STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

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SC Court of Appeals

Appellate Case No. 2020-000950

Dr. Agnes M. Slayman,

Appellant,

v.

The South Carolina Department of Education

Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

The issuance of an Order of Public Reprimand by the State Board of Education was done after a thorough review of the testimony and evidence presented during a prior hearing in the matter before a State Board of Education approved hearing officer. While the Appellant contends, inter alia, that the she was not afforded her constitutional right of due process, Respondent asserts that State Board of Education's Order of Public Reprimand should be affirmed on the following grounds:

I. Appellant failed to preserve her arguments for review by this court where she did not file a motion for rehearing before the Administrative Law Court.

II. The Administrative Law Court correctly found the SCDE properly accepted the report of alleged unprofessional conduct, which warranted further investigation.

III. The Administrative Law Court correctly found that Appellant's arguments were not preserved for appellate review. Further, the Administrative Law Court properly found the investigative process, notice and pretrial exchange of information ensured Appellant's due process.

IV. The Administrative Law Court correctly found the hearing before the State Board ensured Dr. Slayman's Due Process Rights and was in accordance with State Board Regulations and Procedures. The submission of the Order of Public Reprimand to the NASTEC was customary and proper. (Appellant's Issues III and V).

V. The State Board properly issued the Order of Public Reprimand upon review of the hearing transcript, exhibits, the Report and Recommendation along with exceptions.

STATEMENT OF THE CASE

The State Board of Education (State Board) issued an Order Public Reprimand against Appellant on September 10, 2019, based on allegations that Appellant engaged in unprofessional conduct. The order was issued following a lengthy evidentiary hearing before a hearing officer that lasted multiple days. The State Board was presented with the Report and Recommendation of the Hearing Officer, along with the SCDE's exceptions to the Report and Recommendation and the entire written transcript of the proceeding. Counsel for Appellant and Counsel for Respondent were afforded an opportunity to address the State Board. A non-participating attorney within the Office of General Counsel presented the Hearing Officer's Report and Recommendation to the State Board. Upon its deliberation of the matter, the State Board voted to issue an Order Public Reprimand. Within thirty days of the State Board's Order, Dr. Slayman filed her Notice of Appeal to the Administrative Law Court ("ALC"). Both the SCDE and Dr. Slayman filed their briefs to the ALC. On June 3, 2020, the ALC issued an Order affirming the Public Reprimand to Dr. Slayman. ROA pp. 7-28. Dr. Slayman filed her Notice of Appeal to the South Carolina Court of Appeals on July 2, 2020 and an Initial Brief of Appellant on August 4, 2020. This Brief of Respondent follows.

STATEMENT OF FACTS

On September 3, 2015, a report was presented by Ms. Betty Bagley, a seasoned educator with over forty years of experience in South Carolina, to the Chester County School District Board of Trustees (Board). ROA 1862. Ms. Bagley had been commissioned by the Board to investigate allegations, inter alia, that District Superintendent, Dr. Agnes M. Slayman (Dr. Slayman) created a hostile work environment for district office employees. App. p. 1. The report detailed the results of interviews Ms. Bagley conducted on August 31, 2015, through September 3, 2015. The ten

page report, which later became known as the "Bagley Report", consisted of interviews of Dr. Slayman[1] and her immediate staff. ROA 1715-1723, App. p. 1. According to the conclusions of the Bagley Report, the staff accurately described a hostile work environment that escalated over the previous two years; the staff's health had been adversely affected as a result of the work environment; and Slayman's ongoing conduct and pattern of comments had possible legal ramifications for the school system. App. p. 1. The Bagley Report was presented to the Board. However, the Board took no action. On September 8, 2015, a written grievance was filed with the Board Chair of the Chester County School Board, due to an alleged "hostile work environment, implications of ethical violations, and racial and threatening remarks by Dr. Agnes Slayman, Superintendent of the Chester County School District." ROA 1858. The grievants who signed the letter seeking a closed door meeting with the Chester County School Board were members of Dr. Slayman's cabinet, all of whom appeared in the Bagley Report initially disregarded by the Board.[2] The signatories of the grievance were: Dr. Charles King, Associate Superintendent of Instruction, Mr. Jeff Gardner, Associate Superintendent of Operations, Ms. Shawn Williams, Executive Director of Human Resources, Ms. Anna Stroud, Executive Director of Finance, and Ms. Brook Clinton, Public Information Officer, all of whom provided sworn testimony in the hearing in this matter. ROA 1858.

On September 30, 2015, a Settlement Agreement and Release was executed by Dr. Slayman, which effectively ended her tenure as Superintendent of Chester County School District. ROA 4. In a letter dated October 14, 2015, Interim Superintendent Dr. V. Keith Callicutt reported

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[1] Appellant describes how Bagley requested Dr. Slayman's resignation without citing the record. Counsel for Appellant misleads the court. Rather than demanding Slayman's resignation, Ms. Bagley was just curious. Dr. Slayman testified: "And then I asked her at that point, why are you asking me to resign? Are you –is this what we're here for – to do? And she said, no, she was just curious." ROA 1505.

[2] Appellant describes "several" meetings for the purposes of planning and drafting of the one page grievance, without citing the record. This is conjecture on the part of the Appellant, not fact.

the allegations of unprofessional conduct to the SCDE pursuant to State Board Regulation 43-58.1. ROA 5.

