THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

Appellate Case No.: 2020-000950

Dr. Agnes Slayman ..... Appellant,

v.

South Carolina Department of Education ..... Respondent.

FINAL BRIEF OF APPELLANT

J. Lewis Cromer (#1470)
Shannon M. Polvi (#101837)
1418 Laurel Street, Suite A (29201)
Post Office Box 11675
Columbia, South Carolina 29211
Phone: (803) 799-9530
Facsimile: (803) 799-9533
Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

REGULATIONS

OTHER AUTHORITIES

ARTICLES

STATEMENT OF THE ISSUES ON APPEAL

Dr. Agnes Slayman ("Dr. Slayman"), the Appellant, appeals the Order of Public Reprimand issued by the South Carolina State Board of Education ("State Board") on September 10, 2019 sourcing from discipline recommended by the Respondent, the South Carolina Department of Education ("SCDE").

The Public Order of Reprimand is in violation of constitutional and statutory provisions, made upon unlawful procedure, affected by other error of law, clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, and arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Dr. Slayman asserts that the State Board committed serious errors of law based upon the following grounds:

I. The SCDE erred in not dismissing the Complaint when it was filed on October 14, 2015.

II. The Complaint processing and investigation by the SCDE violated Dr. Slayman's Due Process rights and State Board Regulations and Procedures.

III. The Hearing before the State Board of Education violated Dr. Slayman's Due Process rights and State Board Regulations and Procedures.

IV. The State Board of Education erred when it failed to consider the recommendations of the Hearing Officer that recommended the dismissal of the Complaint against Dr. Slayman.

V. The State Board of Education erred in issuing the Public Order of Reprimand.

STATEMENT OF THE CASE

Dr. Slayman is the former Superintendent of Chester County School District. A complaint about Dr. Slayman's educator's certificate was filed on October 14, 2015. The SCDE did nothing until March 28, 2018.

Pursuant to S.C. Code Ann. § 59-25-170, the SCDE notified Dr. Slayman of potential disciplinary action against her teaching certificate and informed her of her right to a hearing via letter dated March 28, 2018. Dr. Slayman timely requested a hearing and such was held over a period of five days on October 3, 2018, October 4, 2018, October 12, 2018, November 1, 2018, and November 2, 2018. Scott Winburn, Deputy General Counsel, represented the SCDE during the pendency of the hearing. Shannon Polvi represented Dr. Slayman during the pendency of the hearing.

Dr. Slayman was accused of unprofessional conduct in the nature of workplace harassment and intimidation of employees. Dr. Slayman requested that no disciplinary action be taken against her certificate in that the allegations are untrue.

On April 19, 2019, the Hearing Officer issued a Report and Recommendation ("R&R") recommending no disciplinary action be taken against Dr. Slayman's certificate. On April 26, 2019, the SCDE submitted written objections to the Hearing Officer's R&R. On May 29, 2019, the Hearing Officer submitted a response to the SCDE's objections to the R&R.

The State Board disregarded the recommendation of the Hearing Officer and issued a Public Reprimand to Dr. Slayman on September 10, 2019. Dr. Slayman is aggrieved by the Order issued by the State Board.

Dr. Slayman exhausted all administrative remedies prior to this appeal. Dr. Slayman timely filed her Notice of Appeal to the Administrative Law Court ("ALC") within thirty days of the State

Board Order. The ALC had jurisdiction over the appeal pursuant to S.C. Code Ann. § 59-25-260, S.C. Code Ann. § 1-23-380(B), and S.C. Code Ann. § 1-23-600(E). Pursuant to S.C. Code Ann. § 59-25-260, the State Board filed a certified copy of the record with the ALC.

Dr. Slayman and the SCDE submitted briefs to the ALC. No hearing was held before the ALC. The ALC issued a decision on the briefing. On June 3, 2020, the ALC issued an Order affirming the Public Reprimand to Dr. Slayman. Dr. Slayman timely filed her Notice of Appeal to this Court on July 2, 2020.

STATEMENT OF THE FACTS[1]

Dr. Slayman is a professional educator in South Carolina with about thirty-two years of experience. Prior to the Public Reprimand at issue in this appeal, Dr. Slayman had no prior disciplinary action from the State Board. Dr. Slayman holds a Bachelor's degree, a Master's degree, and a Doctoral degree, all conferred upon her by the University of South Carolina. Dr. Slayman served South Carolina as a special education teacher, a high school assistant principal, a middle school principal, a high school principal, Kershaw County School District Assistant Superintendent for Curriculum and Instruction, and Chester County School District Superintendent.

Dr. Slayman was employed in the Kershaw County School District for over 20 years. She was the first female high school principal in the history of that school district.

Dr. Slayman was hired by the Chester County School District as the Superintendent in January 2012 and she served in that capacity until her resignation on September 24, 2015. (R. p. 1097, line 20 – p. 1098, line 9). Dr. Slayman was also the first female Superintendent in the history

[1] The disciplinary hearing was a weeklong, so this Statement of Facts is merely a summary. Dr. Slayman craves reference to the facts as described in the Hearing Officer's Report and Recommendation and those memorialized in the Hearing Transcripts and exhibits used therein.

of the Chester County School District. Upon information and belief, Dr. Slayman was the first Hispanic Superintendent in the State of South Carolina.

In or around August 2015, Anna Stroud ("Stroud"), then Director of Finance, and Leonard Jeffers Gardner ("Gardner"), then Assistant Superintendent for Operations, called Dr. Rick Hughes ("Dr. Hughes"), a Chester School Board member, to advise him that Dr. Slayman' s senior staff members intended to file a grievance against Dr. Slayman. Attorneys for the Board were contacted, and the Board authorized an investigation to be done. (R. p. 1099, line 16 – p. 1158, line 24). At this point, nothing in writing had been submitted by the grievants and the Board was acting on the verbal communication between Stroud, Gardner, and Dr. Hughes.

Betty Bagley ("Bagley") was hired to conduct the investigation. Bagley was instructed by the Board that her investigation was restricted to interviews with the five senior staff members, as well as Dr. Slayman and Callie McConnell, the Superintendent's administrative assistant. A very short time frame was given for this investigation and Bagley was instructed not to prepare a written report, but to verbally report her findings to the Board. Bagley made written notes of the interviews she conducted, and these later became known as the "Bagley Report". Bagley did not testify at Dr. Slayman's disciplinary hearing; however, the Bagley Report were entered into evidence. (R. pp. 1862-1870).

During Bagley's interview with Dr. Slayman, Bagley asked Dr. Slayman more than once if she would resign. Dr. Slayman told Bagley that she would not. There is no testimony in the record that suggests that Bagley was authorized to request Dr. Slayman's resignation. Dr. Slayman was never again asked to resign.

The grievants met several times together and jointly planned to draft and issue the grievance as a planned group. McConnell, a career employee with the District who has worked

with several Superintendents, testified that she observed the grievants meeting together as a group and that she observed no basis for the allegations against Dr. Slayman.

Bagley delivered an oral report to the Board on September 3, 2015. A written letter was filed with the Board, dated September 8, 2015, addressed to the Board Chair, Denise Lawson, and signed by the five senior staff members: Gardner, Stroud, Dr. Charles King, former Assistant Superintendent for Instruction, Shawn Williams, former Chief Human Resource Officer, and Brooke Clinton, former Public Information Officer. The letter states:

> We are formally filing an official grievance due to a hostile work environment, implications of ethical violations, and racial and threatening remarks by Dr. Agnes Slayman, Superintendent of the Chester County School District.
>
> We are requesting a closed door meeting of the Board as a group to present our concerns to the Board of Trustees. We respectfully request that Dr. Slayman not be in attendance during this meeting.

(R. p. 1819).

On September 21, 2015, the five grievants were allowed to express their grievances regarding Dr. Slayman to the Board in executive session. Dr. Slayman was not even told what the allegations were against her, and she was not notified or present at the grievance. Even after the grievants had solely given their side of the story,[2] the Board, as a body, disbelieved these accusations, seeing for themselves that this was a conspiracy against Dr. Slayman, and Dr. Slayman had the votes to remain in her position as Superintendent. (R. p. 1099, lines 3-15) (R. p. 1181, line 23 – p. 1182, line 13).

[2] Bagley's investigation excluded the positive feedback she received about Dr. Slayman and the Bagley Report excluded all of the rebuttal information given to her by Dr. Slayman and McConnell. (R. pp. 1862-1870); see also Hearing Testimony of Dr. Slayman and McConnell). The self-evident focus of Bagley's investigation was to get only one side of the story, that being the grievants' side.

Dr. Slayman voluntarily resigned thereafter, without the Board ever taking any action against her. Dr. Slayman resigned because she felt that she would not be able to supervise the grievants in the future or provide direction to the District in that her actions would constantly be questioned. (R. p. 1536, line 14 – p. 1537, line 3). Dr. Slayman believed that the turmoil these events had caused was not beneficial to anyone involved, so she was trying to make the best decision for the District when faced with such horrible circumstances. (R. p. 1459, lines 4-11).

