No. ________

In The

Supreme Court of the United States

MARY MELANIE ANGELLOZ,

Petitioner,

v.

IBERVILLE PARISH SCHOOL BOARD,

Respondent.

On Petition For A Writ Of Certiorari To The State Of Louisiana, Court Of Appeal, First Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Louisiana Supreme Court has so far departed from proper judicial proceedings, so abused its powers, and sanctioned such a departure and abuse by lower courts, as to constitute a denial of due process of law.

2. Whether the Louisiana Supreme Court, and the courts below, in depriving a 27-year teacher of her employment without substantial evidence, denied the plaintiff due process of law.

3. Whether an employer deprives an employee of her constitutional right to free speech by terminating her employment because she states she keeps a loaded gun in her home or her constitutional right to keep and bear arms because she actually does so.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings in the Louisiana Supreme Court include the Iberville Parish School Board and the Petitioner. There are no parties to the proceedings other than those named in the petition.

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SUPREME COURT
Supreme Court of Louisiana
Mary Melanie Angelloz v. Iberville Parish School Board
No. 12-C-1645
October 26, 2012

APPELLATE COURT
Court of Appeal for the First Circuit of Louisiana
No. 2011-CA-2294
June 14, 2012

DISTRICT COURT
18th Judicial District, Louisiana
No. 69707, Div. D
June 20, 2011

SCHOOL BOARD TENURE HEARING
In Re: Mary Melanie Angelloz Tenure Hearing
December 1, 2010

JURISDICTION

The Supreme Court of Louisiana filed its decision on October 26, 2012. This Petition for Writ of Certiorari is filed within 90 days of the filing of that decision. The United States Supreme Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

A. Federal Constitutional Provisions

1) The Fifth Amendment to the United States Constitution provides: "[N]or shall any person...be deprived of life, liberty, or property without due process of the law...."

2) Section One of the Fourteenth Amendment to the United States Constitution provides: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law....".

3) The First Amendment of the United States Constitution provides that "Congress shall make no law...abridging the freedom of speech,..."

4) The Second Amendment of the United States Constitution provides that "...the right of the people to keep and bear Arms, shall not be infringed."

STATEMENT OF THE CASE

On August 26, 2010, Mary Angelloz, a 27-year teacher (R. 386) attended a parent/teacher conference concerning a student who had just that day returned from suspension for stealing a teacher's cell phone while at school. R. 390. During the meeting, the same student gained access to Angelloz's purse and stole her cell phone.

The Principal, Evelyn Gautreaux, failed to timely end the meeting although Angelloz signaled her three times to warn of the time. R. 390-391. By the time the meeting terminated, Angelloz, who is hypoglycemic and borderline diabetic (R. 392), was already having physical shakes from instability of blood sugar level, and the lunch period was over. R. 392. The cafeteria had saved no food for the late returning teachers. R. 392-393. The principal allowed Angelloz to take her own car and go to a nearby store, Canezaro's, to pick up lunch for those teachers who missed the school lunch. R. 393.

During the time that Angelloz left school and finally returned with the lunches, the handle on her car door had broken off in her hand, she received her first speeding ticket in some 30 years, and she discovered that her cell phone was missing. R. 304, 402-404. She was never able to eat lunch and had to take anti-anxiety medication on an empty stomach. R. 392, 401.

Upon her return to school and, confirming her cell phone missing from her purse, Angelloz began crying. R. 404. Dean of Students Marguerite Jenkins had discovered that the student who had been previously suspended for stealing a teacher's phone had also stolen Angelloz's phone. Angelloz told the student that she would press charges. R. 411-412.

Later that same afternoon, after all the students had left the school, Angelloz went out to the bus stop where some of the teachers were sitting on a bench. R. 413-416. They engaged in a general discussion

regarding theft and Angelloz, who lives alone (R. 398), advised that, if someone came on her property, she would shoot first and ask questions later. R. 415.

Later that same evening and well after school hours, Angelloz called the principal to advise that her SIM card had also been stolen. During that telephone conversation, Angelloz made reference to the wayward student as a "bastard" or possibly "a dirty bastard." R. 419-422. That very evening the principal initiated disciplinary action against Angelloz that included her immediate termination because, in the principal's opinion, Angelloz posed a threat to the school and the students. R. 289-290, 292, 296. Professional diagnosis indicates otherwise. R. 345.

At the School Board hearing Jenkins testified that, after the students and teachers returned to their classrooms, teacher Terri Harris comforted Angelloz as they walked arm-in-arm to the teacher's lounge. No parents or students were in the hallway. R. 221, 232-233.

Para-professional Doris Knatt testified, over objection, when the attorney for the School Board insisted that Knatt follow her affidavit, which had been obtained during the School Board's so-called "investigation." R. 241. In any event Angelloz's statement, made after school and between teachers, did not bother Knatt. R. 248.

Harris testified that Angelloz was not disruptive. R. 252-253. Harris was not in the least offended by any of Angelloz's behavior and did not find it inappropriate.

R. 257-259. There was no proof offered that "damn" is considered a curse word in the community. R. 1-634.

Assistant Principal Dawn Washington testified that "She wasn't loud at all or anything. I didn't hear her say anything. She was just – just crying, upset that she – that her phone was stolen, she said." R. 267. She saw Angelloz with the student who stole her phone and SIM card, but Angelloz said nothing. Later, after school, she was sitting on the bench with two other teachers when Angelloz "...made the comment that if anybody come onto her property, she'll shoot them." R. 274.

At the time Evelyn Gautreaux was a new principal at the North Iberville Elementary School. R. 275. Her testimony is in direct conflict with that of all of the teachers. She relied extensively on hearsay and assumptions for her conclusion that Angelloz's behavior rose to a level of "willful neglect." She acknowledged that Angelloz had advised her of her medical condition. R. 276, 407. See also R. 81-82. That information was not conveyed to the School Board office. R. 202-208. Gautreaux further testified that she was with the other teachers out by the bench after all the buses had gone and long after school had let out. R. 286. She testified that Angelloz told her that, when she lived in an apartment years earlier, they called her "crazy bitch" because, if they got in her way or on her property, she would shoot them. R. 286. No other teacher that was at the bench corroborates Gautreaux's "crazy bitch" statement. That phrase only appears during the opening statement of the

School Board (R. 179) and with Gautreaux's testimony. She came up with this scurrilous phrase out of whole cloth. R. 415.

According to Gautreaux, Angelloz advised that she was going home to load her guns. R. 288. Angelloz would later testify that her guns that she keeps at her home for protection are already loaded and have been loaded with the same bullets for the past twenty-plus years and, because of that, she would never have had any reason to make such a statement. R. 398-399, 452.

Gautreaux further testified that Angelloz called her that night and referred to the student as a "filthy little bastard." R. 288. Angelloz advised Gautreaux that she wanted to come to school the next day to meet with the police and take care of her students (R. 422-423), which Gautreaux interpreted to mean to shoot, or otherwise harm, them. R. 288-290. At one point in the testimony the counsel for the School Board was whispering in the ear of the principal. R. 294-296. Upon cross-examination Gautreaux recants her testimony. R. 300-301. When she is caught in the inconsistency, she again changes her testimony. R. 301. When confronted with her written statement, Gautreaux again changes her testimony about what was said and admits that, rather than repeating what Angelloz actually said, she is interpreting and providing her meaning that she read into what was said. R. 301-302. Thus, what Ms. Gautreaux did to make the charges was to take the statement that Angelloz would shoot to defend herself if anyone came

on her property and link that to the much later statement that Angelloz would take care of her missed calls the next day, to fabricate an allegation that Angelloz threatened her students with a gun.

