THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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.

SECOND AMENDED RECORD ON APPEAL - VOLUME I

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November 17, 2020.

Volume I[1]*

[1]* In accordance with guidance from the court issued by letter dated October 28, 2020, Appellants are submitting the this Second Amended Record on Appeal with the original organization and page numbers as the Record on Appeal filed on July 21, 2020, but with the documents identified in Appellants' Motion to Seal placed in separate volumes. Accordingly, this Second Amended Record on Appeal is divided into the original Volumes I and II, with selected documents segregated into two separate volumes: Volume I – Not for Online Publication and Volume II – Not for Online Publication. Documents appearing in the "Not for Online Publication" Volumes are noted with an "*".

Audio Records, Transcripts and Exhibits

Audio Records

Transcripts

[2] Audio files on CDs filed by Appellants on June 5, 2019, are in the possession of the Richland County Clerk of Court and audio files submitted by the Respondent (Exhibits 34, 35 and Additional Exhibit 19) are in the possession of the Honorable L. Casey Manning. Appellants will file a motion pursuant to Rule 210(f), SCACR, requesting an order to have the audio files delivered to this Court.

Volume II

Exhibits

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[3] This transcript and the Transcript of Hearing before the Board on February 12, 2019, were prepared by Creel Court Reporting after the Appellant's filed the Notice of Appeal and Appellant's Initial Brief with this court. This Court granted the Respondent's Motion to include these two transcripts in the Record on Appeal by Order dated April 23, 2020.

[4] See footnote 3 above.

Exhibits Referenced DuringHearing on December 12, 2018

Additional Exhibits

Additional Documents

Respondent's Policies

R007

ORDERS, DECISIONS and DECREES

R008

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND T.D. by and through his guardians, A.D. and J.D., Plaintiffs/ Appellants, vs. Richland County School District Two, Defendant/ Respondent.	IN THE COURT OF COMMON PLEAS C.A. No. 2019-CP-40-01615 **ORDER DENYING APPEAL AND MOTION FOR INJUNCTIVE RELIEF/ DECLARATORY JUDGMENT**

I. STATEMENT OF CASE

This is a direct appeal of Respondent Richland School District Two ("District") Board of Trustees' ("Board") decision to expel Student T.D. for the remainder of the 2018-19 school year for using social media to threaten to shoot other students. This appeal was brought by T.D. through his guardians, A.D., and J.D., ("Appellants") pursuant to S.C. Code Ann. § 59-63-240. In addition, through this action, Appellants seek injunctive relief and declaratory judgement related to the disciplinary action. Specifically, as a First Cause of Action, the Appellants seek to appeal the suspension and expulsion of T.D. and request the Court reverse and vacate the decision and reinstate T.D. As a Second Cause of Action, the Appellants seek temporary injunctive relief and/or an immediate stay of the decision of the District excluding T.D. from all district schools and programs and immediate reinstatement into an alternative education setting until such time as these matters can be heard and resolved. As a Third Cause of Action, the Appellants have asserted a claim for declaratory relief pursuant to S.C. Code Ann. §15-53-20, in which Appellants seek an order finding the District in violation of S.C. Code Ann. §63-19-2020(e) and 2030(e) by failing to develop and implement policies to protect the privacy and due process rights of juveniles accused of crimes. Finally, as a Fourth Cause of Action, Appellants

seek declaratory relief pursuant to S.C. Code Ann. §15-23-20, for an order finding that the District's "policy of denying students recommended for expulsion the ability to ask questions of all witnesses" to be in violation of Article 1, Section 22 of the South Carolina Constitution and S.C. Code Ann. §59-63-240.

Respondent contends that Student T.D. was afforded due process and that there was substantial evidence in the record to justify the expulsion of T.D. Additionally, Respondent argues that Appellants' request for injunctive relief is moot, that Respondents' reliance on or use of juvenile records in connection with student disciplinary matters is not in violation of South Carolina law, and that South Carolina law does not require school districts to compel non-party students who have submitted statements in connection with school discipline investigations to attend due process hearings and be subjected to questioning and cross examination. After carefully considering the entire record in this matter, including the memoranda of law submitted by and oral arguments made on behalf of, the parties, the Court finds that T.D. was afforded due process based upon statutory and case law and that there is substantial evidence in the record to support the Board's decision. This Court also finds Appellants request for injunctive relief moot at this time and that there is no basis to award Appellants the declaratory judgment relief sought.

II. FACTUAL SUMMARY

At the time of the incident giving rise to the expulsion, T.D. was enrolled in the eighth grade at Blythewood Middle School ("BMS"). On Sunday, December 2, 2018, BMS Principal, Karis Mazyck, received a call from the School Resource Officer regarding concerns of threats to BMS and was notified that an investigator from the Richland County Sheriff's Department would be contacting her to provide additional information. Later that day, law enforcement notified Principal Mazyck that Student T.D. had confessed to making threats and that T.D. had been advised that he could not return to school until contacted by the administration.

According to the police incident report, a parent of a BMS student contacted law

enforcement to report a troubling message her daughter had seen which was sent or posted by T.D. on Snapchat, a form of social media. The message at issue read, "*I want my shit 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.*"

After being contacted by law enforcement regarding the threat, the BMS administration began investigating the matter by interviewing and collecting written statements from students who had been identified as having information regarding the threat.[1] The administration also contacted T.D. in an attempt to obtain his side of the story or a written statement. The administration was advised by T.D.'s guardian that he denied the allegations and would not be providing a statement. Thereafter, the administration issued T.D. a one day suspension and recommendation for expulsion.

By letter dated December 5, 2018, Principal Mazyck advised Appellants that T.D. was being recommended for expulsion in accordance with School Board Policies JICDA and JICDA-R, Level(s) III, Item 11; under actions leading to suspension or expulsion, specifically for using social media to threaten other students. Appellants were also advised that they would receive notification regarding the time and place of the expulsion hearing.[2]

A hearing was held before the Hearing Officer, Lottie Chishom, on December 12, 2018.[3] Following the hearing, the Hearing Officer upheld the school administration's recommendation for expulsion, finding T.D. did commit the alleged infractions of illegal use of technology (i.e., communicating a threat of a destructive device, weapon, or event with the intent

[1] There is a discrepancy in the record as to the date in which the statements were prepared and obtained.
[2] By letter dated December 5, 2018 from Hearing Officer Lottie Chishom, Appellants were advised of the time and place of the hearing. For reasons unknown, this letter was inadvertently omitted from the student's file but submitted to the Court prior to the hearing.
[3] Prior to the hearing, the school administration conferenced with the Appellants regarding circumstances giving rise to the expulsion recommended, providing T.D. with another opportunity to share his side of the

of intimidation, threatening, or interfering with school activities) which was in violation of Level III, Item 11 of the School District's Code of Conduct, JICDA and Administrative Rule JICDA-R.

Appellants appealed to the Board, and then through legal counsel, supplemented their written appeal and requested an appeal hearing before the Board. Under Policy JKE/JKE-R, *Expulsions of Students*, the hearing officer's decision may be appealed by either the student or the administration to the Board. Per the policy, an appeal will normally be limited to the established record which will consist of the recording of the hearing, including any documentary evidence presented by either party, and the record will also contain the hearing officer's decision letter and expulsion summary sheet and the appealing party's written notice of intent to appeal. Normally the Board will not grant a personal appearance to either party in an appeal, unless there are extenuating circumstances, and the Board, in its discretion, determines to grant such an appearance. In this case, the Board did not grant Appellants the right to a new evidentiary hearing, but afforded Appellants the opportunity to make a personal appearance before the Board in connection with the appeal. Following the appeal, the Board voted to uphold the expulsion. This appeal follows the Board's decision.