Dr. Slayman and the Board entered into an agreement whereby Dr. Slayman was employed as a consultant until June 30, 2016. The majority of the Board did not believe the claims made against Dr. Slayman and wanted to vote that the claims had "no merit." (R. p. 1172, line 21). However, the Board was strongly advised by legal counsel that they should vote that the claims were "moot" because Dr. Slayman had resigned. (R. p. 1172, lines 16-24).

By letter dated October 14, 2015, SCDE received notice of Dr. Slayman's resignation and the allegations of the five employees. The Complaint was sent by the Interim District Superintendent, Dr. V. Keith Callicutt. The Board did not vote on this action and was not aware that Dr. Callicutt had sent the letter to SCDE. Thereafter, SCDE initiated an investigation into this matter which ultimately culminated in the five-day hearing. The five grievants testified at the hearing. A summary of important facts about each of them, as well as the allegations made by each, is found in the Hearing Transcript and the Hearing Officer's R&R.

The events of this matter were chronicled in news reports and in postings on social media. The "Bagley Report" was leaked to media outlets around South Carolina and in other states. Dr. Slayman and certain Board members were followed and continually harassed by the press and others to the depth that Dr. Slayman and certain Board members feared for their safety.

STANDARD OF REVIEW

"In an appeal of the final decision of an administrative agency, the standard of appellate review is whether the AL[C]'s findings are supported by substantial evidence." *Braxton v. S.C. Dep't of Corr.*, Appellate Case No. 2017-001964, Opinion No. 5737 (Ct. App. July 1, 2020). quoting *Sanders v. S.C. Dep't of Corr.*, 379 S.C. 411, 417, 665 S.E.2d 231, 234 (Ct. App. 2008). "Although [the appellate] court shall not substitute its judgment for that of the AL[C] as to findings of fact, [it] may reverse or modify decisions which are controlled by error of law or are clearly erroneous in view of the substantial evidence on the record as a whole." *Id.* "In determining whether the AL[C]'s decision was supported by substantial evidence, [the appellate] court need only find, considering the record as a whole, evidence from which reasonable minds could reach the same conclusion that the AL[C] reached." *Id.* "This court's review of the ALC's order must be confined to the record provided on appeal." *Braxton v. S.C. Dep't of Corr.*, Appellate Case No. 2017-001964, Opinion No. 5737 (Ct. App. July 1, 2020) citing S.C. Code Ann. § 1-23-610(B) (Supp. 2019). Appellants have the burden to prove convincingly that the agency's decision is unsupported by the evidence. *Braxton v. S.C. Dep't of Corr.*, Appellate Case No. 2017-001964, Opinion No. 5737 (Ct. App. July 1, 2020) quoting *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996).

ARGUMENT

I. The SCDE erred in not dismissing the Complaint when it was filed on October 14, 2015.

The Complaint was purportedly filed by Chester County School District on October 14, 2015, yet in actuality it was filed by Dr. Callicutt, the Interim Superintendent who had no personal knowledge of the allegations therein the Complaint that he filed against Dr. Slayman, and it was

filed without the knowledge and approval of the Chester County School Board. No one with personal knowledge of the allegations were the complaining parties to the SCDE.

a. The Complaint by Dr. Callicutt was improper under State Board Regulation 43-58.1.

State Board Regulation 43-58.1 ("R43-58.1") is the State Board policy for reporting terminations of certain district employees. In relevant part, R43-58.1 states:

> 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 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.

R43-58.1 (emphasis added). It is vital to analyze the bolded and italicized portions of the regulation because a plain reading analysis is pertinent here.

The principles of statutory construction similarly apply to regulatory construction. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *S.C. Dep't of Soc. Servs. v. Boulware*, 422 S.C. 1, 7–8, 809 S.E.2d 223, 226 (2018) quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000); *Michael P. v. Greenville Cty. Dep't of Soc. Servs.*, 385 S.C. 407, 414, 684 S.E.2d 211, 215 (Ct. App. 2009). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Id.* quoting *Hodges*, 341 S.C. at 85, 533 S.E.2d at 581 (quoting Norman J. Singer, *Sutherland Statutory Construction* §

46.03 at 94 (5th ed. 1992)). "Appellate courts must follow a statute's plain and unambiguous language, and when the language is clear, 'the rules of statutory interpretation are not needed and the court has no right to impose another meaning.'" *Id.* Accordingly, the Court should apply the plain meaning of R43-58.1.[3]

i. The allegations of misconduct are not within the context of those intended by R43-58.1.

Misconduct is not fully defined within R43-58.1, but the clear intent of the drafters was for this reporting regulation to pertain to misconduct that would amount to conduct so egregious that it would result in the suspension or revocation of an educator's license. Here, Dr. Slayman's license was not suspended or revoked, only a Public Reprimand was recommended and issued by the SCDE.

The intent to limit mandatory reporting is clear because the regulation states it is intended to apply to misconduct involving drugs, sexual misconduct, the commission of a crime, immorality, moral turpitude, or dishonesty. In a nutshell, the intent of the regulation is to ensure that sexual predators and educators involved in unlawful activities, like stealing money from a school district, do not relocate from one school district to another without there being some record of a pattern of such alarming conduct. No such issues are involved in this case.

ii. The Interim Superintendent could not have a reasonable belief that there were grounds for revocation or suspension of Dr. Slayman's certificate.

Dr. Slayman voluntarily resigned in good standing as superintendent. (R. p. 1097, line 20 – p. 1098, line 9). After the grievance was filed and heard by the Chester County School Board and after the Bagley Report was discussed on September 8, 2015, the Board unanimously reached

[3] The ALC disagrees and found that the SCDE did not err in failing to dismiss Dr. Callicutt's complaint. (R. pp. 16-19).

a consensus to allow Dr. Slayman to return to work. Thereby, the Board did not act on the Bagley Report and the false allegations about Dr. Slayman memorialized therein were not adopted by the Chester County School District. Furthermore, on September 30, 2015, the Board voted to find the grievance "moot" and the majority of the Board wanted to find "no merit".

Also, on September 30, 2015, the Chester County School District and Dr. Slayman entered into a binding contract. Thereafter, the District violated that contract. The pertinent part of Term 8 to this issue is "the District will instruct the Board and administrators not to publicly disparage Dr. Slayman..." and Term 10 states, "the parties recognize that the promises and covenants contained herein are made in consideration of the mutually agreed separation of Dr. Slayman's employment and are in no way an admission of wrongdoing by either party."

Dr. Slayman was not fired. Dr. Slayman was not found by the Board to have engaged in the conduct alleged in the grievance, and the District contractually agreed to that on September 30, 2015. Furthermore, Dr. Slayman continued employment with Chester County School District as a consultant for the time period of September 24, 2015 through June 20, 2016.

Yet, on October 14, 2015, Dr. Callicutt, the Interim Superintendent with no personal knowledge of what he was complaining about, intentionally acted expressly contradictory to the District's contractual and factual findings by falsely alleging that Dr. Slayman had engaged in conduct requiring a report per R43-58.1. The filing of the Complaint was a voluntary report intended to harm Dr. Slayman and the Complaint was filed in direct violation of the contractual agreement executed by Dr. Slayman and the District on September 30, 2015.

Dr. Callicutt's complaint was filed by the District on October 14, 2015, without the knowledge and approval of the Chester County School Board. Even then Board Chair Denise Lawson is quoted in a January 14, 2016 News & Reporter article as stating she was "not aware of

any investigation on Slayman by the state Department of Education". Maggie James, a Chester County School Board member, testified in Dr. Slayman's hearing as follows:

> Winburn Q: ...What is your understanding of the duties to report allegations of unprofessional conduct to the State Department? I mean, is it your belief that Dr. Keith Callicutt broke a law, violated in some ethics? What is your position at the Keith Callicutt's report of the allegations?
>
> James A: Being that he was the interim, he was not there firsthand, anything that he would have written would have been, as you, per se, hearsay. So why was he to be believed in sending a letter down here without authorization from the board, and not two members to send that type of letter down here requesting that.

(R. p. 1174, line 14 – p. 1175, line 3). Dr. Callicutt was not employed by the Chester County School District during the time of any of the events that are purportedly the basis of his complaint to the SCDE and he would have no reasonable belief to file the Complaint for matters he knows nothing about and that he did not even discuss with the Board prior to making a complaint about matters to which he had no personal knowledge.

II. The Complaint processing by the SCDE violated Dr. Slayman's Due Process rights and State Board Regulations and Procedures.

Dr. Slayman's due process rights guaranteed by the Fourteenth Amendment to the Constitution prohibit any state from depriving any person of life, liberty, or property, without due process of law or denying any person equal protection of the law.[4] Dr. Slayman's due processes rights were violated by the SCDE. The ALC described the SCDE's procedural failures as merely "curious." (R. p. 19). The SCDE's actions, as described below, are not merely curious, these actions violate Dr. Slayman's Due Process rights.

