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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
L. Casey Manning, Circuit Court Judge

Appellate Case No. 2019-001603
Case No. 2019-CP-40-01615

T.D., by and through his guardians, A.D. and J.D.,

Appellants,

v.

Richland County School District Two,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS, Rule 242, SCACR

D. Michael Mathison
721 Huntington Avenue
Columbia, South Carolina 29205
Ph: (843) 222-0456
dmichaelmathison@yahoo.com
Attorney for Appellants

November 22, 2024

Certification of Counsel

I hereby certify that the Court of Appeals issued a decision in this matter on September 11, 2024. The Petition for Rehearing was filed on September 26, 2024. The Court of Appeals issued its decision denying the Petition for Rehearing in this matter on October 23, 2024.

ISSUES ON APPEAL

I. Do South Carolina's public school students in have the right to ask questions of all witnesses when recommended for expulsion from school.

II. Did the Board, Circuit Court and Court of Appeals err in applying a substantial evidence standard of review to questions of law and statutory interpretation, where the court was not called on to review the substantive determinations of the School Board, but only whether appellant was afforded the procedural due process prescribed by statutes, constitution, and caselaw.

IV. Did the Court of Appeals err affirming the Circuit Court's ruling that an expulsion hearing provided a student due process of law, where (a) the accused Student was not advised of the specific facts or evidence against him before the evidentiary hearing; (b) the Student was deprived access to the records used against him during the evidentiary hearing; (c) administrators misinformed the family that they had no knowledge of any criminal charges; (d) administrators, with the Hearing Officer's knowledge, altered and misrepresented the content of the evidence during the hearing; (e) administrators provided the hearing officer with *ex parte* information, which the Hearing Officer introduced *sua sponte* against the student; (f) the administrators and the Hearing Officer withheld evidence favorable to the Student's case; (g) the Hearing Officer refused to answer student's questions about the evidence; (h) the Hearing Officer exhibited overt bias against Student; (i) the Hearing Officer incorporated *ex parte* information into her decision; and (j) the Hearing Officer and Respondent's counsel prepared and submitted false and incomplete hearing transcripts to the reviewing Board.

VIII. Did the Court of Appeals err in ruling that School District's policies, practices and actions comply with South Carolina Code Sections 63-19-810(c), 63-19-2020(E) and 63-19-2030(E), which require school districts to have policies limiting access and use of juvenile law enforcement records, where the district's policies do not contain the mandatory language required by statute, the district misinformed the family about pending charges, then used student's confidential juvenile law enforcement records for a recorded cross-examination, without providing the family access to the records, and used the records for purposes other than monitoring, supervision and serving the educational needs of the child?

Introduction

This case is about fundamental fairness. This is an appeal of a school district's decision to expel a student who was charged by law enforcement with making threats over social media.[1] Students facing expulsion are guaranteed basic constitutional and statutory rights as are students facing charges in our Family Courts. This case also involves novel questions of law. This Court is free to determine novel questions of law with no particular deference to the lower court. State v. Sweat, 379 S.C. 367, 665 S.E.2d 645, 648-649 (Ct. App. 2008). Appellants ask this court to interpret and apply the state's expulsion procedures statute (S.C. Code Ann. § 59-63-240), in which the General Assembly expressly provided that parents "shall have the right to legal counsel and to all other regular legal rights including the right to question all witnesses." [2]

Appellants also ask this court to interpret and apply statutes related to the confidentiality of juvenile records at S.C. Code Ann. §§ 63-19-810(C), 63-19-2020(E) and 63-19-2030(E). The statutes require school districts to have policies restricting how school principals may access and use juvenile law enforcement information. The mandatory policies must limit access and use to supervision, monitoring, and serving the educational needs of the child. S.C. Code Ann. §§ 63-19-810(C), 63-19-2020(E) and 63-19-2030(E).

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[1] At the time of the initial expulsion hearing, December 12, 2018, Student and Family were not aware of any pending criminal charges. [R. p. 194; Hearing Audio 2, 5:31-6:31; R. pp. 222, line 17 - p. 226, line 24]. All criminal charges against the student were dismissed by the Fifth Circuit Solicitor's Office on August 7, 2019.

[2] This code section was amended in the summer of 2024. 2024 Act No. 39, § 1; S. 1188; It is important for the Court to know that General Assembly retained the right to ask questions of *all* witnesses in the revised version of Section 59-63-240. During hearings before both the Senate and House subcommittees, the South Carolina Association of School Administrators pressed the legislators to qualify the language to exempt students from testifying. They proposed an amendment that would only allow questioning of witnesses "who appear at the Hearing." In short, they asked the legislature to adopt the Circuit Court's order in this case. The lobbyist explained that schools wanted to use student statements without presenting student witnesses at hearings. Their amendment and rationale were roundly rejected by both houses. *See*, e.g., S.C. Legislature Video Archive, House Education Committee, K-12 Subcommittee Meeting, April 16, 2024, at 30:00-34:00, https://www.scstatehouse.gov/video/archives.php.

One thousand three hundred students lost their constitutional right to a public education through expulsion in schoolyear 2022-2023.[3] Over thirteen thousand juvenile petitions were filed in South Carolina's Family Court's in fiscal year 2023-2024, [4] based on countless more law enforcement interactions. The General Assembly has enacted legislation to protect the due process rights of youth in both systems, but the Court of Appeals has held that these statutory protections are completely meaningless.

STATEMENT OF THE CASE

This is an appeal of a school expulsion by Richland County School District Two ("School District" or "Respondent"). T.D. ("Student") was suspended from school and recommended for expulsion by Respondent after the Richland County Sheriff's Investigators informed school administrators that T.D. was accused of sending a threatening message.

The message itself, was actually a picture of a phone screen showing a message on a blue background, which stated:

> I want my shit on Monday or all I know is u and him is getting shot in school . . . I don't give a fuck. I want my shit Monday…my pistol is coming to school with me…and if I don't get my juul I'm shooting both of y'all and a ton of other people.