When Gauthreau was confronted with her charge that Angelloz was cursing in the hallway and that no one else heard this, Gautreaux testified that she did not remember and then changed it to Angelloz cursing in the teacher's lounge. R. 304-305. Gautreaux could not substantiate any claim that Angelloz was cursing on school grounds with any word that Angelloz had spoken. R. 306-307. Gautreaux later admits that any curse words she attributed to Angelloz were not said in front of any students. R. 323. In questioning Gautreaux, a School Board member admitted to having made a similar comment as did Angelloz regarding shooting someone who comes on one's property. R. 324. Ms. Gautreaux admitted that there was video of the hallway, but that she did not produce it because it had no audio. R. 472-473. The courts below did not address the negative inferences to be drawn from such failure of production or whether any statements were acceptable by community standards. R. 145, *Angelloz, infra.*

Following the incidents at school on August 26, 2010, an investigation was initiated that same evening by Gautreaux, which culminated in five charges, one of which was dismissed voluntarily. At the conclusion of the School Board hearing on December 1, 2010, each of the charges was read to the School Board, which made a guilty finding on each. R. 491-499.

Only after this reading of the charges and initial vote were the definition and standard for each charge provided to the School Board. The members then re-voted and again made the same findings of guilty. R. 346-348. The disciplinary action elected was termination. R. 358-359.

Angelloz then appealed the School Board's decision to the Eighteenth Judicial District Court pursuant to its power of review under Louisiana Revised Statute 17:433, seeking a reversal of the conclusions of the School Board on the basis that its findings of willful neglect were legally insufficient and arbitrary and capricious and not supported by substantiated evidence. A hearing was conducted before the District Court on June 24, 2011, which issued a *Judgment* [R. 145] affirming the Iberville Parish School Board ("IPSB") and dismissing Angelloz's claims with prejudice. On June 14, 2012, the Louisiana First Circuit Court of Appeal affirmed the District Court.

ARGUMENT

I. THE LOUISIANA SUPREME COURT, AND THE COURTS BELOW, HAVE SO FAR DEPARTED FROM PROPER JUDICIAL PROCEEDINGS, SO ABUSED ITS POWERS, AND SANCTIONED SUCH A DEPARTURE AND ABUSE, AS TO CONSTITUTE A DENIAL OF DUE PROCESS.

The Louisiana Supreme Court, October 26, 2012, decision is a one-word "Denied." The First Circuit

opinion consists of nine paragraphs. Of that, the first five paragraphs merely recite the charges against Mary Angelloz and the previous procedural votes and claims. The last four paragraphs, citing two cases, simply acknowledge the "...great deference...," "...statutory formalities..." and "...credibility determination standards." *Angelloz v. Iberville Parish School Board,* 12-2294, p. 2 (La.App. 1 Cir. 6/14/12). There is not word one about the actual evidence by which this 27-year teacher lost her career. *Id.,* pp. 1-2. If there was a "...thorough review of the evidence...," it is not apparent from "...this memorandum opinion...." *Id.* And the District Court fared no better. R. 145, 553-633.

By contrast, *Holt v. Rapides Parish School Bd.*, 96-755, p. 3 (La.App. 3 Cir. 12/11/96); 685 So.2d 501, 504, concludes:

> Lastly, we address the most serious charge that plaintiff and Lori Robinson were seen partially disrobed in plaintiff's office. The only evidence submitted in support of this allegation was the testimony of two young, seventh-grade girls. Jennifer Powers and Catrina Van Asselberg testified that as they were walking past plaintiff's office they saw, through partially opened blinds, Lori sitting on the plaintiff's desk and plaintiff standing in front of her, both partially disrobed. Interestingly, when questioned by the principal about the incident, both girls twice denied having seen anything. When questioned a third time, the girls did see

something. A review of the girls' testimony reveals several important inconsistencies. For example, Powers testified plaintiff did not have a shirt or bra on, while Van Asselberg testified she did; the girls' testimony differed regarding the position of the blinds; and Powers saw them kissing, while VanAsselberg saw them standing arm's length apart looking at each other. Neither of the girls stopped to watch, but continued walking. Both agreed that the incident occurred rapidly. In fact, Powers testified that once plaintiff saw them, she almost immediately (a matter of two seconds) opened her office door, *fully clothed*, to tell the girls to get out of the hall. Both Lori and plaintiff deny this occurred and no one else who testified believes this event occurred.

> We find that the School Board's action in dismissing Ms. Holt was arbitrary and an abuse of discretion. The record reflects that the Board did not have a rational basis supported by "substantial evidence" for its decision to terminate plaintiff for willful neglect and duty.

There is no such credibility analysis by the courts below. R. 145. *Angelloz, supra*, pp. 1-2.

In *Howell v. Winn Parish Sch. Bd.*, 76-57178, p. 2 (La. 5/17/76); 332 So.2d 822, 824, the Louisiana Supreme Court opined:

> ...an aggrieved employee may "petition a court of competent jurisdiction for a *full*

> *hearing* to review the action of the school board, and the courts shall have jurisdiction to affirm or reverse the action of the school board in the matter" (emphasis added) La.R.S. 17:443 B. While this clause by its terms provides for review by the courts and not a trial *de novo*, see *Campo v. East Baton Rouge School Board*, 231 So.2d 67, 71 (La.App. 1st Cir. 1970) and *Granderson v. Orleans Parish School Board*, 216 So.2d 643, 646 (La.App. 4th Cir. 1969), the requirement of a full hearing indicates that the legislature intended the courts to exercise a broad scope of judicial review, particularly at the district court level.

Neither the District Court nor the state First Circuit engaged in "...a full hearing to review the action of the School Board,...." *Id.* R. 145, *Angelloz, supra*.

Pertinent to Angelloz's case is this passage:

> At the school board hearing and before the district court, Mr. Howell testified that he had received permission from Mr. E. H. Farr, the Superintendent of Winn Parish Schools, to be absent....

Id., at 825. Angelloz "...received permission...to be absent..." from the classroom in order to search for her cell phone. R. 276-277. Like plaintiff Howell, Angelloz "...had made arrangements..." for a substitute to cover the class "...during [her] absence, as was customary,..."

> Q. Do you know what was going on with her class at that point?
>
> A. At that point, no, I didn't. I found out later that Ms. Greavis had taken over her class for her.

R. 282. *Id.* There is no mention of either factor by the courts below. R. 145; *Angelloz, supra*, pp. 1-2.

Of further significance is this entry of then Justice, later Chief Justice, Calogero: "The evidence indicated that it was the usual policy for a principal to...." *Id.* There is no evidence of record as to the usual policy for a principal when she deprives a "...hypoglycemic, near diabetic (R. 392)" teacher of lunch and that teacher has an unfortunate reaction. R. 216. Nor is there any evidence of "...the usual policy for a principal to..." deal with a teacher's reaction to being a crime victim on school grounds at the hands of one of the school's students. R. 242-246. And, of course, these two-fold deficiencies merit no mention by either court below. R. 145; *Angelloz, supra*, pp. 1-2.

Howell goes on:

> While we do not disagree with the findings of the school board and the district court that Mr. Farr did not specifically authorize plaintiff's absence during the week in question, we note supplementally that Mr. Farr never expressly told Mr. Howell that he would not be permitted to be away from his school at that time. We are thus required to assess Mr. Howell's conduct in relation to the week of Monday, June 11, 1973 to Friday, June 15,

> 1973 and to determine whether as a matter of law and fact it constitutes willful neglect of duty.

