

IN THE CHANCERY COURT OF LEFLORE COUNTY, MISSISSIPPI

JAMES JOHNSON-WALDINGTON

APPELLANT

VS.

CAUSE NO.: 2023-CV-042

GREENWOOD LEFLORE CONSOLIDATED
SCHOOL DISTRICT

APPELLEE

FINAL OPINION AND ORDER

I. PROCEDURAL BACKGROUND

1. This matter involves a Petition for Appellate Review filed with this Court on July 27, 2023, by Mr. James Johnson-Waldington (herein-after referred to as Appellant) of the decision of the Greenwood Leflore Consolidated School District (herein-after referred to as Appellee), to terminating his employment contract as the Superintendent which was to end on June 30, 2026.
2. Appellant requested that he be restored to his position as Superintendent of Greenwood Consolidated School District and that he be awarded backpay, fringe and all other contractual benefits, and such other relief to which he may be entitled.
3. Jurisdiction is proper in this Court and authorized pursuant to Miss. Code Ann, §37-9-113 (as amended) which provides an avenue for aggrieved employees to appeal a final decision of a school board to the chancery court.
4. On August 10, 2023, the Transcript of the School Board Hearing and what is styled as “Documents For Consideration By The Board Of Trustees Of Greenwood Leflore Consolidated School District” were filed in this cause.

5. On September 14, 2023, Appellee filed its Answer and Defenses, raising several defenses and denying any liability and that Appellant is entitled to any relief sought in his Petition. Appellee argued its decision is supported by credible, substantial evidence, was not arbitrary or capricious, was not in violation of any statutory or constitutional rights belonging to the Appellant, and should not be overturned by this Court.
6. A hearing was set for this matter and held on November 2, 2023, before the Court. The Court, after hearing oral argument of counsel for each party and having taken this matter under advisement and considering the record and authorities, hereby renders its decision.

II. FACTUAL FINDING

7. On February 18, 2022, Appellant James Johnson-Waldington entered into a period of three (3) years employment contract of Superintendent with the Board of Trustees of Greenwood Leflore Consolidated School District. The contract was signed by Mrs. Samantha Milton, then Board President. It was for the period of July 1, 2022 through June 30, 2025.
8. Prior to entering the contract, Appellant was interviewed by four board members namely; Mrs. Samantha Milton, Mrs. Jackie Lewis, Ms. Mary Magdalene Abraham and Dr. Kalanya Moore. Dr. Ro'Shaun Bailey, the fifth board member, was absent during the interview.
9. Appellant was hired by a split vote of 3 to 2 with board members Mrs. Milton, Mrs. Lewis, and Ms. Abraham voting to hire him and board members Dr. Moore and Dr. Bailey voting against his being hired as the Superintendent.
10. On December 19, 2022, Appellant entered into a similar employment contract of Superintendent with Appellee which extended his employment as Superintendent for the

period of July 1, 2022 through June 30, 2026. Again, the then Board President Samantha Milton signed the contract on behalf of the Board.

11. During the November 2022 School Board Election, Mrs. Milton lost her seat to Mr. Henry Fant, who was seated on January 1, 2023.
12. At the end of a regular Board Meeting held on June 6, 2023, the Board voted to go into executive session to discuss performance of the Superintendent, and after the discussion and interchange with Appellant, Dr. Bailey, Board President, made a Motion, seconded by Mr. Fant, to terminate the employment contract of Appellant as Superintendent of the Greenwood Leflore Consolidated School District. The vote was 3 to 2 with Dr. Bailey, Mr. Fant, and Dr. Moore voting in favor of the motion and Ms. Abraham and Mrs. Lewis voting against the motion to terminate Appellant's contract.
13. On the next day, June 7, 2023, Appellant received a letter from Mr. Carlos Palmer, attorney for the Greenwood Consolidated School District, advising that he was relieved of all duties as of the date of dismissal, setting forth the five bases for termination, and advising that he could request a hearing within five (5) days.
14. In Attorney Palmer's letter, he informed Appellant that he was "being dismissed for the following reasons concerning incompetence and neglect of duty" as follows:
 - a. Subpar results/data from 3rd grade state testing for the 2022-2023 school year;
 - b. Violation of Educator Code of Ethics (as based upon the testimony you provided during testimony for Kellia Washington's hearing in December 2022);
 - c. Fiscal mismanagement (not proactively tracking the District's fund balance and consequently borrowing 16th section land funds to cover payroll – December 2022);
 - d. Failure to notify MDE of special called meeting for May 31, 2023 pursuant to MDE prior directive; and
 - e. Violation of the due process rights of employee Talonda Henderson.