[4] At different points in the ALC's Order, there is reference to whether issues were preserved for appeal. Prior to the hearing, on August 16, 2018, Dr. Slayman filed a motion to dismiss. Thereby, all of these issues on appeal are preserved.

a. The SCDE engaged in notice and investigation failures and additionally violated R43-58.1.

The SCDE did not timely investigate the complaint against Dr. Slayman thereby causing substantial prejudice to Dr. Slayman. The ALC states that Dr. Slayman cites to no authority for the proposition that SCDE's failure to timely investigate the complaint against Dr. Slayman violates her due process rights. (R. p. 19). Respectfully, that is inaccurate. The first sentence of Dr. Slayman's legal argument states the authority upon which this argument is based, the Fourteenth Amendment to the Constitution. No additional case law was cited, because it appears that this issue may be one of first impression.[5] Important questions of novel impression should be considered carefully and not readily dismissed. See *Kubic v. MERSCORP Holdings, Inc.,* 416 S.C. 161, 168, 785 S.E.2d 595, 598 (2016); *Jackson v. Atl. Soft Drink Co.,* 286 S.C. 577, 579, 336 S.E.2d 13, 14 (1985) citing *Dismukes v. Carletta,* 269 S.C. 110, 236 S.E.2d 421 (1977) and *Vanden v. College Heights Subdivisions,* 261 S.C. 509, 201 S.E.2d 113 (1973); see also Justice's Few's Concurrence in *Buchanan v. S.C. Prop. & Cas. Ins. Guar. Ass'n,* 424 S.C. 542, 551-554, 819 S.E.2d 124, 129-130 (2018).

Because this is a novel issue, the Court should look to guidance from other cases that implicate due process rights. *Id.* The Court's analysis of excessive pre-indictment delay should be considered here; though the issues are not the same, the Court's analysis of due process principles is persuasive. *See State v. Lee*, 360 S.C. 530, 602 S.E.2d 113 (Ct. App. 2004), aff'd, 375 S.C. 394, 653 S.E.2d 259 (2007).

When considering the issue of pre-indictment delay, this Court in *Lee* cited to the South Carolina Supreme Court's analysis in *State v. Brazell,* 325 S.C. 65, 72, 480 S.E.2d 64, 68 (1997).

[5] Dr. Slayman's counsel has performed multiple searches on Westlaw about this issue and she did not find any case law in South Carolina that parallels this situation.

In *Brazell*, the South Carolina Supreme Court considered the issue of pre-indictment delay. *State v. Brazell,* 325 S.C. 65, 480 S.E.2d 64 (1997). In its analysis, the Court in *Brazell* relied on decisions of the United States Supreme Court and the Fourth Circuit Court of Appeals. *Lee*, 360 S.C. at 535, 602 S.E.2d at 116 citing *Brazell,* 325 S.C. at 72-73, 480 S.E.2d at 68-69. The Court applied a two-prong inquiry when pre-indictment delay is alleged to violate due process. *Id.*

Though the underlying issues are different, this Court could also apply a similar two-prong inquiry to the issue in Dr. Slayman's case. *Id.* First, Dr. Slayman must show that the delay caused substantial actual prejudice to her right to a fair hearing. *Id.* Second, if Dr. Slayman shows such actual prejudice, the Court must consider the SCDE's reasons for the delay and balance the justification for delay with any prejudice to Dr. Slayman. *Id.* When balancing the prejudice and the justification, the basic inquiry then becomes whether the SCDE's action in prosecuting after substantial delay violates 'fundamental conceptions of justice' or 'the community's sense of fair play and decency.' *Id. citing Howell v. Barker,* 904 F.2d 889, 895 (4th Cir.), *cert. denied,* 498 U.S. 1016, 111 S.Ct. 590, 112 L.Ed.2d 595 (1990); *United States v. Automated Medical Laboratories, Inc.,* 770 F.2d 399, 404 (4th Cir.1985).

Here, Dr. Slayman has shown that the delay caused substantial actual prejudice to her right to a fair hearing. Dr. Callicutt filed the Complaint against Dr. Slayman on October 14, 2015. Dr. Slayman was not notified by the SCDE of the Complaint until February 2018. Official written notice of the Complaint, giving Dr. Slayman written notice of the accusation, was not given to Dr. Slayman until March 28, 2018. Thus, the SCDE engaged in undue delay that violates Dr. Slayman's due process rights.[6]

[6] Dr. Slayman is not asserting that the time between March 28, 2018 and the five hearing that transpired on October 3, 2018, October 4, 2018, October 12, 2018, November 1, 2018, and November 2, 2018 is the constitutional violation. The undue delay amounting to the due process

The time span between Dr. Callicutt's Complaint and the SCDE's written notice to Dr. Slayman of a complaint amounts to 896 days or alternatively measured as 2 years, 5 months, and 14 days. Dr. Slayman filed a Motion to Dismiss on this very issue on August 16, 2018. Dr. Slayman asserted that almost two and a half years without written notice of a complaint against her amounted to an egregiously long period of time, thereby prejudicing her substantial rights.

The SCDE also engaged communications in violation of R43-58.1, which states that "no preliminary information gathered by the State Department of Education concerning misconduct reasonably believed to constitute grounds for revocation or suspension of a certificate, including the name and certificate number of the certified educator, shall be disclosed to any third party." Thus, even if the SCDE had reasonable belief that Dr. Slayman engaged in unprofessional misconduct for revocation or suspension of her certificate (which it did not), there should have been no mention of it.[7] Thus, the SCDE further prejudiced Dr. Slayman's substantial rights by disclosing that an investigation was occurring, thus violating R43-58.1, compounded by the egregious nature of failing to formally notify Dr. Slayman of the complaint or any investigation related thereto, for 896 days. There can be no clearer proof of the harm to Dr. Slayman's rights than the SCDE failing to timely investigate and yet disclosing a purported investigation to the media rather than to the person about whom there was a complaint. Public disclosure taints the well, thus the very reason why R43-58.1 prohibits the SCDE from publicly disclosing preliminary

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violation is the Agency's inaction between the complaint filing on October 14, 2015 and complaint notification to Dr. Slayman on March 28, 2018.

[7] *State Department of Education Investigating Slayman*, The News & Reporter, January 14, 2016. https://www.onlinechester.com/content/state-department-education-investigating-slayman. "The News & Reporter has learned former Chester County School District Superintendent Dr. Agnes Slayman is under investigation by the S.C. Department of Education. According to the information, the investigation was begun on the strength of the report prepared for the school district by educational consultant Betty Bagley."

information. Here, the disclosure was not merely inadvertent, it was intentionally provided to the media in violation of R43-58.1. See *State Department of Education Investigating Slayman*, The News & Reporter, January 14, 2016. https://www.onlinechester.com/content/state-department-education-investigating-slayman. Thereby, the first prong is satisfied.

As to the second prong, if the SCDE had given adequate justification for the delay, the Court would need to balance any justification the SCDE against the prejudice it imposes on Dr. Slayman. SCDE has provided no legitimate justification for waiting 896 days to pursue the complaint against Dr. Slayman. Given that there is no valid justification, the SCDE violated fundamental conceptions of justice and the community sense of fair play and decency.

b. The Complaint should have been dismissed upon receipt.

The Complaint is significantly out of context to other types of claims of unprofessional conduct that the SCDE has pursued as grounds to act against an Educator's certificate. The types of unprofessional conduct warranting this type of scrutiny include allegations of fraud, physical harm, stealing money, sex with students, and other types of egregious unprofessional conduct. The untrue allegations against Dr. Slayman source from grievants who were disgruntled employees seeking to punish their Superintendent for her efforts to hold them accountable. It is exceedingly rare for the SCDE to take action against a superintendent's license and this particular targeted action toward Dr. Slayman is highly unusual.

Context is key to consider here. An agency need not exercise its discipline discretion identically in every case, but it must follow its governing regulations. See *Daufuskie Island Util. Co., Inc. v. S.C. Office of Regulatory Staff*, 427 S.C. 458, 832 S.E.2d 572 (2019) reh'g denied (Sept. 27, 2019); *Deese v. S.C. State Bd. of Dentistry*, 286 S.C. 182, 332 S.E.2d 539 (Ct. App. 1985). The Board's decision about what penalty an educator faces is discretionary, but whether the SCDE

follows the reporting and investigation regulations is not. *See Id.* If the SCDE purports that R43-58 and R43-58.1 require a hearing against Dr. Slayman (it so purports); then, it must also do so against all educators who are faced with charges of misconduct.

The SCDE has zealously pursued Dr. Slayman when comparatively much more egregious circumstances have gone intentionally unaddressed and even rewarded by the SCDE. For example, the conduct of Dr. Quincie Moore[8] is key to compare to alleged conduct of Dr. Slayman. On November 18, 2018, Dr. Quincie Moore, the Superintendent of Cherokee County School District at the time, was arrested on a charge of driving under the influence by the S.C. Highway Patrol when she rear-ended another vehicle on Interstate 85 around 1:15am when driving home from a Clemson University football game.[9] Drunkenness is a ground for revocation or suspension of an educator's license. S.C. Code Ann. § 59-25-160(5).