III. STANDARD OF REVIEW

This matter is properly before the Court pursuant to S.C. Code Ann. § 59-63-240, which specifically governs student expulsions. Section 59-63-240 provides that "the action of the [school] board [in student expulsion cases] may be appealed to the proper court." The hearing before the Circuit Court is to be a review of the record below, not a *de novo* hearing. *See Rumsey v. Anderson Sch. Dist. Five*, Case No. 92-CP-04-481 (S.C. Common Pleas, May 5, 1992); *Kemp v. Beaufort County Sch. Dist.*, Case No. 92-CP-07-799 (S.C. Common Pleas, June 2, 1992); *Brock v. Chesterfield County Sch. Dist. Bd. of Educ.*, Case No. 91-CP-13-301 (S.C.

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Common Pleas June 30, 1992), and *Ferguson v. Laurens County Sch. Dist.* 56, Case No. 98-CP-30-277 (S.C. Common Pleas, April 14, 1999).

Although Section 59-63-240 does not set forth the appropriate standard of review of by school boards reviewing appeals of student expulsions, South Carolina courts have applied the substantial evidence rule to these administrative appeals on the ground that a court should not substitute its judgment for that of school authorities. *See Laws v. Richland County School District One*, 270 S.C. 492, 495, 243 S.E. 2d 192, 193 (1978); *Kizer v. Dorchester County Vocational Educ. Bd. Of Trustees*, 287 S.C. 545, 340 S.E.2d 144, 146 (1986); *Hendrickson v. Spartanburg County Sc. Dist.* No. Five, 307 S.C. 108, 413 S.E.2d 871 (Ct. App. 1992). Substantial evidence is defined as evidence which, when considering the record as a whole, "would allow reasonable minds to reach the conclusion that the board reached or must have reached in order to justify its action." *Kizer*, 340 S.E. 2d at 146. Additionally, courts in other jurisdictions have also applied the substantial evidence rule in student suspension and expulsion cases. *See e.g., Jones v. Bd. Of Trustees of Pascagoula*, 524 So. 2d 968 (Miss. 1988); *Labrosse v. St. Bernard Parish School Bd.*, 483 So. 2d 1253 (La. Ct. App. 1986); *Birdsey v. Grand Blanc Com. School*, 130 Mich. App. 718, 344 N.W.2d 342 (Mich. App. 1983).

Relying on *McIntyre v. Sec. Comm'r of South Carolina*, Appellants contend that the substantial evidence or any deferential review is not appropriate or adequate in light of the alleged procedural due process violations. 425 S.C. 439, 823 S.E.2d 293, *cert. denied* June 28, 2019. However, unlike in this case, *McIntyre* did not involve a decision of school authorities or appellate review following a lower level evidentiary hearing, and when one does exist, South Carolina courts have held that alleged violations or deficiencies relating to due process concerns can be cured on appeal at the Board level. *See Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 70, 492 S.E.2d 62, 72–73 (1997) (finding administrative boards' independent consideration of grievance cured any constitutional due process violation.). Further, South Carolina courts have not

hesitated to apply the substantial evidence review standard even when there have been allegations of procedural defects or violations of due process in student discipline hearings. *Doe v. Richland Sch. Dist. Two*, 382 S.C. 656 (Ct. App. 2009); *Greer v. Anderson Sch. Dist. Five*, Case No. 2014-CP-04-00381 (S.C. Common Pleas, October 6, 2014); *Savage v. Richland Sch. Dist. Two*, Case No. 2012-CP-40-00455 (S.C. Common Pleas, September 2, 2015); *Doe v. Richland Sch. Dist. 2*, Case No. 2006-CP-6525 (S.C. Common Pleas Feb. 16, 2007). Accordingly, this Court declines to depart from controlling, well established precedent, and the appeal should be confined to the record and reviewed under the substantial evidence standard of review.

IV. LEGAL ANALYSIS AND CONCLUSIONS

A. There Is Substantial Evidence In The Record To Support The Board's Decision.

The record in this matter includes a police report reflecting that a parent of a BMS student contacted law enforcement to report a troubling message her daughter had seen which was sent or posted by T.D. on Snapchat. According to the police report, the message read, "*I want my shit 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*[4] *I'm shooting both of y'all and a ton of other people.*" There is a screen shot of this message, along with other related screenshots. As part of its investigation, the school administration interviewed students who were identified as having knowledge regarding the threatening messages and obtained statements. The statements are below:

> **Incident Statement (student-K.M.):** T.D. sent me a message saying he wants the jul back. T.D. said that he was going to find where I live and shoot up my house. T.D. said if he doesn't get the jul back by Monday he is going to come to school with a gun and shoot me. T.D. threaten me multiple times and was asking what's my address. T.D. said he was going to try and find me and shoot me.

[4] Juul is a type of electronic cigarette.

Incident Statement (student-H.G.): We were sitting on my bed and we get these text and they say: Yo bring me my jul or something is coming out my boot, and we say we don't have it, then T.D. says he knows we do. Then we sent T.D. a picture of it and he says yes and I better get it. Then the other student says or what and T.D. says or you're getting shot, simple enough. At that point me and the other student didn't believe T. and started messaging with him and said go ahead shoot me and we'll go tell before you can. Then T.D. said we can go tell them and if they search him, he'll shoot up the school and if he doesn't get his juul, he'll shoot up the school. Then we say ok, and T.D. responds like a hour later and says "I'm not scared of school or cops I'll shoot anyone.

Incident Statement (student-C.G.): After T.D. was saying threatening things to us he came to me and the other student he was texting by phone. The first thing he texted me was: where is my juul? I didn't respond to him. A few minutes later, he text me and said if I don't have my jul before Monday someone is going to get shot at school. The third message was if you think I'm joking, I'm not and if you all report me to the school, I'm going to pull the gun out of my boot and shoot everybody. While he was texting me this, I got the other friend to take a picture of the message on my phone. He took the photos of all of the things that T.D. said.

In addition, Student C.G. also provided the following statement to law enforcement prior to being interviewed by the school administration:

Incident Statement (student-C.G.): Friday night I went to H.'s house we stayed at the house the whole time we were there. I had already had T.D. blocked on snap chat but he decided to make another snap chat and added me on it that night. I looked at my phone and he started texting me. The first text was " Who has my juul" I didn't respond to that about 5 minutes later he sends a text saying if he doesn't have his juul by Monday he is going to shoot up our school after he said this he said "I know K.M. took it". And the last message he sent was " And if ya'll make me get searched at school im pulling a gun out of my boot and shooting everyone". While he was saying all of this I was getting H.G. to take pictures of it on his phone. When he finished saying this stuff I blocked him on snap chat. I never knew who had the juul or if anybody ever took it from him.

The school administration testified during the hearing, and noted on the disciplinary referral, having been advised by the investigator that T.D confessed to sending the messages. The Hearing Officer questioned T.D. regarding his admission to law enforcement by reading from an investigative report that provided, "T.D. stated he had sold his cell phone and did not have a cell phone. Then he [T.D.] stated that when he was at the emergency room last night that

he was using his biological mother's phone. He was pissed off because a student and the other boys took his juul and he did not know which one of them had it but that he wanted it back. Due to the fact that he was mad he sent the message to the student..."

During the hearing, T.D. maintained that someone had gotten into his account and sent the message because he did not have a phone at that time, having sold it in November. His grandparents, who were also in attendance at the hearing, explained that on that evening T.D. tried "to play gun with a bullet," hit it, and a piece of fragment went into his finger which had to be taken out. One of his grandparents reported that T.D. was mad because he had that fragment in his hand and his grandmother made him go to the emergency room. According to the grandparents, T.D. and his mom were sitting in the emergency room taking pictures but T.D. never got his hands on her phone, and after she left, she took the phone with her. Appellants denied T.D. had access to a pistol but admitted he had a 22 rifle, a 3030 rifle, and a shot gun which were locked in a bedroom and only used for hunting.