15. Although the record is devoid of the Appellant's letter requesting a hearing, this appears to be a no issue and the Court finds that Appellant timely requested and was granted a due process hearing before the School Board.
16. During the hearing held on July 7, 2023, former Board President Samantha Milton, Board Member Mary Magdalene Abraham and Appellant gave testimony on behalf of Appellant. Appellee offered no testimony of live witness. Also, several exhibits were admitted into evidence at the school board hearing.
17. At the end of the hearing, the board went into executive session and after deliberation the motion was made to reinstate Appellant as Superintendent and it failed to pass by the vote 2 in favor (Ms. Abraham and Mrs. Lewis) and 2 against (Dr. Bailey and Mr. Fant), with one recusal (Dr. Moore).

III. ANALYSIS AND DISCUSSION OF GROUNDS FOR DISMISSAL

This matter involves a dismissal of a Superintendent rather than a nonrenewal of a Superintendent's contract. A hearing to contest a dismissal proceeds under the same statute as a hearing to contest nonrenewal. See Miss. Code Ann. §§ 37-9-59 and 111. *Leland School Board District v. Brown* So 3d 508, 515. In *Burks v. Amite County School District*, 708 So 2d 1366 (1998), the Mississippi Supreme Court set forth the purpose and application of the Employment Procedures Act as follows:

The Mississippi School Employment Procedures Law was enacted in 1977 to "establish procedures for providing public school employees with notice of reasons for not offering an employee renewal of his contract." Miss. Code Ann. §37-9-101 (1977). This act does not establish a tenure system for the state nor require that decisions for non-reemployment be based on cause. It does, however, set guidelines to protect employees against actions in violation of their statutory or constitutional rights or those which are arbitrary or capricious. The purpose of the act is to protect "employees" from "unfair and sometimes vindictive practices of their superiors." *Jackson v. Board of Education*, 349 So.2d 550, 553 (Miss. 1977). "Employee" is defined as "any teacher, principal,

superintendent elected by the Board of Trustees, and other professional personnel employed by any public school district and required to have a valid certificate issued by the state department of education as a prerequisite to employment.” Miss. Code Ann. §37-9-103 (1977).
708 So.2d at 1369

(my emphasis added)

The scope of review of the chancery court in school cases on appeal shall be limited to a review of the record made before the school board or hearing officer to determine if the action of the school board is unlawful for the reason that it was:

- (a) Not supported by any substantial evidence;
 - (b) Arbitrary or capricious; or
 - (c) In violation of some statutory or constitutional right of the employee.
- Miss. Code Ann. §37-9-113(3) (Rev.2013). On appeal, the same standard applies, and this Court will not disturb the Board’s decision if there is “substantial credible evidence undergirding the ...[B]board’s findings of fact.” *Noxubee Cty. Bd. Of Educ. v. Givens*, 481 So.2d 816, 819 (Miss. 1985).

“Substantial evidence affords a substantial basis of fact from which fact in issue can be reasonably inferred.” *Leigh v. Aberdeen Sch. Dist.*, 207 So. 3d 1276, 1281 (¶19) (Miss. Ct. App. 2016) (internal quotation marks omitted) (quoting *Amite Cnty. Sch. Dist. v. Floyd*, 935 So. 2d 1034, 1039 (¶7) (Miss. Ct. App. 2005)). It amounts to “more than a mere scintilla of evidence, and does not rise to the level of a preponderance of the evidence.” *Id.*

In *Burks* supra, the Court stated:

The terms “arbitrary” and “capricious” have recently been defined by this Court in *McGowan v. Mississippi State Oil & Gas Bd.*, 604 So.2d 312, 322 (Miss. 1992). An act is arbitrary when it is not done according to reason or judgement, but depending on the will alone. *Id.* “Capricious” was defined as any manner, implying either lack of understanding of or disregard for the surrounding facts and settled controlling principles. *Id.* Once the superintendent has given demonstrable reason for nonrenewal of a contract, the burden shifts to the employee at the hearing to show “affirmatively and conclusively that the reasons relied upon by the School Board have no basis in fact.” *Calhoun County Bd. Of Educ. v. Hamblin*, 360 So.2d 1236, 1240 (Miss. 1978)
708 So.2d at 1370

At the hearing, the burden rests on the [District] to prove by a preponderance of the evidence that there were “adequate grounds for dismissal.” *Merchant v. Bd. of Trs. of Pearl Mun. Separate Sch. Dist.*, 492 So. 2d 959, 961 (Miss. 1986). See also *South Panola Sch. Dist. v. Rone*, 315 So. 3d 1046 (COA, 2020).