Dr. Moore's tenure as Superintendent ended as a result of her actions on November 18, 2018.[10] Dr. Moore wrote in her resignation notice, "...On November 18, I put myself in a horrible position, and as a result, I have embarrassed my family, my colleagues, my profession, and my community... I have decided to retire so that the District can move forwards and refocus on the students..." *Id.* This shows that a substantiated finding for discipline was warranted.

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[8] Dr. Slayman intends no disrespect to Dr. Moore, as both women are career educators respectively dedicating more than thirty years of their lives to educating children. The comparison of the conduct alleged against such seasoned and respected superintendents is necessary.

[9] See *Cherokee Co. School Supt. Dr. Quincie Moore charged with DUI*, WSPA 7News, November 19, 2018, https://www.wspa.com/news/dr-quincie-moore-reaches-settlement-agreement-with-cherokee-school-district/; *Quincie Moore: Educrat Redemption? On rendering judgment* ...Fitsnews, November 21, 2018, https://www.fitsnews.com/2018/11/21/quincie-moore-educrat-redemption/.

[10] *Resignation Settlement Agreement between Cherokee Co. School District and Dr. Quincie Moore*, https://www.wspa.com/wp-content/uploads/sites/53/2019/01/Resignation20Settlement20Agreement20between20Cherokee20Co.20School20District20and20Dr.20Quincie20Moore_1546552549780_66472878_ver1.0.pdf .

Dr. Moore engaged in conduct that correlates to just cause for suspension or revocation of an educator's certificate; yet in response, the SCDE has taken no action against Dr. Moore and they even helped her by hiring Dr. Moore, after her resignation from the Cherokee County School District Superintendent, as their Director of the Office of Early Learning and Literacy at the SCDE.[11] Comparatively, the unsubstantiated conduct alleged against Dr. Slayman has never amounted to conduct requiring revocation or suspension of her educator's certificate.

The comparison between Dr. Slayman and Dr. Moore is not in the reprimand, as *Deese* establishes that the reprimands can be different; the comparison is the reporting and investigation of misconduct, and whether a hearing is even necessary against an educator. If a hearing is not necessary against Dr. Moore; then, a hearing is not necessary against Dr. Slayman. To do otherwise, where the SCDE has arbitrarily pursued an investigation and hearing against Dr. Slayman's licensure, amounts to due process violations.

c. The SCDE improperly sought to limit the testimony of the Chester County School Board Members at the Hearing.

Dr. Slayman called four current and former Chester County School Board Members as witnesses, including Sandra Stroman, Maggie James, William Stringfellow, and Jim Stroman. During the Board Members' testimony, Mr. Winburn objected to the Board Members giving full disclosure and testimony. Comparatively, Mr. Winburn did not seek to limit the testimony of the witnesses called by the SCDE. The ALC stated that these concerns were not contemporaneously raised at the hearing. Respectfully, that is inaccurate. (See R. p. 703, line 4 – p. 794, line 12). (R. p. 795, line 6 – p. 821, line 18). (R. p. 1013, line 5 – p. 1055, line 20). (R. p. 1056, line 1 – p. 1169, line 21). The admissibility of the executive session discussions was objected to and ruled upon by

[11] See https://ed.sc.gov/contact/staff-directory/.

the Hearing Officer. For example, during Board Member Maggie James' testimony, Mr. Winburn objected to the admissibility of Exhibit 22 and portions of Ms. James' testimony related thereto. (R. p. 1107, line 24 – p. 1111, line 24). [12] The exclusion of such evidence and testimony limited information pertinent to the State Board's deliberations.

III. The Hearing before the State Board of Education violated Dr. Slayman's Due Process rights and State Board Regulations and Procedures.

There were multiple violations of the State Board's Rules involving the Procedures for Educator Certification Hearings. The ALC found none of Appellant's arguments persuasive. (R. pp. 21-25). These violations of the State Board's Rules involving the Procedures for Educator Certification Hearings were to such a degree that the whole hearing before the State Board was nothing more than a sham, and a blatant attempt to discredit a woman who has devoted her life to educating children. There were multiple violations of the procedures that the State Board must follow, and as such, Dr. Slayman's procedural due process rights were violated.

a. Numerous violations of the BCAF Procedures for Educator Certification Hearings occurred.

The hearing process[13] that Dr. Slayman was subjected to was nothing more than a blatant

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[12] Another specific example, see R. p. 765, line 5 – p. 772, line 1. After exclusions from the record were made by the Hearing Officer after objection by Mr. Winburn, Ms. Stroman was asked, "How would you describe how Dr. Slayman was portrayed after the grievance was filed?" In her response, Ms. Stroman clearly identifies that communications in executive session had already been disclosed and any privilege attached to them had already been waived. Ms. Stroman testified, "It was horrible. It was obvious, as you can read in my statement, someone inside the executive session was talking to people outside. Dr. Slayman was treated – I've never seen any treatment like that before in my life. She was portrayed as the wicked witch on a Facebook page. It was called county politics. But the only politics every discussed on it was the school board. And it was obvious that the things that were put on there, there was some thread of what was talked about in the executive sessions. And it would find its way onto the Facebook page, but it wasn't the whole truth...somebody was telling somebody what was going on inside [the] board room." (R. p. 769, line 18 – p. 770, line 13).

[13] Dr. Slayman would like to acknowledge that the Hearing Officer, Ms. Pike, conducted a thorough and impartial hearing. Her diligence in the matter is not the issue on appeal in this

violation of her procedural due process rights. The most egregious violation of the State Board's rules was in BCAF IV(K). That section pertains to the Hearing Officer's R&R and presentation to the Board. That section in relevant part states:

> 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. Notice will be given be given to both parties of the time, date, and place of the hearing officer's presentation to the Board.

See BCAF IV(K). This Procedure states that the hearing officer will present her finalized report to the Board. In the case of Dr. Slayman, this did not happen. There is no permissive language in BCAF IV(K), the Procedure states, "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." (emphasis added). Here, rather than allow the Hearing Officer to present her report to the Board as required by BCAF, the SCDE disallowed the Hearing Officer from presenting her findings.

The SCDE arbitrarily added procedural limitations, that are nowhere in writing, that are directly contradictory to the written BCAF Procedures that the SCDE is required to follow. Counsel for the SCDE added unwritten rules making the State Board hearing substantively a sham hearing. The presenters were limited to a mere three minutes to discuss more than a week-long hearing with no opportunity for rebuttal. (R. p. 1924). Those improper and seemingly non-existent procedures resulted in Mr. Winburn taking one purported statement, by Dr. Slayman to Williams,

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argument section, it is the hearing before the State Board that Dr. Slayman asserts is a basis for reversal of the Public Reprimand.

well out of context of the testimony and utterly disregarding the facts surrounding the purported threatening statement. It was clearly intended to inflame the State Board members, without providing any context within the facts that were undisputed and affirmed by Williams.

"Procedural due process does not require certain results; it requires only fair and adequate procedural protections." *Tri County Paving, Inc. v. Ashe County*, 281 F.3d 430, 437 (4th Cir. 2002). Procedural due process insists on fair play. *McIntyre v. Securities Commissioner of S.C.*, 425 S.C. 439, 449, 823 S.E.2d 193, 198 (Ct. App. 2018)(citing *Hipp v. S.C. Dep't of Motor Vehicles*, 381 S.C. 323, 325, 673 S.E.2d 416, 417 (2009)). Dr. Slayman was not afforded procedural protections that are intended to secure fair play. She was subjected to a hearing before the State Board that did not follow its on procedures. Instead, the SCDE decided to not allow the Hearing Officer to present her report to the Board, where she recommended that the charges against Dr. Slayman be dismissed. It appears that this arbitrary rule change that is contradictory to the written BCAF Procedures has the intent to prevent a Hearing Officer who issued a decision for Dr. Slayman to present why she made that very recommendation. These rule changes in the hearing procedures is directly contradictory to the written procedures.

Furthermore, Mr. Henry Gunter, Deputy General Counsel in charge of educator certification for SCDE, informed Dr. Slayman's counsel she would only be afforded three minutes to address the Board before it made its decision about Dr. Slayman's certification. There is nothing in the BCAF that specifically limits the time a person has to address the Board.

The extent of the procedural protections due process corresponds to the extent of the potential deprivation. *McIntyre*, 425 S.C. at 449, 823 S.E.2d at 198. The potential deprivation was discipline on Dr. Slayman's certification and the SCDE sent notice to the National Association of State Directors of Teacher Education and Certification (NASDTEC) and all South Carolina school

districts; thereby, preventing Dr. Slayman from subsequent employment in education in South Carolina. See BCAF IV(M). The SCDE notified subscribers throughout the country of Dr. Slayman's Public Reprimand; in addition, it harmed her publicly to all the school districts in South Carolina. Because this deprivation is so weighty, promulgated procedures are intended to ensure such decisions are not reached lightly or without due process. In Dr. Slayman's case, those procedures were put aside for no other reason than trying to finagle the procedures in such a manner so as to limit the State Board's information and prevent the State Board from hearing from the Hearing Officer. Thus, the actions violated Dr. Slayman's procedural due process rights and the Public Reprimand should be overturned.

