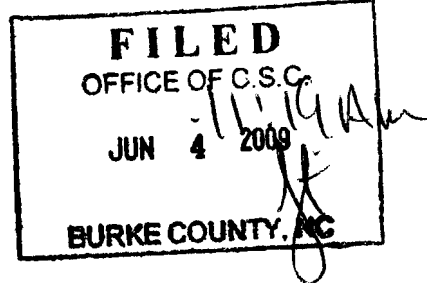


STATE OF NORTH CAROLINA  
COUNTY OF BURKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
09-CVS-1083

DAVID C. BURLESON, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 BURKE COUNTY BOARD )  
 OF EDUCATION, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

**PRELIMINARY INJUNCTION**



THIS CAUSE came on to be heard before the undersigned Superior Court Judge duly assigned to hold Court in Burke County Civil Superior Court on June 3, 2009. Plaintiff was represented by Edward T. Hinson, Jr., John S. Arrowood and Harrison A. Lord of the law firm of James, McElroy & Diehl, P.A. Defendant was represented by Richard A. Schwartz of the law firm of Schwartz & Shaw, P.L.L.C. The Court has reviewed the Verified Complaint, Plaintiff's Memorandum of Law in Support of Plaintiff's Request for Preliminary Injunction and the authorities cited therein, Defendant's Memorandum in Opposition to Plaintiff's Motion for Preliminary Injunction along with the supporting Affidavit, the authorities cited therein and the Legislative History of N.C.G.S. §115C-271. The Court has also considered the arguments of counsel. Based upon the forgoing, the Court for the purposes of this hearing makes the following:

**FINDINGS OF FACT**

1. On July 1, 2000 the Burke County Board of Education (hereinafter "Board" or "Defendant") elected David C. Burleson (hereinafter "Burleson" or "Plaintiff") Superintendent of the Burke County Schools. The term of office set forth in his

Employment Contract (hereinafter "Contract") was until June 30, 2004. This Contract complied with the provisions of N.C.G.S. §115C-271(b).

2. On December 15, 2003 the Board extended Burleson's Contract from January 1, 2004 until December 31, 2007.

3. On April 10, 2006 the Board again extended Burleson's Contract until April 10, 2010. The terms of this Contract stated:

The Board hereby employs the Superintendent and the Superintendent hereby accepts such employment for a term of four (4) years commencing April 10, 2006 and ending April 10, 2010.

4. These Contract extensions were pursuant to the provisions of N.C.G.S. §115C-271(c).

5. The relevant Legislative History of N.C.G. S. § 115C-271 is as follows:

1981 SL 1981-423

Term:

Superintendent is to be elected at a meeting "during the month of April" and is to take office on the following July 1. The superintendent elected in April "shall be elected for a term of either two or four years."

Extension or Renewal:

Contract may be extended or renewed "at any time during the final year of his term."

1987 SL 1987-389

Term:

Election requirement changed from "during the month of April" to "not later than April 30."

1989 SL 1989-339

Extension or renewal:

Provision changed to from "at any time during the final year of his contract" to "during the final 12 months of the contract."

1991 SL 1991-238

Term:

Selection requirement of "not later than April 30" removed  
Term changed from "either two or four years" to "one to four years, ending on June 30 of the final 12 months of the contract." Specification that term begins on July 1 removed.  
Extension or renewal:  
Provision changed from "at any time during the final year of his term" to "after the first 12 months of the contract. . . [provided that] the current superintendent's contract may not be extended or renewed for a term of greater than four years."

1997 SL 1997-443

Term:

Term changed from "one to four years, ending on June 30 of the final 12 months of the contract" to "no more than four years, ending on June 30 of the final months of the contract."

Extension or renewal provision:

Provision changed from "may not be extended or renewed for a term of greater than four years" to may be extended or renewed "for a term of no more than four years from the date of the extension."

6. In March 2009, the Board's current attorney opined that all superintendent employment contracts must end on June 30<sup>th</sup> of a calendar year.

7. On April 20, 2009, the Board conducted a Special Called Meeting to deal with the Superintendent's Contract.

8. At this meeting the Board adopted a motion "[t]hat the Contract of the Superintendent not be renewed and that it end June 30, 2009 in accordance to the General Statutes."

