications for [the District]" and that grievants were considering legal action; and (e) "the Superintendent has lost the trust and respect of her team to the point that she cannot be an effective leader."

On or about September 8, 2015, the five grievants submitted a formal written and signed grievance to Ms. Lawson alleging that Dr. Slayman created a hostile work environment, engaged in ethically questionable practices, and made racial and threatening remarks in the workplace.

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[2] It is not clear from the record exactly when or how Mrs. Lawson or Dr. Hughes first became aware of the allegations against Dr. Slayman. Also unclear is the extent of their knowledge of the surrounding circumstances at the time. The formal written and signed grievance addressed to Mrs. Lawson is dated September 8, 2015, after many of these events had already transpired.

[3] The Bagley Report was not actually prepared as a written report, in accordance with Ms. Bagley's instructions from the District Board. Rather, the Bagley Report was a compilation of Ms. Bagley's written notes from her interviews that later became public.

On September 14, 2015, the District Board voted 6-1 to hear the employment grievance related to Dr. Slayman.

On September 21, 2015, the District Board formally heard the grievance during executive session. Upon exiting executive session, the Board voted 4-3[4] to obtain additional information concerning the grievance.

Thereafter, the District's counsel and Dr. Slayman drafted an improvement plan for Dr. Slayman, provided she were to return to work, addressing the allegations and providing curative instructions or guidelines.

On September 24, 2015, the District Board voted 4-3 to accept Dr. Slayman's resignation as the District's Superintendent, effective September 30, 2015, and entered into an agreement with the Dr. Slayman.[5] The terms of that settlement agreement provided for the execution of a satisfactory release and resulted in Dr. Slayman continuing her employment with the District in a consulting capacity until June 30, 2016, with a $300,000 payment from the District to Dr. Slayman.

On September 30, 2015, the District Board voted unanimously to deny the grievance concerning Dr. Slayman as moot. During the same meeting, the District Board also voted unanimously to employ Dr. V. Keith Callicutt as the District's Interim Superintendent, effective immediately, on an at-will basis.

The events described above were publicized in news reports and in social media posts.

On October 14, 2015, unbeknownst to the District Board, Dr. Callicutt filed a complaint against Dr. Slayman's educator's certificate for the aforementioned allegations. The complaint read as follows:

> [T]hat a professional employee of the [District], Dr. Agnes Slayman, certificate number 134958, resigned from her employment with the District, effective September 30, 2015. Because Dr. Slayman's resignation followed an investigation into allegations that her conduct and actions resulted in a hostile work environment for some employees, I am reporting this matter pursuant to State Board Regulation R. 43-58.1.[6]

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[4] This 4-3 vote reflects a divide in the District Board that is relevant to the arguments in this case. In this instance, after Ms. Bagley had presented her findings, District Board members Mrs. Stroman, Mrs. Hensley, Mr. Boyd, and Mrs. James voted in favor of obtaining additional information on the employee grievance, while Dr. Hughes, Dr. Fort, and Ms. Lawson voted against the need to obtain additional information. It is alleged that the latter three District Board members, particularly Dr. Hughes and Ms. Lawson, conspired with and/or aided the grievants in a plot to remove Dr. Slayman from her position.

[5] Dr. Slayman contends that, had she wished to stay as superintendent, a majority of the District Board would have voted in her favor.

[6] While the record is replete with references to Dr. Callicutt filing the complaint, the court was unable to locate within

Roughly two and a half years later, on March 28, 2018, Dr. Slayman received notice from the Department that it was investigating allegations that she "engaged in unprofessional conduct by harassing, intimidating, and creating a hostile work environment for employees while employed as the Superintendent of the [District]."[7]

At some point thereafter, Dr. Slayman brought suit against several of the individuals involved in this case, including Dr. King, Dr. Hughes, Dr. Callicutt, Ms. Lawson, and Ms. Bagley.

On October 3, 2018, a five-day hearing began before a hearing officer during which all parties were represented by counsel.[8] Testifying on behalf of the Department were the following witnesses: Dr. King; Mr. Gardner; Ms. Williams; Ms. Clinton; Ms. Stroud; and Ms. Ligon. Testifying for the Appellant were the following witnesses: Dr. Slayman; Mr. John Stiver; Ms. Sandra Stroman; Mr. James Stroman; Mr. John Agee; Mr. Bill Bundy; Mr. Robert Teal; Mr. Charles Moore; Dr. Jimmy Littlefield; Rev. William Stringfellow; Ms. Maggie James; Ms. Callie McConnell; and Dr. Angela Bain.

The allegations made during the hearing were that Dr. Slayman: (a) was generally terse with and inconsiderate of her subordinates; (b) would become markedly annoyed and/or callous when employees would request either personal or medical leave; (c) threatened physical and/or professional consequences to her employees for various reasons related to job performance; (d) made racially charged comments in the course of her job; (e) engaged in name calling, belittling, vindictive, and otherwise hostile conduct towards her employees; (f) inappropriately shared private personnel information; (f) misrepresented certain information to the District Board; (g) attempted to coerce an employee into providing inaccurate information about a former District student to the student's college; (h) largely ceased seeking or following the advice of her senior staff in lieu of that of her "breakfast club" members, to the detriment of the students; (i) allowed a personal feud with the Chester County Sheriff to inappropriately control her policymaking to the detriment of the students.

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the record a copy of the complaint itself. The original text of the complaint is revealed, however, in a pre-hearing motion submitted by Dr. Slayman, which is contained within the record.

[7] Dr. Slayman testified that she first became aware that a complaint had been filed with the Department at some point in February by way of a phone call with a Mr. Joel Griggs.

[8] The fragmented hearing did not end until November 2, 2018, and the record was not finally closed until November 19, 2018.