On March 28, 2018, the SCDE notified Dr. Slayman that the State Board was prepared to take action against her teaching certificate as a result of the allegations of unprofessional conduct. ROA 4. On April 11, 2018, Dr. Slayman, through her legal counsel, requested a hearing.

Prior to the hearing in this matter, Dr. Slayman filed a Motion to Dismiss Complaint and Motion to Stay Hearing. ROA 49. In her motion, Dr. Slayman claimed that her due process rights had been violated, yet she had not yet availed herself of the process offered by Respondent as part of its hearing process. She further denied having engaged in unprofessional conduct, and that the matter should be stayed during the pendency of a lawsuit she filed *while* the SCDE was attempting to schedule the matter for a hearing. Dr. Slayman argued that since the Chester County School Board of Trustees refused to take action against her, it would be improper for the State Board to do so. In its Memorandum to the hearing officer in response to the motion, the SCDE submitted the following:

> Ultimately, the facts and circumstances surrounding Respondent's employment dispute are largely irrelevant to the pending matter. If anything, these extraneous circumstances described in detail by the Respondent display a need for investigation by the SCDE due to the fact that the district board failed to adjudicate the merits of the claim, which the Respondent plainly concedes. Def.' s Mot. Dismiss ¶75.
>
> Following the notice letter, which was sent to Respondent's counsel, the Respondent rebuffed the SCDE's efforts to schedule this matter for a hearing, citing vacation plans throughout the summer. [1] Respondent then decided to file a lawsuit against multiple potential witnesses in this matter. While the timing of the lawsuit is suspicious since it coincides with the SCDE's efforts to schedule the hearing of the certificate matter, the Respondent should be estopped from seeking relief contained in her motion since *Respondent* asked to postpone the hearing prior to filing the lawsuit and prior to filing this motion. Furthermore, it is unclear how the Respondent can argue that the educator certificate matter is unwarranted because the underlying issues were resolved at the district level, while at the same time alleging in circuit court that the district has caused her significant damages.

The Hearing Officer denied the Motion to Dismiss and the Motion to Stay the Proceedings. ROA 96.

The hearing in this matter was conducted October 3, 2018, before Malane Pike, the board-appointed hearing officer. The parties agreed to the sequestration of witnesses. Testimony continued on October 4, October 12, November 1, and finally concluded November 2, 2018, after more than thirty hours of testimony.

Based on the nature of the allegations of a hostile work environment, the SCDE called the members of Dr. Slayman's cabinet to testify. ROA 88-89. Other than Callie McConnell, the senior cabinet worked closest with Slayman. This is confirmed by Dr. Slayman's testimony. ROA 1577. Although the witnesses were sequestered, their testimonies mirrored each other, and corresponded with the findings contained in the Bagley Report. Based upon certain testimony, counsel for Dr. Slayman accused counsel for the SCDE of "coaching" witnesses. ROA p. 426. . In addition to the immediate cabinet members, the SCDE called Ms. Jean Ligon, who was able to corroborate the testimonies of the witnesses, because she offered her observations of the cabinet members who would seek her counsel as a school psychologist and Director of Special Education for the District. ROA 669, 681.

Dr. Slayman was allowed to call multiple witnesses to testify on her behalf, many of whom were part-time consultants for the District. Dr. Slayman called no witnesses who worked as principals, assistant principals, or teachers who would have observed her interaction with her cabinet in District office, or elsewhere in the District. Rather, the only witness called by Dr. Slayman who could have testified about Dr. Slayman's interactions with her cabinet was Ms. Callie McConnell. ROA 1577. Ms. McConnell testified that the cabinet members would not confide in her because she served as the clerk to the Chester County School Board as well as the

secretary to the Superintendent. ROA 1261-62. After more than thirty hours of testimony, Dr. Slayman asked that the record be left open so that she could obtain an affidavit from a witness who was apparently unable attend any of the previous five days of testimony. The SCDE did not object to this request. ROA 1610. On September 10, 2019, the full record was presented to the State Board. The State Board unanimously voted to issue an Order of Public Reprimand to Dr. Slayman.

ARGUMENT

STANDARD OF REVIEW

As to questions of law, the appellate court's standard of review is *de novo*. Fesmire v. Digh, 385 S.C. 296, 302, 683 S.E.2d 803, 807 (Ct. App. 2009). See also S.C. Code Ann. § 59-25-260 ("The findings of fact by the State Board of Education are final and conclusive. A person aggrieved by the order of the State Board of Education, within thirty days, may appeal to the Administrative Law Court, as provided in Sections 1-23-380(B) and 1-23-600 (D), to review errors of law only...). 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). The reviewing 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) (internal citations omitted).

I. Appellant failed to preserve her arguments for review by this court where she did not file a motion for rehearing before the Administrative Law Court.