Id. p. 3, at 826-827. Similarly Principal Gautreaux did not even imply and certainly "...never expressly told..." Angelloz that her remarks on the telephone were even inappropriate, much less "threatening." R. 286. And thus should this Honorable Court, as the courts below did not, assess Angelloz's "...conduct in relation to the..." day of August 26, 2010, and the totality of facts and circumstances therein in relation to a 27-year career, "...and to determine whether as a matter of law and fact it constitutes willful neglect of duty." *Id.*

Howell then opines:

> Under the facts as developed by the school board and the district court, we conclude that there was no substantial evidence to establish that as a matter of law and as a matter of fact, Mr. Howell *willfully* neglected his duty as a principal of the Atlanta High School during the week in question. Even accepting Mr. Farr's statement that he did not give plaintiff express permission to be absent, the fact on the record indicates that Mr. Howell made adequate provisions to insure that his responsibilities were carried out. With respect to the specific charges leveled against plaintiff, the record reveals that Ms. Ruby Hamlin had been appointed by Mr. Howell to supervise the N.Y.C. student's work; that arrangements had been made for

> Mr. Prentis Ferguson to act as principal; and that, with respect to the only function which Mr. Ferguson could not perform as principal, i.e., the signing of checks Mr. Howell did return to the school during the week and signed several checks on Friday, June 15, 1973. As Mr. Farr himself stated when questioned about whether there was an established school board policy with respect to the hours a principal was to keep during the week in question, " on the two week period that school is out the principals are required to put in as many hours as is necessary to carry out their work." Nothing in the record indicates that Mr. Howell did not carry out his work or that any adverse consequences ensued insofar as the school board was concerned.

Id. Angelloz likewise "...made adequate provisions to insure that [her] responsibilities were carried out." *Id.* R. 282. Thus is there "Nothing in the record that..." Angelloz "...did not carry out [her] work or that any adverse consequences ensued insofar as the school board was concerned:"

> Q. ...Were there any parents or students, or anyone else, in that reception area in the hallway?
>
> A. I don't recall parents.

****

Q. So they had already gotten into the classrooms?

A. I didn't – the hallways were clear.

****

Q. I want to refer you to the time when she was in the cafeteria. Was there any cursing that you heard?

A. No, sir. I did not.

Q. Okay. And the second occasion in the hallway, did you hear any cursing, or was it just the loud talking?

A. No, sir. I didn't. I just heard the – she was crying and she was talking.

****

...she said, "Well, if anybody mess with my property, I'll shoot'em. If they fool with any of my property, I'll shoot'em." But I didn't pay that any attention. I was just, you know –

Q. Did it bother you?

A. Well, not at the time, because she really wasn't talking to me. She was talking to them. And I knew I wasn't fooling with her property. So it didn't bother me. Not at the time, no.

****

Q. Did she kick the chairs?

A. No.

Q. And I further take it, when she said she got a damn ticket, she was talking to you?

A. (The witness indicated a positive response.)

Q. And there was nobody else in the lounge at that time?

A. (The witness indicated a negative response.)

Q. Is that the only curse words you heard that day, if we consider “damn” a curse word?

A. Yes. That’s – that’s all she said.

Q. And –

A. To me at that time, you know.

Q. Yes. Well, did her saying she got a damn ticket, was that offensive to you?

A. (The witness indicated a negative response.)

****

Q. And you didn’t think she was irate or – she was just crying because she was just nervous?

A. She was – I mean, she was crying and she just – you know, she was, you know, beating on the table like that.

Q. But the door was closed?

A. The door was closed.

****

Q. Why did – what brought you to be involved?

A. Because I'm the one initially asked her – told her I was trying to get in contact with her on her phone. So I'm the one that told her that – I said, "We was trying to call you." And that's when she found out she didn't have her phone.

Q. Why were you trying to call her?

A. We had missed lunch. And she was getting some food for us. And when we placed the order, they didn't have something, or they was out of something that we had ordered.

R. 222, 225, 226, 248-249, 256, 259, 264, 267. Mary Angelloz's behavior did not provoke anything negative:

...what a colleague would do to comfort another student – I mean, another teacher.

****

...I said, "I'm going to go ahead and walk her down here." And I – I just caught her by the arm. As a matter of fact, I think I embraced her arm. And, you know, she embraced mine. And we walked down the hall. And we went into the teacher's lounge from the side door.

> Q. Okay. Was there a point as you walked down the hall that she lost control or that she was loud or displayed anything out of –
>
> A. No. She was – by then, she was kind of just crying and still kind of just upset. But she wasn't saying much.

R. 232, 253-254. Even with the student who stole her cell phone Mary Angelloz was civil:

> ...Did you see her have any interaction with the student who allegedly took her phone?
>
> A. Yes, I did. They crossed at some point in the hallways. And she look at him. And she looked at him like she was really upset. And really, really looked at him – looked at the student.
>
> Q. Did she say something to him at that point?
>
> A. I didn't hear her.

R. 269. But the courts below say nothing about this. R. 145; *Angelloz, supra*, pp. 1-2. As in *Howell, supra*, p. 3, at 827, thus do "...the minimal allegations contained in the written charges against plaintiff and the lack of any substantial evidence that she failed to discharge her responsibilities...," all transpiring within at most a half-day in a 27-year devotion to duty, warrant reversal. R. 1-634.

While adverse to the interests of Angelloz, the following is noteworthy:

> SUMMERS, Justice (dissenting).
>
> I cannot agree that the decision of the School Board, the trial judge in the district court and the Court of Appeal on this purely factual matter involving the credibility of witnesses should be reversed. I agree with the opinion of the Court of Appeal. See 321 So.2d 420.

Id., p. 4, at 827. That Second Circuit 2-1 opinion, unlike the First Circuit herein, actually analyzes the evidence and concludes:

> Although the evidence does not show any real or serious harm was caused by plaintiff's absence for the week in question and though his dismissal under the circumstances could be termed harsh, we nevertheless are of the opinion such a dereliction is sufficient to authorize the board to exercise its discretion to terminate the employment.

Howell v. Winn Parish Sch. Bd., 75-12704, p. 2 (La.App. 10/1/75); 321 So.2d 420, 422-423. The courts below did not consider whether there was "...any real or serious harm was caused by plaintiff's..." behavior on the day in question and whether her "...dismissal under the circumstances could be termed harsh,..." *Id.* They should have:

> ...And she said, "That's my lifeline to all my family and stuff." She said, "I don't have

my phone. Now I done got a ticket." And, you know, she – she hit the table like that in the teacher's lounge. And after that, Ms. Gautreaux walked in like from the other side.

****

Q. She was in pretty pitiful shape, wasn't she?

A. Yes. She was – I mean, she – you know, she was like, "That's my lifeline. Without my phone, nobody can get in contact with me. I can't get in contact with anybody." She was real emotional. You know, and then – Like I say, but by the time she came, it was like it was more about the ticket than kind of about her phone. She just felt like everything was just going bad.

****

...If you don't get to take your medicine, does that create some problems for the person that is relying on the medication?

A. In terms – in terms of having a heightened anxiety state, yes.

Q. And are those medications that need to be taken at certain time during the day, at mealtime?

A. In her case, she's – she takes some at – at lunchtime.

R. 254, 260, 348. See also R. 398.

II. IN DEPRIVING A 27-YEAR TEACHER OF HER EMPLOYMENT WITHOUT SUBSTANTIAL EVIDENCE, THE LOUISIANA SUPREME COURT DECISION, AND THAT OF THE COURTS BELOW, CONSTITUTES A DENIAL OF DUE PROCESS.

The Louisiana Supreme Court cites nothing. The First Circuit cites two cases. All that is said of one is this:

> In conducting such an examination, the district court must give great deference to a school board's findings of facts and credibility. *Arriola v. Orleans Parish School Board*, 2001-1878 (La. 2/26/02); 809 So.2d 932, 941.

There is no analysis of how *Arriola* relates to Angelloz's case. Factually the difference is stark:

> ...Arriola admitted that his attendance problems resulted from a dependency on cocaine. He provided a urine sample on May 28, 1996, which tested positive for cocaine metabolites.

Arriola, *supra*, p. 2, at 934. Legally there is this difference:

> In short, in addition to failing to show a risk of erroneous deprivation under the procedures used, Arriola fails to show a probative benefit for requiring the testimony of persons in the chain of custody at the laboratory and the testimony of persons actually performing the tests.