In response, Dr. Slayman either disputed the allegations or offered further explanation as to why such actions were not inappropriate in context. Dr. Slayman argued that the allegations were the result of a "coup," which allegedly stemmed from job performance issues, manipulation, and/or personal ties. Specifically, it was alleged that Dr. King was ostensibly upset or vengeful after purportedly being chastised by Dr. Slayman for using a District MiFi in lieu of a cell phone, and was possibly vying for Dr. Slayman's position as he had aspirations of being a superintendent himself[9]; Mr. Gardner also purportedly had aspirations of being a superintendent, and was previously cautioned by Dr. Slayman for not completing his work in a timely manner; Ms. Stroud purportedly took pay raises, which, despite being approved by the board at the time, were in direct violation of a prior District Board order that her salary be frozen until she obtained certain educational qualifications, and had personal ties to Dr. Hughes and to the Sheriff[10]; Ms. Williams purportedly only signed onto the grievance after Mr. Gardner misinformed her that Dr. Slayman had made a racist remark; and Mrs. Clinton purportedly only joined the complaint after reading the Bagley Report and speaking with the other grievants. Furthermore, with respect to the individuals who were not signatories to the grievance but are nevertheless alleged to have played a role in Dr. Slayman's departure,[11] Dr. Hughes was purportedly beholden to the Sheriff by way of his day job as the physician for the local prison, which was under contract with the Sheriff; Ms. Lawson supposedly supported Dr. King's efforts to become superintendent and conspired with Dr. Hughes against Dr. Slayman during these events; Dr. Fort was allegedly an unwilling or confused participant in removing Dr. Slayman, and was purportedly persuaded by Ms. Lawson to go along with it; and, finally, Ms. Ligon was allegedly involved in an affair with Dr. King.

On April 19, 2019, the hearing officer issued her Report and Recommendation, in which the hearing officer found that "there is insufficient probative evidence to prove the allegations of unprofessional conduct in the nature of workplace harassment and intimidation of employees or on any other basis alleged . . ." and, as such, recommended that Dr. Slayman's charge of

[9] There was also discussion of a purported act of misconduct by Dr. King after Dr. Slayman's departure. However, this information was used to attempt to impeach Dr. King's credibility at the hearing, rather than as a reason for his involvement in the alleged coup.

[10] Dr. Hughes previously coached her son and served as his emergency contact during that time, and her husband worked with the Sheriff's department in some capacity.

[11] Also implicated in the scheme to remove Dr. Slayman were Ms. Bagley and two attorneys at the District's former law firm. However, no motive was offered for the alleged involvement of these individuals.

unprofessional conduct be dismissed. This decision appeared to largely turn on a credibility determination, which the hearing officer summarized as follows:

> [The testimony of the five grievants] was riddled with statements that were contradicted by the testimony of numerous other witnesses, thereby making the truth and veracity of such highly questionable. Several of these employees were also disgruntled over job performance issues or other issues related to the job, raising further issues of credibility. Tragically, these five individuals put into motion a chain of events that culminated in a media frenzy, marking an end to [Dr.] Slayman's otherwise unblemished education career.

More specifically, in the thirty-page report, the hearing officer found, among other things, that Dr. King, Mr. Gardner, and Ms. Stroud had credibility problems that called into question the veracity of their testimony, whereas Dr. Slayman's witnesses had credibly provided testimony to the contrary.

Thus, in concluding that the evidence did not support any action being taken against Dr. Slayman, the hearing officer stated that:

> [Dr.] Slayman's witnesses were all credible and had nothing to gain by their testimony on behalf of [Dr.] Slayman. In contrast, three of the five grievants evidenced substantial credibility concerns. The remaining two were convinced to sign onto the grievance based upon the representations of others. While [Dr.] Slayman admittedly used phrases such as "I'll have to kill you", those phrases were used in the vernacular, were never meant as threats, and would not have been seen as a threat by a reasonable person.

The hearing officer was, however, concerned about one incident involving Ms. Williams that Dr. Slayman admitted to, in which Dr. Slayman stated "I'll have to kill you" or words to that effect. Nevertheless, the hearing officer found that, in that instance, Dr. Slayman "used one of her common phrases in the vernacular" and that Ms. Williams stated that she knew Dr. Slayman did not intend for the phrase to be interpreted literally. Accordingly, the hearing officer opined that the phrase was taken out of context and concluded that it did not rise to the level of unprofessional conduct.

On April 26, 2019, the Department submitted a written objection to the hearing officer's Report and Recommendation, and the findings therein, to the State Board.

On May 29, 2019, the hearing officer submitted a lengthy response to the Department's objections to the State Board.

On September 10, 2019, the State Board held a hearing on Dr. Slayman's charge of unprofessional conduct. That same day, the State Board issued an Order of Public Reprimand to Dr. Slayman. In its order, the State Board found that: (a) while Dr. Slayman categorically denied all accusations, there was evidence that the Board had considered at least some corrective action against Dr. Slayman in the form of an improvement plan; (b) testimony revealed that Dr. Slayman explicitly threatened a cabinet member that she would "slit her throat," which was corroborated by the other witnesses; and (c) there was corroborated testimony by another cabinet member that he was publicly berated by Dr. Slayman in front of his colleagues. Consequently, the State Board found that the evidence demonstrated that Dr. Slayman engaged in conduct that was inappropriate and unprofessional for a District Superintendent. The State Board, however, found that just cause did not exist to revoke or suspend Dr. Slayman's educator certificate, and concluded that the issuance of a public reprimand was the appropriate sanction in this matter.

Thereafter, on October 4, 2019, Dr. Slayman timely filed a Notice of Appeal with this court.

ISSUES ON APPEAL

I. Did the Department err in not dismissing the complaint against Dr. Slayman when it was filed on October 14, 2015? Was the complaint filed by Dr. Callicutt improper under State Board Regulation 43-58.1?

