

**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

BRIEF OF APPELLANT HENRY SIMPSON
(ORAL ARGUMENT NOT REQUESTED)

SUBMITTED BY:

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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 10th day of April, 2008.



Charles R. Saltzman

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STATEMENT OF ISSUES

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 - A. THE SHOOTING**
 - B. THE FIRE**
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- 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**
 - B. INEFFECTIVE AND INCOMPLETE INVESTIGATION VIOLATED MR. SIMPSON'S DUE PROCESS RIGHTS**
 - C. NO RESPONSE BY APPELLEE CONFESSES DUE PROCESS VIOLATIONS**

**BEFORE THE SUPREME COURT OF MISSISSIPPI
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APPELLANT/PETITIONER

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CASE NO. 2007-CA-01159

**HOLMES COUNTY BOARD OF
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APPELLEE/RESPONDENT

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

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

STATEMENT OF THE CASE

On March 3, 2006 Henry Simpson was terminated as principal of Williams-Sullivan High School. (See Appellant Record Excerpts "E").¹ Reasons stated for his termination are, "failure to maintain order, ensure safety for faculty, staff and students, maintain instructional integrity and your failure to follow board policy and the law on reporting incidents in a timely manner at Williams-Sullivan High School."

¹ Appellant Record Excerpts hereafter will be referred to as "R.E."

(See R.E. "E"). On March 4, 2006 Mr. Simpson timely requested a hearing before the Holmes County Board of Education pursuant to Miss Code Ann. § 37-9-59. (See Hearing Exhibit "J-2"). On March 22, 2006 Alix Sanders, attorney for the Holmes County Board of Education provided to Mr. Simpson "specific reasons" for the decision to terminate him, as well as a potential witness list the school district may call at his hearing. (See Hearing Exhibit "J-3"). The "specific reasons" included a student fight, a February 24, 2006 fire in a classroom at Williams-Sullivan, and an incident where a school district employee and a Mississippi Department of Education employee were allegedly shot with a pellet gun while on school campus. (See Hearing Exhibit "J-3"). This correspondence provided a copy of the Board policy which required the reporting of incidents of violence. (See Hearing Exhibit "SD-1"). On April 13, 2006 Mr. Simpson's counsel provided a response to the Holmes County Board of Education March 22, 2006 correspondence in which he responded to each allegation and reason for termination, provided copies of potential exhibits and a potential witness list for the upcoming hearing. (See Hearing Exhibit "J-4"). On April 19, 2006 the hearing was held before the Honorable Mary Brown and a record was made of the proceedings. (See H.T.1-157.).² On July 5, 2006 Hearing Officer Mary Brown provided a Report of the Hearing Officer to the Holmes County School

² The Hearing Transcript of April 19, 2006 will be referred to as "H.T. page number.line number."

District. (See Administrative Record “Report of the Hearing Officer”; R.E. “F”). In this Report, the Hearing Officer did not make a ruling nor offer an opinion to the School District on how to rule, but rather summarized the evidence and testimony presented by both sides in the hearing. On July 18, 2006 the Holmes County Board of Education issued an Order which ruled that, “the decision of the Superintendent to terminate Henry Simpson is supported by substantial credible evidence and is a proper employment decision.” (See Administrative Record “Order”; R.E. “D”).

On August 3, 2006 Henry Simpson timely filed a Notice of Appeal before the Chancery Court of Holmes County pursuant to *Miss Code Ann.* § 37-9-113, requesting an appeal to the Chancery Court of the Holmes County Board of Education’s Order which affirmed the termination of Henry Simpson as the principal of Williams-Sullivan High School. Subsequently, Mr. Simpson, by and through counsel, timely filed a Designation of the Record and Certificate of Compliance with M.R.A.P. 11(b)(1) in accordance with their respective provisions of the Mississippi Rules of Appellate Procedure. The complete Administrative record in this matter was filed on August 25, 2006 and the case was assigned Cause Number 06-0116. Both parties filed their respective briefs on the issues before the Chancery Court and Oral Arguments were heard on February 26, 2007. On May 21, 2007 the Holmes County Chancery Court entered an Opinion which affirmed the school district’s termination

of Mr. Simpson. (See R.E. "C"). Judgement was subsequently entered on June 28, 2007. (See R.E. "B").

On June 20, 2007 Henry Simpson timely filed a Notice of Appeal to the Supreme Court of Mississippi, requesting an appeal to the Mississippi Supreme Court of the Holmes County Chancery Court Order which affirmed the termination of Henry Simpson as the principal of Williams-Sullivan High School. Subsequently, Mr. Simpson, by and through counsel, timely filed a Designation of the Record and Certificate of Compliance with M.R.A.P. 11(b)(1) in accordance with the respective provisions of the Mississippi Rules of Appellate Procedure. The complete County and Administrative record in this matter was filed on January 30, 2008 and the case was assigned to the Mississippi Court of Appeals, Case Number 2007-CA-01159.