Prior to appealing to this Court, Appellant did not make a Motion for Rehearing to the Administrative Law Court. Appellant's failure to make a Motion for Rehearing denied the

administrative law judge an opportunity to review and correct any alleged error. Accordingly, Appellant failed to preserve any issue related to the administrative law judge's ruling for further review by this Court. The South Carolina Administrative Law Court Rules require a motion for rehearing as a prerequisite to filing a notice of appeal from the administrative law judge's decision. See SCALC Rule 40, 2019 Revised Notes ("The 2019 amendments deleted the last sentence of the rule, which provided that a motion for rehearing was not a prerequisite to filing a notice of appeal from the administrative law judge's decision.").[3] This revision is consistent with other aspects of South Carolina appellate procedure. See Rule 242(c), SCACR ("A decision of the Court of Appeals is not final for the purpose of review by the Supreme Court until the petition for rehearing or reinstatement has been acted on by the Court of Appeals."); State v. Bailey, 368 S.C. 38, 626 S.E.2d 898 (Ct. App. 2006) (circuit court's appellate error must be called to its attention by petition for rehearing in order to be preserved for further appellate review); Holly Hill Lumber Co. v. McCoy, 210 S.C. 440, 442, 43 S.E.2d 143, 144 (1947) (holding issue not raised in petition for rehearing is the law of the case, and the question attempted to be raised is res judicata). See also Risher v. S.C. Dep't of Health & Envtl. Control, 393 S.C. 198, 208, 712 S.E.2d 428, 433 (2011) (finding an appellant's failure to file a motion for reconsideration or a motion to alter or amend the judgment rendered an issue first arising from the ALC's final order unpreserved for the supreme court's review).

"[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State."

[3] Interestingly, the South Carolina Administrative Law Court also revised SCALC Rule 29(D) in 2019, noting, "In accordance with applicable case law on issue preservation, the last sentence of subsection (D) which stated a motion for reconsideration is not a prerequisite to filing a notice of appeal, has been deleted." This shows a broad recognition by the ALC that a motion for rehearing is in fact required to preserve any issue for further review.

Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992). Appellant's failure to comply with the applicable appellate procedures precludes review by this Court.

II. The Administrative Law Court correctly found the SCDE properly accepted the complaint of alleged unprofessional conduct, which warranted further investigation.

Appellant contends that the report of unprofessional conduct made by the Interim Superintendent, Dr. Callicutt, was improperly made. Appellant goes on to argue facts related to a pending lawsuit by alleging that the District violated its contract with Dr. Slayman about the District's alleged wrongdoing, which is not an issue on appeal and should not be considered.

The report of alleged unprofessional conduct is mandatory. Pursuant to State Board Regulation 43-58.1, "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 dismissed, **resigns, or is otherwise separated** from employment with the **district based on allegations of misconduct, including but not limited to**. . . . immorality, moral turpitude, or dishonesty. . . ." (emphasis added).

Appellant avers of the regulation, while not defining "misconduct", the intent was to ensure that sexual predators and criminals could not relocate to another school district. Such an extremely narrow reading of the regulation would lead to an absurd result, and would ultimately leave school districts vulnerable and it would render a whole host of unprofessional conduct outside the scope of the State Board's enforcement. See Wade v. State, 348 S.C. 255, 259, 559 S.E. 2d 843, 845 (2002) ("[A] court must reject a statute's interpretation leading to absurd results not intended by the Legislature.") The term "including but not limited" must be given its plain meaning to effectuate the intent of the legislature. The regulation cannot be so narrowly read, as Appellant argues to include only crimes committed and to ward off sexual predators. Ultimately, the SCDE

is charged with the administration of the regulation. While there is no allegation in this case of a crime or sexual impropriety, the SCDE must be afforded deference in its interpretation of the regulation to include acts of hostility as described in the Bagley Report, which was known to Dr. Callicutt at the time of his report of the allegations. The SCDE investigates a wide variety of cases of alleged unprofessional conduct, which range from the willful violation of statutory admissions requirements to sexual misconduct cases. "The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." Dunton v. S.C. Bd. Of Exam'rs In Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987) (citations omitted).

In this case, Dr. Slayman resigned following allegations of unprofessional conduct, i.e. that she threated her immediate staff and created a hostile work environment. ROA 1862. These allegations are well within the scope of the statute. In fact, Dr. Slayman's alleged conduct was so egregious and well within contemplation of the regulation, that the District commissioned an independent, seasoned educator with over forty years of experience in South Carolina, with no ties to the community, to investigate these claims against Dr. Slayman. ROA 1862.

Appellant makes repeated assertions regarding what the District Board did and did not do in this case. The SCDE's process of adjudicating educator certificate matters is wholly independent of how school Districts decide to resolve their local disputes. Thus, Appellant's arguments about what the District decided is evidence that the State Board should have done the same. Since Appellant also misconstrues facts related to the District Board's actions, the Respondent is compelled to correct the record.

Appellant contends the Chester County School Board unanimously reached a consensus to allow Dr. Slayman to return to work. This is misleading. The record is clear that the Board decided

to accept Dr. Slayman's resignation by a split 4-3 vote. ROA 1180. Her resignation followed the revelations first disclosed in the Bagley Report, which were followed by the written grievance signed and submitted by her immediate cabinet. ROA 1858. Dr. Slayman was allowed consult for the District as a term contained in the Settlement and Release executed as part of Dr. Slayman's resignation. ROA 1351. It is misleading to describe these events as a unanimous vote to allow Appellant to return to work. To suggest that the Chester County School Board took no action in response to the allegations of unprofessional conduct, does not provide important context for what transpired. Subsequent to and in response to Dr. Slayman's resignation amid allegations of unprofessional conduct, Dr. Callicutt properly reported the matter to the SCDE pursuant to Regulation 43.58.1.