On the other hand, squarely addressing the second factor in Eldridge, the School Board points out that the chain of custody documentation is reliable, and consequently, that the testimony of the director was sufficient, because SmithKline was a National Institute on Drug Abuse ("NIDA") certified laboratory. In support of this contention, the School Board cites to the rigors required for SmithKline's federal certification which obviates the need for certain State inspections and particularly for this case, its continued use of "approved agency custody form[s] from the time of collection to receipt by the laboratory and that upon receipt by the laboratory an appropriate chain of custody form account[s] for the sample or sample aliquots within the laboratory." See Mandatory Guidelines for Federal Workplace Drug Testing Programs, § 1.2, 53 Fed.Reg. 11,970, 11,979 (1988). Furthermore, to support its argument that not requiring testimony of actual testing personnel presents a minimal risk of erroneous deprivation, the School Board contends that NIDA laboratories are recognized as the gold standard among drug testing laboratories. See David W. Lockard, Protecting Medical laboratories From Tort Liability for Drug Testing, 17 J.Legal Med. 427, 431 (1996) (stating that "[t]he highest standards are found only in the medical laboratories certified by the National Institute on Drug Abuse." and indicating that in 1996, only 90 out of approximately 1,200

drug testing facilities in the U.S. satisfied NIDA standards.

As to the third Eldridge factor, governmental interest and burden of the proposed procedure, Arriola argues that the burden of providing additional chain of custody and testing witnesses cannot be so great because R.S. 17:462 empowers the School Board to issue subpoenas, compel the attendance of witnesses, and require the production of documentary evidence. For its part, the School Board urges that it has a "vested interest in ensuring that its employees who come in direct and daily contact with children are people of good moral character and influence." Citing *Williams v. Concordia Parish Sch. Bd.*, 95-980, pp. 3-4 (La.App. 3 Cir. 1/31/96); 670 So.2d 351, 354. Furthermore, the School Board argues that procuring additional chain of custody testimony would be a huge fiscal burden, and amicus Louisiana School Board Association adds that in light of expense, school systems would effectively be prevented from terminating employees for drug abuse.

In light of these arguments, when we consider that on the one hand, Arriola proposes that additional testimony of chain of custody and testing personnel is a prerequisite to admitting the test results, and on the other the school board details the burden and expense of such testimony, without Arriola making a showing of the value of his

> proposal for additional live testimony, the balance tilts against his position.
>
> Indeed, while Arriola has a property interest at stake, his proposal for additional chain of custody testimony to satisfy the foundation requirement appears to'exceed the standard for admissibility in criminal trials.

Arriola, supra, pp. 7-8, at 939-940. Mary Angelloz does "...show a risk of erroneous deprivation under the procedures used...:"

> MS. BROUSSARD:
>
> Wait just a second. I apologize. But the point you read out to anyone, they weren't present for it and they're all sitting together.
>
> MR. DELAHAYE:
>
> We can tell them out there.
>
> MS. DILL:
>
> Maybe – go ahead.
>
> MR. FALCON:
>
> I would suggest if we just would – if Mr. Delahaye would just take a minute and admonish the witnesses –
>
> MR. DELAHAYE:
>
> I will.
>
> MR. FALCON:
>
> – of the meaning of the order.

MR. DELAHAYE:

I will go –

MR. FALCON:

That would be acceptable as opposed to bringing them all back in here and going through it.

MR. DELAHAYE:

And I'll do that after I finish reading this. (emphasis added (handwritten in)

MS. DILL:

And I would agree to that.

MR. DELAHAYE:

Okay.

****

MR. DILL:

Would you like to go admonish the witnesses first?

MR. DELAHAYE:

Yes, I will. I'll be back in a second.

MR. LODGE:

Let me make a statement before we get started. Each board member will have a right to question the witness. And we would like them to be treated in a courteous manner, with respect. They're going to have a limited amount of time, no more than three

minutes, to make their comment, one way or the other.

(A brief recess followed.)

MR. DELAHAYE:

Okay. Counsel, I've admonished the witnesses. We're ready for the opening statements.

R. 167-168, 175-176. This factor troubled neither the School Board nor the lower courts. R. 145; *Angelloz, supra*, pp. 1-2. See also R. 201, 241, 271-272.

As the "investigation" of Brandie Blanchard leaves much to be desired, Angelloz does also "...show a probative benefit for requiring the testimony of..." the affiants:

Q. – Ms. Blanchard. Is there anything that you possibly can relate to the fact of Ms. Angelloz having a condition, a medical condition? Is there anything of record that she may have a medical condition? I don't know if that's –

MR. DELAHAYE:

Well, Mr. Falcon, in his opening statement, said that the school board was made aware of the – some report.

MS. SANSONI:

But see, I knew she wasn't in here for all of that.

MR. DELAHAYE:

Oh, that's right.

MS. SANSONI:

And that's why I was asking.

BY MS. SANSONI:

Q. Are you aware of the fact that there is some sort of letter in her file, stating that she has a medical condition of high anxiety –

A. I –

Q. – or whatever the proper name is?

A. I am aware of it now.

****

Q. But I'm saying, were we making the school responsible for the accommodations? Since we didn't know about them, we obviously were.

A. (The witness indicated a positive response.) Correct.

****

Q. What is the normal procedure when we have letters that come in with a doctor's recommendation? Is it normally put in their folder here, or is it just left at the school?

MS. DILL:

Excuse me. I'm going to have to ask that we conference outside for just a moment, take a brief recess. Could we do that?

MR. DELAHAYE:

Sure.

(A brief recess follows.)

MR. DELAHAYE:

Anymore questions for Ms. Blanchard?

MS. SANSONI:

Did I get an answer?

MR. DELAHAYE:

You're dismissed. Call the next – what's your next witness, Ms. Dill?

MS. SANSONI:

I didn't get an answer? Did I get an answer?

MR. DELAHAYE:

What was your question?

BY MS. SANSONI:

Q. What was the procedure for putting medical recommendations into the permanent folder here at the office?

A. What is the procedure?

Q. Because this medical – this medical report was only kept at the school. And something of this severity, why wasn't it housed in the permanent record here?

MS. DILL:

Well, I would object to the characterization of something of this severity.

MR. DELAHAYE:

Okay. I sustain your –

MS. SANSONI:

You're right. You're right.

MS. DILL:

Nobody had – ye.

MR. DELAHAYE:

Okay.

MS. DILL:

I think our agreement was that the letter will be introduced. We can question Ms. Gautreaux about it since she had it in her file and knew about it. And we can question the doctor about it.

MR. DELAHAYE:

That's correct.

R. 202-203, 204, 211, 212-214. Apparently it did not even include a review of Angelloz's personnel file. This deficiency, that neither the principal nor the Human Resources representative knew about Ex. B (R. 81-82), merits no mention by the courts below. R. 145. *Angelloz, supra*, pp. 1-2.

And, on the other hand, unlike its Orleans counterpart, the Iberville School Board can point to nothing in the affidavits that is "...reliable, and consequently, that the testimony of..." Principal Gautreaux was sufficient. The School Board presented no evidence as to "...the rigors required for..." the verification of the affidavits. The School Board produced nothing "...recognized as the gold standard..." in its so-called "investigation." R. 1-634.

The Orleans Parish School Board was quite right to argue that, as to teachers with "...a dependency on cocaine (*Arriola*, p. 2, at 934)," "...it has a vested interest in ensuring that its employees who come in direct and daily contact with children are people of good moral character and influence." *Id.* Furthermore there is no Iberville School Board evidence of "...a huge fiscal burden..." and certainly no danger "...that in light of expense, school systems would effectively be prevented from terminating employees for drug abuse." *Id.* Here, "...the balance tilts against..." the Iberville School Board's position. *Id.* Mary Angelloz, too, "...has a property interest at stake..," but her proposal does not "...exceed the standard for admissibility in..." administrative hearings.