[R. p. 449; R. p. 419]. The picture does not show any name, screenname, username, phone number, cellular data or other identifying feature. Id. Respondents finally admitted this at oral arguments.

Student attended a hearing on December 12, 2018, before district Hearing Officer, Lottie S. Chishom ("Chishom" or "Hearing Officer"). [Amended Certified Record ("A.R.") R. p. 194;

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[3] State Annual Report Card 2023. https://screportcards.com/overview/school-environment/student-safety/?q=eT0yMDIzJnQ9UyZzaWQ9OTk5OTk5OQ, last accessed November 17, 2024.
[4] Family Court Nature of Action Report, S.C. Judicial Branch Annual Report, 2023-2024. https://www.sccourts.org/media/annualReports/2023-2024/FCNOA_F.pdf, Last access November 17, 2024.

December 12, 2018, Hearing Audio 1 and 2[5]; R. pp. 212-262]. Before the hearing, the Student's grandfather stated he was not sure why the expulsion was going forward because there were no charges or proof. [R. p. 194, Hearing Audio 2, 2:00-6:41 (Not transcribed by Respondent); R. p. 214 line 1-p. 227 line 17]. The Hearing Officer instructed the administrator to have a conference to disclose the information in the district's possession. Id. The administrator did not provide the family with any of the documentary evidence, and misrepresented to the family that the district that no charges were pending. Instead, she told the family:

> At this point, all I can say is, that because of the alleged threat that was made against the students and against the school we did go ahead and make the recommendation for expulsion based off what was shared with us in the incident report that we received. Based on that it would be up to Ms. Chishom to make her determination. Everything else will be up to the police department at this time as far as the paperwork.
> **A.D.:** Did they send y'all a police report on that?
> **Mazyck:** I have an incident report, but they would have to be the ones to give you all any additional information.
> **A.D.:** What I'm saying is that they sent the school an incident report?
> **J.D.:** Did they press charges against him?
> **Mazyck:** No. Not to my knowledge.
> **A.D.:** That's what we're saying. We didn't even know.
> **J.D.:** That's what I said.
> **A.D.:** We don't even have the incident report. That's why I'm asking you. Because, I mean, I was like, shocked.

[R. p. 225, line 9- p. 226, line 24; Hearing Audio 2, 6:00-7:40]. Mazyck misrepresented that she had "no knowledge" of criminal charges, even though she and the Hearing Officer were in possession of charging documents, anonymous investigation reports,

[5] According to district policy AR-JKE-R, the audio recording of an expulsion hearing is the official record of the hearing. [R. p. 492] To ensure the audio files were actually available to the court, Appellants Counsel filed copies of the audio recordings with the Clerk of Court on June 5, 2019. [R. p. 118]. Respondent's counsel submitted the Amended Certified Record to Judge Manning with a Motion to Seal on July 15, 2019. [R. p. 120] A portion of the audio of the hearing on December 12, 2018, was not preserved for reasons that have never been explained. The Audio appears as two separate recordings. [R. pp. 217] Exhibit 34 is four minutes and fifty-five seconds long and ends abruptly while Appellant A.D. is speaking. Exhibit 35 begins with the end of Appellant J.D.'s objection to the proceedings: "… when he ain't been found for nothing." [R. pp. 217, lines 10-16].

juvenile petitions, booking reports and other documents which indicated that T.D. was charged with unlawful communication and incorrigibility [R. p. 355-406].

During the hearing, administrators read a disciplinary referral, the incident report of Deputy Josh Robinson dated December 1, 2018, and three student witness statements, none of which were previously discussed with the Family and which were not provided to the Family during the hearing. The administrators did not the read any names of the witnesses, including adult witnesses, nor did they use any pseudonymous identifiers. The Student and Family denied student's guilt and the testified that Student had sold his phone the day after Thanksgiving, a week before the investigation began. The Hearing Officer already possessed additional evidence, including a screenshot of the messages, which was not part of the administration's case. [R. p. 194; Hearing Audio 2, 29:26 to 30:30; R pp. 246, line 14 – p 248, line 18]. The Hearing Officer would not answer Student's questions about whether the screenshot had his name on it. Id. After Student's brother testified about how anybody could create a SnapChat account, the Hearing Officer became frustrated and started to introduce *her own evidence from law enforcement*, which administrators had provided to her *ex parte*. [R. p. 194; Hearing Audio 2, 29:00-42:00; R. pp. 209-211; R. pp. 247 line 14 – 257, line 23; R. p. 417]. The Hearing Officer cross-examined student using portions of an anonymously-authored "Investigation Follow-Up" report, created outside of SLED's uniform crime reporting system. The document described a confession from T.D., stating he sent the messages while at the emergency room using his mother's phone. Id. Contrary to Mazyck's statement to the Family before the hearing, this document indicated that T.D. *had been charged with unlawful communication*. The Hearing Officer declined to answer the Family's questions about the report, telling them to "talk to the cops" about it. Id. Chishom expelled student by letter dated January 11, 2019. [R.p. 29].

Chishom did not transcribe any of this behavior or her numerous prejudicial statements in creating "meeting minutes" for the Board. [R. pp. 196-201, R. pp. 202-211].

Family appealed the decision to the Richland County School District Board of Trustees. On January 14, 2019, after the family obtained counsel, the district produced the records they had received from law enforcement before the December 12, 2019, hearing. [R. p. 462]. The district did not produce the student statements read at the December 12th hearing until February 1, 2019. [R. p. 86]. The documents revealed the following:

- The offending message discussed in the December 12, 2018, hearing did not have Student's name, screenname, account name or any other identifying information on it. [R. pp. 380, 419, 449]

- The district actually received dozens of confidential law enforcement records on December 4, 2018, including a total of thirteen screenshots with differing screennames and usernames. [R. pp. 355-406, 419-430]

- The student (K.M.) who initially reported receiving the message from T.D., later told law enforcement that he actually received the message from other students, not T.D. – a direct contradiction of the student's statement read at the hearing and the incident report. [Compare R. pp. 412 and 414 and R. pp. 362-63, 417-418]

- Another student (C.G.) who claimed to be the recipient of the message, told police that the message did not come from T.D.'s normal SnapChat account, which he had blocked. Instead the message came from "a new snapchat" that was created on the night of the incident. Notably, that witness also said that the message was sent on a completely different day than the day claimed by law enforcement. [Compare R. pp. 366, 435 and 417].