II. Did the Department's processing and investigation of the complaint violate Dr. Slayman's due process rights, as well as the State Board's regulations and procedures?

   a. Did the Department engage in notice and investigation failures, and violate Regulation 43-58.1?

   b. Should the complaint have been dismissed upon receipt?

   c. Did the Department improperly seek to limit the testimony of District Board members at the hearing?

III. Did the hearing before the State Board violate Dr. Slayman's due process rights, as well as State Board regulations and procedures?

   a. Did the hearing violate the BCAF Procedures for Educator Certification Hearings?

   b. Are the regulation changes purportedly made by the Department procedurally deficient and violative of the requirements for Adoption, Amendment, and Repeal of Regulations required by the South Carolina State Register and the South Carolina

Code of Regulations?

IV. Did the State Board err when it failed to consider the hearing officer's recommendation the that complaint against Dr. Slayman be dismissed?

a. Is the State Board's decision arbitrary and capricious?

b. Is the State Board's decision clearly erroneous in view of the substantial evidence?

c. Did the State Board err by failing to consider mitigating circumstances surrounding the alleged misconduct?

V. Did the State Board err in issuing the order of public reprimand?

STANDARD OF REVIEW

The court has jurisdiction over appeals from the State Board of Education, as provided for in Sections 1-23-380(B) and 1-23-600(D) of the South Carolina Code. *See* S.C. Code Ann. § 59-25-260 (2020). In such cases, the court sits in its appellate capacity under the Administrative Procedures Act (APA). *See* S.C. Code Ann. § 1-23-600(D) & (E) (Supp. 2019). Absent alleged irregularities in agency procedure, the scope of the court's review in appellate cases is confined to the record. *See* S.C. Code Ann. § 1-23-380(4) (Supp. 2019); SCALC Rule 36(G).

Section 1-23-380(5) of the South Carolina Code provides the standard of review to be utilized by appellate bodies, including the ALC, when reviewing agency decisions:

> The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> (a) in violation of constitutional or statutory provisions;
> (b) in excess of the statutory authority of the agency;
> (c) made upon unlawful procedure;
> (d) affected by other error of law;
> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Ann. § 1-23-380(5) (Supp. 2019); *see also* S.C. Code Ann. §1-23-600(E) (directing administrative law judges to conduct appellate review in the same manner as prescribed in Section 1-23-380).

"'Substantial evidence' is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached . . . ."[12] *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (citation omitted). "The limited substantial evidence standard of review is intended only to assure that the [agency's] action is properly supported and that, therefore, no abuse of delegated authority occurred." *Fast Stops, Inc. v. Ingram*, 276 S.C. 593, 595, 281 S.E.2d 118, 119 (1981) (citation omitted).

In applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. *See* S.C. Code Ann. § 59-25-260 ("The findings of fact by the State Board of Education are final and conclusive."); *Rodney v. Michelin Tire Corp.*, 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996) (*citing Kearse v. State Health & Human Servs. Fin. Comm'n*, 318 S.C. 198, 200, 456 S.E.2d 892, 893 (1995)); 73A C.J.S. *Pub. Admin. Law & Procedure* § 497 (2015). A reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact for which there is room for a difference of intelligent opinion. *See Byerly Hosp. v. S.C. State Health & Human Servs. Fin. Comm'n*, 319 S.C. 225, 229, 460 S.E.2d 383, 386 (1995) (citation omitted). The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's findings from being supported by substantial evidence. *Risher v. S.C. Dep't of Health & Envtl. Control*, 393 S.C. 198, 210, 712 S.E.2d 428, 435 (2011) (citing *Palmetto All., Inc. v. S.C. Pub. Serv. Comm'n*, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984)). Thus, the court "will not overturn a finding of fact by an administrative agency 'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res.*, 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (citation omitted).

The party challenging an agency action on appeal has the burden of proving convincingly that the agency's decision is not supported by substantial evidence. *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996) (citation omitted). If substantial evidence exists for an agency decision, the decision may not be disturbed absent a

[12] In this regard, the term "substantial evidence" is a bit of a misnomer; there need not be a "substantial" amount of evidence in order to satisfy the substantial evidence standard.

showing that the action was arbitrary, in excess of the statutory authority, or otherwise unlawful.[13] *See* S.C. Ann. § 1-23-380(5).

DISCUSSION

In this educator disciplinary matter, the Appellant cites to five (5) grounds in support of her argument that the State Board erred in issuing its order of public reprimand. In her first assignment of error, Dr. Slayman argues that Dr. Callicutt's complaint to the Department, which set the instant action in motion, was improper because the allegations of misconduct contained therein are not encompassed by Regulation 43-58.1, and because Dr. Callicutt could not have had a reasonable belief that there were grounds for revocation or suspension of Dr. Slayman's certificate. Second, Dr. Slayman opines that the Department violated its own regulation in notifying her of and investigating the complaint, and improperly limited evidence presented at the hearing from Dr. Slayman's witnesses, both of which violated her due process rights. Third, Dr. Slayman argues that the Department improperly failed to adhere to the BCAF Procedures for Educator Certification Hearings, and relied on an invalid regulation change, which deprived her of due process. Fourth, Dr. Slayman contends that the State Board's decision was arbitrary and capricious, and clearly erroneous in view of the evidence as a result of the State Board's failure to consider either the hearing officer's recommendation to dismiss the complaint or relevant mitigating evidence in this case. Finally, Dr. Slayman opines that the State Board erred in issuing an order of public reprimand to her because the discipline is not within the permissible range applicable to public reprimands issued to educators in this State. These arguments are addressed *ad seriatim* below.