Respondent contends that the above referenced facts provide ample evidence of substantial evidence to support the Board's decision. Appellants, however, argue that there is no probative, reliable or substantial evidence of guilt in the record, because all of the evidence is highly unreliable hearsay. This Court disagrees. An administrative agency need not adhere to strict rules of evidence when acting in a judicial capacity, but the substantial rights of the party must be preserved. *City of Spartanburg v. Parris*, 251 Sc. 187, 190, 161 S.E.2d 228, 299 (1968). In fact, courts have repeatedly held that strict rules of evidence do not apply in student discipline matters, and among other things, hearsay evidence is admissible. *See Newsome v. Batavia Local School District*, 842 F.2d 920 (6th Cir. 1988); *Boykins v. Board of Educ.*, 492 F.2d 697 (5th Cir. 1974); *Tasby v. Estes*, 643 F.2d 1103 (5th Cir. 1981); *Jones v. Board of Trustees*, 524 So. 2d 968, (Miss. 1988); *Racine Unified Sch. Dist. v. Thompson*, 107 Wis. 2d 657, 321 N.W.2d 334,

(1982). Specifically, the Fifth Circuit Court in *Boykins* stated:

> There is a seductive quality to the argument—advanced here to justify the importation of technical rules of evidence into administrative hearings conducted by laymen - that, since a free public education is a thing of great value, comparable to that of welfare sustenance or the curtailed liberty of a parolee, the safeguards applicable to these should apply to it.... In this view we stand but a step away from the application of the strictissimi juris due process requirements of criminal trials to high school disciplinary processes. And if to high school, why not to elementary school? It will not do.
>
> The requirements of due process are sufficiently flexible to accommodate themselves to various persons, interests and tribunals without reduction to a stereotype and hence to absurdity.... Basic fairness and integrity of the fact-finding process are the guiding stars. Important as they are, the rights at stake in a school disciplinary hearing may be fairly determined upon the "hearsay" evidence of school administrators charged with the duty of investigating the incidents. We decline to place upon a board of laymen the duty of observing and applying the common-law rules of evidence.

Id. at 924-925 (*quoting Boykins*, 492 F.2d at 701.). Also, it is important to note that where hearsay in an administrative hearing is merely cumulative to other evidence, its admission is harmless. *See Jackson v. Speed*, 326 S.C. 289, 305, 486 S.E.2d 750, 758 (1997).

Based on a review of the record, the Court finds there is substantial, reliable evidence to support the Board's decision. Included in the record is the screenshot of the threatening social media post from T.D.'s account. *See e.g. U.S. v. Needham*, 852 F.3d 830, 837 (8th Cir. 2017) (finding social media screenshots not hearsay under FRE 801.) Absent from the record is any evidence linking the threatening Snapchat post to another user other than T.D. or that someone hacked his Snapchat account. Further, Student T.D. testified he could not have sent the message

because he sold his phone prior to the incident, but this does not explain the fact that he could have accessed or created the account from another device. Importantly, the investigative report from law enforcement documents T.D.'s admission to using his mother's phone to send the threatening message, which this Court's views as a prior inconsistent statement or admission by a party opponent. SCRE Rule 801. This Court also notes law enforcement records would be admissible as a hearsay exception. SCRE Rule 803. In light of the evidence, giving it its due weight and creditability, this Court finds there is substantial evidence in the record to support the Board's decision and its decision should be affirmed.

B. Student T.D. Was Provided Due Process.

Appellants argue that T.D. was deprived of due process based on certain alleged procedural defects that occurred at the hearing officer level and on appeal before the Board. S. C. Code § 59-63-240 outlines the procedures for student expulsion and provides, in relevant part, as follows:

> ...If procedures for expulsion are initiated, the parents or legal guardian of the pupil shall be notified in writing of the time and the place of a hearing either before the board or a person or committee designated by the board. At the hearing the parents or legal guardian shall have the right to legal counsel and to all other regular legal rights including the right to question all witnesses. If the hearing is held by any authority other than the board of trustees, the right to appeal the decision to the board is reserved to either party. ..

The United States Supreme Court first addressed what process is due in the school discipline context in *Goss v. Lopez*, 419 U.S. 565, 95 S.Ct. 729 (1975). Although *Goss* specifically limited its holding to the short term suspension, not exceeding 10 days, courts have stated that it "nevertheless establish[ed] the minimum requirements for long-term expulsions as well." *Goss*, 419 U.S. at 584, 95 S.Ct. 729; *Newsome v. Batavia Local Sch. Dist.*, 842 F.2d 920, 927 (6th Cir.1988); *Remer v. Burlington Area School Dist.*, 286 F.3d 1007, 1010-11 (7th Cir. 2002). Specifically, *Goss* requires only that a student be given (1) notice of the charges against

him, (2) an explanation of the evidence, and (3) an opportunity to present his side of the story. Goss, 419 U.S. at 581, 95 S.Ct. 729.

Although the South Carolina Supreme Court has not articulated a standard for minimal due process in a student expulsion case, in *Stinney v. Sumter School District 17*, the court noted an expulsion is a more serious disciplinary action than is suspension, and therefore, the procedures and protections given to the accused student should be greater than the informal, immediate hearing that was authorized in *Goss*. *Stinney*, 391 S.C. 547, 551-552 (2011). Nonetheless, without deciding the constitutional minimum that must be given in these circumstances, the South Carolina Supreme Court has found those procedures and protections outlined in S.C. Code Ann § 59–63–240 to be constitutionally sufficient.

After T.D. was recommended for expulsion, he received a letter from the Hearing Officer noting procedural rights afforded to him and referencing the expulsion policy which would have outlined the same. The record does not reflect Appellants took advantage of all rights afforded. Prior to the evidentiary hearing before the Hearing Officer, Appellants received explanation of the violation T.D. was being accused of committing. During the hearing, T.D. had the opportunity to question the witnesses present, the administration, and present a defense. All three appellants, in addition to another relative, provided testimony during the hearing. Appellants could have presented more witnesses to testify or offer evidence of their own, but they did not. Appellants noted during oral arguments that they were not provided with evidence prior to the hearing, and that the court in *Doe v. Richland Sch. Dist. Two* has found such deprivation of evidence to be a violation of due process warranting reversal of an expulsion. 382 S.C. 656 (Ct. App. 2009); *see also Doe v. Richland Sch. Dist. 2*, Case No. 2006-CP-6525 (S.C. Common Pleas Feb. 16, 2007). *Doe,* however, is distinguishable on the grounds that reversal was based on a lack of substantial evidence to support the expulsion as well as the fact that the evidence the student was deprived of reviewing (a video which was the only piece of evidence

depicting the minor's conduct in dispute and question) was not made available to the student and parent even prior to appeal before the Board. That is not the case here where Appellants were provided all evidence prior to appeal before the Board.

Appellants further contend that reversal should be granted because the Hearing Officer demonstrated clear partiality by serving as both prosecutor and fact finder. To 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, and there is no evidence to support the Hearing Officer engaged in material *ex parte* communications with the Board. *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 70, 492 S.E.2d 62, 72–73 (1997). Through the appeal process, Appellants had the opportunity, through legal counsel, to receive and review all the records, including, but not limited to, a summary of the evidence against the student, copies of all statements, and law enforcement records; identify any errors; raise any legal arguments; provide a defense; and make a personal appearance before the Board. Also, this Court notes that Appellants were also offered an opportunity to have a *de novo* hearing before another hearing officer prior to appeal before the Board, but did not accept the offer unless conducted pursuant to their terms.

Board policy does not require a *de novo* evidentiary hearing before the Board when a matter is reviewed on appeal. Further, Appellants have not identified any authority which would require a school board to do so. The appeal was conducted in accordance with the Board's policies, and there is no legal authority to support that this policy in inconsistent with applicable State law. To nullify a ruling of a quasi-adjudicatory body on the basis of bias or prejudgment requires a substantial showing of a "predetermined purpose to reach a determined end." *Kizer v. Dorchester Cty. Vocational Educ. Bd. of Trustees*, 287 S.C. 545, 552–53, 340 S.E.2d 144, 148–49 (1986). Although Appellants fault the Board for not granting them everything requested in connection with their appeal hearing or for not deviating from the

Board's standard practice in such type of appeals generally based solely on the record, the evidence does not suggest that the opinions of the Board members were predetermined, fixed, or unchanged. To the contrary, in keeping with its standard practice for personal appearances, Board members encouraged T.D. to provide his account of the story so they could consider what he had to say at that time.