In its appeal to the Board, Student requested an in-person appearance before the Board, to reopen the record, and cross-examine witnesses based on the previously withheld information and numerous due process violations. [R. pp. 36, 39-48, 56-57; R. p. 483]. On appeal, the Family argued (1) the procedures used by the administrators and hearing officer violated student's due process rights; (2) the Hearing Officer was overtly biased against Student; (3) the

administrator and hearing officer misused student's confidential juvenile records in violation of student's statutory rights under S.C. Code Ann. § 63-19-810(c), 63-19-2020(E) and 63-19-2030(E).

Jasmine Drain of Halligan Mahoney & Williams, informed the family that the Board had granted the family a personal appearance by email dated February 8, 2019. [R. p. 484]. Board policy allows for in-person appearances, but does not provide any procedures for in-person hearings. On the same date, the Family submitted an additional request for clarification of procedures before the Board. They requested that the record be opened and that witnesses who were not disclosed at the prior hearing be available for questioning in accordance with S.C. Code Ann. § 59-63-240. [R. pp. 56-57]. The Family also objected to the two inaccurate and incomplete transcripts of the evidentiary hearing prepared by the Hearing Office and Respondent's counsel. [R. p. 56-57, objecting to transcripts at R. pp. 196-201 and R. pp. 202-211].

On February 12, 2019, counsel for the district sent a letter proposing to remand the hearing to a new hearing officer. The letter advised that the district would not promise to make any witnesses present. Counsel wrote:

> "Our position with regard to the witnesses being present is at most, the Board could vote to request the presence of any witnesses they deem appropriate; however; the Board does not have the authority to compel the presence of witnesses in these type matters."
> [R. pp. 58-59].

In short, the letter stated the Board would have to vote on the Family's requests to open the record and cross-examine witnesses at the Board Hearing scheduled for later that day or any subsequent hearing.

Family appeared before the Board on February 12, 2019. [R. p. 194; Board Audio; R. pp. 262-308] [R. pp. 58-59]. Unbeknownst to the Family, the administration had submitted dozens of additional documents that were not introduced in the hearing on December 12, 2018, including Mr. Williams' letter from earlier that day.[6] The documents included dozens of images of statements that were not part of the hearing on December 12, 2018.[7] Family was not copied on any of the administration's submissions to the Board. [R. p. 87; Answer, ¶ 32].

During the Board Hearing on February 12, 2019, just hours after Mr. Williams had advised that the Board would have to vote on procedural questions, the Chairwoman of the Board introduced Mr. Williams as "our attorney" and referred those procedural questions directly to him:

> **Chairwoman**: Want me to share this with you? What we typically do is we have students explain what happened we allow statements from people that he has with him. However, we have two attorneys present. We will defer to the advice of our attorney as to how to proceed. This is what we do without attorneys, so what you are asking for I would have to defer to legal advice. That's why we have our attorney here.
> **V. Williams**: Again, we are representing the administration . . .

[R. p. 194; Board Audio, 7:56 to 8:25; R. pp.272, lines 9-22].

The Board refused to allow the Family the opportunity to introduce documentary evidence to meet the allegations against Student. [Board Audio 5:24-7:56, R. pp. 270, line 1-p. 274, line 23; Board Audio, 9:11-10:10, R. pp. 273, line 20- p. 274, line 21; Board Audio 12:28-16:01, R. pp. 277, line 3 – R. pp. 280, line 16; Board Audio 16:00-22:40, R. pp. 280, line 17- p. 288, line 9; Board Audio 23:50-26:00 R. pp. 289, line 11 – page 291, line 15]. The Chairwoman

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[6] Family did not learn of what was actually in the record before the Board until May 1, 2019, the record on appeal was filed with the Circuit Court.

[7] Compare R.pp. 419-430, A.R. Exhibit 18 containing twelve images with statement of Chishom; Hearing Audio 2, 31:00 – 31:17, R. pp. 248, line 2-15: "T.D.: Do you have screenshots of the messages? Chishom: … I've got one, it says I want my shit Monday".

and other Boardmembers stated that they would not allow any additional evidence, except direct testimony from T.D. and his grandparents. [Board Audio, 21:30-22:40; R. p. 287, lines 1-23; Board Audio 29:10-30:00; R. p. 295, line 25- p. 296, line 24.]. Family's counsel was denied the right to ask questions of Chishom or Mazyck, who were in attendance. During the hearing, the Chairwoman and other board members indicated that they would not entertain the Family's arguments about the Hearing Officer's inappropriate conduct or impartiality. [*See, e.g.* Board Audio 16:00-16:20; R. p. 280, line 17-R. p. 281, line 12; Board Audio18:50-19:55; R. p. 283, line 19 - 285, line 1].[8] Despite Family's request that the Board consider the audio files, which is the official record under Board Policy, at least one Boardmember stated that the Board only considered written materials. [Board Audio, 38:48-39:16; R. p. 306, lines 4-14; ("We're just seeing what we read.")].

Throughout the hearing, Respondent's counsel advocated for the Board to remand the matter to a different hearing officer. [Board Audio, 19:55-20:56; R. p. 285, line 3- p. 286, line 9]

> Boardmember Manning: "…[O]ne thing our legal counsel [sic] keeps bringing up is this remand. I am hearing Mr. Shadd saying typically we deny or uphold the appeal, but it sounds like we might have another thing that we've never done before but it is an option to remand it, which means that we would begin the process over . . .
> V. Williams: We would ask for the third option. We essentially are proposing a third option of remand, in addition to the traditional deny or uphold . . .."