Propriety of Dr. Callicutt's Complaint

The parties agree that Regulation 43-58.1 controls this question, though they differ in their reading of the reporting requirements it imposed on Dr. Callicutt. The regulation provides in pertinent part that:

> A district superintendent, on behalf of the local board of education, shall report to the Chair of the State Board of Education and the State Superintendent of Education, the name and certificate number of any certified educator who is

[13] "A decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards." *Deese v. S.C. State Bd. of Dentistry*, 286 S.C. 182, 184-85, 332, S.E.2d 539, 541 (Ct. App. 1985).

> dismissed, resigns, or is otherwise separated from employment with that district based on allegations of misconduct including, but not limited to, misconduct involving drugs, sexual misconduct, the commission of a crime, immorality, moral turpitude, or dishonesty, that is reasonably believed by the district superintendent to constitute grounds for revocation or suspension of the certificate issued to the educator by the State Board. This report is required notwithstanding any termination agreement to the contrary that the district board of trustees or superintendent may enter into with the educator. The reasons for the educator's termination of employment with the district shall also be provided along with all evidence in the possession of the district relating to the termination.

S.C. Code Ann. Regs. 43-58.1 (2011).

In arguing that Dr. Callicutt's complaint was improper under the regulation, Dr. Slayman contends that: (1) because she was only issued an order of public reprimand, the conduct she was accused of does not fall within the category of misconduct that would result in the suspension or revocation of a certificate, as is envisioned by the plain text of the regulation; and (2) Dr. Callicutt could not have had a reasonable belief that there were grounds for suspension or revocation of her educator's certificate since he was not employed by the District at the time of the alleged conduct, and the District Board neither acted on the Bagley Report, nor found that she engaged in the conduct alleged in the grievance.[14,15] The court disagrees.

While Dr. Slayman was issued an order of public reprimand as a final consequence of Dr. Callicutt's complaint, the regulation plainly provides that the reporting requirement is based – not on what punishment is ultimately received, or even possible in a given circumstance, but rather that "misconduct" which is "reasonably believed by the district superintendent to constitute grounds for revocation or suspension of the certificate issued to the educator by the State Board." S.C. Code Ann. Regs. 43-58.1. Moreover, though the regulation provides a non-exhaustive list of illustrations of possible forms of misconduct, the term "misconduct" is not actually defined as it used within Regulation 53-58.1. *See id*; *see also Branch v. City of Myrtle Beach*, 340 S.C. 405,

[14] Though Dr. Slayman notes that the District did contractually agree not to disparage her and that Dr. Callicutt's report violated that contract, she does not argue that Dr. Callicutt was contractually prevented from filling his complaint. To that end, the regulation plainly provides that reporting "is required notwithstanding any termination agreement to the contrary that the district board of trustees or superintendent may enter into with the educator." S.C. Code Ann. Regs. 43-58.1.

[15] In her brief, Dr. Slayman also alludes to the idea that it was against District Board policy for Dr. Callicutt to submit his complaint without approval from the District Board. To the extent that Dr. Slayman argues that this goes to the validity of the complaint, she cites to no authority stating that a school board's authorization is required prior to complying with Regulation 43-58.1 or, even if it were, that a violation of a district school board policy requires invalidating an otherwise lawful complaint pursuant to that regulation.

409-10, 532 S.E.2d 289, 292 (2000) (citation omitted) ("When faced with an undefined statutory term, the Court must interpret the term in accord with its usual and customary meaning."); *Lee v. Thermal Eng'g Corp.*, 352 S.C. 81, 91-92, 572 S.E.2d 298, 303 (Ct. App. 2002) (stating that where a word is not defined in a statute, "courts have looked to the usual dictionary meaning to supply its meaning"); *Bruning v. S.C. Dep't of Health and Envtl. Control*, 418 S.C. 537, 545, 795 S.E.2d 290, 294 (Ct. App. 2016) (citation omitted) ("Regulations are interpreted using the same rules of construction as statutes."). According to Black's Law Dictionary, "misconduct" is defined rather broadly as "[a] dereliction of duty; unlawful, dishonest, or improper behavior, esp. by someone in a position of authority or trust." *Misconduct*, BLACK'S LAW DICTIONARY (11th ed. 2019).

Here, the bases for the complaint were the allegations that Dr. Slayman's "conduct and actions resulted in a hostile work environment for some employees . . . ." (R. at 19.) Even if not unlawful, the allegations raised by the grievants in this case would, by any account, certainly fall within the realm of "improper" behavior, if true. Thus, irrespective of the end result of the complaint, in the absence of any indication that Dr. Callicutt did not genuinely and reasonably believe that facilitating a hostile work environment could constitute grounds for revocation or suspension, the court cannot say that his complaint was improper on that ground.

As for Dr. Slayman's second argument, nothing in the regulation requires or even suggests that, in order to be properly filed, the complainant must have personal knowledge of the underlying events in their report and/or that the district school board must first act on or find merit in the complaint. Indeed, the Regulation 43-58.1 envisions the precise scenario involved here:

> A district superintendent . . . shall report . . . the name and certificate number of any certified educator who is dismissed, resigns, or is otherwise separated from employment with that district based on allegations of misconduct . . . that is reasonably believed by the district superintendent to constitute grounds for revocation or suspension of the certificate issued to the educator by the State Board. This report is required notwithstanding any termination agreement to the contrary that the district board of trustees or superintendent may enter into with the educator.