While Appellants may dispute the Board's outcome, this Court finds that any procedural errors either were not prejudicial to T.D., or were cured on appeal, and that the Student was afforded due process required under applicable law. Accordingly, the Board's decision is affirmed.

C. Appellants Request For Injunctive Relief Is Moot.

"A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court," and finding an issue moot because a ruling on the issue "would have no practical effect whatsoever". See *Seabrook v. Knox*, 369 S.C. 191, 197, 631 S.E.2d 907, 910 - 911 (2006). In this case, T.D. was expelled for the remainder of 2018-2019 school year. At this time, the school year has concluded, a new school year is about to commence, and T.D. is permitted to apply for readmission. Thus, the temporary relief that that Appellants sought (i.e. reinstating T.D. in an adequate eighth grade setting) is impractical and impossible for the Court to grant at this time. Accordingly, the request for injunctive relief is now moot and need not be addressed.

D. Respondents' Reliance on Juvenile Records In Connection With The Disciplinary Proceedings Does Not Warrant Grounds for Reversal Or Declaratory Judgment.

Appellants allege that Respondent violated by S.C. Code Ann. § 63-19-2020(E) and § 63-19-810 (C), statutes which govern the confidentiality and disclosure of juvenile records, by using or relying upon such information in connection with a disciplinary proceeding. Further,

Appellants seek an order finding the District in violation of S.C. Code Ann. §63-19-2020(E) and 2030(E) by failing to develop and implement policies to protect the privacy and due process rights of juveniles accused of crimes.

In this case, law enforcement notified the BMS principal when it had been alerted of a threat against the school and the students there. By law, the BMS principal was entitled to request and receive a copy of the incident report, and any additional juvenile records provided by law enforcement to the BMS administration were unsolicited. At the time of the incident, the District's Student Records Policy, Policy JRA, provided for the principal being the legal custodian of all student records for that school. The policy also provided that the school would maintain student records in a confidential manner and comply with all state and federal law, including the Family Educational Rights and Privacy Act ("FERPA"), regarding publication and dissemination of student records. The policy also contained a provision regarding the retention of records. Although Respondent's records policy did not contain the express language from § 63-19-2020(E), it met with the intent by placing restrictions to govern the confidentiality of all student records, which would have included juvenile records, and it contained language regarding the retention and destruction of the records.

Further, South Carolina law allows juvenile records to be used for supervising, monitoring, and meeting the educational needs of students. Appellants have failed to identify any clear, controlling persuasive authority to support that the scope of the language (i.e., supervising, monitoring, and meeting the educational needs of students) would not include disciplinary purposes, which would ultimately be directly related to a student's supervision, monitoring, placement and instructional services, or any authority in which schools are expressly prohibited from using such records for such purposes.

Appellants have failed to identify any South Carolina authority to support an argument that the constitutional principle in criminal cases excluding evidence which is "fruit of the poisoned tree" should be applied to student discipline hearings. This Court also recognizes that Appellants had complete access to all juvenile records prior to the appeal and were not precluded from relying on any of that information in connection with the appeal. To the extent information was obtained or relied upon unlawfully regarding a threat to shoot students at school, it would not preclude the Respondent from considering the information. Further, in *Reese v. Richland Sch. Dist. Two, et. al.*, issues were raised regarding the use of police records involving students in connection with an expulsion proceeding, and the Court did not find this to be a violation of the expelled student's rights. *Reese*, No. 3:13-03040-MGL, 2015 WL 9239785, *6 (D.S.C. Dec. 7, 2015). This Court does not find Respondents actions in violation of State law and does not believe Respondent's reliance or consideration of the records, as a matter of law, would warrant reversal of the Board's decision. Accordingly the Board's decision is affirmed, and Appellant's request for declaratory judgment is denied.

E. Respondent Did Not Violate S.C. Code § 59-63-240.

The record generated in this matter contains statements from student witnesses interviewed by school administrators as well as reports from law enforcement. Neither the students who submitted statements nor law enforcement officials attended T.D.'s evidentiary hearing and provided testimony. Because of this, as grounds for appeal, Appellants contend that the Board erred in refusing to remand the case to a separate hearing officer to conduct a hearing that complies with S.C. Code § 59-63-240, including affording Appellants the right to ask questions of all witnesses. Also, Appellants seek declaratory relief pursuant to S.C. Code Ann. §15-23-20, for an order finding that the District's "policy of denying students recommended for expulsion the ability to ask questions of all witnesses" to be in violation of Article 1, Section 22

of the South Carolina Constitution and S.C. Code Ann. §59-63-240. South Carolina Code § 59-63-240, provides, in relevant part, that:

> The Board may expel for the remainder of the school year a pupil for any of the reasons listed in Section 59-63-210. If procedures for expulsion are initiated, the parents or legal guardian of the pupil shall be notified in writing of the time and the place of a hearing either before the board or a person or committee designated by the board. At the hearing the parents or legal guardian shall have the right to legal counsel and to all other regular legal rights including the right to question all witnesses...

It cannot be disputed that during the December 12, 2018 hearing, Appellants had the opportunity to, and did, question all witnesses present, the BMS principal and assistant principal. Accordingly, Respondent argues this statutory requirement of S.C. Code Ann. § 59-63-240 was fulfilled. Respondent further contends school districts lack subpoena power to compel students to miss instructional time to attend confidential disciplinary hearings for other students, noting an absence of any South Carolina law, or controlling authorities, expressly requiring or authorizing school districts to compel the attendance of any non-party students at discipline hearings. Yet, Appellants' position is that this statute, and the accompanying Board policy, should be interpreted to require school districts to compel students, who are interviewed by or provide written statements to the administration in connection with a school disciplinary matter, to attend disciplinary hearings where they can be subject to questioning or cross-examination by the accused student or his/ her representative. Appellants have not identified any South Carolina authority granting school district's subpoena power to compel non-employees to attend student disciplinary hearings. Therefore, Respondent argues Appellants' misapplication of this statute is unsupported by legal authorities, legislative intent, or practices of other school districts in the state of South Carolina.

School disciplinary hearings and criminal proceedings are distinct processes. Because of this, Respondent argues that school districts must balance the need to protect student witnesses and encourage them to come forward; the need to avoid excessive costs; the complexity of such

administrative proceedings; and the need to avoid duplicative testimony. This Court agrees that the value of compelling students to attend such hearings is outweighed by the burden that would be placed upon school districts by providing these additional safeguards.

While South Carolina courts have yet to directly address the issue concerning the right to confront and cross-examine minor student witnesses in public school expulsion hearings, the United States District Court for South Carolina has addressed the use of redacted student statements obtained by law enforcement and/or the school administration in connection with student discipline hearings as it relates to questions of due process. *Reese v. Richland School District Two, et. al*, No. 3:13-03040-MGL, 2015 WL 9239785, *6 (D.S.C. Dec. 7, 2015). In that case, student Ashton Reese was expelled from school as a result of being involved in an off-campus gang-related fight. *Id.* at *1. As part of the investigation, law enforcement and the school administration interviewed and collected statements from student witnesses, and there was an allegation that law enforcement allegedly coerced or forged some of the student statements. *Id.* at *6. In *Reese*, the District Court found that the school's failure to provide Reese with non-redacted documents prior to his expulsion hearing did not violate his due process rights, noting federal courts have found that the use of anonymous witness statements at high school expulsion hearings is consistent with the principles of due process. *Id*; (*citing Newsome*, 842 F.2d at 924-25; *Brewer ex rel. Dreyfus v. Austin Indep. Sch. Dist.*, 779 F.2d 260, 263 (5th Cir. 1985). Based on the substantial evidence in the record, this Court does not find the case turns solely on the credibility of T.D. and the students who submitted the statements. Because the *Reese* Court did not find the use of the redacted statements from student witnesses to be a violation of Reese's due process rights, it would be contrary to South Carolina law to conclude a school district's failure to compel students who authored those statements to attend the hearing to be in violation of state law or the student's due process rights.