The issues raised on appeal may be framed as follows:

- (1.) WHETHER OR NOT THE DISTRICT’S DECISION TO TERMINATE SUPERINTENDENT’S CONTRACT ON THE GROUND OF SUBPAR RESULTS/DATA FROM 3RD GRADE TESTING FOR 2022-2023 SCHOOL YEAR WAS SUPPORTED BY ANY SUBSTANTIAL EVIDENCE OR WAS ARBITRARY OR CAPRICIOUS;
 - (2.) WHETHER OR NOT THE DISTRICT’S DECISION TO TERMINATE SUPERINTENDENT’S CONTRACT ON THE GROUND OF VIOLATION OF EDUCATOR CODE OF ETHICS (AS BASED UPON THE TESTIMONY PROVIDED DURING TESTIMONY FOR KELLIA WASHINGTON’S HEARING IN DECEMBER 2022), WAS SUPPORTED BY ANY SUBSTANTIAL EVIDENCE OR WAS ARBITRARY OR CAPRICIOUS;
 - (3.) WHETHER OR NOT THE DISTRICT’S DECISION TO TERMINATE SUPERINTENDENT’S CONTRACT ON THE GROUND OF FISCAL MISMANAGEMENT (NOT PROACTIVELY TRACKING THE DISTRICT’S FUND BALANCE AND CONSEQUENTLY BORROWING 16TH SECTION LAND FUNDS TO COVER PAYROLL – DECEMBER 2022), WAS SUPPORTED BY ANY SUBSTANTIAL EVIDENCE OR WAS ARBITRARY OR CAPRICIOUS;
 - (4.) WHETHER OR NOT THE DISTRICT’S DECISION TO TERMINATE SUPERINTENDENT’S CONTRACT ON THE GROUND OF FAILURE TO NOTIFY MDE OF SPECIAL CALLED MEEETING FOR MAY 31, 2023 PURSUANT TO MDE PRIOR DIRECTIVE WAS SUPPORTED BY ANY SUBSTANTIAL EVIDENCE OR WAS ARBITRARY OR CAPRICIOUS;
 - (5.) WHETHER OR NOT THE DISTRICT’S DECISION TO TERMINATE SUPERINTENDENT’S CONTRACT ON THE GROUND OF VIOLATION OF THE DUE PROCESS RIGHTS OF EMPLOYEE TALONDA HENDERSON WAS SUPPORTED BY ANY SUBSTANTIAL EVIDENCE OR WAS ARBITRARY OR CAPRICIOUS; and
 - (6.) WHETHER OR NOT THE DISTRICT’S DECISION TO TERMINATE SUPERINTENDENT’S CONTRACT WAS IN VIOLATION OF SOME STATUTORY OR CONSTITUTIONAL RIGHT OF THE EMPLOYEE?
- (1) WHETHER OR NOT THE DISTRICT’S DECISION TO TERMINATE SUPERINTENDENT’S CONTRACT ON THE GROUND OF SUBPAR RESULTS/DATA FROM 3RD GRADE TESTING FOR 2022-2023 SCHOOL**

YEAR WAS SUPPORTED BY ANY SUBSTANTIAL EVIDENCE OR WAS ARBITRARY OR CAPRICIOUS?

At the school board hearing, Appellant testified that during the 11 months he served as Superintendent that he was never given any specific goals by Appellee as related to this ground for his termination. He stated he created some SMART (Specific Measurable Attainable Result-Oriented Timed) goals for the district regarding academics, infrastructure, chronic absenteeism, parent-student engagement and parent-community engagement. According to Appellant, these goals were presented to and approved by Appellee at a school board meeting.

Appellant, while referring to Mississippi Academic Assessment Program – 3rd Grade Reading Initial Summative Assessment Results (May 2022) by State Superintendent Carey M. Wright, Ed. D, testified that the third-grade test scores of the Greenwood Leflore Consolidated School District overall passing percentage was 40.4%.

He further testified that:

“Bankston Elementary School had a 62.3 percent passing; Davis Elementary had a 47.9 percent passing; East Elementary had a 39.7 percent passing; Leflore County Elementary had a 43.8 percent passing; and Threadgill Elementary had a 19.7 percent passing.