S.C. Code Ann. Regs. 43-58.1. Thus, mere awareness of allegations of misconduct that are reasonably believed to constitute grounds for suspension or revocation is sufficient for reporting purposes under the regulation; nothing more is required.[16]

[16] Interestingly, the regulation does not even contemplate the district's superintendent's personal belief in the veracity of the allegations. Under Regulation 43-58.1, if the superintendent believes the allegations could result in suspension or revocation of the educator's certificate, then reporting is required irrespective of whether the district superintendent

Dr. Callicutt's compliant makes clear that he was aware that Dr. Slayman resigned amid allegations that her "conduct and actions resulted in a hostile work environment for some employees," and that he was "reporting this matter pursuant to State Board Regulation R. 43-58.1." (R. at 19.) Again, without any evidence that Dr. Callicutt did not reasonably or genuinely believe that those allegations could result in suspension or revocation of Dr. Slayman's certificate, this court cannot invalidate an otherwise proper complaint. There is also nothing in the regulation that could be read to suggest that a district school board must first act on or find merit in the allegations prior to a report being made pursuant to it. Given that the regulation notes that reporting is required even in the face of an agreement to the contrary that a district school board may enter into with an educator, and cautions that "[t]he intentional failure of a district superintendent to report the termination of employees as required by this regulation shall be considered an act of unprofessional conduct and may be sufficient cause for revocation of such person's education certificate," any requirement that the district superintendent must seek or receive authorization or acknowledgement from the district board first would seem wholly antithetical to the regulation. *See id.* In view of the foregoing, the court cannot hold that the Department erred in failing to dismiss Dr. Callicutt's complaint.

Due Process & the Department's Actions

In her second assignment of error, Dr. Slayman contends that her due process rights were violated by way of the Department's handling of this action. Specifically, Dr. Slayman argues that: (1) the complaint was filed on October 14, 2015, but she was not notified of any pending action until February of 2018 or notified officially in writing until March 28, 2018; and (2) the Department improperly sought to limit the testimony of District Board members during the hearing.[17] While the court finds the roughly twenty-seven month period between notification the filing of the complaint and the notification of the pending action to be curious, the court is not aware of, and Dr. Slayman cites to no statutes, regulations, or rules of procedure setting forth any mandatory time frames for the processing and/or investigation of a complaint of this nature by the Department. Likewise, Dr. Slayman cites to no authority for the proposition that this apparent

believes the underlying allegations. *See* S.C. Code Ann. Regs. 43-58.1.

[17] Dr. Slayman also argued that her due process rights were violated because the instant complaint is dissimilar to the other types of unprofessional conduct envisioned by the regulation. Because the court found *supra* that the present action is not outside the context of Regulation 43-58.1, the court declines to address the same argument from a due process perspective.

delay violated her due process rights. Instead, she broadly asserts that "almost two and a half years later without written notice of a complaint against her amounted to an egregiously long period of time, thereby prejudicing her substantial rights." Because this argument is not pursued in any detail whatsoever, the court finds that it is abandoned and, thus, unpreserved for review. *See* SCALC Rule 37(B)(3) (setting forth the requirement that issues argued in appellate briefs be followed by "a discussion and citation of authority"); *Eaddy v. Smurfit-Stone Container Corp.*, 355 S.C. 154, 164, 584 S.E.2d 390, 396 (Ct. App. 2003) (citation omitted) ("[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not preserved for [appellate] review.").

Even if she had sufficiently preserved this argument, there is no indication that Dr. Slayman suffered any actual prejudice merely as a result of the apparent delay. "[P]roof of a denial of due process in an administrative proceeding requires a showing of substantial prejudice." *Palmetto All., Inc. v. S.C. Pub. Serv. Comm'n*, 282 S.C. 430, 435, 319 S.E.2d 695, 698 (1984) (citation omitted). Here, the only mention of prejudice is the aforementioned conclusory statement that the "egregiously long" delay prejudiced her substantial rights. Without any explanation and supporting evidence demonstrating how or why the delay substantially prejudiced her, this court is unable to conclude that the mere delay itself prejudiced Dr. Slayman's substantial rights.

With respect to the Department's alleged hampering of witness testimony at the hearing, Dr. Slayman opines that counsel for the Department hamstrung several of her witnesses at the hearing, including Mr. & Ms. Stroman, Ms. James, and Rev. Stringfellow. However, Dr. Slayman failed to cite to any point in the transcript where counsel for the Department purportedly "refused to let the [District] Board Members give full disclosure and testimony." It is also unclear whether these alleged issues were contemporaneously raised and ruled upon by the hearing officer, what the basis of any ruling was, or whether the contents of the allegedly excluded testimony were ever proffered. In any event, the court finds this argument similarly unpreserved for review. *See Eaddy*, 355 S.C. at 164, 584 S.E.2d at 396 (citation omitted); *see also Buist v. Buist*, 410 S.C. 569, 574, 766 S.E.2d 381, 383 (2014) (citation omitted) ("It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved."); *Medlock v. One 1985 Jeep Cherokee VIN 1JCWB7828FT129001*, 322 S.C. 127, 134, 470 S.E.2d 373, 378 (1996) (citation omitted) ("To preserve an issue for appeal, a contemporaneous objection is necessary and specific grounds must be clearly stated."); *Jamison*

v. Ford Motor Co., 373 S.C. 248, 260, 644 S.E.2d 755, 761 (Ct. App. 2007) (citations omitted) ("The failure to make a proffer of excluded evidence will preclude review on appeal . . . . It is well settled that a reviewing court may not consider error claimed in the exclusion of testimony unless the record on appeal shows fairly what the rejected testimony would have been."). However, even if this argument was preserved, it appears that each witness was allowed to fully testify at the hearing and, aside from standard objections being lodged and handled in a typical format, there is no indication in the roughly fifteen-hundred-page transcript that testimony of Dr. Slayman's witnesses was ever inappropriately limited by the Department. Nevertheless, the fact that Dr. Slayman failed to even argue resulting prejudice from the purported witness hampering would preclude this court from granting the relief she seeks. *See Palmetto All., Inc.*, 282 S.C. at 435, 319 S.E.2d at 698 (citation omitted).

