

**SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

HENRY SIMPSON

APPELLANT

V.

CASE NO. 2007-CA-01159

**HOLMES COUNTY BOARD OF
EDUCATION; HOLMES COUNTY
SCHOOL DISTRICT**

APPELLEES

APPEAL FROM THE CHANCERY COURT OF HOLMES COUNTY

**REPLY BRIEF OF APPELLANT HENRY SIMPSON
(ORAL ARGUMENT NOT REQUESTED)**

SUBMITTED BY:

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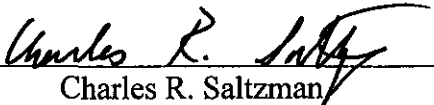
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HENRY SIMPSON**

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the judges of the Court may evaluate possible disqualifications or recusal.

- 1) Neysha Sanders, Esquire, Counsel for Holmes County School District.
- 2) Alix Sanders, Esquire, Counsel for Holmes County School District.
- 3) Sandra Young, Former President, Holmes County School District.
- 4) Stephen Bailey, Former Superintendent, Holmes County School District.
- 5) Powell Rucker, Superintendent, Holmes County School District.
- 6) Henry Simpson, Appellant.
- 7) Charles R. Saltzman, Attorney for Appellant.
- 8) Judge Janace Harvey-Goree, Chancery Court Judge, Holmes County.

This the 3rd day of July, 2008.



Charles R. Saltzman

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**BEFORE THE SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

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APPELLANT/PETITIONER

V.

CASE NO. 2007-CA-01159

**HOLMES COUNTY BOARD OF
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APPELLEE/RESPONDENT

**REPLY BRIEF OF APPELLANT HENRY SIMPSON
(ORAL ARGUMENT NOT REQUESTED)**

COMES NOW Appellant, Henry Simpson, by and through counsel, and files this his Reply Brief in the above name and numbered cause and would show unto the Court the following:

**I. THE DECISION TO TERMINATE HENRY SIMPSON IS NOT
SUPPORTED BY SUBSTANTIAL EVIDENCE AND
THEREFORE IS ARBITRARY AND CAPRICIOUS**

The decision to terminate Henry Simpson was based on alleged policy violations regarding three incidents which occurred on February 24, 2006 and Mr. Simpson's alleged failure to report these incident to the Superintendent. The Brief of Appellees suggests that Mr. Simpson "offers smoke and mirrors to divert attention" from the substantial evidence that supports his termination. It is obvious that the

“smoke and mirrors” are cards dealt by the Holmes County School District. The school district does not offer any evidence or references to the hearing transcript which support their position or respond to Simpson’s arguments. The school district does state that Mr. Simpson should have been terminated because he was “the captain of the ship” and because he failed to have “his finger on the pulse of his campus.” Neither of which are justifiable reasons to terminate a principal or in accordance with the policies originally referenced as reasons for his termination.

The policies that Mr. Simpson is alleged to have violated require notice to him before he can do anything. The school board’s own witnesses testified as to their own lack of knowledge regarding when Mr. Simpson received notice of these incidents. They further testified that Mr. Simpson should not and can be responsible for incidents for which he had no knowledge of. (H.T.33.13-18)(H.T.34.14-18)(H.T.78.22-25)(H.T.79.1-11). The school district fails to cite any portion of the record, authority, or policy of the school district which supports their position or counters the Appellant’s arguments.

Furthermore, the Holmes County School District contends that Simpson had not properly trained his staff and he failed as an administrator to ensure that he had staff capable of maintaining order, but cites no evidence in the record to support this position.

The facts, testimony, and evidence before this court show that there is not substantial evidence to support Mr. Simpson's termination which makes the decision arbitrary and capricious.

II. HENRY SIMPSON'S DUE PROCESS RIGHTS WERE VIOLATED THEREFORE THE DECISION TO TERMINATE HIM IS IN VIOLATION OF HIS STATUTORY AND CONSTITUTIONAL RIGHTS

A. MR. SIMPSON WAS ALREADY RENEWED AND THE DISTRICT CANNOT TERMINATE HIM FOR ACTS THAT OCCURRED BEFORE MARCH 1, 2006

It is undisputed that Henry Simpson was renewed as principal of Williams-Sullivan High School. Both Mr. Rucker and Mr. Bailey testified that Mr. Simpson's contract had been renewed for the next year as principal of Williams-Sullivan High School. (H.T.49.5-7;H.T.59.7-8). Holmes County School District contends that "Simpson did not cite any authority in support of this proposition" in regard to the renewal. Simpson's Brief cited various Mississippi Statutory Law and portions of the Hearing Record as well as Record Excerpts in support of this issue. On the contrary, the Holmes County brief states "the fact the School District may have tolerated his sub-standard performance in the past, does not constitute a waiver of the District's power to rely on just cause to terminate an employment contract." The school district, once again, offers no evidence or relevant portions of the record in support

of this theory. The evidence is clear that Mr. Simpson was renewed as principal. Had his performance been “sub-standard” as suggested, logic assumes he would not have been renewed.