[Board Hearing: 22:00-23:55; R. p. 287, line 25 – p. 289, line 10]. Mr. Williams advised the Board that it had no authority to order student witnesses to attend the hearing on remand. [Board Hearing, 4:00-5:25; R. p. 268, line 9 – p. 269, line 25]. The Family's position was that any

[8] Chairwoman: "It sounds like the hearing officer is on trial now, that's not what we are here for . . ." [Board Audio, 16:00-16:25; R. pp]. Boardmember Cheryl Caution-Parker: "The child needs to speak on his behalf what he feels. And shares his story and what he feels happened to him. How he was involved. How he was supported or not supported. That's what we pretty much base our decision on, not all this esoterical [sic] stuff. . . So, basically what I would like to do is to carry on like we always do, without all this other stuff. I have no idea, it just doesn't matter. …" Board Audio 19:00-19:55]. The Board's policy specifically allows for appeals based on due process violations.

remand would have to comply with S.C. Code Ann. § 59-63-240, which expressly provides parents and legal guardians with the right to ask questions of all witnesses. Mr. Williams conceded that inappropriate law enforcement information was included in the record before the Hearing Officer. [Board Audio, 26:42-27:10; R. p. 292, line 11 - 25].

The Board did not vote on any of Student's procedural requests. The board denied the appeal by a single vote that night. The Director of Administrative Services for Respondent signed a letter dated February 18, 2019, stating some of the grounds for the Board's decision.[9] In pertinent part, the decision stated:

> "[T]he Board found that there was sufficient and substantial evidence to support the expulsion recommendation *without consideration of the law enforcement records to which you objected*. In addition, the Board found that to the extent the student was deprived of the opportunity to review any evidence prior to the hearing, it was subsequently provided and he was given an opportunity to respond to that information on appeal."

[R. pp. 27-28]. The Board did not address hearing officer bias, nor did the Board address its failure to promulgate juvenile records policies consistent with the mandatory provisions of S.C. Code Ann. § 63-19-2020(E). On April 30, 2019, the Board subsequently voted to amend its student records policy JRA to reference the current juvenile records law. [R. p. 111, fn. 3].

The Family timely appealed to the Court of Common Pleas for Richland County on March 20, 2019, arguing that the Student was denied due process before the Hearing Officer and that the substantial evidence review of the Board did not cure the structural defects of the prior hearing. [Summons, Complaint and Notice of Appeal ("Appeal and Complaint"); R. pp. 62-78]. A hearing was held before the Honorable L. Casey Manning on July 26, 2019.[10] Without a

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[9] The letter makes no findings of fact and cites "other reasons" for denying the appeal which were not stated. [R. pp. 27-28].

[10] The "Amended Certified Record" was never actually filed with the Clerk of Court, but provided to Judge Manning as an attachment to a Motion to Seal by Letter dated July 15, 2019 [R. p. 120]. The "Amended Certified Record" was never "certified" by any member, clerk or secretary of the School Board as required by Rule 75,

single edit or note, Judge Manning signed an order prepared by Respondent's counsel on August 16, 2019, and filed it on August 21, 2019. [R. pp. 8-26, ("Order")].

The Family timely filed this appeal on September 20, 2019. It was argued three years later on September 13, 2022. After becoming one of the oldest undecided cases at the Court of Appeals, a decision was issued on September 11, 2024, just shy of the case's fifth anniversary. The Petition for Rehearing was denied on October 23, 2024.

Argument

I. The Court of Appeals erred in holding that lack of subpoena power justifies a school district's refusal to produce its witnesses in a school expulsion hearing as required by S.C. Code 59-63-240, school district policy, and South Carolina constitutional caselaw.

Without addressing what the plain language of S.C. Code 59-63-240, the Court of Appeals held that Appellants forfeited their right to complain about numerous, egregious due process violations because they requested a hearing in that complies with the plain language of S.C. Code 59-63-240 and district policy JKE, including the right to ask questions of all witnesses.

> "Rather than accept this offer of a new hearing with the opportunity to question the adult witnesses, Grandparents opted to decline the offer because the District would not accede to all of their demands, particularly their insistence upon cross-examining the student witnesses." Order p. 9

The Court of Appeals suggests that it was an overreach to ask for exactly what is guaranteed by the plain language of S.C. Code 59-63-240 and the school district's own policy. This was error. In Swinney v. Sumter School District 17, 391 S.C. 547, 707 S.E.2d 397 (2011) this court held that failure to assert statutory rights in an expulsion hearing could effect a waiver to assert those rights. Appellants were merely following the guidance of this court in insisting upon the rights

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SCRCP, despite Defendant's requesting an extension for that express purpose. [R. p. 105]. Nevertheless, references to the Amended Certified Record are cited as "A.R."

guaranteed by statute. The Court of Appeals turns Swinney on its head, by finding that asserting the right to ask questions of *all* witnesses justifies a forfeiture of both your statutory right to an adequate hearing and also your statutory right to adequate appellate review of prior errors.

Second, the Court of Appeals misrepresents the evidence by suggesting the district guaranteed to make any witnesses available. The District did nothing of the sort. During the Board Hearing, Vernie Williams explained that districts around the state, including Richland Two, have a practice of disregarding the law when it comes to student witnesses:

> "And some of the witnesses he's asking to appear would be students. And its y'all practice as well as the practice of every district that I know in this state not to have student witnesses in discipline hearings. To the extent he's asking for witnesses, surely if it is adults we can approach them and say that a request has been made, and it's up to the adult if they appear at the hearing. I am not aware of anybody that compels or tries to compel students to testify at hearings of this nature. So the administration would say if it's an adult witness, like Officer Trulock, we could reach out to them and *see if he is available and agreeable*. But we could not do that for student witnesses.