...
For the 2023 school term, Greenwood Leflore Consolidated School District had a 49.4 percent passing; Bankston Elementary had a 55.3 percent passing; Davis Elementary School had a 54.3 percent passing; East Elementary had a 49.5 percent passing; Leflore County Elementary had a 45.9 percent passing; and Threadgill Elementary School had a 43 percent passing.”

Also, Appellant testified the Greenwood Leflore Consolidated School District had a nine percent increase over the year before which almost doubled the SMART goal of the 5%, he set for himself. He said that all of the schools' percentage rate increased except Threadgill Elementary which:

“— in the previous year before I got here had the lowest initial passing on third grade gate in the state of Mississippi as far as schools are concerned at 19.7 percent. But this year, Threadgill Elementary had a 43 percent passing, which is an incredible increase over the year before ...”

Appellant expressed his opinion that there was no basis to terminate his employment on the ground that the 3rd grade test scores were subpar.

Appellant explained the effect of COVID on the scores of the 3rd grade students. He testified that when the state of Mississippi shut down schools in March 2020, these 3rd grade students were in kindergarten and they did not get back into a traditional school setting until this year (2023). He further stated they missed almost nine weeks in their kindergarten year, they missed their first grade being virtual and their second grade being virtual. Appellant testified the years these third graders missed in the traditional school setting were very important for skill building to be successful on the third grade ELA exam. He concluded that if these third graders had not missed most of the face-to-face instruction from their first and second grade teachers that they would have been more successful on the tests. Appellant testified about systems he put in place which led to the nine percent increase in the students' test scores.

On cross-examination, Appellant admitted that the overall average of the third grade reading initial summative assessment results for the Greenwood Leflore

Consolidated School District is under 50 percent. This was the only related question to this ground for dismissal asked of Appellant during his cross-examination. Appellee failed to present any evidence to refute testimony offered by Appellant or to present any substantial credible evidence to support this ground as a reason to terminate the employment contract of Appellant. The District's decision is arbitrary and capricious because "it necessarily follows that [a] decision is arbitrary and capricious" if it "is not based on substantial evidence." *pub. Emps. ' Ret. Sys. v. Marquez*, 774 So. 2d 421,430 (¶35)

Brown supra 342 So. 3d at 517-18.

(2) WHETHER OR NOT THE DISTRICT'S DECISION TO TERMINATE SUPERINTENDENT'S CONTRACT ON THE GROUND OF VIOLATION OF EDUCATOR CODE OF ETHICS (AS BASED UPON THE TESTIMONY PROVIDED DURING TESTIMONY FOR KELLIA WASHINGTON'S HEARING IN DECEMBER 2022), WAS SUPPORTED BY ANY SUBSTANTIAL EVIDENCE OR WAS ARBITRARY OR CAPRICIOUS?

This ground cited as a reason for dismissal of Appellant's employment contract involves his testimony that he was not aware the Board was in executive session. The Board went into executive session and conducted a personnel hearing for Kellia Washington in December 2022. The Board had an executive session on February 23, 2022, wherein Appellant was not present but was on the speaker phone of Board President Samantha Milton. During the personnel hearing of Kellia Washington, held in December 2022, Appellant testified and denied that he was in executive session on February 23, 2022. On cross-examination, Appellant testified that he realized on January 4, 2023, by review of board minutes, that the Board was in executive session. Mrs. Milton testified that she told Appellant that the Board was in executive session but she

could not be certain that Appellant heard her. She further said it was a lot of confusion, a lot of talking and like mumbling and chattering among board members and an outside legal attorney on a conference call-like phone, so she could not testify Appellant heard her tell him the board was in executive session. Appellant later testified that he was not in executive session when he was on the speaker phone of Mrs. Milton.

According to the testimony of board member, Ms. Mary Magdalene Abraham, she was present at the January 4, 2023 executive session when the issue of the Appellant's truthfulness arose regarding his presence on Mrs. Milton's speaker phone in executive session on February 23, 2022. According to Ms. Abraham, during the executive session on January 4, 2023, Dr. Ro'Shaun Bailey made a motion to reprimand Appellant but the motion failed due to lack of evidence.

Appellant denied that he lied about knowing he was in executive session when he was on the speakerphone when he testified at Kellia Washington's hearing in December 2022. Appellee failed to inform Appellant of the specific Code of Ethics he was accused of violating. According to documents in the record, there are ten (10) Code of Ethics (Standards of Conduct). Appellant speculated that he was accused of violating Standard 2: Trustworthiness of Mississippi Educator, Code of Ethics (Standards of Conduct) by Mississippi Department of Education, which states:

An educator should exemplify honesty and integrity in the course of professional practice and does not knowingly engage in deceptive practices regarding official policies of the school district or education institution.

