IN THE SUPREME COURT FOR THE STATE OF MISSISSIPPI

DEBRA L. WINTERS — **APPELLANT**

VS. — **CAUSE NO. 2007-CA-00476**

CALHOUN COUNTY SCHOOL DISTRICT and CALHOUN COUNTY BOARD OF EDUCATION — **APPELLEES**

ON APPEAL FROM
THE CHANCERY COURT OF CALHOUN COUNTY, MISSISSIPPI

REPLY BRIEF

ORAL ARGUMENT REQUESTED

DAVID BURKS LANGFORD (MSB # [redacted]
MATTHEW DANIEL WILSON (MSB # [redacted]
Langford & Associates, PLLC
Attorneys at Law
212 East Main Street
Starkville, MS 39759
Telephone: (662) 324-6306
Facsimile: (662) 320-4275

Attorneys of Record for the Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

ARGUMENT

I. Mrs. Winter's Petition for Appeal Does Demonstrate a Set of Facts Entitling Her to Relief

The Appellees' Brief is predicated upon the faulty assumption that Mrs. Winter's Petition for Appeal incorporates "conclusory allegations" or "legal conclusions masquerading as factual conclusions." (Appellees' Brief at 1.) This assumption is patently absurd.

The Petition for Appeal states: "Mrs. Winters had no experience teaching special education or students with special needs, including those with learning disabilities or behavioral problems." (R.E. at 9; C.P. at 8.) In the context of this allegation, the phrase "behavioral problems" is included as a subset of "special needs." Accordingly, one may glean from the Petition for Appeal that Mrs. Winters does not assert a lack of experience teaching disruptive students altogether. Rather, Mrs. Winters claims that she lacks experience teaching students with behavioral problems that are so severe as to categorize the children as having "special needs."

Mrs. Winters' statement about her lack of experience is not a legal conclusion. Rather, it is a factual contention that may be proven by objective means. Even the School District recognizes this. We may surmise from the School District's own words that Mrs. Winters' assertions could have been verified by a sworn affidavit. (See, generally, Appellees' Brief at 10-12.) *A fortiori*, if her assertions could have been corroborated by extrinsic evidence, such as an affidavit, then her assertions would necessarily be factual contentions, not legal conclusions masquerading as such.

It is undisputed that the School District attempted to transfer Mrs. Winters to a school comprised entirely of students with severe behavioral problems. See *Miss. Code Ann.* § 37-13-92 (1). Intuitively, if a child has a behavioral problem that is so severe as to warrant the segregation of that child from the rest of the student body, then invariably such a child would

have special needs. Therefore, by asserting that she had no experience teaching students with special needs—particularly those students with behavioral problems—Mrs. Winters presents in her Petition for Appeal a set of facts in support of her contention that she was demoted. See Penn Nat'l Gaming, Inc. v. Ratliff, 954 So.2d 427, 430 (Miss. 2007); see also Bd. of Edu. for the Holmes Co. Schs. v. Fisher, 874 So.2d 1019, 1022 (Miss. App. 2004). Accordingly, the esteemed Chancellor erred when he sustained the School District's Motion to Dismiss under *Miss. R. of Civ. P.* 12(b)(6). See Penn Nat'l Gaming, Inc., 954 So.2d at 430.

The School District further contends that Mrs. Winter's assertions are legally inaccurate. (Appellees' Brief at 10.) Making reference to the Guidelines for Mississippi Educator Licensure K-12 (hereinafter "K-12 Licensure Guidelines"), the School District asserts:

> Specifically the Mississippi Department of Education requires that to teach in an alternative program in the state of Mississippi a teacher must merely hold a valid teaching license or certificate. (R. 111-113; RE 59-61). Appellant holds a valid teaching license and certificate. *Id.* The Mississippi Department of Education does not require that a teacher teaching in an alternative program be certified in every subject area that she might teach. *Id.* Without question, Appellant's teaching certification and license meet that requirement and her certification is perfectly sufficient for the position.

(Appellees' Brief at 10-11.) Since the K-12 Licensure Guidelines require an "Alternative School/Program Teacher" to possess a "valid license" (C.P. at 113), the School District reasons that Mrs. Winters could teach any subject at the Alternative School simply because she has a "valid license."