There is further support for Angelloz in *Arriola*, *supra*, at pp. 8-9:

> II. Review of the Evidence
>
> Certainly, affording Arriola procedural due process was not the only prerequisite to

> terminating his employment. The Superintendent had to show that there was substantial evidence of a violation of its policy against drug abuse. Again, we note that Arriola's blanket challenge was one of procedural due process; he has not alleged a particular flaw with the chain of custody, the testing procedures, or any other evidence to indicate the test results were inaccurate. Even so, we review the sufficiency of the evidence under our jurisdiction to review both law and fact. La.Const.Art. V § 5(C). In our evidentiary review, we apply the substantial evidence standard recognized by the Court of Appeal in Coleman: "'Substantial evidence' has been defined as 'evidence of such quality and weight that reasonable and fair-minded men in exercise of impartial judgment might reach different 'conclusions.'" *Coleman*, p. 4, 688 So.2d at 1315 (citing *Wiley v. Richland Parish Sch. Bd.*, 476 So.2d 439, 443 (La.App. 2 Cir. 1985)).

Unlike plaintiff Arriola, Angelloz does allege "...a particular flaw..." with the use of affidavits not subject to cross-examination and "...were inaccurate." *Id.* R. 197-198. The courts below did not address this distinction with *Arriola* nor the mandate of *Coleman*. R. 145; *Angelloz, supra*, pp. 1-2.

Arriola, *supra*, pp. 9-10, at 941 then quotes:

> See *Coleman*, 688 So.2d at 1315: "Great deference should be given to a board's factual findings and credibilitiy determinations. Reasons for dismissal are largely in the

> sound discretion of the school board. The school board's judgment should not be reversed in the absence of a clear showing of abuse of discretion." (Internal citations to *Gaulden v. Lincoln Parish Sch. Bd.,* 554 So.2d, 152, 157 (La.App. 2 Cir. 1989) omitted).
>
> Furthermore, we see no need for the School Board to confine its consideration of the charge of drug abuse to any one particular piece or type of evidence. See, e.g., *Chapital v. Orleans Parish School Bd.*, 2000-0646 (La.App. 4 Cir. 2/7/01); 780 So.2d 1110 (On review, the court considered the totality of the evidence: "The testimony and exhibits showed a pattern of improper physical contact with students."). Accordingly, in our examination of the record, we find that the chain of custody evidence, the testing procedures, the test results, and other evidence in support of the charge against Arriola, including his past admissions of drug abuse," offered a sufficient basis for a reasonable and fair-minded factfinder, in the exercise of impartial judgment, to reach the conclusion that Arriola violated the drug abuse policy. Thus, the decision of the School Board to terminate Arriola's employment was proper.

What plaintiff Arriola did not have, but Angelloz does, is "...a clear showing of abuse of discretion." *Id.* Perhaps most indicative of anything but the level playing field for this hearing is the School Board

lawyer allowing Principal Gautreaux to herself threaten the School Board with an ultimatum:

> ...whether you vote to terminate her or not, if you do not vote to terminate her or not, if you do not vote to terminate her, I will immediately request that she be transferred. I cannot have someone on my campus that has threatened a student. So it's up to you what you decide, but I want to make it very clear that I will not have her back on my campus.

R. 296-297. The District Court recognized that "her feelings were so strong,..." R. 631. But Evelyn Gautreaux's testimony did not hold up under cross-examination:

> Q. But isn't it true, ma'am, that she did not say that she was going to load her gun and shoot any student?
>
> A. She said she would load – go home and load her guns.
>
> Q. Didn't mention any students?
>
> A. Not at that time.
>
> *******
>
> A. She said she would take – that if I weren't going to take care of the students, that she would.
>
> Q. She didn't say anything about a gun, did she?

A. She had already said something about a gun.

Q. Okay. So you're putting the two statements together? They did not happen at the same time; is that fair?

A. They did not happen at the same time.

****

Q. You said in your statement, and in the charges, you said she was cursing. Did you hear any cursing? Because nobody else did.

A. I – I know she was yelling. At that point, quite frankly, I don't remember.

****

– were you closer than everybody else? Were you closer than Ms. Harris who had her by the arm and was leading her down the hall?

A. No.

R. 300-301, 302, 304, 305. See also R. 296-310. Nevertheless, the Evelyn Gautreaux testimony imposed its confusion on the part of the Board:

BY MR. TOM DELAHAYE:

Q. Dr. Gilkes, you had said that you thought that Ms. Agnelloz was not a threat. And I think that that's the bottom line issue that we're faced with here today as a board. We're asked today – and I don't know how

> much you are aware of what we're asked to do today or not, but we're asked today to do – to vote whether or not to terminate Ms. Angelloz. And in my mind it boils down to whether or not we feel like her actions violated policy, and of course, if in the future, there is a potential for threat. The principal has told us that the statements made by Ms. Angelloz, whatever they were, she interpreted them to be threats that she found – that she was very uncomfortable with as a professional educator in reference to use of guns or things like that. That's the problem I'm faced with as a board member –

R. 365. Thus was the Board decision based not on what Mary Angelloz did, even if everything the Board claimed be true, but "...if in the future, there is a potential for threat." R. 365. Or because Evelyn Gautreaux "...interpreted them to be threats...." R. 365. Or because "...she was very uncomfortable with as a professional educator in reference to use of guns or things like that." R. 365. The District Court voiced similar concerns. R. 530-581, 619-620. However "...the totality of the evidence..." shows nothing akin to "...a pattern of improper..." behavior on the part of Angelloz. R. 1-634. On the contrary, the unfortunate circumstances and reactions were at most, a one-day breech of exemplary behavior over a 27-year career.

Also garnering no reflection from the Board or the lower courts was that, on August 26, 2010, Mary Angelloz was the victim of crime, not just any crime but theft by one of her own students. R. 242-246.

Somehow Angelloz's perspective was lost to the entities that matter (R. 256):

> ...Well, she said, "First, I lost my phone, now I done got a damn ticket." You know, she said, "This is not a good day for me."

Even the gun comment is harmless (R. 271, 323):

> ...And the comment that you said that was made on the bench outside, this was after school and this was a comment among four – three or four teachers?
>
> **A.** Yes. It was –
>
> **Q.** And she said something about – talking about if somebody came onto her property, she would shoot them?
>
> **A,** Yes, sir.
>
> *******
>
> **A.** As far as me hearing what she said, there were no students around.

The only other case cited by the First Circuit is *Wise v. Bossier Parish School Bd.*, 02-1525 (La. 6/27/03); 851 So.2d 1090, 1097.

The District Court, in the case sub judice, "...specifically found...." nothing. R. 145. The one-page, June 24, 2011, Judgment could most charitably be described as a rubber stamp (R. 145):

> This matter, an appeal brought under the Louisiana Teacher Tenure Law,

> La.Rev.Stat. 17:443, came before the Court on briefs submitted by the parties.
>
> *******
>
> After reviewing the record of the tenure hearing at issue, and for oral reasons stated in the ruling in open court;
>
> IT IS ORDERED, ADJUDGED AND DECREED that the decisions of the Iberville Parish School Board regarding the termination of the employment of Mary Melanie Angelloz be and are hereby AFFIRMED.

There is also a distinction as to the *Wise* analysis of the appellate court review in that Angelloz's case does not involve "...less than satisfactory performance on evaluations and assistance schedules..." or "...acts of referring students to the school office...." *Id.* In fact, Supt. Ex. No. 6 is a four-page listing of "Professional Expectations." R. 72-75. For 27 years Mary Angelloz did her best to "...always present a favorable attitude... (R. 72)," listen "...attentively to each school system customer and to one another (R. 72)...," "maintain a dignified and respectful appearance and demeanor at all times (R. 73)...," did "...her part to keep the workplace safe, healthy and clean (R. 73)...," took confidentiality "...seriously at all levels of job responsibilities, both on and off of the job (R. 74)...," "felt...a sense of ownership toward...her job and the school system (R. 74)...," and faithfully observed her "...obligations to co-workers, supervisors, the Superintendent and the Board." R. 74. See also Supt. Ex. No. 7, R. 76-78.