SUMMARY OF THE ARGUMENT

Mr. Henry Simpson was terminated on March 3, 2006 as principal of Williams-Sullivan High School. The termination is unwarranted and the actions of an embattled school district which overreacted to a difficult school day. The school district suggests that Mr. Simpson was fired because he allowed a fight, a fire, and a shooting to occur not only on the same day, but on a day where several dignitaries were present for a school program. The school was also undergoing a routine state audit with Mississippi Department of Education employees on campus. The incidents,

when coupled together, do sound serious and alarming, but the specific facts reveal otherwise. The facts show that none of the incidents that led to Mr. Simpson's termination were attributable to him. The facts show that the fire and the "shooting" (bb gun) were so inconsequential that they were not reported to Mr. Simpson by the parties involved. The facts also show that Mr. Simpson immediately had the fight under control and the persons involved were disciplined immediately by being suspended. 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. 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. The facts show that the incomplete investigation and the termination for acts prior to March 1st are in violation of Mr. Simpson's right to Due Process and therefore the termination should be overturned on those grounds as well. Furthermore, the Appellee chose not to respond or address any of the constitutional errors alleged by the Appellants before the Chancery Court, therefore those errors are deemed confessed and admitted under *Turner v. State of Mississippi*, 383 So.2d 489 (Miss.1980) .

STANDARD OF REVIEW

The Standard of Review in school employee termination appeals at the hearing level, the Chancery Court, and the Mississippi Supreme Court is clearly established by Mississippi Statutory authority and Mississippi case law. Section 37-9-59 of the *Miss Code Ann.* (Rev. 2001) provided that, "For incompetence, neglect of duty, immoral conduct, intemperance, brutal treatment of a pupil or other good cause the superintendent of schools may dismiss or suspend any licensed employee in any school district." *Amite County School Dist. v. Floyd*, 935 So.2d 1034, 1038 (Miss.App. 2005). Employees that are dismissed are entitled to a hearing on the charges. *Amite* at 1038. (see also Miss.Code Ann. § 37-9-111 (Rev.2001)). In this hearing the superintendent has the burden of proving by the preponderance of the evidence that there are adequate grounds for dismissal. *Id.* (citing *Harris v. Canton Separate Pub. Sch. Bd. Of Educ.*, 655 So.2d 898, 902 (Miss.1995)).

Section 37-9-113 of the Mississippi Code allows an employee aggrieved by a school board's decision to seek judicial review by appeal to the chancery court of the judicial district in which the school district is located. *Id.* The standard of review of the chancery court in these cases is limited to a review of the record made before the hearing officer to determine if the action of the school board is unlawful due to: (a) Not supported by substantial evidence; (b) Arbitrary or capricious; or (c) In violation

of some statutory or constitutional right of the employee. *Id.*

“Substantial evidence has been defined as ‘evidence which affords a substantial basis of fact from which the fact in issue can be reasonably inferred. *Id.* at 1039. It is something more than a ‘mere scintilla’ of evidence, and does not rise to the level of a ‘preponderance of the evidence.’ *Id.* (additional citations omitted). Under Mississippi case law an act is arbitrary when it is not done according to reason or judgement, but depending on the will alone. *Id.* “Capricious is defined as any act done without reason, in a whimsical manner, implying either a lack of understanding of or a disregard for the surrounding facts and settled controlling principles.” *Id.*(quoting *Burks v. Amite County School Dist.*, 708 So.2d 1366, 1370 (Miss.1998) (additional citations omitted)). Logic dictates that a board decision based on substantial evidence is, by definition, not arbitrary or capricious. *Id.* The opposite has also held true. “If an administrative agency’s decision is not based on substantial evidence, it necessarily follows that the decision is arbitrary and capricious.” *Public Employees’ Retirement System v. Shurden*, 822 So.2d 258, 263 (Miss. 2002)(quoting *Public Employees’ Ret. Sys. v. Marquez*, 774 So.2d 421, 430 (Miss.2000)).

Section 37-9-113 (5) of the Mississippi Code provides: “Any party aggrieved by action of the chancery court may appeal to the Supreme Court in the manner provided by law.” On appeal of the Chancellor’s decision, this Court applies the same

standard of review. *Harris v. Canton Separate Pub. Sch. Bd. Of Educ.*, 655 So.2d 898, 901 (Miss.1995) (citing *Spradlin v. Board of Trustees of Pascagoula Municipal Separate School District*, 515 So.2d 893, 898 (Miss.1987)).

ARGUMENT

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. These alleged incidents, a shooting, a fire, and a fight are specifically addressed below. The incidents, grouped together and on the surface, appear significant and damaging to the case of Mr. Simpson. Thankfully the specifics of each incident are revealed in the record of the hearing and it is very obvious and apparent that the school district made an improper employment decision not based on substantial evidence.