If this interpretation of the K-12 Licensure Guidelines is correct, then the Legislature and the State Department of Education have created a bifurcated educational system where some children are given a quality education while others are not. For instance, if a teacher must have endorsement number 181 on her license to teach biology at the High School (C.P. at 112), while a teacher needs only a "valid license" to teach biology at the Alternative School (C.P. at 113), then the quality of biology instruction at the High School would be superior to the instruction

given at the Alternative School. Likewise, if a kindergarten teacher having a "valid license" bearing endorsement code 116 (C.P. at 112) may teach algebra at the Alternative School (C.P. at 113), while algebra classes at the High School may be conducted only by a teacher having a license bearing endorsement code 154 (C.P. at 112), then the quality of algebra instruction at the Alternative School would be inferior to that of the High School. Otherwise, endorsement codes would be of little value.

This dichotomy places the School District in a conundrum. On the one hand, the School District argues that Mrs. Winters is certified to teach any subject at the Alternative School simply because she has a "valid license." (Appellees' Brief at 10-11.) On the other hand, one would hardly expect for the School District to admit that the Alternative School provides inferior learning opportunities for its students. Nevertheless, the School District cannot have it both ways. Either (1) the Alternative School is equal to the High School with respect to requirements for teacher licensure, in that teachers are required to teach within their endorsement areas, or (2) the Alternative School is promulgating an inferior educational product by allowing teachers to instruct outside of their endorsement areas. As such, the School District must either admit to demoting Mrs. Winters or to demoting its students.

Although the Appellant stands by her contention that her transfer was a demotion as per the Fisher test, 874 So.2d at 1022, Mrs. Winters respectfully submits that this Honorable Court should clarify the Fisher test to include situations where teachers are asked to teach outside of their endorsement areas. By construing the word "certified" to include endorsement areas, this Honorable Court would maintain the spirit of the Fisher holding while adding safeguards to prevent the further bifurcation of our state's educational system. See id. By making this simple clarification to the Fisher decision, this Court would give school districts greater incentive to hire qualified educators to teach all of Mississippi's school children—not just the well-behaved ones.

The School District would likely oppose the imposition of any such safeguards. This is made apparent from its public policy argument:

> If this Court accepts the Appellant's argument... its decision would have a chilling effect in school districts across this state. Specifically, school districts would effectively be prohibited from ever assigning a teacher to the alternative program unless that teacher had previous experience in the alternative program or expressly agreed to the assignment. This would hamper school districts' ability to manage and administer their alternative programs, which are mandated by law. *Miss. Code Ann.* §37-13-92.

(Appellees' Brief at 12, n.4.)

What the School District fails to note is that under the very statute that it has cited, an alternative school is required to comply with certain minimum guidelines. In particular, *Miss. Code Ann.* §37-13-92 (7) states, in pertinent part: "The minimum guidelines for alternative school programs shall also require the following components: ... (h) A motivated ... staff."

Since Mississippi law requires alternative schools to have "motivated" teachers, it seems counter-productive for the School District to coerce an educator into (1) teaching subjects for which she has not been trained to (2) students having severe behavioral problems beyond her recent experience to handle (3) at a school where the various licensure endorsements are completely disregarded. Instead of motivating Mrs. Winters, the School District demoralized her. Such actions are against the expressed public policy of the Legislature. See §37-13-92 (7).

Therefore, instead of allowing school districts to demoralize their workforce by transferring teachers to sub-par schools where their talents may be misappropriated or wasted, this Court should encourage school districts to hire alternative school teachers who are up to the formidable task of teaching and correcting students who may be but one step away from the State Penitentiary. Undersigned counsel respectfully submits that by reversing the lower court's judgment, this Honorable Court will send a strong message to public schools throughout the

State: "Hire the very best people to teach all of Mississippi's children—even those children who have fallen through the cracks. Leave no child behind."