Due Process & the State Board's Actions

Next, Dr. Slayman argues that, during the hearing before the State Board, multiple violations of the State Board's Procedures for Educator Certificate Hearings occurred, which resulted in a "sham" hearing that was fundamentally unfair and violated her due process rights. More specifically, Dr. Slayman contends that the Department erred by: (1) disallowing the hearing officer to present her findings to the State Board, in direct violation of State Board Rule IV(K); and (2) limiting her presentation before the State Board to three minutes, despite such a restriction not being found in any official hearing rules.[18]

The "most egregious," and only alleged written rule violation cited by Dr. Slayman in her brief is of State Board Rule IV(K) of the Procedures for Educator Certificate Hearings, which states that:

> Following the hearing, the hearing officer will formulate a written report stating his or her findings of fact and recommended action and will present the report to the Board for consideration. Prior to presenting the report to the Board, the hearing officer must serve the parties with a draft of the report and provide the opportunity for each party to file objections to the report. Once the hearing officer has considered the objections and finalized his or her report, the hearing officer will present the report at the next scheduled board meeting. The hearing officer will make every effort to present the report to the Board within 30 days of the hearing.

[18] Dr. Slayman also argues the purported refusal to let the hearing officer present her report and time limit imposed before the State Board constitute regulation changes by the Department that are "procedurally deficient and violate[] the requirement for Adoption, Amendment, and Repeal of Regulations" in this state. Since, as discussed *infra*, the underlying arguments are without merit, the court declines to rule on this argument.

> Notice will be given to both parties of the time, date, and place of the hearing officer's presentation to the Board. Upon consideration of the hearing officer's report and any information submitted by the parties, the Board may order one of the following:
>
> 1. permanent revocation;
> 2. revocation with the right to reapply after three years, subject to a character and fitness review;
> 3. suspension for a specified period of time;
> 4. suspension for a specified period of time, upon satisfaction of certain conditions such as drug or alcohol testing, counseling, or treatment; psychiatric testing, counseling, or treatment; or other conditions appropriate to the facts of the case;
> 5. public reprimand, or
> 6. dismissal of case.
>
> If the Board's decision is to revoke permanently an educator's certificate, the educator will be prohibited from petitioning any future Board for reapplication. The Office of General Counsel has the authority to deny any such request for reapplication.

See S.C. DEP'T OF EDUC., PROCEDURES FOR EDUCATOR CERTIFICATE HEARINGS 7-8 (2016) (also referred to in this case by its internal code moniker "BCAF") (emphasis added). Dr. Slayman contends that, while the report and recommendation were required to be presented to the State Board, that never occurred in this case. Again, this is argument is not preserved for review. The court can find no place in the record where an alleged failure to be presented with the hearing officer's report and recommendation was ever raised with or ruled upon by the State Board. As such, any argument that the State Board erred in failing to have the hearing officer present her report and recommendation is deemed abandoned. *See Buist*, 410 S.C. at 574, 766 S.E.2d at 383 (citation omitted).

Even assuming that this argument had been raised and ruled upon, the court finds no merit for the contention that the hearing officer's report was not presented to or considered by the State Board in this case. Though it does not appear that the hearing officer in this case personally presented her report to the State Board, the record clearly reflects that not only was the hearing officer's thirty-page report and recommendation presented to and considered by the board, but also that the hearing officer presented to the State Board Chair her supplementary eleven-page response to the Department's exceptions to her report. (*See* R. at 4 ["After considering the . . . report and recommendation presented, the State Board voted to publicly reprimand Dr. Slayman."]; 6; 1728 ["State Board members are given a packet of documents from the case one week before the

hearing. The materials include the hearing officer's report and recommendation. The transcript of the hearing, the Department's exceptions, and the Hearing Officer's response to those exceptions are also included . . . ."]; 1739.) Thus, any argument that the hearing officer's report and recommendation was not sufficiently presented to the State Board is wholly without support in the record.[19] Moreover, even if the State Board failed to follow its procedure in this instance, Dr. Slayman does not articulate how she was supposedly prejudiced as a result. *See Gardner v. S.C. Dep't of Rev.*, 353 S.C. 1, 14, 577 S.E.2d 190, 197 (2003) (citation omitted) ("As a general rule, a party must establish prejudice as the result of another's failure to follow mandatory statutory procedure.")

As for her second argument, Dr. Slayman opines that she was improperly restricted to just three minutes before the State Board, despite there being no official rule setting forth such a limitation. Once again, the court finds this argument unpreserved. While the court acknowledges that counsel for the Department did notify counsel for Dr. Slayman that there was a three-minute allotment at the State Board hearing, which does not appear in the official Procedures for Educator Certificate Hearings, it seems that, rather than challenging that limitation, counsel for Dr. Slayman merely accepted it as fact. (*See* R. at 1730 ["Thank you . . . . I intend to make a brief address to the State Board on Dr. Slayman's behalf."]; 1729 ["I want to plan my 3 minutes the most efficiently . . . ."].) Thus, this argument is also deemed abandoned. However, even assuming it was sufficiently preserved, it is axiomatic that, while a meaningful hearing must occur at some stage of an administrative proceeding, "[a] party is not entitled to a hearing at each stage of agency review . . . ." *McIntyre v. Sec. Comm'r of S.C.*, 425 S.C. 439, 445, 823 S.E.2d 193, 196 (Ct. App. 2018) (citing *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 68–69, 492 S.E.2d 62, 71–72 (1997)). Here, Dr. Slayman acknowledges that she received a "thorough and impartial" hearing before the hearing officer. (Appellant's Br. 15 n.10.) Dr. Slayman was, therefore, plainly afforded notice and an opportunity to be heard in a meaningful way before the hearing officer. Moreover, the court notes that Department counsel's directive appears to be in keeping with spirit of the statutory procedures for hearings before the State Board, which states that the hearing "*shall* be as summary and as simple as reasonably may be . . . ." *See* S.C. Ann. § 59-25-200 (2020) (emphasis added).