Both parties have cited numerous cases from other jurisdictions which have issued split opinions or guidance on the issue of compelling student witnesses to attend hearings and be subject to questioning and cross examination. *See Newsome v. Batavia Local Sch. Dist.*, 842 F.2d 920 (6th Cir. 1998); *Doe v. Baum*, 882 F.3d 579 (6th Cir. 2018); *Doe v. Miami University*, 882 F.3d 579 (6th Cr. 2018); *Brewer ex rel. Dreyfus v. Austin Indep. Sch. Dist.*, 779 F.2d 260, 263 (5th Cir. 1985); *Winnick v. Manning*, 460 F.2d 545, 550 (2d Cir. 1972); *E.K. v. Stamford Board of Education,* 557 F. Supp. 2d at 276 (D. Conn. 2008); *Stone v. Prosser Consol. Sch. Dist. No. 116*, 971 P.2d 125 (Wash App., 1999); *Bogle-Assegai v. Bloomfield Board of Education*, 467 F.Supp. 2d 236 (D.Conn. 2006); *Colquitt v. Rich. Tp. High School Dist.*, 599 N.E.2d 1109 (Colo. 1998); *Nicholas ex rel. Nicholas v. Destefano*, 70 P.3d 505 (Colo. App. 2002); *In Re. Expulsion of EJW from ISD No. 500*, 632 N.w.2d 775 (Minn. App., 2001); *Rone v. Winston-Salem/Forsythe Cnty Bd. of Educ.*, 701 S.E.2d 284 (N.C. App., 2010); *Graham v. Knutzen*, 351 F.Supp. 642, 666 (D.Neb.1972); *Jaska v. Regents of Univ. of Michigan*, 597 F.Supp. 1245, 1253 (E.D.Mich.1984); *Dillon v. Pulaski County Special School Dist.*, 468 F.Supp. 54, 58 (E.D.Ark.1978), *aff'd*, 594 F.2d 699 (8th Cir.1979). However, this Court recognizes that no South Carolina court in reviewing an expulsion appeal has yet interpreted or applied S.C. Code Ann. § 59-63-240 the way Appellants seek for it to be interpreted and applied, and absent more controlling or persuasive authority, this Court sees no basis for adopting Appellants' argument, particularly in light of *Reese*, which has found *Newsome* to be persuasive. Accordingly, Appellants' request for declaratory judgment is denied.

V. CONCLUSION

Based on all the facts and circumstances involved in this case and for the reasons articulated herein, this Court concludes that the Board's decision should be affirmed and Appellants' request for injunctive relief and declaratory judgments should be denied.

IT IS SO ORDERED.

R026

The Honorable L. Casey Manning

Columbia, South Carolina

8-16-19, 2019

CONFIDENTIAL

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February 12, 2019

VIA E-MAIL ONLY
D. Michael Mathison, Esq.
Richland County Public Defender's Office
1701 Main Street, Suite 103
Columbia, SC 29201

RE: Richland School District Two/D[redacted]T[redacted] E.

Dear Mike:

This letter is in response to your email this morning requesting a written version of the verbal proposal that we discussed yesterday. As will be discussed further below, I will summarize the proposed resolution; however, two of the three questions that you asked would have to be decided by the Board at a Board meeting.

With regard to the proposed resolution, in light of the due process concerns that you raised, we proposed essentially remanding this matter for a second due process hearing to be heard by Roosevelt Garrick, who is a retired administrator. Mr. Garrick has no prior knowledge of this incident and would be making a decision based on the record that will be presented to him. Our reason for this proposal was in light of the concerns that you raised that, even if the Board were to make a decision, included in the record for the Board's consideration are law enforcement records to which you object based on your client's status as a juvenile. With regard to your numbered request, we can confirm that based on the administration's practices in these matters, the tapes will be available for Board members, should they wish to review the tapes. Items 2 and 3 in your request are matters that would have to be considered by the Board, and voted upon after their consideration and discussion of these items. 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. We also proposed recommending an amendment to the Board's policy regarding student records, to include provisions regarding the handling of juvenile criminal records.

We trust this is responsive to your concerns. We will look forward to discussing these matters with you further.

* Certified Specialist in Employment Law ◆ Certified Mediator
◆ Also admitted in District of Columbia □ Also admitted in Georgia
◇ Also admitted in North Carolina

CONFIDENTIAL

Sincerely yours,

Vernie L. Williams
vwilliams@hmwlegal.com

/mlp
c: Jasmine Rogers Drain, Esq.

R081

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
T.D. by and through his guardians, A.D. and J.D., Plaintiffs/Appellants, vs. Richland County School District Two, Defendant/Respondent.	)	C.A. No. 2019-CP-40-01615 **ANSWER AND RETURN**

Defendant/Respondent, Richland School District Two, by and through its undersigned counsel, hereby responds to the Appeal and Complaint of Plaintiffs, and denies each and every allegation of the Appeal and Complaint except as may be expressly admitted herein, and further responds to the specific allegations of Plaintiffs' Appeal and Complaint, in accordance with the numbered paragraphs thereof, as follows:

INTRODUCTION

1. This paragraph is jurisdictional in nature, does not contain factual allegations, and states legal conclusions as to which no response is required. To the extent a response may be required, Defendant admits only that by this action Plaintiffs seek, among other things, to appeal a school suspension and expulsion under the referenced laws and authority, that this court has jurisdiction to review the appeal of this matter, but denies violating any of the cited statutes or that Plaintiffs are entitled to any relief requested under the statutes cited or other legal authority.

2. Admitted in part and denied in part. Defendant admits only that Plaintiffs are seeking injunctive relief through this action but denies that Plaintiffs are entitled to any relief requested.

3. This paragraph does not contain factual allegations and states legal conclusions as

to which no response is required. To the extent a response may be required, Defendant admits only that by this action Plaintiffs seek declaratory judgment but denies violating any of the cited statutes or that Plaintiffs are entitled to any relief requested under the statutes cited or other legal authority.

4. This paragraph does not contain factual allegations and states legal conclusions as to which no response is required. To the extent a response may be required, Defendant admits only that by this action Plaintiffs seek declaratory judgment but denies violating any of the cited statutes or that Plaintiffs are entitled to any relief requested under the statutes cited or other legal authority.

PARTIES AND VENUE

5. Admitted upon information and belief.

6. Admitted upon information and belief.

7. Admitted upon information and belief.

8. Admitted.

ABBREVIATED STATEMENT OF THE FACTS AND THE CASE

9. Admitted in part and denied in part. Defendant admits upon information and belief only that a parent contacted law enforcement on December 1, 2018, regarding alleged threatening messages related to Blythewood Middle School (BMS) and or its students. Defendant further admits the referenced incident report speaks for itself and would defer to the referenced incident report completed by law enforcement as the best source regarding its contents. Any remaining allegations contained in this paragraph are denied.

10. Denied as stated. Defendant admits only that on December 2, 2018, BMS Principal Karis Mazyck received notification from School Resource Officer Brooks regarding alleged threats to Blythewood Middle School and/or students and that Principal Mazyck was contacted later that day by an investigator from the Richland County Sheriff's Department

regarding the same. Any remaining allegations contained in this paragraph are denied.