A. THE SHOOTING

The March 22, 2006 correspondence from Board attorney Alix Sanders referenced the specific reasons for Henry Simpson's termination, and states as follows, "On February 24, 2006, a school district employee and a Mississippi Department of Education employee were shot with a pellet gun while on the

Williams-Sullivan School campus. You failed to properly report this incident as required by board policy and state law.” (See Hearing Exhibit “J-3”).

The testimony provided by George Allison, called by Mr. Simpson, was the only first-hand witness account offered of the incident. Mr. Allison, a teacher at Williams-Sullivan, testified that while speaking with a Mississippi Department of Education employee he was struck on the shoulder by a “bb” or a pellet and it then ricocheted off the pavement and hit the M.D.E. employee in the ankle. (H.T. 102.12-15). Mr. Allison testified that he at no time saw a gun nor the person who may have fired the bb gun. (H.T.101.12-21.; H.T.103.1). Mr. Allison further testified that he never made a report on the incident and nor informed Mr. Simpson. (H.T.103.2-17). He did later (March 1, 2006) make a report at the insistence of the Superintendent Stephen Bailey. (H.T.104.1-5). (See Hearing Exhibit SD-2).

Mr. Allison offered no testimony as to actually being injured as a result of this incident, nor was there any testimony offered as to injuries sustained by the M.D.E. employee. Mr. Allison also stated that he did not believe that Mr. Simpson should be fired for this incident. (H.T.104.18-20).

Irma Nichols also testified with regard to the alleged shooting incident at Williams-Sullivan High School. Mrs. Nichols is the assistant principal at Williams-Sullivan High School. Mrs. Nichols testified that she was informed about the

“shooting” around 2:30 p.m. on February 24, 2006 and believed it had occurred around 1:00 p.m. (H.T.106.10-23). Ms. Nicholas testified on cross that she made a report on Tuesday regarding the “shooting” incident. (H.T.114.12-19). Mrs. Nicholas further testified that she believed the school board policy was for her to provide a written report to the school board within two days and that she believed she had complied with policy. (H.T.114.20-25; H.T.115.1-11). She also testified on re-direct she informed Mr. Simpson of the incident around 3:10 p.m. that day, after the students had already gone home. (H.T.123.8-9). She testified that she was aware that Mr. Simpson was going to be out on Monday and the responsibility would be on to her to file a report with the school board within two days of the incident. (H.T.123.8-21.)

Mr. Henry Simpson testified that he learned of this incident around 3:15 p.m. on February 24, 2006. (H.T.128.3-4). Mr. Simpson also testified that immediately upon hearing of the incident he called the central school board office and asked for Mr. Bailey, the superintendent, who was unavailable. (H.T.128.23-25; H.T.129.1-11). Mr. Simpson also asked for three other employees with the school district but was unable to reach them. (H.T.129.1-11). Mr. Simpson explained in his testimony that he was to be out on medical leave on Monday for his brother’s surgery. (H.T.129.16-19). (See Hearing Exhibit “J-4”, February 20, 2006 letter). The assistant

principal, Ms. Nichols was to be in charge while Mr. Simpson was out and Mr. Simpson felt the school was in capable hands. (H.T.129.24.; H.T.135.7). On rebuttal examination Mr. Simpson testified that he did not believe under the school district's policies that his duty to file a written report with the district was activated until he has received a written report from the affected teacher or employee. (H.T.149.2-19). Mr. Simpson never received a written report from the employee or the M.D.E. employee regarding the "shooting" at Williams-Sullivan High School. (H.T.149.20-23).

The Holmes County School District Policy and Procedures both require Notification to the Principal. The policies read:

The reports of unlawful or violent acts required by Policy JCBF shall be made in accordance with the following procedures:

A. ACTION BY DISTRICT PERSONNEL

When any school employee, principal or the superintendent has knowledge that an unlawful or violent act has or may have occurred on school property or at a school-related event:

1. IMMEDIATELY UPON RECEIVING INFORMATION OF SUCH ACT, the following oral reports shall immediately be made:

- a. The employee shall notify his principal.
- b. The principal shall notify the superintendent or his designee.

Holmes County School District Board Policy Manual Policy JCBF-P: Reporting of

Unlawful or Violent Acts Procedures (See R.E. "G").

The Policies are further outlined in the Policy for Reporting of Unlawful or Violent Acts:

REPORTING OF UNLAWFUL OR VIOLENT ACTS

District employees shall comply with all requirements imposed by law with regard to reporting unlawful or violent acts which have or may have occurred on school property or during school-related activities or for which students have been expelled.