The school board offered no evidence or testimony of actions after March 1st and failed to provide Mr. Simpson notice of termination prior to March 1st; therefore the school board has waived the right to terminate Mr. Simpson and this termination is in violation of Mr. Simpson’ Due Process rights and should be reversed with Mr. Simpson restored to his previous position prior to this termination.

B. INEFFECTIVE AND INCOMPLETE INVESTIGATION VIOLATED MR. SIMPSON’S DUE PROCESS RIGHTS

This entire investigation by the Holmes County School District regarding Mr. Simpson was in violation of Simpson’s Due Process rights. The testimony provided by Mr. Rucker and Mr. Bailey are littered with obvious and apparent signs of ignorance surrounding the facts and details of the incidents that ultimately led to Mr. Simpson’s termination. (See Brief of Appellant, pg. 35-36). In *Grand Casino Biloxi v. Hallmark*, 823 So.2d 1185 (Miss.2002) the Mississippi Supreme Court affirmed the reversal of an administrative agency’s ruling on Due Process grounds based on an inadequate and unreliable investigation.

Neither Mr. Bailey nor Mr. Rucker interviewed Mr. Simpson regarding the

incidents he was fired for. Since "notice" to the principal is an essential element of the policy that Mr. Simpson is alleged to have violated, it had to be determined at what point did Mr. Simpson have notice. (See R.E. "G" and "H"). Based on the testimony, the people investigating this matter had no idea.

This obviously inadequate investigation, subsequent termination, and hearing were in violation of Mr. Simpson's Due Process rights and the Constitution of the State of Mississippi. Mr. Simpson's termination should be overturned and he should be returned to work as the principal of Williams-Sullivan High School.

C. NO RESPONSE BY APPELLEE CONFESSES DUE PROCESS VIOLATIONS

The Holmes County School District failed to respond to any of the Constitutional arguments made in Simpson's brief before the Chancery Court, therefore the errors are deemed admitted, the school district waived their right to oppose said constitutional issues and Mr. Simpson's termination should be reversed. (See Brief of Appellee R.E. "I").

Simpson clearly placed the Holmes County School District on notice that he was raising a due process issue in this matter. Section "II" of Brief of Appellant filed in the Chancery Court, page 15, states: **HENRY SIMPSON'S DUE PROCESS RIGHTS WERE VIOLATED THEREFORE THE DECISION TO TERMINATE HIM IS IN VIOLATION OF HIS STATUTORY AND CONSTITUTIONAL RIGHTS.** (See Brief of

Appellant filed before the Chancery Court). Appellant then outlines over twelve different parts of the record in support of his contention that this investigation was incomplete and therefore in violation of Simpson's Due Process rights. The school district was clearly on notice of the Due Process Issue.

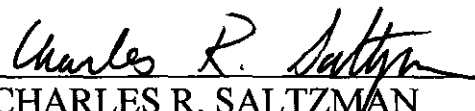
The hearing and termination were in violation of Mr. Simpson's Due Process rights and the Constitution of the State of Mississippi. Based on the previously cited case law, and the Constitution of the State of Mississippi, Mr. Simpson's termination should be overturned and he should be returned to work as the principal of Williams-Sullivan High School.


CONCLUSION

WHEREFORE PREMISES CONSIDERED, the Appellant, Henry Simpson, respectfully requests that this Court enter an order restoring him as the principal of Williams-Sullivan High School and overturn the Order of the Holmes County Board of Education which affirmed his termination. Appellant further requests that this Court order the Holmes County Board of Education to provide Mr. Simpson with all back pay and benefits to which he is entitled, attorney fees, and costs associated with pursuing this unwarranted termination.

Respectfully submitted,

HENRY SIMPSON


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CERTIFICATE OF SERVICE

This is to certify that I have caused the above document to be served upon the person or entity identified below at their usual place of business:

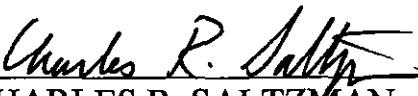
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SO CERTIFIED this the 3rd day of July, 2008.



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