The right to follow a chosen profession, free from unreasonable governmental interference, implicates Dr. Slayman's liberty and property interests protected by the Due Process Clause. *Brown v. South Carolina State Bd. of Educ.* 301 S.C. 326, 329, 391 S.E.2d 866, 867 (1990)(citing *Greene v. McElroy*, 360 U.S. 474, 79 S.Ct. 1400 (1959)). Dr. Slayman has the right to practice her profession as an educator. Dr. Slayman has the due process right that any disciplinary scrutiny of her certification must follow the procedures laid out by the regulations and BCAF procedures.

Dr. Slayman was subjected to unreasonable government interference on her ability to practice her form of specific employment. The State Board decided to not follow its practices and allow the Hearing Officer, who had issued a R&R recommending no discipline, to present it to the State Board. See BCAF IV(K). This unreasonable interference was in violation of procedures that states the Hearing Officer will present her report to the Board. Indeed, one State Board Member, Dr. J.R. Green, asked a question, and he asked what the R&R even said. It proves that Dr. Green had not even seen the Hearing Officer's R&R, and this alludes to the fact that maybe all State Board members had not read or even possibly been given the R&R prepared by the Hearing

Officer. Due to this interference perpetuated by the SCDE, Dr. Slayman was forced to have her procedural due process rights violated without just cause.

The Hearing Officer's R&R recommended that the complaint against Dr. Slayman be dismissed. Because the Hearing Officer was unable to present the evidence to the Board, and there were questions by at least one State Board member asking what the R&R even recommended, there is no evidence that the State Board was provided the bare minimum required to take action toward Dr. Slayman's educator's certification.

Additionally, after the Hearing Officer rendered her initial decision and gave the parties leave to provide rebuttal responses, Mr. Winburn, who represented the SCDE in the preceding, violated the procedures used by the SCDE and sent the SCDE's objections to the R&R directly to the State Board Chair, as well as the Hearing Officer. The SCDE's objections should have only been sent to the Hearing Officer and counsel for Dr. Slayman. The Hearing Officer noticed this procedural violation and indicated such in her final decision letter. This bares question to Mr. Winburn'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.

When the State seeks to take action against a professional license, Constitutional interests are implicated, and procedural due process requirements must be met. See *Brown* at 329, 391 S.E.2d at 86; *Schware v. Board of Bar Examiners*, 353 U.S. 232, 77 S.Ct. 752 (1957). Here, it is obvious from the record that those requirements have not been met. The State Board decided not to follow their own procedures that would have ensured a fair process. Instead, the SCDE created arbitrary rules, found nowhere in the BCAF Procedures or Regulations, that did nothing but prejudice Dr. Slayman's substantial rights. Indeed, when the rules and procedures can be so flippantly cast aside at the merest whim, justice and fairness cannot be ensured, the only thing that

can be ensured is chaos and inconsistency with the law and application thereof.

b. These Regulation changes purportedly made by the Department are procedurally deficient and violated the requirement for Adoption, Amendment, and Repeal of Regulations required by the South Carolina State Register and South Carolina Code of Regulations.

The procedural changes to disallow a Hearing Officer from presenting the Report and Recommendation to the Board and limiting presentation the presentation to the Board to three minutes without rebuttal are failures by the SCDE to modify the pertinent regulations related thereto.

The South Carolina State Register is an official publication, and it is a temporary update to South Carolina's official compilation of the South Carolina Code of Regulations. Changes in regulations, whether by adoption, amendment, repeal, or emergency action must be published in the State Register pursuant to the provisions of the APA. The State Register also publishes other documents issued by state agencies considered to be in the public interest. All documents published in the State Register are drafted by state agencies and are published as submitted. Publication of any material in the State Register is the official notice of such information.

To adopt, amend, or repeal a regulation, an agency must publish in the State Register a Notice of Drafting; a Notice of the Proposed Regulation that contains an estimate of the proposed action's economic impact; and, a notice that gives the public an opportunity to comment on the proposal and request a public hearing. Also, the regulation must be submitted to the General Assembly for approval. If no legislation is introduced to disapprove or enacted to approve before the expiration of a one-hundred-twenty-day review period, the regulation is approved on the one hundred twentieth day and is effective upon publication in the State Register.

This mode of the adoption of rules, the amending of rules, and the repeal of rules is fundamental to the rule of law. *McIntyre,* 425 S.C. at 447, 823 S.E.2d at 197. This very issue was

recently before this Court and the Court found that the appellants were denied procedural due process based on the Agency's failure follow the requirements for adopting, amending, and repealing regulations. *Id.*

The SCDE has made no official state publication of the regulation changes it purported to have made to R43-58 or the Procedures for Educator Certification Hearings, as set forth in BCAF. The SCDE is aware of such requirements for regulation changes because it actively engages in the above outlined steps to adopt, amend, and repeal a regulation.[14] The 2018 State Register, Volume 42, included multiple drafting notices issued by the SCDE for the following regulations: Accounting and Reporting SR 42-8, Medical Homebound Instruction SR 42-4, Minimum Stands of Student Conduct and Disciplinary Enforcement Procedures to be Implement by Local School Districts SR 42-5, Operation of Public Pupil Transportation Services SR 42-8, and School Resources Officers SR 42-5. BCAF was issued on April 4, 2004 and was revised on August 17, 2004, August 10, 2005, October 8, 2008, February 11, 2009, and April 12, 2016. No revisions were made by the SCDE to the regulations and procedures applicable to discipline Dr. Slayman.

The SCDE's failure, to not follow the requirements for adoption, amendment, and repeal of Regulations required by the South Carolina State Register and South Carolina Code of Regulations when changing the procedures for an educator's hearing, amounts to a denial of Dr. Slayman's procedural due process rights.

c. The SCDE does not contest that it did not follow the written BCAF procedures.

The SCDE did not follow the written regulations and BCAF procedures and it offers excuses about why it made changes to the regulations. (R. pp. 2022-2027). All such purported changes are not in writing and do not meet the regulatory change requirements of South Carolina.

[14] See South Carolina General Assembly Home Page: http://www.scstatehouse.gov/regnsrch.php.

These facts are germane to the notice and modification issues recently analyzed in *Pickens County v. S.C. Dep't of Health & Envtl. Control*, an appellate decision that was issued on January 8, 2020. *Pickens Cnty. v. S.C. Dep't of Health & Envtl. Control*, No. 2017-000066 (S.C. Ct. App. January 8, 2020). Though the *Pickens County* case involves a permitting decision, and this case involves an educator certification reprimand, the same principles apply. Both cases parallel attention to the requirement that state agencies must follow the rules that are written and established so as to ensure a fair and adequate proceeding.

> Our supreme court reiterated this in *South Carolina Coastal Conservation League v. South Carolina Department of Health & Environmental Control*, 390 S.C. 418, 702 S.E.2d 246 (2010), in which the Coastal Conservation League sought review of a critical area permitting decision more than fifteen days after DHEC issued the staff decision. DHEC failed to notify the Coastal Conservation League as required by statute; thus, the time limitations for review did not start to run until DHEC corrected its notice error. *Id.* at 430, 702 S.E.2d at 253. The plain language of § 44-1-60(A) supports this conclusion here as well: "All department decisions involving the issuance, denial, renewal, suspension, or revocation of permits . . . shall be made using the procedures set forth in this section." The procedures in § 44-1-60 particularly emphasize public notification, as reflected in § 44-1-60(B). ***Only after*** DHEC issues a staff decision ***in compliance with the procedural and notice dictates of its own regulations and of § 44-1-60*** subsections (A) through (E), does subsection (E)(1) trigger the fifteen day deadline for an appeal of the decision to the DHEC Board. *See also Leventis v. S.C. Dep't of Health & Envtl. Control*, 340 S.C. 118, 143 n.14, 530 S.E.2d 643, 657 n.14 (Ct. App. 2000).

Id., p. 13 (emphasis added). Apply that same legal analysis to this case. There are regulatory and procedural failures here. First, Appellant was not notified of a complaint against her educator's certificate for 896 days. That timeframe is an uncontested fact. (R. p. 2019). Second, SCDE enacted no written changes to the regulations or BCAF procedures to modify what the regulations and procedures required throughout the pendency of the complaint proceeding. (R. pp. 1989-1995). Third, the SCDE's failure to not follow the requirements for adoption, amendment, and repeal of regulations, and changing the procedures for an educator's hearing with no written

modifications to BCAF since April 12, 2016,[15] amounts to a denial of Dr. Slayman's procedural due process rights.