Appellant avers that Dr. Callicutt (a defendant in a pending civil case filed by Dr. Slayman), violated a contract by reporting the matter to the SCDE, when the reporting requirement is mandated by the statute. ROA 1536. In fact, Dr. Callicutt could have jeopardized the District's accreditation and even his own credentials if he decided not to report the allegations of misconduct to the SCDE under these circumstances. Regulation 43-58.1 provides:

> A district superintendent, on behalf of the local board of education, shall report to the Chair of State Board of Education and the State Superintendent of Education, 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 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.
>
> The intentional failure of a district board of trustees to instruct the district superintendent to report the termination of school employees as required by this regulation shall be considered by the State Department as an accreditation deficiency pursuant to R43-130

and, upon approval of the State Board of Education, all district schools will be placed on an accreditation status of probation.

The 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 pursuant to Section 59-25-160, Code of Laws of South Carolina, 1976.

In support of her argument, Appellant provides an excerpt of testimony from Board Member Maggie James, who claimed that since Dr. Callicutt had no firsthand knowledge, he broke the law by reporting the matter to the SCDE[4]. Again, the District Board actions in this case are largely irrelevant, especially when Appellant chose only a select few board members to testify. However, Appellant's attempt to utilize Ms. James' testimony in this way is instructive. On the one hand, Appellant argues that since Dr. Callicutt had no first-hand knowledge, his actions were unlawful. Yet, regarding the merits of this case, the Appellant expected the State Board to believe the testimony of consultants who occasionally worked for the District, over the testimony of the immediate cabinet members who possessed firsthand experiences with Dr. Slayman. Furthermore, Appellant's argument would also suggest that a Superintendent's report of unprofessional conduct pursuant to Regulation 43.58.1 requires the Superintendent to have first-hand knowledge, or participate in the investigation of the claim. Of course, no such requirement exists.

For the foregoing reasons, the report of allegations of unprofessional conduct was proper, and the investigation by the SCDE that followed the report was warranted.

III. The Administrative Law Court correctly found that Appellant's arguments were not preserved for appellate review. Further, the Administrative Law Court properly found the investigative process, notice and pretrial exchange of information ensured Appellant's due process.

[4] Ms. James is not a current or former SCDE employee and is not qualified to render an opinion on the State Board's Regulation or the SCDE's procedures.

a. The SCDE did not violate Reg. 43-58.1

Appellant argues that she was not timely notified of an investigation by the SCDE. As referenced above, Appellant filed a Motion to Dismiss and Motion to Stay Proceedings prior to the hearing in this matter. The Hearing Officer denied the motions. While the time between the reporting letter (October 14, 2015) and the time of the hearing (October 3, 2018) is considerable, the Appellant could not articulate any discernable prejudice created by the delay. To the contrary, Appellant cited her work as a consultant for much of that time period. In its Final Order, the Administrative Law Court explicitly found Appellant cited no authority for the proposition that the delay violated her due process rights. Further, the Administrative Law Court concluded Appellant's argument was not pursued in any detail whatsoever and found it to be abandoned and therefore unpreserved for appellate review. The Administrative Law Court noted there is no indication Dr. Slayman suffered any actual prejudice as a result of the delay. In response to this finding, Appellant makes rambling and vague arguments concerning pre-indictment delay and prejudice that were not made to the Administrative Law Court, which found the arguments raised by Appellant were raised in a conclusory manner and were therefore not preserved for review. According to the law-of-the-case doctrine when issues are either not raised on appeal, but should have been, or when issues are raised on appeal, but expressly rejected by the appellate court, the party is precluded from relitigating the issues. Judy v. Martin, 381 S.C. 455, 459, 674 S.E.2d 151, 153 (2009); see also Glasscock, Inc. v. United States Fid. & Guar. Col, 348 S.C. 76, 81, 557 S.E.2d 689, 691-92 (Ct. App. 2001) (holding an argument raised on appeal in a conclusory fashion without citation to authority was abandoned for appellate purposes and noting "South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review."); West v. Morehead, 396 S.C. 1, 14, 720 S.E.2d 495, 502 (Ct. App. 2011) ("Appellants make arguments and cite authorities in their briefs that were

not presented to the trial court. These arguments are not preserved."). "[I]ssues not raised to and ruled on by the AL[C] are not preserved for appellate consideration." Brown v. S.C. Dep't of Health & Envtl. Control, 348 S.C. 507, 519, 560 S.E. 2d 410, 417 (2002). Appellant failed to raise these arguments in a sufficient manner to the Administrative Law Court and further failed to challenge the Administrative Law Court's determination of this fact through a motion for rehearing. Because she failed to raise the arguments now raised to this court in her brief at the Administrative Law Court, Appellant's arguments are not preserved for appellate review. Error preservation concerns aside, the cases cited by Appellant to support her contentions are inapposite to the present case and Appellant's arguments are thus without merit.

There are no time requirements established by statute or regulation, which relate to the time for bringing a case, or sending notice to a certificate holder that the State Board is prepared to take action against a teaching certificate at the conclusion of the SCDE's investigation of the matter. While Appellant is claiming delay has violated her due process rights, she omits the fact that she requested a delay of an entire season, for her vacation plans throughout the summer so that the hearing could be scheduled in the fall of the year. ROA 45. Yet, during that same period of time, Appellant found time to file a civil action against many of the witnesses who would be called by the SCDE. ROA 75. Only after that, did Appellant seek a stay of the educator certificate proceedings.