Wise, *supra*, p. 4, at 1094 states, "The word 'arbitrary' implies a disregard of evidence or of the proper weight thereof." There is a plethora of such disregard in Mary Angelloz's case. The School Board knew as early as February 25, 2009, "...that Ms. Angelloz has a mental impairment that substantially limits more than one major arena of her life." R. 81-85. Yet her main accuser, Principal Gautreaux, rather than "...minimizing undue and harmful stress which exacerbates her psychiatric condition (R. 81)..," actually exacerbates the situation. R. 390-391. Yet there was no consideration of this evidence by the School Board. R. 1-634. Nor by the courts below. R. 145; *Angelloz, supra*, pp. 1-2.

There is no evidence of Angelloz's "...principal's specific verbal directions...," much less a "...second written warning/reprimand,..." *Wise, supra*, p. 6, at 1096 *Id.* On the contrary, Principal Gautreaux did not even think over the day's events, perhaps "sleep on it," but immediately calls Blanchard to launch a course of termination. R. 192.

Unlike the principal in *Gaulden v. Lincoln Parish Sch. Bd.*, 554 So.2d 152 (La.App. 2 Cir. 1989); writ denied, 559 So.2d 126 (La.1990), Principal Gautreaux had not "...discussed the problem with..." Angelloz even once, much less "...on two separate occasions...." *Id.* Nor were there any "...specific directions to follow in addressing the problem,..." *Id.* Whereas plaintiff Gaulden's "...failure to heed those instructions from her immediate supervisor supported her termination for willful neglect of duty," there is no such failure on

the part of Angelloz. R. 1-634. Nor were there "...multiple conferences with the affected teacher to explain the policy." *Wise, supra*, p. 7, at 1097. There is not even evidence in the record of "...general warnings...." *Id.*

This is not a case "...that teachers cannot decide on their own what policies they will follow." *Id.,* at 1098. But, given the record as a whole, the School Board's "...bona fide exercise of its discretion" demands oversight. *Id.,* at 1097. Neither the District Court nor the First Circuit saw fit to do so. R. 14; *Angelloz, supra*, pp. 1-2. That responsibility now rests with this Honorable Court.

Howard v. West Baton Rouge Parish Sch. Bd., 00-3234, 710 (La. 6/29/01); 793 So.2d 153, 155, opines:

> The court of appeal found Howard brought the gun on school grounds, had knowledge that a gun was kept in the vehicle, and that he parked the vehicle in an area easily accessed by students. We do not find this dispositive of willful neglect of duty and do not agree that a tenured teacher may be terminated based upon the evidence in the record in the instant case.

The earlier decision, *Howard v. West Baton Rouge Parish Sch. Bd.*, 98 2574 (La.App. 1 Cir. 9/22/00, 770 So.2d 441, unlike the court below for Mary Angelloz, at least provided an analysis of the law and evidence. In any event, what plaintiff Howard actually did is far more egregious than the talk about guns for which

Angelloz stands accused. That is so even if one accepts every disputed fact to be in favor of the School Board. Furthermore, there is no evidence that Angelloz "...was uncooperative, committed a dereliction of duty, was not (sic) warned regarding deficiencies, kept poor records, or failed to discharge her professional duties and responsibilities." *Id.*

Angelloz qualifies as a 27-year "...teacher with an unblemished record..." and has not shown "...students movies containing nudity, vulgarity, violence, and explicit scenes,..." *Id.,* p. 2, at 156. More to the point, Angelloz, not even "...in an isolated incident displayed a gun to a student to defend herself when physically attacked, *Landry v. Ascension Parish School Bd.*, 415 So.2d 473 (La.App. 1 Cir. 1982);..." *Id.*

Nor has Angelloz engaged in any of the "Actions for which teachers of this state have been terminated...." *Id.*, p. 3, at 156. Again to the point, even if Angelloz did exactly as described by Doris Knatt and said to a student, "Sit down before I throw you in that chair (R. 242)," Angelloz did not act on such unfortunate language. She certainly did nothing akin to tying a "...five year old behaviorally disordered student to a desk, bound at the ankles and wrists with duct tape and left in the doorway in public view for two hours, *Sylvester v. Cancienne*, 95-0789 (La.App. 1 Cir. 11/9/95); 664 So.2d 1259;..." *Id.* And the courts below gave no never mind to Angelloz's own unfortunate circumstances of August 26, 2010, much less any freedom of speech considerations. R. 145; *Angelloz, supra*, pp. 1-2.

III. THE LOUISIANA SUPREME COURT, AND THE COURTS BELOW, DEPRIVED MARY ANGELLOZ OF HER CONSTITUTIONAL RIGHT TO FREE SPEECH BY TERMINATING HER EMPLOYMENT BECAUSE SHE STATED SHE KEEPS A LOADED GUN IN HER HOME OR DEPRIVED HER OF HER CONSTITUTIONAL RIGHT TO KEEP AND BEAR ARMS BY TERMINATING HER BECAUSE SHE ACTUALLY DOES SO.

In a case involving "...plaintiff's claim based on the public policy embodied in the *Second Amendment*..."[1] "– the right to bear arms. Both the plaintiff and this court have failed to uncover any authority addressing this issue."[2] While the *Petrovski* "...plaintiff has failed to allege any facts that would implicate the *Second Amendment*..,"[3] those facts are distinguishable from that of Mary Angelloz:

> Plaintiff alleges that he engaged in conversations regarding his personal interest in firearms, including his visits to gun shows and participation in shooting on weekends. Plaintiff alleges that his conversations concerning firearms led, in part, to his discharge. Thus, plaintiff's conversations about, not his possession of firearms led to his discharge.

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[1] *Petrovski v. Federal Express Corp.,* 210 F.Supp.2d 943, 948 (N.D. OH 2002).

[2] *Id.*

[3] *Id.*

> Nonetheless, even if his possession of a firearm had led to his discharge, plaintiff's claim would fail for the same reason his free speech claim failed: lack of state action.[4]

The record evidence shows that Mary Angelloz's "...possession of firearms led to... her discharge."[5] And her case involves state action.[6]

In *Plona v. United Parcel Service*, the plaintiff "...was terminated in April 2006, allegedly because UPS discovered that Plona had a handgun in his vehicle while at work."[7] The IPSB does not even have the UPS argument which the Court rejected "...that in this case, without state action, there can be no violation of the public policy embodied by *Article I, Section 4 of the Ohio Constitution,* as both the right to bear arms and the right to free speech are violated only when state action is involved."[8] The *Plona* court held:

> ...punishing employees for exercising constitutional rights while *outside* the workplace jeopardizes public policy to a much greater degree. *Chapman v. Adia Servs., Inc., 116 Ohio App.3d 534, 688 N.E.2d 604, 609 (Ohio Ct. App. 1997)* (noting that "[a] remedy

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[4] *Id.,* at 948-949.

[5] *Id.*, at 949.

[6] Respondent is the IPSB.

[7] 2007 U.S. Dist. LEXIS 10345, at *1 (N.D. OH 2007).

[8] *Id.* at *6.

> would be illusory if citizens could lose their jobs for seeking it" in upholding a wrongful termination claim based on the "open courts" provision of the Ohio constitution).[9]

The federal Second Amendment affords no less protection to Mary Angelloz.[10]

Mary Angelloz certainly has a greater right than the plaintiff in *Korb*[11] who "...does not dispute that he in fact handled the gun."[12] *Korb* concluded:

> In sum, while Kentucky law certainly protects Korb's right to possess the handgun in his vehicle at work, this protection does not extend to the handling of the firearm. Although the punishment for Korb's indiscretion was perhaps severe, Voith has the discretion to terminate an employee who violates company policies in such a way that does not run contrary to state or federal statutory or constitutional law.[13]

Thus does federal constitutional law, the Second Amendment, certainly protect Mary Angelloz's "...right to possess the handgun in..."[14] her home. The IPSB

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[9] *Id.,* at pp. 6-7.

[10] The Second Amendment states, "...the right of the people to keep and bear Arms, shall not be infringed...."

[11] *Korb v. Vorith Industrial Services, Inc.,* 2012 U.S. Dist. LEXIS 168464 (W.D. KY 2012).