[Board Hearing Audio, 5:00-5:24; R. pp. 268-269]. In short, the District made no guarantee that any fact witnesses would be available, based on its practice of disregarding the rights of accused students. The Court of Appeals hypothetical remedy was and is a complete fiction.[11]

This practice is exemplified in the notice letters sent to students recommended for expulsion, which only tells them they have the right "to ask questions of all persons presenting information." R. p. 34. Flatly lying to parents and students about their due process rights has become so commonplace, that the General Assembly had to amend Section 63-19-240 to require schools to notify families of basic rights that have existed for fifty years.

Section 59-63-240 is a law passed by the general assembly. Disregarding Section 59-63-240 is a *practice*. If a government agency wants to use a witness's statement to deprive a citizen

[11] Moreover, law enforcement officers would be precluded from testifying in a student disciplinary matter regarding a juvenile by S.C. Code 63-19-2030(A), a point Appellants were hoping to make in this case.

of a constitutional right, it needs to produce its own witness. *See*, City of Spartanburg v. Parris, 251 S.C. 187, 161 S.E.2d 228, 229 (1968). S.C. Code Section 59-63-240 mandates that districts live up to that guarantee.

Instead of analyzing the plain language of the statute, which is made mandatory pursuant to Article I, Section 22 of the South Carolina Constitution, the court wrote:

> "Appellants contend the Board's refusal to remand the case for a new hearing in which they could ask questions of all witnesses, including the threatened students, violated T.D.'s right to confront his accusers,[12] the applicable statutes, and District policies. To address these claims, we must consider the authorities applicable to Appellants' constitutional challenge while also recognizing the flexibility school officials must be afforded in balancing the constitutional interests of an individual student against legitimate school safety concerns." Ct. App. Order p. 8.

The court errs in fabricating a balancing test that does not exist in South Carolina law, especially in a case where the general assembly has mandated the procedures to be used and those procedures are made mandatory by the South Carolina Constitution. The court's reasoning is a direct rejection of the Supreme Court's unequivocal precedents: "The Legislature can repeal or amend its statute but neither the [School] Board nor [the Supreme] Court has the authority to do so." Smith v. Wallace, 295 S.C. 448, 369 S.E.2d 657 (Ct. App. 1998). The Court of Appeals has violated the separation of powers doctrine in doing so.

The Court disregarded South Carolina case law on the subject of the right to cross-examine witnesses in significant administrative proceedings like City of Spartanburg v. Parris, 251 S.C. 187, 161 S.E.2d 228, 229 (1968); In re Vora, 354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003)(Due process requires the right to cross-examine adverse witnesses). In Parris, the Supreme Court held that the civil service commission who investigated an officer's misconduct had an obligation to make the key witness available rather than relying on an affidavit. Notably

[12] This is a

the statutes that created the civil service commission and defined its investigative and prosecutorial authority (Act. No. 345 of 1965 and Act No. 991 of 1966) do not provide *any* subpoena power whatsoever. Notwithstanding that limitation, the Supreme Court quoted 2 Am Jury. 234 with approval:

> "The right to cross examine witnesses in *quasi-judicial* or adjudicatory proceedings is a right of fundamental importance which, in regard to serious matters, exists even in the absence of express statutory provision, as a requirement of due process of law or the right to a hearing, and no one may be deprived of such right even in an area in which the Constitution would permit it if there is no explicit authorization therefor."
>
> Parris, 251 S.C. 187, 191, 161 S.E.2d 228, 229 (1968). .

This case was decided just five years before the Representative Roger Kirk, a former high school principal, ushered our school expulsion law into effect in 1973.

Finally, the Court simply disregarded the authorities provided by Appellants on the issue of subpoena power. The only cases provided to the court reject the notion that the absence of subpoena power absolves districts of the constitutional responsibility to comply with due process: Colquitt v. Rich. Tp. High School Dist. 599 N.E.2d 1109, 298 Ill. App.3d 856 (1998); JS, a minor by his parents, M.S. and D.S. v. Manheim Township School District, 231 A.3d 1044, 1044-1065 (Pa. Comma. Ct. 2020), affirmed by J.S. v. Manheim Twp. Sch. Dist., 263 A.3d 295 (Pa. 2021).

The obvious effect of its ruling is to nullify the General Assembly's insistence that students have the right to ask questions of all witnesses. Moreover, the decision also ignores the basic reality that school district's exert tremendous coercive control over students eight hours a day for 180 days a year and can use their authority to make students available for hearings. This is precisely how they make them into witnesses in the first place:

> "Teachers and administrators may question students about any matter pertaining to the operation of the school and/ or enforcement of its rules. The staff member will conduct the questioning discreetly and under circumstances, which will avoid unnecessary embarrassment to the student being questioned. **Any student who answers falsely or evasively or refuses to answer an appropriate question may be disciplined**."

Richland County Student Handbook 2018-2019, p. 26. This provision remains in effect in the district's current Student Handbook.[13] The district compels students to be witnesses, then pretends to have no authority to compel them to be witnesses. If a school Board can't compel students to comply, then it can't compel anybody to comply.

II. The Board, Circuit Court and Court of Appeals Erred in applying a Substantial Evidence of review to questions of law and statutory interpretation, in a case where procedural defects prevented the Appellants from making a complete record.

Student argued that the circuit court should review the decision under S.C. Code Ann. § 1-23-380, in accordance with the Supreme Court's decision in Young v. Charleston County Sch. Dist., 393 S.C. 303, 725 S.E.2d 107, 108, *quoting* Lee County. Sch. Bd. of Tres. v. MLD Charter Sch. Acad. Planning Comm., 371 S.C. 561, 565, 641 S.E.2d 24, 26 (2007); ("This Court's scope of review when reviewing decisions of school boards is governed by the Administrative Procedures Act (APA), S.C. Code Ann. § 1–23–380.") [R. p. 68; Appeal and Complaint, p. 7, ¶ 38; R. pp. 49-55; Final Brief of Appellant pp. 11-13].[14] In cases where a court is not called to review the substantive determinations of the Board, but only whether appellant was afforded the procedural due process prescribed by our laws and our constitution, the court may reverse or modify the decision if substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is: (a) in violation of constitutional or statutory provisions; (b) in

[13] Richland County School District Two Student Handbook 2024-2025, pp. 25. Available online at https://www.richland2.org/departments/communications-and-strategic-partnerships/student-handbook

[14] Appellants even submitted a copy of Young to the school board with it's appeal, which is why it appears in the record. [R. pp. 49-55].

excess of the statutory authority of the agency; or (c) made upon unlawful procedure. Young, 393 S.C. 303, 725 S.E.2d 107, 108, *citing* S.C. Code Ann. § 1–23–610(B).