9. After the Contract was entered into it was submitted to the State Board of Education as required by the provisions of N.C.G.S. §115C-271.

10. Prior to April 20, 2009 the Defendant had provided Plaintiff no notice whatsoever of its intention with regard to the renewal or extension of his Contract.

11. The current Contract also provided that "[t]he Board agrees to notify the Superintendent no later than 180 school days before the expiration date of this Employment Contract of the intent of the Board regarding the renewal [and/or] the extension of this Employment Contract or the issuance of a new Employment Contract.

The Superintendent shall place this item on the Board's agenda prior to the expiration of the 180-day period."

12. According to the public records of the Board, the Board has indicated that it intends to commence the search for a new superintendent on June 2, 2009 and have that superintendent in place on or about August 17, 2009.

13. If no action is taken, the Board intends to remove Plaintiff as Superintendent on June 30, 2009.

14. Allowing the Board to terminate Plaintiff's Contract on June 30, 2009 without a hearing will subject Plaintiff to the following:

- a. He will lose his right to hold a position to which he has a contract of entitlement;
- b. He will lose his right to due process under the North Carolina Constitution;
- c. If his position is declared vacant on June 30, the Board will improperly fill the position, thereby preventing Burleson from competing to retain his position in the future;
- d. He will lose his right to a meaningful hearing as to his entitlement to the Office of Superintendent of Burke County Schools.

15. The Board did not provide Plaintiff any due process in the termination of his employment by notifying the Plaintiff on April 20, 2009 that his Contract was not renewed June 30, 2009.

Based upon the foregoing Findings of Fact, the Court makes the following:

#### **CONCLUSIONS OF LAW**

1. There is probable cause to believe that Plaintiff will prevail on the merits of his claims for Declaratory Judgment and Permanent Injunctions.

2. There is a reasonable apprehension of irreparable loss unless injunctive relief is granted and such relief appears reasonably necessary to protect Plaintiff's rights during the litigation.

3. Plaintiff's initial Contract with the Board of Education was legal in every respect and complied with the provisions of N.C.G.S. §115C-271(b).

4. Based upon a literal reading and interpretation of the statute, pursuant to the provisions of N.C.G.S. §115C-271(c) the Board of Education could at any time after the first twelve (12) months of the Contract, with the written consent of the current superintendent, extend or renew the superintendent's contract for a term of no more than four (4) years from the date of the extension.

5. In compliance with the provisions of N.C.G.S. §115C-271(c) which governs extensions and renewals of superintendent contracts, the Burke County Board of Education on April 10, 2006 extended Plaintiff's Contract until April 10, 2010. This contract extension was valid in every respect.

6. Because Plaintiff has a valid contract allowing him employment until April 10, 2010, he has a constitutionally protected property interest in his employment with the Burke County Schools until that time. The Board's action on April 20, 2009 was not proper.

7. Because of Burleson's constitutionally protected interest, he has a right to due process prior to Defendant's denying him this property interest. In the present case, no due process was given.

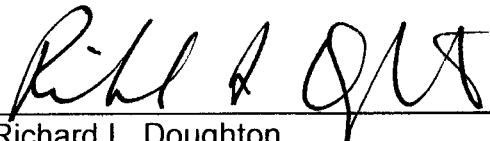
8. The Court after having balanced the equities also concludes that if a preliminary injunction is issued Defendant Board will suffer little or no harm by maintaining the status quo.

9. The Court further concludes that on the other hand if a preliminary injunction is not issued and the Defendant Board is allowed to terminate the Contract pursuant to its actions of April 20, 2009, Plaintiff will suffer irreparable harm in at least the following respect, he will be denied his rights to due process under the North Carolina Constitution.

Based upon the foregoing Findings of Fact and Conclusions of Law it is hereby **ORDERED, ADJUDGED and DECREED** that the Burke County Board of Education is hereby enjoined from terminating its contract with David C. Burleson during the pendency of this action or until April 10, 2010, whichever occurs first, unless it first complies with the provisions of N.C.G.S. § 115C-271(d) or N.C.G.S. § 115C-274.

Plaintiff is required to post a bond in the amount of \$200.00 to enforce this injunction on or before June 5, 2006.

This the 4th day of June, 2009.

  
Richard L. Doughton  
Superior Court Judge Presiding