This written and formalized mode of the adoption of rules, the amending of rules, and the repeal of rules is fundamental to the rule of law. *McIntyre v. Sec. Comm'r of S.C.,* 425 S.C. 439, 447, 823 S.E.2d 193, 197 (Ct. App. 2018), reh'g denied (Feb. 19, 2019), cert. denied (June 28, 2019). Procedural due process is denied when a state agency fails to follow the requirements for altering regulations. *Id.* The SCDE has made no official state publication of the regulation changes it purported to have made to R43-58 or the Procedures for Educator Certification Hearings as set forth in BCAF and no written changes were identified in Respondent's Brief. The SCDE merely identified changes to its ***practices***, but not the written rules it is required to follow.

Appellant cannot emphasize enough that the most egregious violation of the State Board's rules was its failure to follow BCAF IV(K). The Procedure states that the hearing officer will present her finalized report to the Board. In the case of Dr. Slayman, this did not happen. There is no permissive language in BCAF IV(K), the ***written*** procedure, states, "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." (emphasis added). Here, rather than allow the Hearing Officer to present her report to the Board as required by BCAF, the SCDE disallowed the Hearing Officer from presenting her findings.

The SCDE acknowledges that it had been violating that written procedure "for over a year now." (R. p. 2025). Furthermore, the SCDE stated that "[t]he presentation to the State Board is to present the Hearing Officer's Report and Recommendation from the hearing and any objections to

[15] After the conclusion of this matter, the BCAF Procedures were revised on June 9, 2020. Any changes to the BCAF Procedures on June 9, 2020 are irrelevant to the Public Reprimand issued on September 10, 2019 and the proceedings that preceded that discipline.

the report." (R. p. 2023). Here, the Hearing Officer did not present anything to the State Board. Mr. Gunter, selected by the SCDE to present their abbreviation of the thirty-hour hearing to the State Board, did not attend the hearing, had no personal knowledge of the hearing, and is not an impartial adjudicator because he is an attorney solely representing the SCDE's interests.

Mr. Gunter and Mr. Winburn are both attorneys employed by, and representing, the SCDE. Ethically, professionally, and financially they are solely tasked with representing their own clients' interests. Comparatively, the same would apply to Appellant's counsel; she cannot both advocate for Appellant's interests and the SCDE's interests when these parties are in an adversarial proceeding with conflicting interests. There is no way for either Mr. Gunter, Mr. Winburn, or any other SCDE attorney to both represent their client, the SCDE, and serve as an impartial adjudicator to the State Board. Thus, the very purpose of why the BCAF Procedures were written requiring the Hearing Officer, the impartial adjudicator, to present his or her findings to the State Board. Preventing questions to the Hearing Officer and costs savings (described as the SCDE's rationale on page 16 of Respondent's Brief) do not resolve the Constitutional failures that transpired.

Appellant is greatly prejudiced by the procedural failures described here and in Appellant's Reply Brief. Respondent argues that notice, an opportunity to be heard, an impartial adjudicator, and judicial review were provided to Appellant. Such due process requirements were not provided to Appellant when the procedures that are established to guarantee those rights are not followed by the SCDE. The SCDE designated Ms. Pike as the Hearing Officer and she was tasked with being an impartial adjudicator overseeing thirty hours of testimony. Yet, somehow the State Board is supposed to make a valid decision when it did not hear from her, as required by the written rules, and the SCDE's substitute presenting the issues only provided a brief abbreviation of what the actual adjudicator recommended to the State Board. Furthermore, the SCDE sought to limit Dr.

Slayman's ability to be heard when it sought to prevent Sandra Stroman, Maggie James, William Stringfellow, and Jim Stroman from testifying with full disclosure about the grievance against Dr. Slayman and the Chester County School Board's deliberations about its credibility.

When the State seeks to take action against a professional license, Constitutional interests are implicated, and procedural due process requirements must be met. See *Brown v. South Carolina State Bd. of Educ.* 301 S.C. 326, 329, 391 S.E.2d 866, 886 (1990); *Schware v. Board of Bar Examiners*, 353 U.S. 232, 77 S.Ct. 752 (1957). Here, it is obvious from the record that those requirements have not been met. The State Board decided not to follow their own procedures that would have ensured a fair process. Instead, the SCDE created arbitrary rules found nowhere in the BCAF procedures or regulations that did nothing but prejudice Dr. Slayman's substantial rights. All such issues were preserved; Appellant filed a pre-hearing Motion to Dismiss and expressly asserted therein that the proceedings violated her due process rights.

IV. The State Board of Education erred when it failed to consider the recommendations of the Hearing Officer that recommended the dismissal of the Complaint against Dr. Slayman.

The State Board heard essentially six minutes of perfunctory information, that can amount to nothing more than an introduction of the parties, and from those perfunctory six minutes they issued a Public Reprimand to Dr. Slayman, when comparatively the Hearing Officer, selected by the SCDE, heard five (5) days of testimony from nineteen (19) witnesses, and several of those days ran well into the evening hours. From those days of testimony and evidence, the Hearing Officer issued the following recommendation:

> Having carefully considered all the testimony and exhibits, I find 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 herein and described below. The evidence presented at the hearing in support of these allegations was the testimony of five employees that comprised Slayman's senior cabinet. This testimony 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 Slayman's otherwise unblemished education career.

(R. p. 1901). The Board erred when not following the recommendation.

a. The State Board's decision was arbitrary and capricious.

The impartial Hearing Officer, a contracted employee of the SCDE, recommended complete dismissal of the allegations. The Board arbitrarily and capriciously disregarded the recommendation. "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." *Okadigwe v. S.C. Dep't of Labor, Licensing, & Regulation*, No. 2017-001339, 2019 WL 2025269, at *1 (S.C. Ct. App. May 8, 2019) quoting *Deese v. S.C. State Bd. of Dentistry*, 286 S.C. 182, 184-85, 332 S.E.2d 539, 541 (Ct. App. 1985). Courts require the [governmental entity] evaluate the evidence and carry out their important responsibilities consistently, within the 'objective and measurable framework' the law provides." *Daufuskie Island Util. Co., Inc.*, 427 S.C. at 464, 832 S.E.2d at 575 quoting *Utils. Servs. of S.C., Inc. v. S.C. Office of Regulatory Staff*, 392 S.C. 96, 113, 708 S.E.2d 755, 765 (2011). The ALC acknowledged that "...there is testimony in the record that would tend to show Dr. Slayman's innocence..." yet it found that the State Board, after only six minutes of presentation, could make a decision that is contrary to the substantial evidence and the R&R issued by the Hearing Officer. (See R. pp. 24-26).

The State Board's decision is contrary to the substantial evidence. Mr. Winburn went before the State Board and alarmingly misstated the evidence in the record. The Hearing Officer accurately states that the most egregious accusation against Dr. Slayman was that she engaged in

hostile treatment of the five complainants to include intimidation, public degradation, threats such as "I will rip your throat out", "I will kill you", "I will cut your legs off.' (R. p. 1902). The Hearing Officer weighed the evidence and found such allegations to be untrue. (R. pp. 1901-1904). The Hearing Officer appropriately noted that the only evidence in the record regarding such alleged egregious behavior is the testimony of the five grievants, all of whom benefited in one form or another by ousting Dr. Slayman from her position. (See R. p. 1903).

The consultants, employees, and four Board members who testified during Dr. Slayman's case testified that their interactions with Dr. Slayman were professional and pleasant, with no evidence of the behaviors alleged by the grievants. (R. p. 1902). "The four Board members and the four consultants went on to testify that they had the opportunity to observe Dr. Slayman's interactions with her staff and that such interactions were always pleasant." (R. p. 1902). Many witnesses testified that they had the opportunity to observe the atmosphere and morale in the District office and they all testified that such was very good. *Id.* None of the witnesses called by Dr. Slayman, who testified about their observations at the District Office, saw any evidence of the hostile environment described by the five grievants. *Id.*

One of the most important witnesses was "Slayman's administrative assistant, McConnell, whose office was adjacent to Slayman's, [who] testified that she had a good rapport with Slayman and had never seen these behaviors that the five grievants alleged. In fact, she described the filing of this grievance as a "coup"." (R. p. 1903).

The grievants with the apparent support of two Board members engaged in a media campaign and trial by public opinion against Dr. Slayman and those who supported her when these false allegations transpired. Ms. James, a Chester Board Member, testified:

> Dr. Slayman was an outstanding leader of our district during the time that she served. It was very disheartening to know that she was surrounded by the kind of

> people that would set out to destroy someone's career. I had never been caught up in any situation like that before that brought on personal attacks from people in the community. I felt threatened. My life was in danger. I had people following me, people taking pictures of me at various places. It was just an onslaught of things on the media, on social media. Information was being put out there. I had a drawing of someone went on a map of Chester community and, I guess, googled earth and googled my home and put it out there on the Facebook page. It was just unbelievable how they were able to enrage a community against the educational process for our children trying to disrupt the educational process for the children of Chester County all because they thought they were gonna gain something personally. And I know that you may think you have a harvest, but you reap what you sow. And karma can really be something when it comes back into your own life. Dr. Slayman did not deserve what happened to her, and I just as a board member, I just hope and pray that I never have to live through anything like that again in my life.

(R. p. 1148, line 21 – p. 1158, line 24).