Appellant denied knowingly engaging in any deceptive practices. He testified that during the executive session on January 4, 2023, Dr. Bailey made a motion, seconded by Mr. Henry Fant, for a written reprimand of him for a violation of the Code of Ethics. The motion failed by a

vote of 3 to 2. Appellant questioned why this is a ground for his termination since it has already been resolved in his favor. The Court has the same concern and concludes that this ground lacks any substantial evidence and is arbitrary and capricious.

(3) WHETHER OR NOT THE DISTRICT'S DECISION TO TERMINATE SUPERINTENDENT'S CONTRACT ON THE GROUND OF FISCAL MISMANAGEMENT (NOT PROACTIVELY TRACKING THE DISTRICT'S FUND BALANCE AND CONSEQUENTLY BORROWING 16TH SECTION LAND FUNDS TO COVER PAYROLL – DECEMBER 2022), WAS SUPPORTED BY ANY SUBSTANTIAL EVIDENCE OR WAS ARBITRARY OR CAPRICIOUS?

Mrs. Milton testified that the budget was adopted on July 5, 2022, with a shortfall in the millions. She said it was adopted a mere four days after Appellant's effective date of hire. She testified that at some point during the latter part of the Fall of 2022, Appellant approached the Board about the shortfall and provided two options: to borrow from the 16th Section Funds or get a short-term loan. According to Mrs. Milton, during the meeting on December 12, 2022, the Board elected to borrow from the 16th Section Funds (\$284,307.13) by a vote of 4 to 1 with her casting the sole dissent vote. She said if this transfer had not been made, the District would have not been able to make its December 2022 payroll.

Appellant testified that he was hired four days before the District approved the budget on July 5, 2022, and he had no input on any of the line items in the budget. He said the adopted budget showed a deficiency or shortfall of revenues over expenditures in the amount of \$697,509.96. Appellant said he requested, from the business manager, a copy of the audit for the previous year and audit for the Fiscal Year 2021 and was told the audit had not been done. He testified he inquired of the business manager; how can we construct a budget without doing an audit? Appellant said he later learned that the bank reconciliations for the school term, 2021-2022, had not been completed in the District. He testified that without completed bank

reconciliations, the District did not know its fund balance. Appellant recommended and the Board approved to hire an outside consultant to complete the bank reconciliations for 2021-2022. He testified the Board received financial reports of the expenditures for the month or maybe the previous month that allowed for the tracking of the budget.

Appellant said at some point during the fall semester he approached the Board with options to prevent a shortfall and cover payroll for the month of December. He said it was brought to his attention that by looking over the financials and speaking with the business manager, that there would be a shortfall to cover December payroll. He said he and the business manager discussed the funds shortfalls and options to the Board and the policy of transfers. Appellant testified that the District transfers policy allowed the Board to transfer money from 16th Section Fund to the general fund, in order to meet payroll. After the options were given to the Board, Mrs. Milton previously testified the Board elected to transfer from the 16th Section Funds. According to Appellant and the minutes of the December 12, 2022 meeting, Mrs. Lewis motioned, Dr. Moore seconded to approve to borrow \$784,307.13 from the 16th Section Interest to be paid back with the reimbursement. The motion passed by a vote of 4 to 1, with Milton casting the dissent vote. Appellant testified he took the appropriate action in his recommendation to the Board to prevent the December payroll shortfall. He emphasized the fact he inherited and had no input in the budget.

In addition to a lack of testimony of Appellee to refute any testimony tendered by Appellant and his witnesses, Appellee failed to demonstrate that the recommendation to transfer 16th Section Funds into the general account was in violation of any policy. Appellee does not point to any misleading act or deceptive practice of Appellant in his recommendations to the Board. Appellant's testimony that the Board received financial reports of the expenditures on a

monthly basis to allow the tracking of the budget remain unrefuted. Finally, and most importantly, the same Board which approved the transfer of funds from the 16th Section Funds to avoid a payroll shortfall, is now accusing Appellant of taking an action only the Board could have taken. Appellant had absolutely no authority to make a decision to borrow from 16th Section Funds nor did he make any such decision. The Court finds, without any reservation, that this stated ground for dismissal was not supported by any substantial evidence and was arbitrary and capricious.