[19] To the extent Dr. Slayman argues that the State Board erred in not accepting the hearing officer's recommendation, the court flatly rejects such an argument as being wholly inconsistent with State Board's procedures. State Board Rule IV(K) requires only that the State Board consider the hearing officer's report, which it plainly did in this case.

Consequently, Dr. Slayman has not demonstrated that this apparent limitation at the State Board hearing stage deprived her of due process. In any event, aside from merely asserting that these alleged failures "prejudiced her substantial rights," Dr. Slayman offers no authority or evidence to support her conclusory claim that she was prejudiced by this action. Thus, this court is without authority to grant the relief she seeks. *See Palmetto All., Inc.*, 282 S.C. at 435, 319 S.E.2d at 698 (citation omitted); *Gardner*, 353 S.C. at 14, 577 S.E.2d at 197 (citation omitted).

Consideration of the Report & Recommendation

In her fourth assignment of error, Dr. Slayman contends that, because the State Board heard only brief remarks during its hearing, whereas the hearing officer held a full and lengthy hearing, the State Board erred in not following her recommendation. More specifically, Dr. Slayman contends that: (1) the State Board arbitrarily and capriciously disregarded the hearing officer's recommendation; (2) the State Board's decision is clearly erroneous in view of the substantial evidence presented at the hearing; and (3) the State Board erred in failing to consider mitigating circumstances surrounding the incident. Because the crux of Dr. Slayman's arbitrary and capricious argument appears to hinge on the purported evidentiary and witness credibility issues from the hearing, the court will treat this as part of her substantial evidence argument.

Substantial Evidence

Turning to whether the State Board's decision is supported by substantial evidence in the record, Dr. Slayman zealously argues that the State Board's decision is against the weight of the evidence presented at the hearing and unsupported by substantial evidence in the record. The court disagrees.

Crucially, in analyzing whether substantial evidence supports the State Board's decision, it matters not whether the record contains evidence to the contrary, or even whether the weight of evidence in the record is to the contrary. Rather, as stated *supra*, substantial evidence is simply "evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached . . . ." *Lark*, 276 S.C. at 135, 276 S.E.2d at 306 (citation omitted). Thus, the fact that reasonable minds could disagree over the conclusions drawn from that evidence does not preclude a finding that such conclusions are supported by substantial evidence. *Risher*, 393 S.C. at 210, 712 S.E.2d at 435 (citation omitted).

Here, while the court acknowledges that there is testimony in the record that would tend to show Dr. Slayman's innocence and while reasonable minds could – and did – disagree over the conclusions drawn from that evidence, the State Board's decision is supported by substantial evidence in the record. In reaching its conclusion that Dr. Slayman engaged in conduct that was inappropriate and unprofessional for a District Superintendent, the State Board found that: (a) Dr. Slayman explicitly threatened a cabinet member (Ms. Williams) that she would "slit her throat"; (b) Dr. Slayman publicly berated another cabinet member (Dr. King) in front of his colleagues; and (c) the District Board had considered some corrective action against Dr. Slayman in the form of an improvement plan.

To that end, during the hearing, Dr. King testified that: "she got in my face, finger in my nose, very loud and boisterously chiding and chastising me for that, not knowing and not having it arranged and not – that the board member was upset. And she did this in front of pretty much the whole cadre of principals." (R. at 91:6-12.) This instance was independently corroborated by Mr. Gardner. (R. at 246:19-23.) Moreover, Ms. Williams testified that Dr. Slayman "said to me in front of my colleagues that I – she would slit my throat if I ever spoke to the board members again. And that was in front of all of . . . all the cabinet members." (R. at 314:14-24; *see also* 315:23-25; 316:14-22.) This account was corroborated by Dr. King, Mr. Gardner, Ms. Clinton, and Ms. Stroud. (R. at 112:10-20; 128:14-129:3; 261:3-8; 378:8-22; 456:22-457:3; 458:20-25.) Finally, both Ms. James and Dr. Slayman acknowledged that, prior to Dr. Slayman's resignation, the District's attorneys and Dr. Slayman had worked on some form of an improvement plan or set of expectations for Dr. Slayman if she were to return to her position as superintendent. (R. at 1032:21-25; 1033:17-21; 1423:5-1424:25; 1427:21.) Thus, there is substantial evidence in the record to support the State Board's findings and conclusion as a whole that Dr. Slayman engaged in inappropriate and unprofessional conduct.

It is noteworthy that the record contains evidence of other instances of apparent misconduct that further bolster the State Board's determination. These include, *inter alia*, racially insensitive remarks and the testimony of Ms. Ligon, who was not one of the initial grievants and for whom no concrete motive was established for her to take part in this purported elaborate conspiracy,[20]

[20] By the court's count, no less than thirteen individuals are alleged by Dr. Slayman to have been involved in this conspiracy: Dr. King, Mr. Gardener, Ms. Stroud, Ms. Williams, Ms. Clinton, Dr. Hughes, Ms. Lawson, Dr. Fort, Ms. Ligon, Ms. Bagley, two attorneys with the District's former law firm, and the Chester County Sheriff. Additionally, Dr. Slayman's briefs to this court attempt to also implicate counsel for the Department and the Department itself in

detailing an independent hostile interaction during which Dr. Slayman attempted to unduly coerce her into providing false information about a former District student to the student's college for the benefit of the student. (*See, e.g.*, R. at 240:20-241:4; 242:15-21; 243:5-13; 524:7-525:21.) Although Dr. Slayman presented evidence against each grievant in an attempt to refute these claims and establish a personal motive for her removal or other witness credibility issues, there was ample evidence that the State Board could have weighed against her defense, which was well within its province to do. *See Wilder v. Blue Ribbon Taxicab Corp.*, 396 S.C. 139, 147, 719 S.E.2d 703, 707 (Ct. App. 2011) (citation omitted) ("[T]he credibility and weight to be accorded evidence is solely for the fact finder to determine.").