King and Gardner alleged public beratement by Dr. Slayman, yet no corroborating evidence was brought forth. (R. p. 1903). It was noted by several witnesses that Chester is a small, tightly knit community. (Id.). As such, it is highly unlikely that knowledge of this type of behavior could be suppressed for three years, especially given the deeply rooted connections of the Board members and the fact that Dr. Slayman's purported behavior was not just behind closed doors. Notably, problems with the prior superintendent quickly reached the ears of Board members. (Id.). This begs the question of why this type of shocking and reprehensible behavior, if it occurred as alleged, would not have been fodder for discussion all over Chester. (Id.).

The Hearing Officer rationally made the determination that King and Gardner were not telling the truth, by hearing hours of extensive witness testimony to the contrary of what the grievants asserted against Dr. Slayman. (R. p. 708, line 5 – p. 711, line 15). Such testimony included Reverend Stringfellow, a 76-year-old member of the Chester County School Board, an extremely credible witness. He has been a preacher for 55 years, a resident of Chester all his life, President of the Chester Branch of the NAACP, he knows nearly everyone in the Chester area, his

family cumulatively has probably 150 years of employment with the Chester County School District, hundreds of his relatives have been educated by the District, and cumulatively he served on the School Board for about 28 years. (R. pp. 1042-1045). Here is an excerpt of Reverend Stringfellow's testimony:

> Q: When you were on the board, were Charles King, Jeff Gardner, Brooke Clinton, Anne Stroud, and Shawn Williams serving in Dr. Slayman's senior cabinet? A: Yes.
>
> Q: And can you describe for us, at the board meetings were there times that the senior cabinet spoke to the board? A: Yes.
>
> Q: And did you ever see Dr. Slayman discourage those individuals from speaking with the board? A: No, ma'am. Not at all.
>
> Q: And when you say not at all, can you explain to us kind of what your impression of - or what you observed her interaction with her senior cabinet in your observations?
>
> A: My observation from what I've seen, they were very pleasant. She was very pleasant with them. And there was no hesitant of anything they wanted to ask. At least they asked me, anyway, all the time. We had no problem with that with no communication.
>
> Q: So would it be fair to say that the senior cabinet felt comfortable to speak with you?
>
> A: Yes, ma'am.

(R. p. 1046, line 14 – p. 1047, line 14).

> Q: ...Did any of the senior staff mention to you that they were working in a hostile work environment? A: No, ma'am.
> Q: And about how frequently did you personally interact with the senior cabinet?
>
> A: Almost every day when I was on the board for some reason I [was] out in the building or in the working area where they [were] at.
>
> Q: Did any of the senior cabinet ever appear to you when you were physically looking at them that they had any kind of emotional issues going on? A: No, ma'am.
>
> Q: And did any of the senior staff ever give you any indication that they were having health issues because of any treatment from Dr. Slayman? A: No, ma'am.
>
> Q: Did any of the senior staff appear to be afraid of intimated in any kind of manner?
>
> A: No, ma'am.
>
> Q: And when you mentioned that you saw the senior cabinet almost every day, did anyone ever

leave Dr. Slayman's office in tears or upset when you were around?

A: No. I haven't seen that.

Q: Did you ever hear Dr. Slayman make any threatening remarks to anyone? A: No, ma'am. (R. p. 1050, line 4 – p. 1051, line 8). Reverend Stringfellow's testimony is one of many that demolishes the credibility of the grievants' testimony. (R. p. 1061).

The Bagley Report[16] and the conclusions therefrom resulted from time and scope limitations from the Board and the Bagley Report was made with conclusions regarding Dr. Slayman's treatment of persons other than those being interviewed, without first verifying these incidents with the people involved. (Id.). The Bagley Report intentionally withheld any contradictory testimony given to the allegations made by the grievants. Both Dr. Slayman and McConnell testified during the Hearing that they provided testimony to Bagley that rebuts the allegations, yet no such information was produced in the Bagley Report or by Bagley verbally to the Chester County School Board, as affirmed by the Board members testimony at the Hearing.

None of the grievants, other than Williams, ever approached Dr. Slayman regarding any matters that offended them prior to filing this grievance. (R. p. 1903). That is because none of those grievants were facing any hostile work environment.

The one circumstance of a grievant every telling Dr. Slayman of any concerns occurred more than two years prior to the filing of the grievance. Williams felt that Dr. Slayman's statement to her on August 20, 2013, was inappropriate. This grievance was not filed until September 8, 2015. Williams did not file a grievance for over two years about a matter that allegedly made her

[16] 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 Mr. Winburn's questions supporting the credibility of Bagley during his cross examination of Dr. Slayman's witness, Charles Moore. (R. p. 995, line 8 – p. 997, line 13).

feel threatened. (R. p. 476, line 10 – p. 479, line 25). (R. p. 1459, line 12 – p. 1462, line 4). The concept defies logic. Williams worked with Dr. Slayman for more than another two years on a daily basis; she was the head of HR and Dr. Slayman was the Superintendent. If this action had merited the Public Reprimand that Dr. Slayman received, Williams would have taken action on it when it occurred. Williams could have filed a grievance then; she did not. Williams could have filed a police report; she did not. Williams could have filed a Charge of Discrimination; she did not. Williams, as the top HR official in the District, would have personal knowledge about all of the avenues available to her to address the matter, if the conduct were truly as she alleges. Williams took none of these steps, she only filed a grievance against Dr. Slayman as a planned mutiny lead initially by Stroud and Garner, quickly added upon by Dr. King, and then Williams and Clinton were recruited to jump on this planned mutiny to end Dr. Slayman's career.

On the one occasion Williams brought a concern to Dr. Slayman's attention, on August 20, 2013, as confirmed by Williams' own testimony during cross examination, Dr. Slayman respectfully heard Williams' concerns, assured Williams that she would not make statements of the nature that Williams said made her uncomfortable, Dr. Slayman apologized, and Williams confirmed that Dr. Slayman followed up on her statement and never engaged in making such statements again. (R. p. 476, line 10 – p. 479, line 25). (R. p. 1459, line 12 – p. 1462, line 4).

Williams credibility in alleging Dr. Slayman was treating her with hostility is utterly undermined by the acknowledged facts that for the years leading up to the grievance Dr. Slayman and Williams worked fine together. At Williams' request to have Dr. Slayman as a reference, Dr. Slayman gave Williams a glowing reference. (R. p. 482, lines 7-13). (R. p. 483, lines 6-13). It is shocking to think that such kindness is returned with this attempt to end Dr. Slayman's career.

The Hearing Officer having heard that evidence and made the conclusion that no discipline

was warranted. Dr. Slayman did not engage in the complained of conduct, her actions did not amount to conduct worthy of disciplinary action against her certificate, and Dr. Slayman had already expansively suffered as a result of these actions.

b. The State Board's decision is clearly erroneous in view of the substantial evidence.

"Under the APA, the reviewing court may not substitute its judgment for that of the agency on questions of fact, but may reverse the agency's decision if the decision is clearly erroneous in view of the substantial evidence." *Osman v. S.C. Dep't of Labor*, 382 S.C. 244, 249, 676 S.E.2d 672, 675 (2009) citing S.C. Code Ann. § 1–23–380(5) (Supp.2008). "Substantial evidence is relevant evidence that, considering the record as a whole, a reasonable mind would accept to support an administrative agency's action." *Forman v. S.C. Dep't of Labor*, 419 S.C. 64, 70, 796 S.E.2d 138, 141 (Ct. App. 2016) quoting *Trimmier v. S.C. Dep't of Labor, Licensing & Regulation*, 405 S.C. 239, 246, 746 S.E.2d 491, 494 (Ct. App. 2013) (quoting *Porter v. S.C. Pub. Serv. Comm'n*, 333 S.C. 12, 20, 507 S.E.2d 328, 332 (1998)).

It is relevant to compare the facts of *Osman*, where a Public Reprimand of a licensee was upheld, in comparison to this case. In *Osman*, "Dr. Osman's three concessions constitute substantial evidence in support of the Board's actions. Further, the Disciplinary Panel for the Board and the Board both limited the finding of misconduct to the three admitted deviations from the standard of care." *Osman v. S.C. Dep't of Labor*, 382 S.C. 244, 249, 676 S.E.2d 672, 675 (2009).

> Specifically, Dr. Osman agreed, "it was inappropriate ... to perform a primary C–Section in a community county hospital setting without adequate resources immediately available, i.e.: blood products and surgical backup." Additionally, Dr. Osman agreed that she "failed to have surgery stand-by at the bedside in the event that hysterectomy became necessary. When Dr. Ross was called by [Dr. Osman] ... it was learned that Dr. Ross was away on vacation and not available. Therefore, Dr. Osman essentially had no surgical backup in the event that a hysterectomy became necessary." Lastly, Dr. Osman agreed she "deviated from the appropriate standard of care by failing to provide written informed consent to [a] patient ... as to the

possible complications and difficulties which can occur with C–Section in a patient with placenta previa."