[12] *Id.*, at p. 8.

[13] *Id.,* at p. 8.

[14] *Id.*

did not, in this instance, have "...the discretion to terminate an employee,"[15] Mary Angelloz, who violated no board policies.

Similarly Angelloz has greater rights than where "Plaintiffs were terminated after a search by Weyco security personnel uncovered firearms in their vehicles parked in the employee parking lot at the mill, in violation of Weyco policies.[16] Angelloz had no firearms in her vehicle. Also pertinent is this passage:

> While the Oklahoma courts have not addressed the precise question of whether there is a clear and compelling public policy involving the right to bear arms, such that an at-will employee may not be terminated when he exercises that right we are confident that those courts would not embrace that view.[17]

Nor has this Court "...addressed the precise question of whether there is a clear and compelling public policy involving the right to bear arms, such that an at-will employee may not be terminated when he exercises that right."[18] And Angelloz was not an at-will employee. The IPSB, even in its most favorable light, violated Angelloz's constitutional rights in terminating her for either having a gun in her home or saying she did so. Nor was there "...an internet

[15] *Id.*

[16] *Bastible v. Weyerhaeuser Co.*, 437 F.3d 999, 1001 (10th Cir. 2006).

[17] *Id.*, at 1007-1008.

[18] *Id.*

usage report, which confirmed..." Angelloz "...had accessed gun websites."[19] Nor had "...she hinted to a fellow coworker she had a mind to shoot him with her .357 revolver."[20]

CONCLUSION

The Louisiana Supreme Court's mandate was clear: "...the School Board must prove that Angelloz "...willfully or deliberately neglected [her] duties or acted in contravention of an order or school policy." *Howard, supra*, p. 3, at 157. Plaintiff Howard "...possibly endangered the students,..." *Id.* Angelloz did not. Like Howard, Angelloz "...had no history of discipline or charges filed against..." her. R. 60-64. And there was no testimony that, unlike Howard, Angelloz "...had acted unprofessionally on one occasion concerning a threat [she] received from a student...." *Id.* As in *Howard*, the "...School Board did not have a rational basis supported by substantial evidence to terminate..." Angelloz for willful neglect of duty. *Id.* Plaintiff's constitutional rights, pursuant to the First, Second, Fifth and Fourteenth Amendments, were violated. Thus should this Honorable Court grant the writ of certiorari and "...reverse the School Board, trial court, and court of appeal," as well as the

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[19] *Jackson v. Planco*, 431 Fed.Appx. 161, 163 (3d Cir. 2011).

[20] *Gaff v. St. Mary's Regional Medical Ctr.*, 2012 U.S. App. LEXIS 25869 (10th Cir. 2012), *1.

Louisiana Supreme Court and reinstate Angelloz to her "...former position with all salary, compensation and emoluments." *Id.*

Respectfully submitted,

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NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 CA 2294

MARY MELANIE ANGELLOZ

VERSUS

IBERVILLE PARISH SCHOOL BOARD AND
DR. P. EDWARD CANCIENNE, JR.,
SUPERINTENDENT

Judgment Rendered: JUN 14 2012

[/s/ PMC
/s/ JEW]

* * * * * * *

Appealed from the
18th Judicial District Court
In and for the Parish of Iberville, Louisiana
Trial Court Number 69,707

Honorable William C. Dupont, Judge

* * * * * * *

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* * * * * * *

BEFORE: PETTIGREW, McCLENDON,
AND WELCH, JJ.

[/s/ Pettigrew, J. concurs]

WELCH, J.

Plaintiff, Mary Angelloz, appeals a judgment of the district court affirming a decision of the Iberville Parish School Board (School Board) to terminate her employment as a tenured teacher. We affirm.

BACKGROUND

Ms. Angelloz was a tenured school teacher and had been employed by the School Board for 27 years. On August 26, 2010, Ms. Angelloz's cell phone was allegedly stolen by a student and was ultimately recovered later that day. Ms. Angelloz's conduct in response to the loss and recovery of her cell phone that day led to an investigation by the School Board, following which the Superintendent charged Ms. Angelloz with four counts of willful neglect of duty. Specifically, Ms. Angelloz was charged with: (1) angrily yelling at her students that she was "sick" of them and that she would "throw" a student into the desk if he did not sit down; (2) reacting to the loss of her cell phone by interrupting a class and crying while looking for the phone; becoming demonstratively angry, crying, talking and/or yelling loudly and cursing as she walked down the school's hallway; and by yelling, cursing, and kicking and/or hitting the table and chairs in the teacher's lounge in or near the presence of the principal, other employees, and/or

students; (3) reacting to the recovery of her cell phone from the two students who allegedly took the cell phone by yelling, cursing, and otherwise acting irrationally in the school's hallway in the presence of students, other employee(s), and the principal; and (4) engaging in a discussion after school ended in which she stated that she was known as a "crazy bitch" because if someone stepped on her property or she became angry she would "shoot first and ask questions later," and that she was going home to "load [her] guns." In count four, the Board also charged that during a telephone conversation with her principal an hour later, Ms. Angelloz cursed the student who allegedly took her phone and said that if the school was not going to take care of the students and their parents, she would "take care" of the rest of the "little sons of bitches."

Following a termination hearing, during which numerous witnesses testified, the School Board found Ms. Angelloz guilty of all four charges and voted that each of the charges of which Ms. Angelloz had been found guilty constituted willful neglect of duty. The School Board then voted by a 9-2 vote to terminate Ms. Angelloz's employment.

Ms. Angelloz appealed her termination to the district court. The district court upheld the termination, concluding that the School Board did not abuse its discretion in terminating Ms. Angelloz, finding that it had adequate information upon which to base its decision.

Ms. Angelloz appealed that judgment to this court, contending that the School Board's findings were completely unsubstantiated by the evidence, that termination is a punishment far too harsh in relation to the charges, and that the district court erred in affirming the School Board's findings in light of inadmissible affidavits considered by the School Board in making its decision.

A permanent teacher shall not be removed from office except upon written and signed charges of, among other things, willful neglect of duty and only if found guilty after a hearing by a school board. La. R.S. 17:443(A). Judicial review of teacher tenure proceedings is limited to an inquiry of whether a school board complied with the statutory formalities under Louisiana's teacher tenure law and whether its findings are supported by substantial evidence. Substantial evidence is evidence of such quality and weight that reasonable minds in the exercise of impartial judgment might reach different conclusions. **Wise v. Bossier Parish School Board**, 02-1525 (La. 6/27/03), 851 So.2d 1090, 1094. In conducting such an examination, the district court must give great deference to a school board's findings of facts and credibility. **Arriola v. Orleans Parish School Board**, 2001-1878 (La. 2/26/02), 809 So.2d 932, 941. Reasons for dismissal are largely in the sound discretion of the school board. **Wise**, 851 So.2d at 1094. Thus, it is well settled that a school board's judgment should not be reversed in the absence of an abuse of discretion. *Id.*

A district court may not substitute its judgment for that of a school board or interfere with the school board's good faith exercise of its discretion. The district court's responsibility in such a case is to determine whether a school board's action was supported by substantial evidence, or conversely, constituted an arbitrary decision and thus an abuse of discretion. **Wise**, 851 So.2d at 1094-1095. As with the district court, a court of appeal may not reverse the decision of a district court unless it finds that a school board's termination proceedings failed to comply with statutory formalities and/or a school board's findings were not supported by substantial evidence. **Wise**, 851 So.2d at 1095. It is sufficient to support termination if any one of the charges of willful neglect of duty against a tenured teacher is sufficiently supported by the record. *Id.*

After a thorough review of the evidence, it is clear that the School Board's conclusion that Ms. Angelloz was guilty of willful neglect was based largely on credibility determinations. The district court was bound, as is this court, to give wide deference to the School Board's credibility determinations. Our examination of the evidence convinces us that the School Board had substantial evidence upon which to find Ms. Angelloz guilty of willful neglect of duty. Moreover, we find no abuse of discretion in the School Board's decision to terminate Ms. Angelloz's employment upon finding her guilty of willful neglect.