By attempting to transfer Mrs. Winters to a school where teachers may be required to teach outside of their endorsement areas, and by asking her to teach troubled students for whom she had limited (if any) previous experience, the School District demoted her. See Fisher, 874 So.2d at 1022. As such, Mrs. Winters' contract was not renewed. See id. Accordingly, Mrs. Winters prays that this Honorable Court vacate the judgment of the lower court in this matter.

II. Mrs. Winter's Did Not Waive Her Right to Appeal Under the Education Employment Procedures Law of 2001 (§§ 37-9-101, *et. seq.*) ("EEPL")

The School Board implemented the Grievance Policy in order to "secure at the first possible administrative level, an equitable solution to *any grievance*." (Emphasis not in the original.) (R.E. at 24; C.P. at 101.) A "grievance," as defined by the Grievance Policy, is "a complaint by an individual based upon an alleged violation of a person's rights *under state or federal law* or Board policy." (Emphasis not in the original.) (R.E. at 24; C.P. at 101.) The Grievance Policy states in pertinent part: "Grievances *shall be processed* in accordance with the following procedures: ... *All* grievances ... *must* be presented orally to the principal." (R.E. at 24; C.P. at 101.) (Emphasis not in the original.) (R.E. at 24; C.P. at 101.)

The Education Employment Procedures Law of 2001 (*Miss. Code Ann.* §§ 37-9-101, *et. seq.*) (hereinafter "EEPL") is a state law. It affords teachers certain rights with respect to how and when their employment contracts may be non-renewed. See id. Since the Grievance Policy purports to cover **all complaints** involving alleged violations of rights under state law, (R.E. at 24; C.P. at 101), the scope of the Grievance Policy would necessarily overlap with that of the EEPL. Moreover, since the Grievance Policy mandates that **all grievances** be processed according to its procedures, Mrs. Winters had a duty to submit her complaint to the principal,

then to the superintendent, and then to the School Board. (R.E. at 24-25; C.P. at 101-102.) Otherwise, she would have been in breach of her employment contract, which mandates compliance with School District regulations. (C.P. at 76.)

Given the mandatory language of the Grievance Policy, the only way to reconcile the Grievance Policy with the EEPL, particularly with regard to employment matters, would be to interpret the two policies as being extensions of each other—*i.e.*, by treating the Level III School Board hearing as being the equivalent of an EEPL hearing. Otherwise, a teacher would need to appeal the School Board's decision at the Level III hearing to the School Board itself. Such a "vain and useless act" would be inconsistent with state law, see Ronald Adams Contractor, Inc. v. Miss. Transp. Com'n, 777 So.2d 649, 654 (Miss. 2000). Since a school board may not promulgate policies that are inconsistent with state law, see *Miss. Code Ann.* § 37-7-301 (l), one must surmise that the Grievance Policy and the EEPL are extensions of each other, at least with respect to employment concerns.

The School District is quick to point out that the EEPL is written in the Staff Handbook. (Appellees' Brief at 18-19.) Therefore, the School District contends that Mrs. Winters could have selected to follow either the Grievance Policy or the EEPL. (Appellees' Brief at 18-19.) By choosing the Grievance Policy, the School District claims that she waived her rights under the EEPL. (Appellees' Brief at 18-19.) This assertion can be undermined, however, by utilizing basic contract theory.

Mrs. Winters' employment contract, dated June 28, 2005, was "subject to all applicable policies, resolutions, rules and regulations of the employer and the laws of the State of Mississippi." (C.P. at 76.) The Staff Handbook "contain[s] the regulations and policies of the Calhoun County School District." (C.P. at 204.) All teachers "are responsible for ... complying

with the regulations detailed in the [Staff Handbook]." (C.P. at 204.) Therefore, the Staff Handbook operated as an extension of Mrs. Winters' employment contract.

Since the Staff Handbook was written by the School Board, and since the Staff Handbook is incorporated by reference into Mrs. Winters' contract (C.P. at 76), any ambiguity contained therein must be construed against the School District per the doctrine of *contra proferentem*. See Richardson v. Marqueze, 59 Miss. 80, 1881 WL 4553 at *5 (Miss. 1881) ("The maxim applicable here is *Verba fortius accipiuntur contra proferentem*; for, says Blackstone, 'men would always affect ambiguous and intricate expressions, provided they were afterwards at liberty to put their own construction upon them.'").