Appellants argued that this case does not turn on substantial evidence review, because the procedural defects at the Hearing Office level and the Board level prevented Student from receiving a full and fair hearing. *See*, McIntyre v. Sec. Comm'r of South Carolina, 425 S.C. 439, 823 S.E.2d 193, cert denied June 28, 2019. [R. pp. 72-73]. The deferential "substantial evidence" review is inadequate when procedural due process violations have limited a party's ability to receive a fair hearing at a lower level. Id. 425 S.C. 439, 823 S.E.2d 193.

The court mischaracterizes Appellant's argument as stating that substantial evidence review doesn't apply to "constitutional issues." The Court further mischaracterizes its decision in Doe v. Richland County School District Two, 382 S.C. 656, 659, 677 S.E.2d 610, 611 (Ct. App. 2006) in stating the Doe Court applied a substantial evidence review in expulsion cases, including those addressing questions of constitutional due process. The Doe court simply did not address the School District's argument that it provided due process even though it did not allow the student or family to view video evidence.[15] Additionally, Doe adopted its substantial evidence standard from Laws v. Richland County School Dist. 1, 270 S.C. 492, 495, 243 S.E.2d 192, 193 (1978), a dated Teacher Employment and Dismissal Act case, which in turn borrowed the standard from a Texas Tax Court. Since Doe, the South Carolina Supreme Court has clarified that decisions of school boards are subject to review pursuant to the Administrative Procedures Act, *See e.g.,* Young*, supra*.[16]

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[15] Obviously, if the Court of Appeals had addressed the district's failure to provide the evidence, citations to that part of Doe would absolutely be included in Appellants' Brief.

[16] Moreover, the APA's contested case provisions wouldn't have applied to Laws since it was pending on or before June 13, 1977. *See,* S.C. Code § 1-23-390. This is consistent with provisions of the APA which now require that any statutory scheme for contested cases must meet the standards of the APA, and if such a scheme lacks a particular provision (such as a standard of review), the APA provision applies.

The Court of Appeals simply did not address Appellants' argument that deferential review of the Board and Circuit Court decisions is inadequate and inappropriate when structural defects in the proceedings prohibited Appellant's a fair opportunity to make an adequate record during the only evidentiary hearing. Appellant's argument was based on McIntyre v. Sec. Comm'r of South Carolina, 425 S.C. 439, 823 S.E.2d 193, cert denied June 28, 2019. Appellant's Brief, pp. 11-12, [R. pp. 72-73]. The facts and record references upon which Appellants make this argument, are described in Appellants' Brief at pages 3-4, pages 16-33.

III. The Court Erred in Affirming the Circuit Court's finding that the District provided Student with Due Process during the December 12, 2018, hearing and ruling that the failure to provide access to the evidence and a Biased Hearing Officer were "not prejudicial."

The Circuit Court ruled that Student was provided with Due Process on December 12, 2018. [R. pp. 17-18]. The Court of Appeals affirmed.

The Court of Appeals does not discuss the specifics of the hearing procedures employed on December 12, 2018, but they are detailed in Appellants Brief at pp. 13-18. As noted above, Karis Mazyck refused to provide the family with a description of the evidence to be used against him before the hearing, even after being instructed to do so by the Hearing Officer. During the Hearing, the administrators concealed relevant information, like the identities of witnesses, and students referenced in the statements, changed references to students in the statements, and concealed contradictory information contained in the statements.[17] The administrators abused the Family's lack of access to the records by changing material facts. The Hearing Officer

[17] To the extent the Court of Appeals approves of anonymous witness statements as a safety measure, it should be noted that the district showed little concern for the witness's safety once T.D. obtained an attorney. The district produced unredacted meeting minutes which identified the statement authors by their initials and even provided the full name and home address of the parent who contacted law enforcement (thereby outing her daughter). However, the district did not include identifiers for the references to students within the statements. Nor did it correct changes and alterations to the statements. The meeting minutes were provided completely unredacted. In short, district's primary concern in anonymizing the statements during the hearing appears to have been hiding the contradictions in the evidence, not protecting the witnesses.

refused to answer basic, straightforward questions about the evidence in her possession and exhibited highly prejudicial behavior toward student.

Refusing to provide access to the evidence is a direction violation of the Supreme Court's holding in Brown v. S.C. Dep't of Education, 301 S.C. 326, 329, 391 S.E.2d 866, 867 (1990)(holding the accused in an administrative proceeding has the right to review the state's evidence, so that the accused has an opportunity to show that it is untrue). The altered evidence is even quoted by the Circuit Court. [Compare R. p. 14].

The Family was further prejudiced by the district's concealment of relevant information that showed contradictions in the evidence read during the hearing, namely:

a. Student C.G. told police that the messages did not originate from T.D.'s known SnapChat account. [R. p. 366].
b. Contrary to the statement read at the hearing [R. p. 414], Student K.M. had told law enforcement that he didn't receive messages directly from T.D., but rather from other students. [R. p. 362-63].
c. Student H.G. told the school that the messages were part of an extensive back and forth between C.G. and T.D. [R. p. 415]. However, C.G. had told law enforcement that he did not respond and knew nothing about the subject matter of the messages. [R. p. 366].
d. The facts of the alleged confession introduced by the Hearing Officer were contradicted by other statements and documents in the law enforcement records which were withheld from the Family by the administrator and Hearing Officer.[18]

None of these indisputable discrepancies are addressed by the Court Appeals. Student was denied an opportunity to make a record with these critical facts. Student was totally prevented from preparing a defense and showing that the state's case against him was untrue. *See,* Brown, *supra*.