(4.) WHETHER OR NOT THE DISTRICT'S DECISION TO TERMINATE SUPERINTENDENT'S CONTRACT ON THE GROUND OF FAILURE TO NOTIFY MDE OF SPECIAL CALLED MEEETING FOR MAY 31, 2023 PURSUANT TO MDE PRIOR DIRECTIVE WAS SUPPORTED BY ANY SUBSTANTIAL EVIDENCE OR WAS ARBITRARY OR CAPRICIOUS?

Pursuant to a letter dated April 17, 2023, addressed to Board President Ro'Shaun Bailey and to Appellant, from Dr. JoAnn Malone, Associate State Superintendent, Office of Accreditation of Mississippi Department of Education (MDE) informing them that since MDE is still receiving complaints regarding allegations of violations of Accreditation Process Standards 1, 1.1, and 1.2, that it is requiring the District to notify it of "all board meetings, regularly and special-called and work sessions...". The letter stated warnings were given to the District on April 7, 2022 and August 4, 2022. According to the testimony of Appellant, the accusations of violations of standards involved the school board's responsibilities and members interfering or meddling in day-to-day operations.

On May 31, 2023, Appellant called board president (Dr. Bailey) and asked him to call a special meeting for that date. Dr. Bailey said okay and he would see if he can get a quorum. Appellant testified the board clerk informed MDE that there would be a special call meeting before the work session which apparently was already scheduled for that day. He said he

informed the board clerk of the special called meeting. According to the evidence, the board clerk informed MDE of the meeting. At some point in time, Appellant acknowledged that the special called meeting would not take place due to lack of quorum. Appellant said he informed the board clerk that the board would not meet. He further said he made no direct attempt to call MDE to let it know about the cancellation of the special called meeting. Representatives of MDE appeared for the called meeting in Greenwood and learned that it had been cancelled. Dr. Malone, of MDE, sent an email to Appellant and Dr. Bailey expressing concerns that MDE was not informed the special called meeting had been cancelled and the trip to Greenwood made by MDE's representatives.

Appellant contends there is no substantial evidence to support this ground for his termination, as written and given to him, because MDE was notified of the special called meeting on May 31, 2023. This was evidenced by the mere fact that representatives of MDE came to Greenwood and learned that the meeting was postponed due to a lack of quorum. The real issue is not failure to give MDE notice of the meeting but a failure to give MDE notice that the special called meeting would not take place due to lack of quorum. However, this issue is not before the Court. Even assuming arguendo that this issue is before the Court, the Appellant testified it was not his responsibility to notify MDE of meetings and cancellation of meetings. Appellant argued this was the responsibility of the board clerk. On cross-examination, Appellant admitted the board clerk answers directly to him in her capacity as assistant to the Superintendent, but not in her capacity as board clerk. He contended this was a separate job. Appellant recommended the person holding the board clerk position for hire and he admitted he was over the day-to-day operations of the District. He failed to produce the job descriptions of the two positions he claimed the board clerk serves in the District. The Court is convinced that if

Appellee would have cited Appellant for failure to notice MDE that the special called meeting was cancelled then this issue would have been resolved against Appellant. Even if so, this ground, standing alone, would not in itself warrant a dismissal of Appellant's employment contract. The Lead Attorney for Appellee conceded during the hearing that not any one of the stated grounds, standing alone, warrant a dismissal and the Court agrees with him.

(5.) WHETHER OR NOT THE DISTRICT'S DECISION TO TERMINATE SUPERINTENDENT'S CONTRACT ON THE GROUND OF VIOLATION OF THE DUE PROCESS RIGHTS OF EMPLOYEE TALONDA HENDERSON WAS SUPPORTED BY ANY SUBSTANTIAL EVIDENCE OR WAS ARBITRARY OR CAPRICIOUS?

This ground for dismissal of the Superintendent involves his action in imposing an immediate three (3) days suspension of an employee, Talonda Henderson: a teacher at the Greenwood Middle School. According to the letter dated March 21, 2023 from Appellant addressed to Talonda Henderson, she was suspended for [1] Violation of Standard 1: Professional Conduct and [2] Violation of Standard 2: Trustworthiness. Appellant testified he received and reviewed two (2) videos concerning the acts and conducts of Talonda Henderson. He said there was a gang fight at one of the schools involving Talonda's children and Talonda took her children to the home of a student her children had a physical altercation. According to his testimony the ring videos presented to him showed her children standing on the side walk asking the student to come outside of the home, that the person in the house asked why and one of Talonda's children said "She knows what this is. She needs to come on outside." He said during this time Talonda was talking from the car. Appellant further testified the second ring video showed Talonda walked up to the door of the home and asked for the student to tell her where the other children live, who got into the physical altercation with her children. He said Talonda was provided a general vicinity as to where the other students lived. Appellant said, based on the videos, Talonda

“...was orchestrating a situation to where they were able to – get their children to be put in dangerous situation by bringing them to that home, by them going to the home, and with that being said, you know, if that was the state of mind of that employee, you know, in the community, it was incumbent upon me to make the best decision for the safety of the students in the Greenwood Leflore Consolidated School District, you know, concerning that particular situation.”