11. Denied as stated. Defendant admits only that on or around December 4, 2018, the BMS administration attempted to contact T.D. to discuss allegations received from law enforcement and afford him an opportunity to share his side of the story. Defendant further admits that at that time, T.D.'s grandfather reported, among other things, that T.D. was asleep and T.D. would not be providing a statement to the school administration because he had already denied the allegations to law enforcement. Any remaining allegations contained in this paragraph are denied or denied as stated.

12. Admitted in part and denied in part. Defendant admits only that as consistent with applicable law, Principal Mazyck requested a copy of the incident report from law enforcement. Defendant further admits that by email dated December 4, 2018, law enforcement provided the incident report, and other unrequested information to Principal Mazyck via email, and would defer to those emails as the best source regarding the records transmitted by law enforcement to Principal Mazyck at that time. Any remaining allegations contained in this paragraph are denied.

13. Denied as stated. Defendant admits only that the BMS administration recommended T.D. for expulsion. Any remaining allegations contained in this paragraph are denied.

14. Admitted in part and denied in part. Defendant admits only that the BMS administration, as consistent with standard practice, submitted documentation supporting the administration's expulsion recommendation to the Hearing Officer in advance of the hearing and would defer to the record as the best source regarding the information submitted. Any remaining allegations contained in this paragraph are denied.

15. Admitted in part and denied in part. Defendant admits only that the BMS administration obtained written statements from BMS students in connection with its

investigation of the alleged incident involving the threat to the school and/or students, that the statements speak for themselves, and would defer to those statements as the best sources regarding their actual contents. Any remaining allegations contained in this paragraph are denied.

16. The paragraph contains factual allegations in addition to legal conclusions to which no response is required. To the extent a response is required, Defendant admits only that its policies, applicable state and federal law, and case law decided thereunder, are the best sources concerning rights of Plaintiffs, and denies violating any of those policies or statutes. Defendant would defer to the referenced audio recordings, in their entirety, as the best source regarding the communications between the BMS administration and Plaintiffs prior to and during the hearing on December 12, 2018. Any remaining allegations contained in this paragraph are denied.

17. Denied as stated. Defendant admits only that prior to the due process hearing the BMS administration discussed with Plaintiffs the nature of information received from law enforcement and would defer to the referenced audio recordings, in their entirety, as the best source regarding communications between the BMS administration and Plaintiffs prior to and during the hearing on December 12, 2018. Any remaining allegations contained in this paragraph are denied

18. Admitted in part and denied in part. Defendant admits only that the BMS administration introduced the referral, student statements, and the incident report during the hearing to support the school's administration expulsion recommendation, that the documents speak for themselves, and would defer the actual documents as the best source regarding their contents. In addition, Defendant admits the audio recording, in its entirety, speaks for itself and would defer to the audio recording as the best source regarding documents introduced and information shared during the hearing. Any remaining allegations contained in this paragraph

are denied.

19. Denied.

20. Denied as stated. Defendant admits only that during the hearing on December 12, 2018, Plaintiffs testified that T.D. sold his cell phone prior to the alleged incident and would defer to the recording of the hearing as the best source regarding Plaintiffs' testimony during the hearing. Any remaining allegations contained in this paragraph are denied.

21. Denied.

22. Denied as stated. Defendant admits only that the Hearing Officer received and questioned T.D. about information contained in a report or document labeled " Investigative Follow-Up" and would defer to that the document as the best source concerning its contents. In addition, Defendant admits the audio recording of the hearing is an accurate reflection of communications of those in attendance during the hearing and would defer to the recording as the best source regarding communications made by or documents referenced by the Hearing Officer during the hearing. Any remaining allegations contained in this paragraph are denied.

23. Admitted in part and denied in part. The allegations contained in the first sentence of this paragraph are denied. With regard to the allegations contained in the second sentence of this paragraph, including all subparts and footnotes, Defendant admits the referenced documents speak for themselves and would defer to the referenced documents as the best source concerning their contents. Defendant further admits that the audio recording of the December 12, 2018, hearing accurately depicts documents referenced or introduced during the hearing and the testimony from those present and would defer to the audio recording as the best source regarding the same. Any remaining allegations contained in this paragraph are denied.

24. Denied as stated. Defendant admits only that Expulsion Summary Sheet speaks for itself and would defer to the referenced document as the best source concerning its contents.

Any remaining allegations contained in this paragraph are denied.

25. Denied as stated. Defendant admits only that minutes provided in connection with student disciplinary hearings are condensed and not intended to be a verbatim transcript and that the copies of the original minutes and revised minutes speak for themselves and would defer to the minutes as the best sources concerning their contents. Any remaining allegations contained in this paragraph are denied.

26. Denied as stated. Defendant admits only that its legal counsel by correspondence dated January 15, 2015, January 22, 2019, and January 31, 2019, provided requested information, including records and recordings, to counsel for Plaintiff, and that once it was discovered the written statements from students had been inadvertently omitted from prior productions, those documents were provided to Plaintiffs' counsel February 1, 2019. In addition, Defendant admits that the referenced records and recordings provided to counsel for Plaintiffs speak for themselves and would defer to the documents and recordings as the best source regarding their contents. Any remaining allegations contained in this paragraph are denied.

27. Admitted in part and denied in part. Defendant admits only that Plaintiff A.D. submitted a letter of appeal to the Board dated January 6, 2019, and that thereafter legal counsel for Plaintiffs supplemented the appeal on February 4, 2019 and February 5, 2019. Defendant further admits that the referenced appeals submitted on by and on behalf of Plaintiffs speak for themselves and would defer to the documents as the best sources regarding their contents. Defendant denies violating any of the cited statutes and any remaining allegations contained in this paragraph.

28. Admitted.

29. Admitted.

30. Denied as stated. Defendant admits only that by letter dated February 8, 2019

counsel for Plaintiffs, among other things, requested clarification regarding the request for an in person hearing. Defendant further admits that during a discussion on February 11, 2019, and also by letter dated February 12, 2019, legal counsel for Defendant addressed Plaintiffs' counsel requests. Defendant further admits that the referenced letters speak for themselves and would defer to the letters as the best source regarding their contents. Any remaining allegations contained in this paragraph are denied.

31. Denied as stated. Defendant admits only that by letter dated February 12, 2019, legal counsel for Defendant addressed Plaintiffs' counsel requests regarding issues pertaining to the request for an in-person appearance. Defendant further admits that the referenced letter speaks for itself and would defer to the letter as the best source regarding its contents. Any remaining allegations contained in this paragraph are denied.

32. Denied as stated. Defendant admits that no parties were "copied" on the submission to the Board as appeals are automatically uploaded through an internal system called "Board Docs." Any remaining allegations contained in this paragraph are denied.

33. Denied as stated. Defendant admits only that audio recording of the hearing before the Board speaks for itself and would defer to the recording in its entirety, or a transcript thereof, as the best source regarding comments made by those in attendance during the hearing. Any remaining allegations are denied.

34. Denied as stated. Defendant admits only that audio recording of the hearing before the Board speaks for itself and would defer to the recording in its entirety, or a transcript thereof, as the best source regarding comments made by those in attendance during the hearing. Any remaining allegations are denied.

35. Denied as stated. Defendant admits only that audio recording of the hearing before the Board speaks for itself and would defer to the recording in its entirety, or a transcript thereof, as the best source regarding comments made by those in attendance during the hearing.

Defendant denies violating any referenced statutes and any remaining allegations contained in this paragraph.

36. Denied as stated. Defendant admits only that during the general session of its Board meeting on February 12, 2019, the Board voted to deny Plaintiffs' appeal. Any remaining allegations contained in this paragraph are denied.

37. Denied as stated. Defendant admits only that by letter dated February 18, 2019, from Cleveland J.C. Smith, Chief Administrative Officer, Plaintiffs were notified of the Board decision and that a courtesy copy of that same was emailed to legal counsel for Plaintiffs on February 18, 2019. Any remaining allegations contained in this paragraph are denied.