[18] The alleged confession was part of an unsigned, undated "Investigation Follow-Up." It stated that T.D. confessed to sending messages from his mother's phone while at the emergency room on the night of December 1, 2018. R. p. 362-3. Contrary to this account, law enforcement records in Respondent's possession showed that the messages were reported as being received by third parties by 12:00 p.m. on December 1, 2018. Investigators submitted sworn petitions stating that the messages were sent from Student's home at 12:00 p.m. R. p. 355. Student C.G. wrote to police that he received the messages at a sleepover on Friday, November 30, not Saturday night. R. p. 366. Three of the messages are time-stamped 1:48 a.m., 1:51 a.m. and 1:53 a.m., [R. p. 426, 428 and 430], whereas T.D. was discharged from the hospital at 9:30 p.m. on December 1, 2018. [R. p. 445-447]. In short, the timeline of the alleged confession conflicted with every other piece of evidence in the possession of law enforcement and the school district employees.

The Court of Appeals, like the Circuit Court and the Board before it, refused to address the specific conduct of the Hearing Officer on the December 12, 2018, hearing, described in detail with block quotations in Appellant's Final Brief at pages 22-29. The Circuit Court Order states: "[t]o the extent proceedings before the Hearing Officer on December 12, 2018, were unfair or impartial, such alleged violation or deficiency would have been cured on appeal at the Board level . . .." Knowing that position was untenable, the Court of Appeals took a different angle, suggesting that a new hearing *"may have"* cured the due process violations, while still refusing to discuss any facts, record references, or legal authorities cited by Appellants: "We see no evidence in the record that the Hearing Officer acted as both factfinder and prosecutor."

Trial before a biased judge is a structural error requiring "automatic reversal." Neder v. U.S., 527 U.S. 1, 119 S.Ct. 1827, *citing* Tumey v. Ohio, 273 U.S. 510 (1927). Evidence of actual bias that violates due process consists of statements on the merits by those who must make factual determinations on contested fact issues where fact finding is critical. Kizer v. Dorchester County Vocational Educ. Bd. of Trustees, 287 S.C. 545, 552, 340 S.E.2d 144, 148, (1985).This is not a case of imputed bias or suggested bias, but rather a case of actual, overt bias, which rendered the evidentiary proceedings fundamentally unfair.

The Hearing Officer acted in both the prosecutorial and adjudicatory roles during the hearing on December 12, 2019. She conducted a fifteen minutes cross-examination of Student which consisted of loaded questions, denigrating comments, shouting at the Student, and made overt statements showing a predetermined commitment to proving Student's guilt. She preempted and argued against Student's witnesses, conducted her own search of Student's juvenile records received *ex parte* and introduced her own evidence against Student, without letting him review it. [Hearing Office Audio 2, 20:00-20:30; R. p. 238, line 9 – p. 239, line 13]

[Hearing Office Audio 2, 29:26 to 30:30; R. p. 247, line 25- p. 248, line 13] [Hearing Audio 2, A.R. Exhibit 35 32:23-32:45; R. p. 248, line 14-p. 249, line 25] [Hearing Audio 2, 27:05-27:30; R. p. 243, line 21-p. 244, line 5][Hearing Audio 2, 34:30-36:00; R. p. 251, line 22-R. p. 252, line 18.]. [Hearing Audio 2; 39:00-41:42; R. p. 254, line 21 – p. 257, line 23].

The Hearing Officer falsified the transcript to hide her conduct. After grandparents appealed, Chishom created a Summary of the Evidence, which referenced information that was not disclosed during the hearing, including inventing sources for anonymous statements. [R. p. 31-32 (Attributing information in the Investigative Follow-Up Report to Investigator Stephany Boyd). T.D. and his brother also explained how display names can be changed on SnapChat and how accounts can be created [Hearing Audio 2, 34:30-36:00; R. p. 251, line 17-p. 252 line 20], but Chishom excluded that from her summary as well. [R. p. 31-32]. The Hearing Officer prepared a transcript which omitted the first fifteen minutes of the hearing audio, deleted most of the Family's testimony in defense of T.D. as well as Chishom's inappropriate comments and prosecutorial conduct. Knowing her introduction of evidence was problematic, she deleted her use of the anonymous "Investigative Follow-Up" from the record. [*Compare* R. p. 196-201 *and* R. p. 202-211]. The transcript inserted information from the police incident report that was not stated or shared during the hearing. [*Compare* Hearing Audio 2; 12:20-13:22; R. p. 231, line 17-p. 232, line 15; and Hearing Audio 2; 24:19 to 25:22; R. p. 241, line 18-p. 242, line 12, *with* R. p. 196 and 200; and R. p. 202 and 205]. Although the summary and transcript did identify the authors of student statements and corrected some omissions from the witness statements, the changes to C.G.'s statement and H.G.'s statement were transcribed as modified by the administrators. [*Compare* Hearing Audio 2, 13:22-15:48; R. p. 232, line 25-R. p. 234, line 8 *with* R. p. 32, R. p. 196-197, 202-203.]

Student was prejudiced by the Board and Circuit Court's reliance on these fraudulent transcripts, instead of the entire audio record required by Board Policy. *See,* Young v. Charleston County Sch. Dist., 393 S.C. 303, 725 S.E.2d 107 (2012) (Board's reliance on report by certain members who had already decided an employment matter adversely to a teacher rather than considering all the evidence violated teacher's due process rights).

IV. A. The Respondent's juvenile records policies did not and do not meet the mandatory requirements of state law protecting juveniles from the misuse of their confidential law enforcement information and Student's expulsion was in direct violation of state law limiting the use of such information to supervision, monitoring, and serving the educational needs of the child.