Appellant also argues that a news article violated her due process rights because a local newspaper reported that Dr. Slayman was being investigated by the SCDE. While she claims prejudice by the purported disclosure, Appellant fails to describe any credible way in which her due process rights were violated, i.e. how the purported violation of the regulation impacted her ability to call witnesses or fully defend herself in the hearing of this matter. There is no evidence

in the record that the article impacted witness testimony, and no evidence the article impacted her ability to work. Furthermore, all but one of the witnesses called by the SCDE in its case in chief were the grievants who sought the investigation of Appellant in the first place. It was certainly not news to them that Dr. Slayman was being investigated for her conduct. Thus, Appellant's claim of prejudice and violation of due process is without merit.

b. The Complaint could not have been dismissed by the SCDE out of hand, as Appellant suggests.

Appellant contends that the allegations here amount to the complaints from disgruntled employees, allegations which do not rise to the level of the types of allegations investigated and handled by the SCDE. In support of her argument, Appellant points her finger at another educator (Moore) she believes got a pass. Initially, the SCDE would note these arguments are not preserved for appellate review. Appellant failed to make *any* objection to the State Board that she had received disparate treatment. "It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved or appellate review." Wilder Corp. v. Wilkie, 330 S.C. 71, 76, 497 S.E.2d 731, 734 (1998). Appellant's failure to raise these issues before the State Board precludes her from raising them for the first time to this Court.

Notwithstanding the SCDE's objection to the appropriateness of raising this claim for the first time, Appellant is asking the court to compare apples to oranges. It would be improper to divulge the nature of the SCDE's involvement, if any, in the Moore case. Furthermore, the SCDE has hundreds of unprofessional conduct complaints pending at any given time, all with their own eccentricities, and it is improper and illogical to compare one case to another for precedential purposes. Assuming arguendo that the facts outlined in Appellant's brief are true regarding the Moore matter, the SCDE does not agree that a DUI, with no reported injuries, is somehow more

unprofessional, more egregious and more disruptive to a district than a Superintendent threatening members of the senior staff/cabinet with grave bodily harm.

Appellant's contention that the allegations in this case do not rise to the level of unprofessional conduct worthy of investigation are without merit.

c. The SCDE never sought to limit relevant and admissible testimony.

Appellant contends, without citation to the record, that counsel for the SCDE somehow inappropriately limited testimony. First, as referenced above, the SCDE argued the testimony from selected District Board members about what action the board took or failed to take was not relevant to the question of whether Appellant mistreated her senior cabinet members and created a hostile work environment. The record is replete with examples of how the cabinet members were to have little to no interaction with the board members outside of their specific duties to report and provide information within the scope of their employment with the district. According to Shawn Williams, Dr. Slayman warned, "she would slit my throat if I ever spoke to the board members again." ROA 464. Aside from the issue of relevance, the SCDE sought to limit testimony from those select board members about discussions they had with the entire board in executive session, subject to privilege. ROA 1136. Since Appellant selected only certain board members to testify, the SCDE took the position that privilege remained with the entire board, and certain members selected by Appellant to testify should not testify about those items discussed in executive session. ROA 1136. Notwithstanding the SCDE's position, multiple examples exist in the record where witnesses for the Appellant testify about the purported rationale for actions taken by the District Board. ROA 1136.

Appellant's contention that counsel for the SCDE sought to limit testimony is misleading, at best, and is belied by the fact that the record includes over thirty hours of testimony, and by the

fact the SCDE acquiesced to Appellant's request for additional time to obtain one more witness affidavit at the close of live testimony. ROA 1610. Thus, Appellant's argument is without merit.

IV. The Administrative Law Court correctly found the hearing before the State Board ensured Dr. Slayman's Due Process Rights and was in accordance with State Board Regulations and Procedures. The submission of the Order of Public Reprimand to the NASTEC was customary and proper. (Appellant's Issues III and V)

Appellant makes a number of arguments concerning the presentation of her case to the State Board, averring that the hearing violated her due process rights. These arguments are without merit. Initially, the SCDE would note that all of these arguments are not preserved for appellate review. Appellant failed to make *any* objection to the State Board regarding the circumstances of the presentation of the case. Appellant did not offer any objection to the State Board on the grounds that the hearing officer was not present, she did not object to the allotted three minutes to address the State Board,[5] nor did she ask that the matter not be reported to the NASDTEC Clearinghouse. "It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved or appellate review." Wilder Corp. v. Wilkie, 330 S.C. 71, 76, 497 S.E.2d 731, 734 (1998); see also Buist v. Buist, 410 S.C. 569, 574, 766 S.E.2d 381, 382 (2013) ("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."). Appellant's failure to raise these issues before the State Board precludes her from raising them for the first time to this Court.

Error preservation concerns aside, Appellant's arguments are without merit. Appellant alleges she was prejudiced by several alleged violations of the State Board's Rule of Governance

[5] Significantly, Counsel for Appellant failed to utilize the entirety of her allotted three minutes to address the State Board. Appellant was also invited to speak by the State Board but declined to do so, instead, deferring to her attorney's presentation.