Appellant testified that the action of Talonda justified an immediate suspension. He said he believed she posed a potential threat or danger to the other students and that her continued presence on campus might disrupt normal school operations. The March 21, 2023 letter gave Talonda notice of her three (3) days suspension. Appellant testified she was suspended for Wednesday, March 22nd through Friday, March 24th, 2023.

Appellant testified that he relied upon Section 37-9-59, MCA (As Amended) to justify his action which states in pertinent parts as follows:

In the event the continued presence of said employee on school premises poses a potential threat or danger to the health, safety or general welfare of the students, or, in the discretion of the superintendent, may interfere with or cause a disruption of normal school operations, the superintendent may immediately relieve said employee of all duties pending a hearing if one is requested by the employee.

(my emphasis added)

On cross-examination, Appellant admitted in his letter of immediate suspension to Talonda, he did not state in the letter that he felt Talonda was a threat or danger to the health, safety, or general welfare to the students. He also admitted the letter failed to notify Talonda that she was immediately released from all duties pending a hearing.

According to the Appellant’s testimony, Talonda requested a hearing on her suspension. He did not recall the hearing took place on April 19, 2023¹, but recalled the board going into executive session and that Talonda was represented by an attorney. He said he recalled and agreed the attorney stated he had violated Talonda’s due process rights. Appellant said the Board

¹ Appellant was later handed a copy of the Transcript of Talonda’s Hearing and agreed it was held on April 19, 2023.

dismissed him and others from the room to discuss and deliberate. He said the Board allowed him back in the room and the attorney for Talonda made a motion to dismiss and the Board agreed to it and overturned his decision to suspend Talonda.

Further Appellant testified that Talonda was cited for violation of trustworthiness when she testified during the disciplinary hearing for students involved in the gang fight when she denied the video showing she went to the home of one the students that her child got into a physical altercation. She denied she went to the home and denied she took the children to the home. According to Appellant, the videos clearly showed that Talonda's testimony was untruthful and not trustworthy. Section 37-9-59, MCA (As Amended) and in particular that cited portion of this statute, herein above relied upon by Appellant, requires a hearing prior to suspension. Although Appellant had good intentions, he nevertheless failed to give Talonda notice and an opportunity to be heard prior to implementing the three (3) days suspension. As such, the Court finds this cited ground was supported by substantial evidence and was not arbitrary or capricious. The Court also finds that this ground standing alone would not have justified the termination of Appellant's contract. If so, Appellee would have taken termination action against Appellant on or soon after April 19, 2023.

(6.) WHETHER OR NOT THE DISTRICT'S DECISION TO TERMINATE SUPERINTENDENT'S CONTRACT WAS IN VIOLATION OF SOME STATUTORY OR CONSTITUTIONAL RIGHT OF THE EMPLOYEE?

A Judicial review pursuant to §37-9-113 (3) (c) requires this Court "to determine if the action of the school board is unlawful for the reason that it was: ... (c) in violation of some statutory or constitutional right of the employee." Here, Appellant proved the District entered into an employment contract with him as Superintendent of the school district on February 18, 2022; that on December 19, 2022, the Board voted to extend his contract for the period of July 1,

2022 through June 30, 2026. Appellant received, on June 7, 2023, a letter from the Counsel of the District stating in essence he had been dismissed for cause. Appellant's employment contract and dismissal letter were made a part of the record on this appeal. In his dismissal letter, Appellant was informed he was being relieved of all duties of the office as of the date of dismissal. He was informed that he could request a hearing in the time allowed by law and if he timely requested a hearing, his compensation shall continue up to and including the date that the initial hearing is set by the school board. Appellant did in fact requested and was provided a hearing. Appellant admitted he was eventually paid compensation up to and including the date of his hearing. During his testimony, Appellant said on June 6, the Board went into executive session to discuss the performance of the Superintendent. He testified as follows:

Dr. Ro'Shun Bailey began to read, you know, some reasons that he felt like that my job was – the job that I was doing was insufficient, subpar test scores, violation of Code of Ethics, you know, not – you know, not contacting MDE about the board meetings, and there were a couple more that was on there.