STANDARD OF REVIEW

38. This paragraph, including subparts, contains legal conclusions as to which no response is required. To the extent a response is required, Defendant admits only that Section 59-63-240 provides that "the action of the [school] board [in student expulsion cases] may be appealed to the proper court and that the hearing before the Circuit Court is to be a review of the record below, not a de novo hearing. In addition, Defendant admits that that the cited rules and statutes in this paragraph are the best source regarding their contents and that cases decided thereunder are the best sources concerning their application. Defendant denies violating any referenced statutes and any remaining allegations contained in this paragraph.

GROUNDS FOR APPEAL

39. This paragraph contains factual allegations in addition to legal conclusions to which no response is required. To the extent a response is required, Defendant admits only that that the cited statutes in this paragraph are the best source regarding their contents and that cases decided thereunder are the best source concerning their application. In addition, Defendant admits that the Board of Trustees' decision to uphold T.D.'s expulsion was based upon substantial evidence and pursuant to Defendant's Policy JICDA and corresponding

Administrative Rule JICDA-R entitled "Code of Conduct" as well as Defendant's Policy JKE and corresponding Administrative Rule JKE-R entitled "Expulsion of Students." Further, Defendant admits it has policy to protect and safeguard student records, including juvenile records, and that that policy is the best source regarding its contents. Defendants deny violating any referenced statutes or policy and any remaining allegations contained in this paragraph.

40. This paragraph contains factual allegations in addition to legal conclusions to which no response is required. To the extent a response is required, Defendant admits only that its policies, applicable state and federal law, and case law decided thereunder, are the best source concerning rights of Plaintiff, and denies violating any of those laws or Plaintiffs' rights. In addition, Defendant admits that the referenced documents speak for themselves and would defer to those documents as the best source regarding their contents and that the recordings of the applicable proceedings speak for themselves and are the best source regarding comments made by individuals in attendance during those proceedings. Any remaining allegations contained in this paragraph are denied.

41. This paragraph contains factual allegations in addition to legal conclusions to which no response is required to the extent a response is required, Defendant defers to applicable state and federal law, and case law decided thereunder, as the best source regarding rights of students as it relates to discipline and denies violating in any of those rights. Any remaining allegations contained in this paragraph are denied.

42. This paragraph contains factual allegations in addition to legal conclusions to which no response is required. To the extent a response is required, Defendant admits only that the referenced documents speak for themselves and would defer to those documents as the best sources regarding their contents. Defendant further admits that the referenced statutes and case laws speak for themselves and would defer to the referenced case law and statutes as the best

source regarding their contents and application and denies violating any statutes or laws. Defendant further admits that T.D. has been out of a school setting since on or around February 18, 2019. Any remaining allegations contained in this paragraph, including subparts thereof, are denied.

43. This paragraph contains factual allegations in addition to legal conclusions to which no response is required. To the extent a response is required, Defendant admits only that the cited case speaks for itself and would defer to the case as the best source regarding its contents and application. Defendant further admits that the audio recording from the hearing before the Board on February 12, 2019, speaks for itself, and would defer to the recording, in its entirety, as the best source regarding any comments made by those in attendance. Any remaining allegations are denied.

44. Defendant denies Plaintiffs are entitled to any of the relief requested.

FOR A SECOND CAUSE OF ACTION

(Injunctive Relief – Rule 65, SCRCP)

45. Defendant incorporates by reference its responses to Paragraphs 1 through 44 of the Complaint/Appeal as if stated herein verbatim.

46. Denied.

47. This paragraph contains a legal conclusion or statement as to which no response is required. To the extent a response is required, Defendant admits only the cited case law speaks for itself and would defer to the cited case as the best source regarding its contents and application but denies violating any rights of Plaintiffs. Any remaining allegations contained in this paragraph are denied.

48. Denied.

49. Denied as stated. Defendant admits only that T.D. was expelled from Richland School District Two for making threats in violation of applicable District policy. Defendant

would defer to the applicable laws of this state regarding student attendance as the best source regarding student enrollment. Any remaining allegations contained in this paragraph are denied.

50. Denied as stated. Defendant admits only that T.D. was afforded the opportunity to receive instruction pending his appeal and defers to the audio recording of the Board hearing, in its entirety, as the best source regarding comments made during the hearing, including those of legal counsel. Any remaining allegations are denied.

51. Defendant denies Plaintiffs are entitled to the relief requested.

FOR A THIRD CAUSE OF ACTION – DECLARATORY JUDGMENT ACT

52. This paragraph states a legal conclusion and requires no response. To the extent a response is required, Defendant admits only that the cited statute speaks for itself and would defer to the cited statute, and case law decided thereunder, and the best source regarding its contents and application and denies violating the cited statute. Any remaining allegations contained in this paragraph are denied.

53. This paragraph states a legal conclusion and requires no response. To the extent a response is required, Defendant admits only that the cited statute speaks for itself and would defer to the cited statute, and case law decided thereunder, and the best source regarding its contents and application and denies violating the cited statute. Any remaining allegations contained in this paragraph are denied.

54. This paragraph states a legal conclusion and requires no response. To the extent a response is required, Defendant admits only that the cited statute speaks for itself and would defer to the cited statute, and case law decided thereunder, and the best source regarding its contents and application and denies violating the cited statute. Any remaining allegations contained in this paragraph are denied.

55. Denied as stated. Defendant admits that Policy JRA/JRA-R governs the

maintenance and confidentiality of student records, which would include all records maintained by the District regarding its students, and would defer to the policy as the best source regarding its contents. Any remaining allegations contained in this paragraph are denied.

56. Defendants deny Plaintiffs are entitled to the relief requested.

57. Defendants deny Plaintiffs are entitled to the relief requested.

58. Defendants deny Plaintiffs are entitled to the relief requested.

FOR A FOURTH CAUSE OF ACTION – DECLARATORY JUDGMENT ACT

59. This paragraph states a legal conclusion and requires no response. To the extent a response is required, Defendant admits only that the cited statute speaks for itself and would defer to the cited statute, and case law decided thereunder, and the best source regarding its contents and application and denies violating the cited statute. Any remaining allegations contained in this paragraph are denied.

60. This paragraph states a legal conclusion and requires no response. To the extent a response is required, Defendant admits only that the cited statute speaks for itself and would defer to the cited statute, and case law decided thereunder, and the best source regarding its contents and application and denies violating the cited statute. Any remaining allegations contained in this paragraph are denied.

61. Denied as stated. Defendant admits only that Policy JKE speaks for itself and would defer to the policy as the best source regarding its contents.

62. Denied.

63. Defendant denies that Plaintiffs are entitled to the relief requested.

64. Defendant denies that Plaintiffs are entitled to any of the relied requested in the Complaint and Appeal or any other recovery whatsoever.

65. Defendant denies each and every other allegation of the Complaint and Appeal except for those expressly admitted herein.

FIRST AFFIRMATIVE DEFENSE

To the extent the Complaint fails to state facts sufficient to constitute a cause of action, Defendant is not liable.

SECOND AFFIRMATIVE DEFENSE

Defendant is immune from liability under § 15-78-60(25) of the South Carolina Tort Claims Act to the extent Plaintiff's alleged loss resulted from an exercise of the District's responsibility or duty to supervise, protect, and control its students, and Defendant School District did not exercise its responsibility or duty in a grossly negligent manner.

THIRD AFFIRMATIVE DEFENSE

Defendant is immune from liability under § 15-78-60(5) of the South Carolina Tort Claims Act to the extent Plaintiff's alleged loss resulted from an exercise of discretion or judgment by a governmental entity or employee or the performance or failure to perform an act or service which is in the discretion or judgment of a governmental entity or employee.

FOURTH AFFIRMATIVE DEFENSE

It is denied, further, that any constitutionally guaranteed right or rights of Plaintiffs have been violated by Defendant.