The Court of Appeals erred in finding that the District's policies and practices complied with our statutes intended to protect youth involved with the juvenile justice process from detrimental collateral consequences. Juvenile law enforcement records and information relating are confidential and "may not be disclosed directly or indirectly to anyone, other than those entitled under [Chapter 19 of Title 63] to receive the information." S.C. Code Ann. § 63-19-2030(A). Under certain circumstances, some confidential information may be shared with a school principal. When a child is taken into custody by law enforcement, the principal is notified "of the nature of the offense." S.C. Code Ann. § 63-19-810(c). Additionally, "incident reports" can be provided to principals upon request, and must be provided for certain serious offenses. S.C. Code Ann. §63-19-2030(E).

Information shared after a child is taken into custody "may be used by the principal for monitoring and supervisory purposes but otherwise must be kept confidential by the principal …." S.C. Code Ann. § 63-19-810(C). Additionally, school districts "must" develop policies that limit any access to incident reports to school personnel, who must only have access "to meet and adequately address the educational needs of the child." S.C. Code Ann. 63-19-2020(E).

The plain language of the statute shows that these provisions are mandatory. Under the rules of statutory interpretation, use of the words such as "shall" or "must" indicates the intent to enact a mandatory requirement. Collins v. Doe, 352 S.C. 462, 470, 574 S.E.2d 739, 734 (2002).

Respondent's Policy JKA and JKA-R [R. pp. 506-512] do not comply with the requirements of S.C. Code Ann. § 63-19-2030(E), even after amendment on April 30, 2019. The Respondent's policies do not include any of the mandatory language to protect and safeguard juvenile information, particularly the access and use limitations in the law.

At the time this action was filed, the District's policy on student records, Policy JRA, referenced S.C. Code Ann. § 20-7-3300 which has not existed since 1996. [R. p. 506]. Contrary to the Court of Appeals decision, vague references to complying with repealed state laws do not satisfy the requirements of the statute. Additionally, no provision of FERPA provides the specific protections to S.C. Code 63-19-2020(E) or 2030(E). Neither Respondent nor the Court even attempted to explain how they might. As noted in the Petition for Rehearing, FERPA is awash in loopholes that permit expansive document sharing beyond what is allowed under our juvenile confidentiality statutes.[19]

B. The Court's interpretation of the statutes leads to an absurd result because it renders the juvenile confidentiality statutes meaningless and of no effect.

Not only do Respondent's policies fail to include language that accomplishes statute's goal – limiting access and use of confidential information to serving the educational to a child – the court's interpretation and application of the statutes in this renders them a nullity. This Court

[19] The Family Education Rights and Privacy Act allows disclosure of personally identifiable information in student records without parental consent to other district officials, other schools, private companies serving school official function, State Educational Agencies, organizations conducting studies, accrediting organizations, parents of other students involved in an incident, and others whose access would be completely foreclosed by Section 63-19-2030(E). *See*, 34 C.F.R. 99.31; Letter to Wachter, U.S. Department of Education Office of Management, December 7, 2017, (Noting that FERPA authorizes and requires disclosure of personally identifiable information of other students in education records that identify two or more students, where redaction would destroy the meaning of the education record.)

will not construe a statute in a way which leads to an absurd result or renders it meaningless. *See* Lancaster Cnty. Bar Ass'n v. S.C. Comm'n on Indigent Defense, 380 S.C. 219, 670 S.E.2d 371 (2008) (in construing a statute, this Court will reject an interpretation which leads to an absurd result that could not have been intended by the General Assembly); Gordon v. Phillips Utils., Inc., 362 S.C. 403, 608 S.E.2d 425 (2005) (it is presumed that the General Assembly intended to accomplish something by its choice of words and would not do a futile thing); Denene, Inc. v. City of Charleston, 352 S.C. 208, 574 S.E.2d 196 (2002) ("[T]his Court must presume the General Assembly did not intend a futile act, but rather intended its statutes to accomplish something").

In this case, the principal did not limit her use of records to supervising and monitoring the student in accordance with S.C. Code Ann. 63-19-810(c) or to serve the educational needs of the child in accordance with S.C. Code Ann. 63-19-2030(E). Mazyck disseminated the records to other district personnel (not school personnel) for the purpose of denying student any of his educational needs. [R. p. 353-354]. [20] These entire proceedings were predicated on the misuse of information that Mazyck had an obligation to keep confidential. Additionally, Mazyck declined to provide access to the records to the parents, in defiance of FERPA's parental access requirements.

The Court of Appeals ruling that using confidential juvenile information to cross-examine and expel children from school is inconsistent with the statute's plain language and intent. Supervision, monitoring and serving the educational needs of the child are all activities that can only be undertaken if a child is in school. Principals cannot perform any of those

[20] The law does permit using records for supervision and monitoring. Appellants do not contest the Respondent's right to use administrative transfer or alternative educational settings to remove students who pose real and immediate safety concerns.

actions when a student is expelled, because expulsion results in total exclusion from the school environment and school property.

The law treats convictions and adjudications differently than mere reports. Under S.C. Code Ann. § 59-63-370, information relating to a student's *adjudication* or *conviction* for certain serious offenses is shared with administrator s and disseminated to school personnel annually. Additionally, in considering a student's past conduct for first time enrollments, school districts are only permitted to consider a student's prior *adjudications*. *See*, S.C. Code Ann. § 59-63-217. Districts are not permitted to exclude students based on incident reports.

When a principal lies to a child about being charged with a crime to coax the child into making a recorded statement, that principal has violated our juvenile confidentiality statutes as well as the bounds of common decency. This behavior creates major due process concerns at the state and federal level.

CONCLUSION

This case involves multiple novel issues of law, issues of constitutional significance, and a decision of the Court of Appeals that disregards numerous precedents of the South Carolina Supreme Court. Appellants respectfully request that the Court grant certiorari in this matter, dispense with further briefing, and decide the matters herein on the prodigious record, arguments, authorities, and filings made over the last five years.

Respectfully Submitted,

s/ D. Michael Mathison
D. Michael Mathison
721 Huntington Avenue
Columbia, South Carolina 29205
dmichaelmathison@yahoo.com
T: (843) 222-0456
SC Bar # 101803
Attorney for Appellants

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