The following reports shall be made in accordance with the law and with Policy JCBF-P - Reporting of Unlawful or Violent Acts -- Procedures.

NOTIFICATION TO PRINCIPAL

Any school employee shall notify his/her principal immediately upon obtaining knowledge that one of the following unlawful activities or a violent act has or may have occurred on school property or during a school-related activity:

1. Aggravated assault, including but not limited to
 - a. Assault resulting in serious physical injury or
 - b. Assault involving use of weapon;
2. Assault on a school employee, simple or aggravated;
3. Indecent liberties with a minor;
4. Possession of a firearm or other weapon;
5. Possession, use or sale of any controlled substance;
6. Rape;
7. Sexual battery;
8. Other sexual offense;
9. Murder or other homicide;
10. Kidnaping; or
11. Other violent act.

When an emergency situation exists and the principal is not available for

immediate notification, the employee shall immediately notify the appropriate law enforcement agency and, as soon as possible thereafter, shall notify the principal or other school administrator.

NOTIFICATION TO SUPERINTENDENT

A principal receiving an employee's report or having personal knowledge of such acts shall immediately notify the superintendent or his/her designee.

Holmes County School District Board Policy Manual Policy JCBF: Reporting of Unlawful or Violent Acts (See R.E. "H").

Mr. Powell Rucker, assistant superintendent for Holmes County, testified that he did receive a phone call from the Mississippi Department of Education regarding some incidents at Williams-Sullivan High School and was asked to investigate it. (H.T. 16.18-25). Despite his investigation, Mr. Rucker testified that he never spoke with Mr. Simpson regarding these incidents. (H.T.17.8-9; H.T.44.18-25). Mr. Rucker also testified that he was not aware that the M.D.E. employee nor the teacher involved did not report the incident to Mr. Simpson. (H.T.30.7-13). Mr. Rucker further testified that throughout his investigation there was never any person who informed him that there was a weapon on the school campus. (H.T.32.22-25).

Mr. Stephen Bailey, was called as the Superintendent of the Holmes County School District. Mr. Bailey testified that Mr. Simpson was terminated for the incidents that occurred on February 24, 2006 (the fire, fight, and shooting) and his

(Simpson's) failure to notify him as the Superintendent. (H.T.59.20-25; H.T.60.1-13). Mr. Bailey testified that Mr. Simpson failed to notify him of a "possession of a firearm or other weapon" on school campus. (H.T.71.13-20). Then Mr. Bailey states that he has no proof there ever was a weapon on the school's campus. (H.T.72.16). Mr. Bailey also confirmed that if Mr. Simpson was not there, then it was the assistant principal who was in charge. (H.T.75.2-8). Mr. Bailey further affirmed that there was nothing that Mr. Simpson could have done differently to protect the students regarding this incident because by the time Mr. Simpson was notified the students had gone home. (H.T.79.24-25; H.T.80.1-9). Regarding the policy that Mr. Simpson was alleged to have violated concerning the reporting of unlawful events, Mr. Bailey testified that Mr. Simpson's duty to file a report with the school board is not "triggered" until the principal receives a written report from the affected employee or the affected employee makes an "oral report" to the principal and the principal has a reasonable belief that an unlawful act has occurred. (H.T.75-79).

It is clear and undisputed that Mr. Simpson never received a written report regarding this incident from the teacher, Mr. Allison, or the M.D.E. employee. It is also indisputable that there was never any proof that there was a bb gun on campus or that the "shooting" resulted in injury or safety concerns to the affected individuals. The evidence and testimony indicated that it was such a non-event to the participants

involved that they did not bother reporting it to Mr. Simpson. Once Mr. Simpson received notice, not from the affected persons, but from the assistant principal, it was well after the students had left for the day. Therefore, there was no immediate safety concern to the students, the staff, or the public that would necessitate Mr. Simpson notifying the authorities of this isolated incident which occurred approximately two hours earlier. Furthermore, it is disingenuous of both the Superintendent and the assistant Superintendent to claim Mr. Simpson violated policy regarding notification when by their own testimony they failed to interview Mr. Simpson, they failed to interview the affected employees and they were unaware that Mr. Simpson was not informed by Mr. Allison of the shooting. The policy directly states that Mr. Simpson is to provide notice to the school district after he has received a written report or notice from the involved employee. Mr. Simpson never received such notice.

Furthermore, when Mr. Simpson was informed about the "shooting" incident he did attempt to call the Superintendent and report the problem, but was unable to reach anybody at the school district. He then relied on the assistant principal to provide notice to the school district, who testified that she filed a report with the district within what she believed to be the proper amount of time (forty-eight hours).

Pursuant to the State law regarding reporting of unlawful activity under *Miss. Code Ann* § 37-11-29 (1) states:

Any principal, teacher or other school employee who has knowledge of any unlawful activity which occurred on educational property or during a school related activity or which may have occurred shall report such activity to the superintendent of the school district or his designee who shall notify the appropriate law enforcement officials as required by the section. In the event of an emergency or if the superintendent or his designee is unavailable, any principal may make a report required under this subsection.