BCAF. Appellant references BCAF IV (K), the section outlining the presentation of the Hearing Officer's Report and Recommendation to the State Board. This presentation is incorrectly referenced in Appellant's brief as the "Hearing before the State Board." (App. Brief p. 15) It should be noted that the presentation to the State Board is a summary of the hearing, which was previously held over multiple days and during which Appellant was granted all due process rights. The presentation to the State Board is to present the Hearing Officer's Report and Recommendation from the hearing and any objections to the report. It is not intended to be a second hearing as Appellant seems to suggest.

In the context of an administrative hearing, Article I, section 22 of the South Carolina Constitution provides:

> No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review.

"Section 22 provides for notice, an opportunity to be heard, an impartial adjudicator, and judicial review." Garris v. Governing Bd. Of South Carolina Reinsurance Facility, 333 S.C. 432, 444, 511 S.E.2d 48, 54 (1998). Article I, § 22 requires an administrative agency provide notice and an opportunity to be heard, but does **not** require notice and an opportunity to be heard **at each level** of the administrative process. It mandates notice and an opportunity to be heard **at some point** before the agency makes its final decision. Ross v. MUSC, 328 S.C. 51, 72, 492 S.E. 2d 62, 69 (1997) (emphasis added).

Due Process requirements imposed on administrative hearings are not technical, and no particular form or procedure is necessary. In re Vora, 354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003). While there are no technical requirements for procedural due process, an administrative

proceeding must include: "(1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; (4) the right to confront and cross-examine witnesses." Id. S.C. Code Ann. § 59-5-70 (B): "The board in its discretion may also designate a hearing officer for the purpose of hearing matters related to the suspension or revocation of teacher certificates. The hearing officer shall then make a recommendation to the board for final action." S.C. Code Ann. § 59-5-60.

Here, there is no dispute Appellant received adequate notice in the spring of 2018 that the State Board was prepared to take action against her certificate. ROA 4. Appellant opted to schedule the hearing in the fall before a hearing officer to serve as an impartial adjudicator. Appellant was provided every opportunity to be heard, as the testimony took place over the course of five days, and the record was left open so that Appellant could attempt to obtain one last witness affidavit. ROA 1461. Appellant was afforded the right to introduce evidence, which is supported by the record. The only notable objection to evidence offered by Appellant, as outlined above, pertained to conversations between District Board members during executive session. ROA 984,985. Otherwise, Appellant was allowed to call multiple witnesses and introduce innumerable exhibits during the presentation of the case. Appellant was represented by counsel during the proceeding, and spent considerable time on cross-examination of the witnesses. She was able to confront each and every one of the grievants who testified on behalf of the SCDE. She was also able to cross-examine Ms. Jean Ligon called by the SCDE. The entire adjudicated record was presented to the State Board, including a complete hearing transcript, the Hearing Officer's report and recommendation and the SCDE's exceptions to the report. As noted in Ross, Appellant is not entitled to notice and opportunity to be heard at every level, i.e. before the Board-approving Hearing Officer, then again at the State Board meeting. The Hearing Officer, as the independent adjudicator, provided that opportunity during the five days of testimony. Finally, Appellant is

seeking judicial review of the proceedings. Thus, each tenant of procedural due process has been met in this case.

As to Appellant's assertion that the Hearing Officer's Report and Recommendation was not "presented" to the State Board, any argument that the Hearing Officer's Report and Recommendation was not presented to the State Board wholly lacks merit. The State Board was presented with the Hearing Officer's Report and Recommendation, the transcript of the hearing, the SCDE's exceptions to the hearing officer's report and recommendation, and the Hearing Officer's response to the SCDE's exceptions. While Appellant avers the Hearing Officer must physically present the Report and Recommendation to the State Board, BCAF does not impose such a requirement, nor is one imposed by some other provision of law.

For over two years, the SCDE has followed the practice of having a SCDE attorney present the Hearing Officer's Report and Recommendation to the State Board. This change was not unique to this matter, but took place after concerns were raised that State Board members were asking questions of the presenting hearing officer that were outside the scope of the hearing itself. A second concern was the unnecessary cost of paying a hearing officer to be present when they were limited to material already in the record. Therefore, it was decided that an attorney in the SCDE that had not been involved in the educator hearing would present the Hearing Officer's Report and Recommendation based on their review of the report. That is what occurred here. The Hearing Officer's Report and Recommendation was submitted to the State Board prior to the hearing, as well as a full copy of the transcript of the hearing, and the SCDE's exceptions to the Report and Recommendation. Having a non-participant attorney present the matter to the State Board eliminates the risk of any bias in the presentation and further ensured Appellant's Due Process rights.