Id. The Board, the Administrative Law Court, and the Supreme Court of South Carolina all agreed that there was substantial evidence supporting the public reprimand issued to Dr. Osman. Whereas, here, the only quasi-judicial body that heard the evidence, the Hearing Officer, has found that there is *not* substantial evidence supporting any action toward Dr. Slayman's educator's license.

Dr. Slayman testified at the hearing and rebutted the accusations against her. She testified that there is absolutely no basis for such allegations. (R. p. 1533, line 20 – p. 1534, line 2). (R. p.1552, lines 1-14). (R. p. 1562, line 1 – p. 1609, line 14). Dr. Slayman and all of her witnesses rebutted the accuracy of the Bagley Report. (R. p. 1489, line 4 – p. 1492, line 16).

During the cross examination of the grievants and through confirmation by testimony from Dr. Slayman and other witnesses, it is clear that the grievants had personal motives for their self-serving and group planned mutiny, also known as a 'grievance'. (R. p. 1493, line 5 – p. 1494, line 21). Dr. King and Gardner both sought Dr. Slayman's job. Dr. King was engaging in inappropriate conduct. Stroud's and Gardner's jobs were at risk. Williams was angry that she had been questioned about a day she did not show up to work without notifying Dr. Slayman[17] and a proposed raise to her salary had not been approved preceding her joining the grievance bandwagon. (R. p. 486, line 19 – p. 487, line 19). (R. p. 1462, lines 5-23). In her testimony at the Hearing, Clinton admitted she only joined the grievance after she was persuaded to do so, based on what

[17] Essentially, Williams was a 'no call no show' to work shortly before she filed this grievance against Dr. Slayman. (R. p. 488, line 1 – p. 490, line 14). (R. p. 1463, line 11 – p. 1465, line 10). Williams denied this circumstance. In most jobs a 'no call no show' to work would be conduct worthy of termination; yet, Dr. Slayman compassionately did not terminate Ms. Williams, rather she talked with Ms. Williams about it and asked that in the future Ms. Williams provide notice to her supervisor when she would not be at work. Dr. Slayman's conduct was utterly reasonable and the exact opposite of hostility because Dr. Slayman would have been within her right to fire Williams for such behavior.

the other grievants told her. These motives caused the coup.

c. The State Board erred by failing to consider mitigating circumstances surrounding the alleged misconduct.

The record before the State Board was replete with mitigating circumstances surrounding the alleged misconduct.[18] Dr. Slayman "was a great superintendent. She was really forward thinking. She had a goal set for the students of our district. She was well received by the community. Let's see, she just had everything on go. We upgraded all of the technology in all of the schools. She worked with the phone company to get the entire county Wi-Fi'd, not only in Chester but Comporium out of Rock Hill that handles Lancaster County, they were -- she was able to work out an agreement with them for the children that live in the eastern part of Chester to be able to have available Wi-Fi service. She worked out that with them. And she was chosen to even go to Washington to serve on a national committee for education." (R. p. 1090, line 15 – p. 1091, line 5). All of Dr. Slayman's evaluations were positive and she consistently received positive feedback for her efforts to help the children of the District and the community where they lived. (R. p. 1092, line 5 – p. 1097, line 4).

Throughout her tenure as Superintendent, Dr. Slayman received various honors, awards, and accolades for her innovative methods of bringing the District into the twenty first century and for bringing additional money into the District. Some of those included:

a. Dr. Slayman received the Superintendent of the Year Award from the S.C. Career and Technology Education Association for the 2012-2013 school year.

b. For 2012, Great Falls Elementary was selected as a Pathfinder School.

c. For 2013, Dr. Slayman and the District were named a Duke Energy Power Partner.

[18] The ALC again, and seemingly for each argument raised by Dr. Slayman, found that the issues were not preserved. (See ALC Order). This is baffling since such arguments are in the hearing record and referenced again on appeal.

d. For 2013, the District was named a Microsoft Alliance Partnership. The District was the only one named in the Southeast and only one of twelve in the United States.

e. In 2013, Dr. Slayman was invited to be a speaker at the Microsoft Mobility Conference in N.Y. This conference was attended by business and educational leaders from around the world.

f. In 2014, Dr. Slayman was nominated for the S.C. Superintendent of the Year.

g. In 2014, Dr. Slayman was named Educator of the Year by the S.C. Resource Officers Association.

h. In 2014, two high schools in the District were named Bronze Schools by U.S. News and World Report.

i. In 2014, Dr. Slayman was one of 120 superintendents from across the U.S. invited to attend President Obama's White House ConnectED Superintendent Summit to discuss advancing education and advancing students across the U.S. through academics.

j. In 2015, Dr. Slayman was recognized by the Martin Luther King Celebration Committee as the Grand Master of the parade. She was the first superintendent to be given that honor.

k. In 2015, Dr. Slayman was nominated by the school board, the CEO's from business and industry, and the legislative delegation for Chester, Fairfield and Cherokee Counties for the S.C. School Administrators' S.C. Superintendent of the Year award.

(R. pp. 1884-1885). Dr. Slayman was at the height of her career when the leaders who directly reported to her connived as a group, in secret, to oust her as Superintendent. It is truly tragic that a career educator, such as Dr. Slayman, who has done so much for the children of South Carolina, would be treated in such an abominable manner.

V. The State Board of Education erred in issuing the Public Order of Reprimand.

The discipline issued to Dr. Slayman is not within the permissible range applicable to Public Reprimands issued to educators in South Carolina. A decision may potentially be arbitrary and capricious if it "does not fall within the range of permissible decisions applicable in a particular case." *Okadigwe v. S.C. Dep't of Labor, Licensing, & Regulation*, No. 2017-001339, 2019 WL

2025269, at *1 (S.C. Ct. App. May 8, 2019) quoting *State v. Allen*, 370 S.C. 88, 94, 634 S.E.2d 653, 656 (2006).

The SCDE violated Procedure BCAF(IV)(M), which states that in cases of certificate suspension, revocation, or surrender of educator certificate *only then* will the Office of Educator Certification send notice to all SC School Districts and the NASDTEC Clearinghouse. Comparatively, it states, that the Office of Educator Certification will send notice of a public reprimand to all South Carolina school districts – it does not mention NASDTEC. Yet, the final paragraph of the Public Reprimand issued to Dr. Slayman states, "The public reprimand of Dr. Slayman, certificate 134958, shall be reported to the NASDTEC Clearinghouse..." The SCDE improperly notified the NASDTEC Clearinghouse of the Reprimand issued to Dr. Slayman, which is an action in violation of Procedure BCAF(IV)(M) and not a permissible discipline and thus it violates statutory provisions.

The ALC found no error in the State Board and SCDE exceeding the reprimand procedures. (R. pp. 26-27). The ALC also found that Dr. Slayman did not show prejudice from this action. To the contrary, from Dr. Slayman's own testimony, from the other witnesses' testimony, and counsel's arguments on behalf of Dr. Slayman, preserved in the record on appeal, Dr. Slayman's career in education has been ended. "... [T]he license is essentially the last thing that [Dr. Slayman] has from this [] travesty that ended her employment with Chester County School District. Dr. Slayman lost her job, has irreparably lost hundreds of thousands of dollars in income. She can't find a new job. Her husband lost a job. She's had to move. And now she's faced, almost three years later, with [] a reprimand to her license. That woman's been punished enough." (R. p. 1618, line 9 – p. 1622, line 4). For the SCDE to exceed the discipline allowed under Procedure BCAF(IV)(M) and thereby report the Public Reprimand to the NASDTEC Clearinghouse, the

public-school systems in the entire country are notified of the discipline and that prejudice prevents Dr. Slayman from a career in education.

CONCLUSION

For the foregoing reasons, Appellant asks that the decision of State Board of Education be reversed and vacated accordingly so that the Public Reprimand is retracted, and notification of such retraction is issued to all of the entities informed of the Public Reprimand.

Respectfully Submitted,

CROMER BABB PORTER & HICKS, LLC

BY: _____

J. Lewis Cromer (#1470)
Shannon M. Polvi (#101837)
1418 Laurel Street, Suite A (29201)
Post Office Box 11675
Columbia, South Carolina 29211
Phone: (803) 799-9530
Facsimile: (803) 799-9533
Attorneys for Appellant

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Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

Case No. 2020-000950

Dr. Agnes Slayman ..... Appellant

v.

South Carolina Department of Education ..... Respondent.

CERTIFICATION OF COUNSEL

I, the undersigned attorney of Cromer Babb Porter & Hicks, LLC, certify that Appellant's Final Brief and Appellant's Final Reply Brief comply with Rule 211(b), SCACR.

CROMER BABB PORTER & HICKS, LLC

BY: _____

J. Lewis Cromer (#1470)
Shannon M. Polvi (#101837)
1418 Laurel Street, Suite A (29201)
Post Office Box 11675
Columbia, South Carolina 29211
Phone: (803) 799-9530
Facsimile: (803) 799-9533
Attorneys for Appellant

November 24, 2020
Columbia, South Carolina