There is no evidence that Mr. Simpson had knowledge of any unlawful activity which occurred on the school's campus. Mr. Simpson made a judgement decision that the authorities were not necessary based on the reactions of those persons involved. Clearly if the two people directly affected by this incident choose to not report it to him, how could he reasonably conclude that a crime or "any unlawful activity" had occurred. Again, there was no gun (even if there was a bb gun cannot hardly be considered a "deadly weapon"), there were no suspects, there were no injuries, there was no complaints made to him, and the students and the staff were gone for the day.³ This was not an emergency and notification was not required under the state policy, but Mr. Simpson did try to notify the Superintendent of this incident.

³ As required under the No Child Left Behind Act, the term firearm includes, but is not limited to, any weapon designed to expel a projectile by the action of an explosive, the frame or receiver of any such weapon, a muffler or silencer for such a weapon, or destructive device. The term destructive device means any explosive, incendiary, or poison gas, bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine, or device similar to any or the devices described herein.

Substantial evidence has been defined as ‘evidence which affords a substantial basis of fact from which the fact in issue can be reasonably inferred.’ *Amite County School Dist. v. Floyd*, 935 So.2d 1034, 1039 (Miss.App. 2005). It is something more than a ‘mere scintilla’ of evidence, and does not rise to the level of a ‘preponderance of the evidence.’ *Id.* (additional citations omitted). Under Mississippi case law an act is arbitrary when it is not done according to reason or judgement, but depending on the will alone. *Id.* “Capricious is defined as any act done without reason, in a whimsical manner, implying either a lack of understanding of or a disregard for the surrounding facts and settled controlling principles.” *Id.*(quoting *Burks v. Amite County School Dist.*, 708 So.2d 1366, 1370 (Miss.1998) (additional citations omitted)). Logic dictates that a board decision based on substantial evidence is, by definition, not arbitrary or capricious. *Id.* The opposite has also held true. “If an administrative agency’s decision is not based on substantial evidence, it necessarily follows that the decision is arbitrary and capricious.” *Public Employees’ Retirement System v. Shurden*, 822 So.2d 258, 263 (Miss. 2002)(quoting *Public Employees’ Ret. Sys. v. Marquez*, 774 So.2d 421, 430 (Miss.2000)).

There is no substantial evidence that termination related to this incident was warranted. Furthermore, there is no substantial evidence that there was a violation of policy (school district or state) that supports the termination of Mr. Henry Simpson.

Therefore, the Mr. Simpson's termination based on the above referenced incident is without substantial evidence and therefore by definition is arbitrary and capricious.

B. THE FIRE

The March 22, 2006 correspondence from Board attorney Alix Sanders regarding specific reasons for termination also states as follows, "On February 24, 2006 a fire started in Mr. Allison's 5th period class." It is suggested in this correspondence that this incident relates to Mr. Simpson's alleged failure to maintain order, ensure safety for faculty, staff and students. (See Hearing Exhibit "J-3"). There is no evidence anywhere in the record that Mr. Simpson was ever notified by anyone at Williams-Sullivan High School of this "fire." Mr. Simpson's testimony indicates he did not learn of this fire until he was on his way back from his medical leave and read about it in the newspaper. (H.T.127.1-18). Mr. Simpson also testified that he was never informed by the teacher whose room the fire occurred in, nor was he provided written or oral notice of the fire prior to reading it in the newspaper. (H.T.127.3-18). No evidence was offered to contradict this by the school board.

Mr. Allison, testified that the fire had occurred in his classroom and was immediately put out.(H.T.100.1-5.) He stated that,

Somebody set a piece of notebook paper on fire. That's all. It was just smothered out. No big-I mean, I didn't think anything was serious. The newspaper came along and said the carpet was blazed and all this sort of

stuff--no. But that's all it was was a little piece of paper."

(H.T.99.25; H.T.100.1-5). He also testified that he never notified Mr. Simpson and that he never made a written report. (H.T.100.6-19).

Mr. Rucker testified that he didn't feel there was any damage to the school and that it was only some "little flush burns from the fire." (H.T.20.8-23). When Mr. Rucker was asked how Mr. Simpson can report something like the fire, to which he has no knowledge, he responded, "If Mr. Simpson was not aware he can't report anything." (H.T.34.14-18). Mr. Rucker stated the school district received notice from a M.D.E. employee who witnessed the event and clarified that the fire was not started on the carpet but rather in a desk drawer. (H.T.35.9-15). He also agreed that Mr. Simpson should not be held responsible for things that he didn't have any knowledge of. (H.T. 34.19-23).