And – you know, and I'm listening, you know, to these things and, you know, again, I heard the one about the violation of Code of Ethics, about, you know, me being in executive session and saying that I was not during the termination hearing, and I'm thinking in terms of, you know, we dealt with that.

And with that being said, once he got done, he said, "For these reasons, I'm making a recommendation for termination of the superintendent," and he asked for a second. There was silence in the executive session.

Henry Fant began to talk and, you know, he was talking about, you know, the district not going in the right direction. I asked – I'm like, you know, "What does that" – "what does that mean," you know.

And I began to talk about the test scores that we had from – that we already had for the third-grade gate, talk about test scores as far as pre-K is concerned, that – you know, that we went up double digits percentage-wise in the student scoring at the level that they should based on state standards, kindergarten. Those were the only three we had.

I talked about the Excel Academy that we had in place, you know, to help with those things that we were trying to do. I talked about those kind things and – you know, because this totally caught me off guard, you know. I was trying to explain you know, or plead my case based on things that just, you know, came up, and, you know, Mr. Fant said that, you know – that, you know, that I was – that I

must be something to the effect of me – must be, you know, understanding what they’re saying, because I was getting emotional.

And I’m like, you know, this is something that is just brought upon me, you know, because I, you know, had no idea, you know, that this was going to happen. But that’s the way that it happened. Then motion was put forth again and

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by Dr. Ro’Shaun Bailey and it was seconded by Mr. Fant, and Dr. Moore voted yea and Dr. – excuse me, Ms. Abraham and Ms. Lewis, they voted nay and that was that.

Appellant contended he was not offered a pre-termination hearing and he alluded that not all reasons for his dismissal stated in the Attorney for school board’s letter on the next day were given to him on June 6. The record fails to disclose which reasons he was not informed of during the executive session. The Court is satisfied that Appellant had an opportunity to address reasons given for his termination and any shortfalls claimed or alluded to by him were minor and cured by the hearing afforded to him on July 7, 2023. In addition, he received his compensation up to an including the date of the hearing. Based upon the record on review and governing laws of this state and the United States, the District’s decision to dismiss Appellant’s contract was not in violation of any statutory or constitutional right of Appellant.

Based upon the findings of the Court, Appellant prevailed on four of the five grounds given for his dismissal. He did not prevail on the ground that he violated the due process rights of Talonda Henderson. The Court found that this ground standing alone did not justify the termination of Appellant’s contract as Superintendent. The burden was on the District to prove by preponderance of the evidence that there were “adequate grounds for dismissal”. *Merchant v. Bd. of Trs. of Pearl Mun. Separate Sch. Dist.*, 492 So. 2d 959, 961 (Miss. 1986). See also *South Panola Sch. Dist. v. Rone*, 315 So. 3d 1046 (COA, 2020). Appellee failed to meet its burden. Appellee failed to call any live witness to testify about the stated grounds to justify its termination of Appellant’s contract. The evidence presented for grounds (Issues 1-4) above was not supported by any substantial

evidence and was arbitrary and capricious. Finally, pursuant to Section 37-9-113 (3) (c), the Court was required to find and so finds that the action of the District was not in violation of any statutory or constitutional right of Appellant.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the decision of the Greenwood Leflore Consolidated School District to terminate James Johnson-Waldington's employment contract as the Superintendent is not supported by any substantial evidence and is arbitrary and capricious and the decision is hereby reversed.

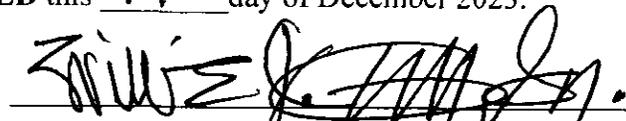
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that James Johnson-Waldington is reinstated as Superintendent of Greenwood Leflore Consolidated School District effective immediately.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that James Johnson-Waldington is awarded backpay in an amount to represent the difference between the salary that he would have earned since June 30, 2023 had he not been terminated by the District minus any earnings as a consultant since his termination; that the parties are ordered to consult the Court if they are unable to agree upon the appropriate amount of backpay for the Superintendent.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any and all fringe and other benefits afforded to James Johnson-Waldington by his employment contract shall be reinstated.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all costs are assessed against Greenwood Leflore Consolidated School District.

SO ORDERED, ADJUDGED, AND DECREED this 14th day of December 2023.



CHANCELLOR

RECEIVED

DEC 14 2023

JOHNNY L. GARY, JR., CHANCERY CLERK

BY 