The School District could have expressly limited the Grievance Policy's application to all grievances except for employment related matters. Alternatively, the School District could have unambiguously given employees the choice of operating under the Grievance Policy or the EEPL.[1] Instead, the School District used phrases such as "all grievances," "all complaints," and "must be presented" to describe the application of the Grievance Policy. (R.E. at 24; C.P. at 101.) Therefore, such terms must be construed in favor of Mrs. Winters. See Richardson, 59 Miss. 80, 1881 WL 4553 at *5. Accordingly, the School District should bear the consequences of placing into the Grievance Policy overly broad terminologies that may be construed to include subjects otherwise reserved by the EEPL. See id. Moreover, any confusion that may have resulted from having overlapping policies in the Staff Handbook must be resolved in favor of Mrs. Winters, since the School District wrote the policies. See id.

Therefore, Mrs. Winters reiterates her contention that she did not waive her right to an appeal under the EEPL and respectfully prays that this Court reverse the lower court's ruling.

---

[1] Although the Staff Handbook does state that "all employees are entitled to due process as detailed in Board Policy GAE-R; GBK; GBN-R," (C.P. at 131), the Staff Handbook does not expressly state that the employee may choose between the three policies.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Debra L. Winters, the Appellant, respectfully requests that this Honorable Court, after a *de novo* review of both parties' briefs, the record in this case, and the oral argument of the parties, find that the esteemed Chancellor abused his discretion in determining that Mrs. Winters had not been demoted and that she had waived her rights to an appeal under the Education Employment Procedures Law of 2001 (§§ 37-9-101, *et. seq.*) Accordingly, Mrs. Winters respectfully requests that this Honorable Court enter an order reversing the Chancellor's order granting the Motion to Dismiss that was filed on behalf of the Calhoun County School District and the Calhoun County Board of Education.

In the alternative, and as stated in the Appellant's Brief, Mrs. Winters respectfully requests that this Honorable Court find that the esteemed Chancellor erred by not treating the Motion to Dismiss as being one for summary judgment. Accordingly, Mrs. Winters respectfully requests that this Honorable Court reverse the esteemed Chancellor's order on the grounds that material issues are in dispute and/or that the Appellees were not entitled to judgment as a matter of law.

In any event, Mrs. Winters respectfully requests that this Honorable Court enter an order reversing that portion of the Chancellor's order that finds Mrs. Winters had not been demoted.

Respectfully submitted, this the 18th day of October 2007.

DEBRA L. WINTERS

BY: _____

MATTHEW DANIEL WILSON
(MSB # [redacted])

Prepared by:

LANGFORD & ASSOCIATES, PLLC
Attorneys at Law
212 East Main Street
Starkville, MS 39759
Telephone: (662) 324-6306
Facsimile: (662) 320-4275

CERTIFICATE OF SERVICE

I, Matthew D. Wilson, counsel for Debra L. Winters, do hereby certify that I have on this date filed a bound original and three (3) bound copies of this Reply Brief with the Clerk of the Supreme Court. I further certify that I have filed with the Clerk an electronic copy of the Reply Brief on CD-ROM. I further certify that I have on this date sent a copy of the Reply Brief to the following persons via first-class mail, postage prepaid:

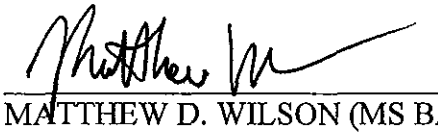
The Honorable Edwin Hayes Roberts, Jr.
Chancellor
P. O. Box 49
Oxford, Mississippi 38655

James A. Keith, Esquire
ADAMS AND REESE, LLP
Post Office Box 24297
Jackson, MS 39225-4297

R. Jarrad Garner, Esquire
ADAMS AND REESE, LLP
Post Office Box 24297
Jackson, MS 39225-4297

Laura Ford, Esquire
ADAMS AND REESE, LLP
Post Office Box 24297
Jackson, MS 39225-4297

Respectfully submitted, this the 16 day of October, 2007.

BY: 

MATTHEW D. WILSON (MS BAR [redacted]