The superintendent Mr. Bailey testified that he was not aware that Mr. Allison never reported this "fire" incident to Mr. Simpson. (H.T.84.1-4). Furthermore, there was no evidence or testimony offered by the school district as to how with this "fire" incident Mr. Simpson violated any school or state policy. There was no immediate danger to any students or staff, there was no damage to the school property, and neither the teacher nor the M.D.E. employee felt the incident warranted notice to Mr. Simpson. There is no evidence or testimony as to how this fire related to Mr.

Simpson's termination and was included merely for shock value. Clearly there is no substantial evidence that termination related to this incident was warranted. Furthermore, there is no substantial evidence that there was a violation of policy (school district or state) that support the termination of Mr. Henry Simpson. Therefore, the Mr. Simpson's termination based on the above referenced incident is without substantial evidence and therefore by definition is arbitrary and capricious. *Public Employees' Retirement System v. Shurden*, 822 So.2d 258, 263 (Miss. 2002); *Public Employees' Ret. Sys. v. Marquez*, 774 So.2d 421, 430 (Miss.2000).

C. THE FIGHT

The March 22, 2006 correspondence from Board attorney Alix Sanders regarding specific reasons for termination also included the following, "There have been numerous discipline problems, including but not limited to student fights." (See Hearing Exhibit "J-3"). There is no evidence or testimony regarding fights outside of the one that occurred on February 24, 2006. Any additional discipline problems or fights intended to be referred to by the school district have been waived by their failure to introduce any evidence or testimony regarding those incidents with the exception of the fight on February 24, 2006. Testimony offered by the school district in reference to the fight on February 24, 2006 is unclear on how that fight relates to Mr. Simpson's termination and what policies Mr. Simpson is alleged to have violated

as a result of that fight.

Testimony is clear that there was a fight between two individuals during a school program on February 24, 2006. There was a black history program in progress and several important former legislators are believed to have been present. (H.T.22.6-11). It is undisputed that the fight was immediately broken up and that Mr. Simpson immediately suspended the two individuals fighting. According to Mr. Rucker, Mr. Simpson failed to enter a report via the MSIS reporting system for the state. (H.T.23.1-10). Mr. Rucker also testified that it was the principal's duty to set-up procedure to have teachers stop fights that happen. (H.T.41.14-25). Prior to this statement there has been no allegations that Mr. Simpson failed to prevent the fight from occurring or breaking it up soon enough. Mr. Rucker was speaking in general terms and offered no specific evidence or testimony on how this related to Mr. Simpson's actions with this particular fight. (H.T.42.25; H.T.43.1-25). It appeared that he was unaware that the fight was broken-up and Mr. Simpson acted immediately with the suspension of the two individuals. (H.T. 42.11-16; H.T.43.8-16). Mr. Rucker even suggested that it was the State Department of Education pushing them on this issue and not the Holmes County School District. (H.T.43.12-16). No employee from the Mississippi Department of Education was called as a witness nor offered any direct evidence in this matter. Mr. Rucker offered no specific reason that

rationally related Mr. Simpson's termination to the fight that occurred on February 24, 2006. Mr. Rucker attempted to suggest it may have had something to do with MSIS reporting, but then admitted not only could he not explain how the MSIS system worked, he didn't handle any aspect of MSIS. (H.T. 40.18-25; H.T.41.2-6). Mr. Rucker admitted, "...I'm not saying he didn't do what he was supposed to do or what he was supposed to do." (H.T.42.14-16).

Mr. Bailey, the superintendent testified that Mr. Simpson should have reported the fights and things of that nature in the MSIS. (H.T.92.1-8). Mr. Bailey offered no evidence or testimony regarding school or state policy that Mr. Simpson should have followed regarding reporting incidents with the MSIS. Mr. Bailey further neglected to state what specific policy Mr. Simpson violated in reference to his handling of the "fight" incident. No other incidents or fights were ever referenced by Mr. Rucker or Mr. Bailey. The School Board policy with reference to MSIS reporting was never explained nor testified to by the school district.

The assistant principal, Mrs. Nichols testified that the students were suspended for three days and articulated how the MSIS works. (H.T.107.5-22)(See also Hearing Exhibit EMP. 3, which shows that the students were actually suspended for five days.). The report of suspension is written up and they are given to a MSIS person who is the person responsible for keying the report in. (H.T.107.16-22). To the best

of Mrs. Nichols' knowledge the MSIS personnel was provided the appropriate documentation and it was up to the MSIS person to enter it into the system. (H.T.108.14-20; H.T.111.11-16).

One last stipulation was read into evidence by the hearing officer which referenced that no one knows what happened to the MSIS report regarding the fight after Mrs. Nichols prepared a disciplinary report. (H.T.153.3-25; H.T.154.1-9).