Mitigating Evidence

Furthermore, Dr. Slayman argues that the State Board erred in not considering mitigating evidence, namely evidence of her professional accomplishments, benefits to the District that occurred under her leadership, and positive District Board evaluations. However, Dr. Slayman fails to cite to any place in the record indicating that this issue was ever raised or ruled upon by the State Board. Moreover, Dr. Slayman cites to no authority stating that failure to consider such evidence is reversible error, to any evidence indicating that the State Board failed to meaningfully consider the mitigating evidence in the record before it, or, if so, to anything that could establish prejudice. *See Gardner*, 353 S.C. at 14, 577 S.E.2d at 197 (citation omitted). Thus, this argument is not preserved for review. *See Buist*, 410 S.C. at 574, 766 S.E.2d at 383 (citation omitted); *Eaddy*, 355 S.C. at 164, 584 S.E.2d at 396 (citation omitted). Nevertheless, even if it had been preserved, in the absence of anything demonstrating that the State Board neglected to even consider such evidence in the record, this argument is without merit since the trier of fact is free to assign weight to evidence as it deems appropriate. *See Wilder*, 396 S.C. at 147, 719 S.E.2d at 707 (citation omitted).

Propriety of Issuing an Order of Public Reprimand

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this scheme. (*See* Appellant's Br. 19 ["This bares question to (Department Counsel)'s intent in not following procedure as an effort to influence the State Board's decision prior to the State Board receiving the Hearing Officer's Final Report."]; 24 n.12 ["Betty Bagley, the author of the Bagley Report, was an employee of the SCDE when the Bagley Report was written. Bagley has a long-standing relationship with the SCDE. Again, this connection draws into question the SCDE's motive for zealously pursuing Dr. Slayman for these false allegations made by the grievants, as publicized by Bagley in her document known as the Bagley Report. As shown by (Department Counsel)'s questions supporting the credibility of Bagley during his cross examination of Dr. Slayman's witness, Charles Moore."].)

Finally, Dr. Slayman contends that the State Board's directive to report the disciplinary action to National Association of State Directors of Teacher Education and Certification (NASDTEC) Clearinghouse is in violation of State Board Rule IV(M) of the Procedures for Educator Certificate Hearings, which states that NASDTEC Clearinghouse must only be notified when an educator's certificate is suspended, revoked, or surrendered; whereas, for a public reprimand, only South Carolina School Districts are required to be notified.

Yet, the court finds nothing in the record that this issue was raised before or ruled upon by the State Board. Therefore, the court must conclude, once again, that this argument has not been preserved for review. *See Buist*, 410 S.C. at 574, 766 S.E.2d at 383 (citation omitted).

Nevertheless, even if this issue had not been abandoned, State Board Rule IV(M) states only that:

> The Office of Educator Certification will send notice of the suspension, revocation, or surrender of an educator certificate to all South Carolina school districts and the National Association of State Directors of Teacher Education and Certification (NASDTEC) Clearinghouse.
>
> The Office of Educator Certification will send notice of a public reprimand to all South Carolina school districts.

See S.C. DEP'T OF EDUC., PROCEDURES FOR EDUCATOR CERTIFICATE HEARINGS 8 (2016). Contrary to Dr. Slayman's assertions, while this rule does not specifically direct notification to NASDTEC Clearinghouse in the event of a public reprimand, it does not preclude it. In any event, "[p]olicy or guidance issued by an agency other than in a regulation does not have the force or effect of law." S.C. Ann. § 1-23-10(4) (2005). Thus, Dr. Slayman has not demonstrated any error in the State Board's decision to notify NASDTEC Clearinghouse. Moreover, even if an error had been shown, Dr. Slayman does not even allege prejudice from this action. *See Palmetto All., Inc.*, 282 S.C. at 435, 319 S.E.2d at 698 (citation omitted); *Gardner*, 353 S.C. at 14, 577 S.E.2d at 197 (citation omitted).

CONCLUSION

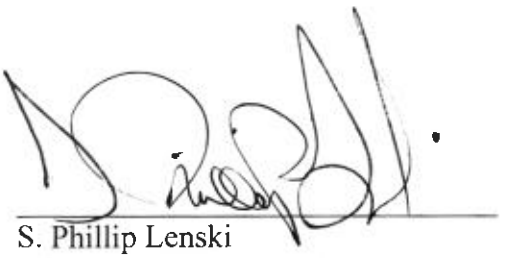
In view of the foregoing, the court finds that Dr. Slayman has not met her burden of establishing a procedural deficiency, due process violation, statutory or regulatory violation, or lack of substantial evidence in this case. Moreover, even if Dr. Slayman had demonstrated an error in this case, there is insufficient proof of prejudice to warrant granting the relief she seeks.

Therefore, since the State Board's Order of Public Reprimand is not affected by a reversible error, its decision must stand.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the State Board's Order of Public Reprimand is **AFFIRMED**.

AND IT IS SO ORDERED.



June 3, 2020
Columbia, South Carolina

S. Phillip Lenski
Administrative Law Judge

CERTIFICATE OF SERVICE

I, Erika S. Easler, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Erika S. Easler
Judicial Law Clerk

June 3, 2020
Columbia, South Carolina

FILED
JUN 03 2020
ADMIN. LAW COURT