For those reasons, we affirm the judgment of the trial court and in so doing, issue this memorandum

opinion in compliance with Uniform Rules-Courts of Appeal Rule 2-16.1B. All costs of this appeal are assessed to appellant, Mary Angelloz.

AFFIRMED.

MARY MELANIE ANGELLOZ	**DOCKET NO. 69707 DIV. D**
vs.	**18TH JUDICIAL DISTRICT COURT**
IBERVILLE PARISH SCHOOL BOARD	**PARISH OF IBERVILLE**
	STATE OF LOUISIANA

* *

JUDGMENT

This matter, an appeal brought under the Louisiana Teacher Tenure Law, La.Rev.Stat. 17:443, came before the Court on briefs submitted by the parties. On Tuesday, June 14, 2011, the Court heard oral argument and thereafter presented its ruling in open court. Present were Mary Melanie Angelloz, appellant; Donna U. Grodner, Esq., attorney for appellant; and Pamela Wescovich Dill, Esq., attorney for respondent, Iberville Parish School Board.

After reviewing the record of the tenure hearing at issue, and for oral reasons stated in the ruling in open court;

IT IS ORDERED, ADJUDGED AND DECREED that the decisions of the Iberville Parish School Board regarding the termination of the employment of Mary Melanie Angelloz be and are hereby **AFFIRMED**, and the claims of Mary Melanie Angelloz against the Iberville Parish School Board, be and are hereby **DISMISSED, with prejudice,** with each party to bear their own costs, and, further, that this is a final judgment for purposes of appeal having disposed of all issues in this matter.

JUDGMENT RENDERED in open Court on Tuesday, June 14, 2011.

JUDGMENT READ AND SIGNED in Chambers this 24 day of June, 2011.

/s/ [Illegible]
WILLIAM C. DUPONT
DISTRICT COURT JUDGE, 18TH JDC

18TH JUDICIAL DISTRICT COURT
PARISH OF IBERVILLE
STATE OF LOUISIANA

-- x
MARY MELANIE ANGELLOZ *
VERSUS * NO. 69,707
IBERVILLE PARISH * DIV. "D"
SCHOOL BOARD, ET AL *
-- x

TRANSCRIPT OF THE ABOVE-ENTITLED PROCEEDING CAME ON FOR HEARING IN OPEN COURT AT THE PARISH COURTHOUSE LOCATED IN PLAQUEMINE, LOUISIANA, ON THE 14th DAY OF JUNE, 2011.

THE HONORABLE WILLIAM C. DUPONT, JUDGE, PRESIDING.

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APPEARANCES:

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PAMELA WESCOVICH DILL
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REPRESENTING THE DEFENDANT

REPORTED AND TRANSCRIBED BY:
JERRI C. SCHNEBELEN
CERTIFIED COURT REPORTER

* * *

[76] THE COURT: All right. It's not a nice situation. I was not privy to hearing the witnesses testify so I really don't know their demeanor, how they looked or didn't look and I'm cognizant enough having tried enough cases as a lawyer and sat through enough cases as a judge to know that when witnesses testify I've, in my mind said, [77] many times I believe them, they're honest or I don't believe anything that one's saying just because of the way they're sitting there saying it. I'm sure jurors do the same thing, and lawyers. So all I got is a transcript and mere typed words to go by and try to take those in the context of everything that's said at a point in time.

I started off telling you, I'm here to determine, one, was the law followed adequately enough in the hearing to provide everybody with due process and the ability to present their case at the hearing; and then past that whether or not what was presented is it adequate enough that the School Board, the trier of fact, the jury in this case so to speak, had adequate information to base their decision on. As far as the evidentiary aspects of the hearing and the manner in which it was conducted and the like the biggest objections that seem to have been made have been in regard to these affidavit aspects. I didn't hear any

other large objections as to the methodology that the hearing was conducted in.

It is an administrative hearing. The fact that the witnesses that did testify and the affidavits were in evidence I don't think it was error because it's an administrative hearing to begin with and [78] the rules of evidence are relaxed, but even if it were not that would not be reversible, it would be ominous error because they were available to be cross examined. The other affidavits that may have been introduced, the parties, it seems like they were actually available to be called if necessary and either party, they were actually physically there. So that, again, would not have been a significant error that would result in any matter.

This Court, of course as I stated, so procedurally I find that there's no merit to the allegation that the procedure was not adequately performed. This Court, I read the transcript, okay, and what I'm telling you here is based on the transcript, it's not based on affidavits, it's based on – 'cause I honestly did not, I'll be honest with y'all, I did not go and read those affidavits, I looked at the exhibits that were put in in regard to what the responsibilities of the parties, of the teachers, that's exhibits 1 through 5 or something, the very first exhibits I think that were put in that talked about responsibilities that the teachers and all have. And I read the testimony of what was said and not said or at least how they took it. As I said, I do not believe you can take one statement in context of just itself. There was enough said, enough

[79] emotions gone that instilled a threatening nature that made the administrative people have to not want her to be there around the students and the, or talk to the parents, that something explosive was going to happen.

Now, it didn't happen, okay, but at the same time it created an atmosphere that was not very conducive to what is supposed to be there at a school system. I did not hear the witnesses. I did not hear or see the demeanor. I did not see what they, other than I get a context of that feeling at the end of Ms. Gauthreaux's – is it Ms. Gauthreaux?

MS. GRODNER: The principal.

THE COURT: Yeah, at the end of her testimony when she just was, her feelings were so strong, which I can take that to be feelings because she point blank said if you tell her to come – if you don't take action please don't send her back to my school, okay, or something to that effect. I don't remember but it was please reassign duties or something. So that tells me that there was an emotional aspect to her dealings and how she felt about the statements that she had heard and made.

I cannot say that there was an abuse [80] of discretion. That's all I can go on. Was there an abuse of discretion? There was enough testimony that the School Board got to vote on it and they had adequate information to make the decision that they felt they needed to make based on what they had. So the Court

is going to affirm the decision of the tenure hearing. That's all I can do at this point.

MS. DILL: Thank you, Your Honor.

MS. GRODNER: Thank you, Your Honor.

(WHEREUPON, THIS MATTER IS ADJOURNED.)

The Supreme Court of the State of Louisiana

MARY MELANIE ANGELLOZ

VS. NO. 2012-C-1645

IBERVILLE PARISH SCHOOL BOARD AND DR. P. EDWARD CANCIENNE, JR., SUPERINTENDENT

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IN RE: Angelloz, Mary Melanie; – Plaintiff; Applying For Writ of Certiorari and/or Review, Parish of Iberville, 18th Judicial District Court Div. D, No. 69707; to the Court of Appeal, First Circuit, No. 2011 CA 2294;

– – – – – –

October 26, 2012

Denied.

JLW

BJJ

JPV

JTK

GGG

MRC

Supreme Court of Louisiana
October 26, 2012

/s/ Robin A. Burras
Deputy Clerk of Court
For the Court

IBERVILLE PARISH SCHOOL BOARD

IN RE:

MARY MELANIE ANGELLOZ

TENURE HEARING

The Tenure Hearing held by the Iberville Parish School Board, at the Iberville Parish School Board central office, 58030 Plaquemine Street, Plaquemine, Louisiana, beginning at 2:08 p.m., on December 1, 2010.

BEFORE:

Lori B. Overland
Certified Court Reporter
In and For the State of Louisiana

ASSOCIATED REPORTERS, INC.
(225) 216-2036

* * *

[361] BOARD SECRETARY: Motion passed.

MR. LODGE: Let the record reflect that the board voted to terminate Ms. Angelloz' service with the school board effective [362] immediately.

MS. KELLEY: Motion to adjourn.

MR. LODGE: Motion to adjourn.

MS. HASTEN: Second.

THE HEARING CONCLUDED AT 8:22 P.M.

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