The school district never offered any direct evidence or testimony that Mr. Simpson did not perform his duties as a principal with respect to the "fight" incident. No violation of district or state policy were ever articulated into evidence by the school board and there was no testimony by any school board witness that Mr. Simpson did something incorrect, improper, or in violation of school policy with reference to this "fight." This fight being used as a reason for Mr. Simpson's termination is clearly a stretch by the district and indicative of the desperate nature of their case against him. The testimony of Mr. Rucker is very revealing in that he clearly shows the lack of any knowledge of facts surrounding this fight. Mr. Rucker was asked if he was aware the fight was ever broken up and the individuals were disciplined. His response was, "Okay. If you say that happened. But, like I said, we did not get into that issue. The State Department pushed us on that issue and they came with the issue on the fight. That was not our--." (H.T.43.8-16). The State

Department did not testify in this matter and they were not the organization responsible for Mr. Simpson's termination. Mr. Bailey testified that he relied on Mr. Rucker's investigation to determine that firing Mr. Simpson was the appropriate action. Mr. Rucker did not speak to Mr. Simpson, Mr. Rucker did not know the students were suspended, Mr. Rucker did not know that Mrs. Nichols provided a report on the fight to the MSIS personnel, and Mr. Rucker did not know what MSIS policy was or how it operated.

There is no evidence or testimony as to how this fight related to Mr. Simpson's termination. There is no substantial evidence that termination related to this incident was warranted. Furthermore, there is no substantial evidence that there was a violation of policy (school district or state) that warranted the termination of Mr. Henry Simpson. Therefore, Mr. Simpson's termination based on the above referenced fight is without substantial evidence and therefore by definition is arbitrary and capricious. *Public Employees' Retirement System v. Shurden*, 822 So.2d 258, 263 (Miss. 2002); *Public Employees' Ret. Sys. v. Marquez*, 774 So.2d 421, 430 (Miss.2000).

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

Henry Simpson was renewed for another year as the principal of Williams-Sullivan High School prior to being terminated. Therefore, despite the fact that he was terminated he had an expectancy in continued employment for another at least another year. This means he had a property interest in his job and was entitled to the protections of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, and Section 14 of the Miss Const. Art. III (1890). In *Harris v. Canton Separate Public School Board of Education*, 655 So.2d 898 (Miss.1995) the Mississippi Supreme Court held that a public employee (Harris) under contract at the time of his dismissal has a property interest in his continued employment with the school district. *Harris v. Canton*, 555 So.2d 898, 902 (Miss.1995). Therefore, Harris was entitled to the protections of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, and Section 14 of the Miss Const. Art. III (1890). *Harris* at 902. (citing *Hoffman v. Board of Trustees, East Mississippi Junior College*, 567 So.2d 838, 840 (Miss.1990)(additional citations omitted). Henry Simpson was denied his right to Due Process during this hearing and throughout his termination process and therefore he is entitled to have his termination overruled by

this court and re-instated immediately as principal of Williams-Sullivan High School.

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). Pursuant to Mississippi Statutory Law, the school district had to give notice to Mr. Simpson of nonreemployment on or before March 1. *Miss. Code Ann. § 37-9-105(a)*. The school district choose to already notify Mr. Simpson of his renewal prior to March 1st. (H.T.49.5-7;H.T.59.7-8). Then on March 3, 2006 Mr. Bailey terminated Mr. Simpson for actions that are alleged to have occurred prior to March 1, 2006. (See R.E. "E"). By not providing any notice to Mr. Simpson prior to March 1st, the school district has waived the right to terminate Mr. Simpson for actions that occurred prior to March 1st. There was no evidence or testimony provided at the hearing that suggested Mr. Simpson was suspected of any wrongdoing after the March 1st deadline. If the Holmes County School District was investigating Mr. Simpson and considering his termination for actions that occurred prior to March 1st, after they have already renewed him, they must provide notice to

him before March 1st. Mr. Simpson was not notified there was a problem with his employment until his March 3, 2006 meeting with Mr. Bailey that concluded with his termination. (H.T.85.16-25; H.T.86.1-2.). By failing to notify Mr. Simpson (a renewed principal) of his termination prior to March 1st according to *Miss Code Ann. 37-9-105(a)*, the Holmes County School District has waived the right to terminate Mr. Simpson for actions that occurred prior to March 1, 2006. Therefore the only evidence that should have been relevant at his hearing was evidence and testimony of allegations related to job performance after March 1st. 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's 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 incomplete, ineffective, inept and incompetent. 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. Mr. Bailey testified at one point that he did conduct an investigation. (H.T.73.6-13). Then he turned around and stated that he did not do any independent investigation. (H.T.93.2-4). Based on the testimony provided by the school district it appears that the latter is probably more accurate.