Appellant further argues she was unfairly limited to three minutes to speak before the State Board during the presentation of the Hearing's Officer's Report and Recommendation. It is true this limitation is not stated in BCAF. The BCAF only requires that the educator is notified of the time, date, and place of the hearing. BCAF (IV)(K). It does not state that an educator must be allowed to address the State Board or the length of time for such. At this point in the procedures, the educator has had the opportunity to address a statement to the SCDE's Certification Review Committee and present any evidence, including any testimony they wish the State Board to review, during the full hearing in front of the appointed hearing officer. Therefore, the SCDE believes it does not violate due process to limit an educator to three minutes during the presentation of the Hearing Officer's Report and Recommendation to avoid the presentation becoming a second hearing. See Ross, 328 S.C. at 595, 582 S.E.2d at 416 ("Article I, § 22 requires an administrative agency provide notice and an opportunity to be heard, but does not require notice and an opportunity to be heard at each level of the administrative process."). Critically, three minutes is the designated time limit to address the State Board in all cases. Appellant was not treated differently than any other educator that addresses the State Board. As noted by the Administrative Law Court, Appellant cannot cite to any prejudice from this limitation where she was previously afforded her due process right to a full hearing.

Appellant then notes that BCAF does not mention reporting an Order of Public Reprimand to the National Association of State Directors of Teacher Education and Certification (NASDTEC) Clearinghouse and appears to confuse BCAF with a regulation that would require promulgation. While BCAF does note an Order of Public Reprimand is reported to all school districts in South Carolina, the rule of governance does not specifically state the order will be reported to the NASDTEC Clearinghouse. For a number of years, the SCDE did not report public reprimands to

NASDTEC. However, sometime in late 2016, an attorney with the SCDE learned that NASDTEC did require reports of public reprimands. Since early 2017, all orders of public reprimand have included language that the order was reported to the NASDTEC Clearinghouse. While there is no allegation Appellant committed a crime, or had any inappropriate interaction with a student, picking and choosing which Public Reprimands issued by the State Board to submit to the NASTEC could obviously leave school districts vulnerable to educators seeking to keep hidden allegations of unprofessional conduct. While there is no allegation of a crime, or inappropriate interactions with students, reporting all Public Reprimands to NASTEC is commonplace across the country.

Pursuant to the Standards Manual for Drafting and Filing Regulations from the South Carolina State Register, regulations are not necessary for agency actions relating only to specified individuals. In the case of BCAF, those specified individuals are educators certified by the SCDE. As a rule of governance, BCAF is not intended to have the force of law. See S.C. Code Ann. 1-23-10(4) ("Policy or guidance issued by an agency other than in a regulation does not have the force or effect of law."). BCAF cites to applicable statutes and regulations as needed[6] and offers a more compact view of the various South Carolina education and due process laws that govern educator certification hearings.

V. The State Board properly issued the Order of Public Reprimand upon review of the hearing transcript, exhibits, and the Report and Recommendation along with exceptions.

a. The State Board's decision was not arbitrary and capricious.

The Hearing Officer's Report and Recommendation is merely that, a recommendation to the State Board of Education. In her brief, Appellant first provides an excerpt from the

[6] The fact that BCAF cites actual regulations as well as statutes is *prima facia* proof that it is not a regulation itself.

recommendation. Critically, Appellant omits a footnote in her citation. The SCDE submitted approximately five single-spaced pages of exceptions to the Hearing Officer's Report and Recommendation, including a lengthy exception to the passage cited in Appellant's brief related to the omitted footnote, relating to a key witness. For ease of reference, the SCDE submitted exceptions in red throughout the Report and Recommendation. Below is the exception submitted by the SCDE, which was included in the State Board packet:

Hearing Officer:

> The evidence presented at the hearing in support of these allegation was the testimony of the five employee that comprised Slayman's senior cabinet. FN: Although a sixth employee testified, she could not provide probative evidence as to any matter complained of.

Exception Submitted by the SCDE:

> (False.) In this footnote, the hearing officer attempts to hide arguably the most important witness. A witness who was a longtime employee of the district, not a consultant, and not once of the five grievants accused of formulating a coup. **Slayman** testified: "And I'm gonna tell you, Jeannie Ligon is good." Slayman called Ms. Ligon "PROBABLY THE STONGEST EMPLOYEE THAT THE DISTRICT HAS." Tr. p. 1291, L. 22-24. Therefore, who better to share with the hearing officer and the SBE what she observed regarding the work environment and the stress under which the senior cabinet was operating while Slayman was at the helm?

In her correspondence with the Board Chair, the Hearing Officer acknowledged that "reasonable minds can differ," regarding the view of the evidence in this case. She even encourages the State Board to review the record: "Because of the wide disparity between the OGC's view of the evidence in this case and my view of the evidence in this case, I would strongly encourage the Board members to read the transcript . . . ." App. p. 16. As Appellant correctly notes: "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 principals, or is governed by no fixed rules or standards." Deese v. S.C. State Bd. of Dentistry, 286 S.C. 182,

332 S.E.2d 539 (Ct. App. 1985). Here, the Hearing Officer in this case told the Chair of the State Board that the State Board may review the record and make an opposite, but no less rational, determination that just cause existed to take action in this case. In short, such a finding by the Board, upon review of the record would *not* be arbitrary and capricious according to the Hearing Officer.