According to Mr. Bailey, he relied on Mr. Rucker's investigation as the assistant superintendent. (H.T.73.10-14). He also states that he relied on the state department's investigation, but since no one from the state testified we only have Mr. Rucker and Mr. Bailey's testimony on the record. (H.T.73.10-12). Mr. Rucker testified to the following:

- He never spoke with Mr. Simpson throughout this investigation. (H.T.17.8-9; H.T.44.18-25).
- He was unaware of Mr. Simpson's actions in response to the fight on February 24, 2006. (H.T. 22.20-22).
- He did not know that neither Mr. Allison nor the M.D.E. employee never reported the "shooting" to Mr. Simpson. (H.T. 29.16-22; H.T.30.7-13).
- He did not know if Mr. Simpson was ever notified of the "fire." (H.T.35.2-25).
- He did not know that Mr. Simpson attempted to call to the school

district office to notify them of the “shooting” immediately upon first hearing of it. (H.T.36.17-20).

- He did not know that Mr. Simpson was not notified of the shooting until after all the students had left for the day. (H.T.36.21-25).
- He did not know how the MSIS system works. (H.T.40.18-21).
- He did not know Mr. Simpson had the “fight” broken-up immediately and that Mr. Simpson suspended the students who were fighting. (H.T.42.9-16; H.T.43.8-16).

How could Mr. Rucker have performed any investigation at all and be unaware of the above relevant and important facts? Mr. Bailey’s testimony is just as revealing:

- Did not know when the “shooting” incident was reported to Mr. Simpson. (H.T.69.14-24).
- Did not know that the “fire” was never reported to Mr. Simpson. (H.T.84.1-4).
- Did not speak with Mr. Simpson until the same day that he fired him. (H.T.85.16-25; H.T.86.1).
- When asked what Mr. Simpson said regarding the incidents he said he could not remember. (H.T.86.9-10).

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 should have been determined at what point did Mr. Simpson have notice. (See R.E. "G" and "H"). Based on the above testimony the people investigating this matter had no idea. Therefore the policy reasons suggested are merely pretexts for another reason. Both the United States and Mississippi Constitutions guarantee Mr. Simpson due process of law in his hearing before the school district. Administrative proceedings "must be conducted in a fair and impartial manner, free from any suspicion of prejudice, unfairness, fraud or oppression." *McFadden v. Mississippi State Board of Medical Licensure*, 735 So.2d 145,158 (Miss.1999)(citing *Mississippi State Bd. of Health v. Johnson*, 19 So.2d 445, 447 (Miss.1944). "Due process always stands as a constitutionally grounded procedural safety net in administrative proceedings." *Id.*(citing *McGowan v. Mississippi State Oil and Gas Bd.*, 604 So.2d 312, 318 (Miss.1992). 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 Appellee failed to respond to any of the Constitutional arguments made in Appellant's brief before the Chancery Court, therefore the errors are deemed admitted, the Appellee waived their right to oppose said constitutional issues and Mr. Simpson's termination should be reversed. (See Brief of Appellee R.E. "I").

In *Turner v. State of Mississippi*, 383 So.2d 489 (Miss.1980) the Mississippi Supreme Court held that the State's failure to respond in its brief to a defendant's constitutional speedy trial argument was tantamount to a confession of error and would be accepted as such by the Court. *Turner v. State of Mississippi*, 383 So.2d 489 (Miss.1980). The Court further held that the reason for the rule is that an answer to appellant's brief cannot be safely made by this Court, without doing what appellee should have done, namely, brief the appellee's side of the case. *Turner* at 491. "This we are not called on to do." *Id.* The court also stated that the rule applies where appellee fails to respond to a part of appellant's brief. *Id.* See also *Stampley v. State*, 284 So.2d 305 (Miss.1973); *Lawler v. Moran*, 245 Miss. 301, 148 So.2d 198 (1963); *Gulf, M. & O. R. Co. v. Webster County*, 194 Miss. 660, 13 So.2d 644 (1943).

Based on the above case law the Appellee has confessed the Due Process errors alleged in Appellant's brief before the Chancery Court and therefore this termination

is in violation of Mr. Simpson's Due Process rights and should be reversed with Mr. Simpson restored to his previous position prior to this termination.

The above *Turner* case also applies to Appellant's argument that the investigation and hearing were in violation of Mr. Simpson's due process rights. Again, the Appellee has chose not to respond or address any of the constitutional errors alleged by the Appellants, therefore those errors are deemed confessed and admitted under *Turner*. The brief of Appellant before the Chancery Court outlined the facts and testimony that indicate a obvious inadequate investigation. The brief of Appellee does not respond at all to the Due Process allegations of the Appellant.


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 above case law, the *Turner* case, 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:

Honorable Janace Harvey-Goree
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SO CERTIFIED this the 10th day of April, 2008.



CHARLES R. SALTZMAN