Appellant also contends that counsel for the SCDE misstated evidence in the record without providing the misstatement. As noted above, the SCDE offered extensive and detailed exceptions to the Hearing Officer's Report and Recommendation. Those exceptions were included in the Board packet transmitted to the State Board prior to the presentation of the Report and Recommendation. The SCDE highlighted what it believed to be glaring omissions in the Report and Recommendation, as well as those testimonies the SCDE believed the Hearing Officer failed to reconcile. For example, the SCDE believed Shawn Williams' testimony was of particular importance and worthy of the scrutiny by the Board. Appellant threatened that she would "slit" Ms. Williams' throat during a cabinet meeting. ROA 984. Not only was this testimony corroborated by the other cabinet members in attendance, but the egregiousness of the incident was also confirmed by Appellant's own testimony of her apology to Ms. Williams. ROA 315. The SCDE highlighted this exchange between Appellant and Ms. Williams during its presentation to the State Board. Quoting testimony of witnesses is not misstating the evidence in the record as Appellant charges. Quoting a critical piece of testimony did not amount to a misstatement of evidence as alleged by Appellant.

Appellant contends that the testimony of Callie McConnell established that the filing of a grievance was a "coup". (App. Brief. p. 23) However, it is critical to highlight other testimony provided by Ms. McConnell that she *did not* have much interaction with Appellant's cabinet

members. ROA 1261-62. As secretary to the School Board, Ms. McConnell's interactions were limited to members of the Board and the District Superintendent. Thus, the SCDE argued Ms. McConnell's admission that she has virtual no interaction with the grievants, should not be overlooked by the Hearing Officer or members of the State Board.

Appellant further alleges that Dr. King and Mr. Gardner "alleged public beratement by Dr. Slayman, yet no corroborating evidence was brought forth." (App. Brief p. 24) This statement is false on its face. Dr. King offered testimonial evidence about the public beratement, which was corroborated by Mr. Gardner's testimonial evidence describing the same event.

b. The State Board's Decision is supported by the substantial evidence in the record.

"Substantial evidence is relevant evidence that, considering the record as a whole, a reasonable mind would accept to support an administrative agency's action." Trimmer v. S.C. Dep't of Labor, Licensing & Regulation, 405 S.C. 239, 246, 746 S.E.2d 491, 494 (Ct. App. 2013). As referenced above, the Hearing Officer communicated to the Chair of the State Board of Education, that "reasonable minds can differ…" when reviewing the record in this case. Here, the record before the State Board contained a complete transcript of the proceeding, along with exhibits admitted into evidence. Additionally, the State Board reviewed the Hearing Officer's Report and Recommendation, along with the document containing all of the exceptions to the report highlighted in red. In short, the State Board had the entire record to review and consider before voting for and approving the Order of Public Reprimand.

Appellant seeks to re-litigate the facts of this case, and seeks to disparage the witnesses called by the SCDE. In doing so, she again misconstrues facts that are not established by the record. For example, the record does not establish that the grievants had self-serving motives or that the group had a concerted effort, or planned a coup. The testimony of the grievants establishes

exactly the opposite. There is nothing in the record establishing several meetings among the grievants plotting the purported "coup". There is nothing in the record establishing how any of the grievants actually benefit from Appellant's resignation. Nor is there any evidence of how any of the grievants actually benefit from the Appellant's resignation. Ultimately, what the Record On Appeal clearly establishes, is that the State Board had before it ample evidence and testimony upon which to base its decision for an Order of Public Reprimand. Based upon the record presented, the State Board's Order of Public Reprimand was reasonable, under these circumstances. Furthermore, the Hearing Officer predicted that such an outcome could be reached. Thus, the State Board decided this matter precisely in the way the Hearing Officer indicated that they could decide the matter, should the State Board take the opposing, but no less reasonable view of the facts and evidence in this case. Appellant's contention that substantial evidence does not exist to support the State Board's determination in this case is wholly without merit.

c. The State Board considered the mitigating circumstances contained in the record.

Appellant contends that the State Board must have failed to consider her accomplishments. As with most other arguments raised on appeal, Appellant failed to preserve this issue for appellate review. Appellant never raised the issue of the State Board's failure to consider mitigating evidence to the State Board, thus the issue was not raised to nor ruled upon by the State Board. See State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 ("Appellant is limited to the grounds raised at trial."). As to the merits of Appellant's argument, as noted above, the State Board was presented all of the mitigating circumstances, or evidence of good character Appellant was allowed to present in this case. Arguably the majority of the testimony presented on Appellant's behalf could have been considered character evidence since the witnesses she called had relatively little interaction with her as compared with the grievants. The SCDE did not object to the presentation

of Appellant's accolades, except to point out that many of the accomplishments she touted occurred during the tenure of her senior cabinet. ROA 1523. On the one hand, Appellant was eager to show all her good works during her time as Superintendent. Yet, counsel for Appellant sought to tear down each and every one of the cabinet members who testified, attempting to impugn their integrity, questioning their work ethic, and pitting them against each other. Appellant was able to tout all of her accomplishments as mitigating evidence, and rightly so. But in the end, she conceded on cross-examination that she did not accomplish those things with the help of those vital cabinet members she sought to impugn during the hearing of this matter. ROA 1523.

Appellant's argument that the State Board failed to consider mitigating circumstances is without merit, since those same accolades were presented during the hearing of this matter and included in the record before the State Board for their consideration.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgement of the Administrative Law Court be affirmed.

Respectfully submitted,

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November 30, 2020

ATTORNEY FOR RESPONDENT

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Nov 30 2020
SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Appellate Case No. 2020-000950

Dr. Agnes M. Slayman,

Appellant,

v.

The South Carolina Department of Education

Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief of Respondent complies with Rule 211(b), SCACR.

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