FIFTH AFFIRMATIVE DEFENSE

Defendant is immune from liability under the South Carolina Tort Claims Act to the extent Plaintiff's alleged loss, if any, resulted from the adoption, enforcement, or compliance, or the alleged failure to adopt, enforce, or comply, with any law, rule, regulation, or written policy.

SIXTH AFFIRMATIVE DEFENSE

. Defendant School District pleads as a further bar and limitation on this action each and

every provision of the South Carolina Tort Claims Act, including its limitations on damages and its exceptions to the waiver of sovereign immunity.

SEVENTH AFFIRMATIVE DEFENSE

Defendant is immune from liability under the South Carolina Tort Claims Act to the extent Plaintiff's alleged loss, if any, resulted from the institution or prosecution of any judicial or administrative proceeding.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs have been provided all due process available under the law for the disciplinary consequences applied in Plaintiffs' case.

NINTH AFFIRMATIVE DEFENSE

To the extent that Plaintiffs seek recovery for conduct outside the scope of official duties or which constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude, Plaintiffs claims are barred by the immunities set forth in the South Carolina Tort Claims Act.

TENTH AFFIRMATIVE DEFENSE

Defendant District is immune from liability under the South Carolina Tort Claims Act to the extent Plaintiffs' alleged loss, if any, resulted from: a) legislative, judicial, or quasi-judicial action or inaction; or b) administrative action or inaction of a legislative, judicial, or quasi-judicial nature.

ELEVENTH AFFIRMATIVE DEFENSE

T.D.'s expulsion was based on substantial and sufficient evidence.

TWELFTH AFFIRMATIVE DEFENSE

Defendant at all times acted in good faith. Further, Defendant's employees acted with a reasonable, good faith belief in the lawfulness and constitutionality of their actions, and their alleged wrongful conduct did not violate clearly settled law or established rights. The conduct of Defendant's employees was lawful, justified, and made in good faith.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claim for equitable relief must fail to the extent they have failed to join all necessary parties.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs have made no showing that they will suffer irreparable harm without an injunction and Plaintiffs have adequate remedies at law.

WHEREFORE, having fully answered the Complaint and Appeal, Defendant respectfully prays that the Court dismiss Plaintiffs' claims against them, with all costs and expenses awarded to the Defendant, together with any and all further relief that the Court deems equitable and just.

Respectfully submitted,

HALLIGAN MAHONEY WILLIAMS SMITH
FAWLEY & REAGLE, PA

By: s/ Jasmine Rogers Drain

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R 096

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Attorneys for Defendant/Respondent

April 18, 2019

Columbia, South Carolina

R097

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
T.D. by and through his guardians, A.D. and J.D., Plaintiffs/Appellants, vs. Richland County School District Two, Defendant/Respondent.	)	C.A. No. 2019-CP-40-01615 **CERTIFICATION OF RECORD**

TO: THE COURT OF COMMON PLEAS, FIFTH JUDICIAL CIRCUIT

Please take notice that inasmuch as a Summons and Appeal and Complaint has been served upon Richland County School District Two ("District") in the above-entitled action, Respondent, Richland County District Two, hereby certifies to the Court the following written record herein, subject to SCRCP 41.2:

1. Discipline referral for Student T.D. dated December 4, 2018.
2. Letter dated December 5, 2018, from Blythewood Middle School (BMS) Principal, Karis Mazyck, to Dr. Baron Davis, Superintendent, regarding expulsion recommendation for Student T.D.
3. Amended letter dated December 5, 2018, from Blythewood High School Principal, Karis Mazyck, to Dr. Baron Davis, Superintendent, advising of expulsion recommendation for Student T.D.
4. Parent/guardian information and emergency contact information form for T.D.
5. T.D.'s student discipline summary for 2018-2019 term.
6. Attendance record for T.D.
7. Historical Grades for T.D.
8. Grades and Attendance for T.D. for 2018-2019 term.

9. Letter dated December 5, 2018, from Ms. Mazyck, to A.D. and J.D. regarding the school administration's decision to recommend T.D. for expulsion.

10. BMS Incident statement from Student K.M. dated December 5, 2018.

11. BMS Incident statement from Student H.C. dated December 5, 2018.

12. BMS Incident statement from Student C.G. dated December 5, 2018.

13. Juvenile On-Demand Access form for T.D.

14. Law Enforcement Officer Recommendation Form (Youth Arbitration) for T.D. dated December 2, 2018.

15. Juvenile Petition (R18-8391) dated December 3, 2018.

16. Juvenile Petition (R18-8392) dated December 3, 2018.

17. Juvenile Petition (R18-8393) dated December 3, 2018.

18. Statement form from Richland County Sherriff's Department dated December 2, 2018, reflecting "refused" by T.D.

19. Consent to Search dated December 2, 2018.

20. Physician's Discharge Summary dated November 16, 2018.

21. Richland County Sheriff's Department Incident Report dated December 1, 2018. (Report 1)

22. Richland County Sheriff's Department Incident Report dated December 1, 2018. (Report 2)

23. Richland County Sheriff's Department Supplemental Incident Report dated December 2, 2018.

24. Richland County Sheriff's Department Investigative Follow Up.

25. Richland County Sheriff's Department Incident Report dated November 21, 2018.

26. Richland County Sheriff's Department Incident Report dated September 23, 2018.

27. Richland County Sheriff's Department Incident Report dated May 8, 2018.

28. Screenshots/photographs of social media/and or text exchanges.

29. Richland County Sheriff's Department Petition Worksheets.

30. Law Enforcement Officer's Youth Arbitration Checklist.

31. Email dated December 2, 2018 from Student C.G. to Deputy Steffany Boyd and father re: Statement.

32. Richland County Sheriff's Department Arrest Report dated December 2, 2018.

33. Richland County Sheriff's Department Custody of Minor Child form.

34. Richland County Sheriff's Department Statement from Student H.C. dated December 2, 2018.

35. Courtesy Notice/Recommendation for Expulsion dated December 18, 2018 from Roxanna Cubero of Student Services to BMS officials.

36. E-mail dated January 3, 2019 from Ms. Cubero to Dr. Bobby Cunningham, Director of W.R. Rogers Center, and Greta Carter, BMS Assistant Principal, re: OSSP services for T.D.

37. Letter dated January 8, 2019 from Deputy Chief James Smith to Ms. Mazyck.

38. Letter dated January 6, 2019, from A.D. to Richland School District Board of Trustees appealing Hearing Officer's decision and notice of appeal form reflecting appeal on file.

39. Letter dated January 11, 2019, from Lottie Chishom, Hearing Officer, to A.D. and J.D regarding decision.

40. Summary of Hearing and Resolution from Ms. Chishom.

41. Original condensed version of minutes from December 12, 2018 hearing.

42. Transmittal email communications from January 10, 2019 - January 14, 2019, between Jasmine Rogers Drain, Esq., legal counsel for Richland School District Two, and Michael Mathison, Esq., legal counsel for Plaintiffs, re: Student T.D.[1]

43. Email communications dated February 15, 2019, between Ms. Drain and Mr. Mathison re: T.D. and T.D. Recording Part I.

[1] These communications, as well as other exhibits containing communications between counsel, are being included for the Court's consideration, should it deem necessary and appropriate, as it relates to evidentiary and procedural issues raised by Plaintiffs in this appeal.

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44. Email communications dated January 19, 2019 and January 20, 2019 between Ms. Drain and Mr. Mathison re: Student T.D.

45. Email communication dated January 22, 2019 (2:22 p.m.) from Ms. Drain to Mr. Mathison transmitting audio recording from T.D. October 2018 hearing.

46. Email communication dated January 22, 2019 from Ms. Drain to Mr. Mathison re: Student T.D. producing requested transmittal correspondence between law enforcement and District.

47. Text and email communications between Ms. Mazyck and Sergeant Ronald Cris Truluck dated December 4, 2018.

48. Email communications dated January 22, 2019, between Mr. Mathison and Ms. Drain re: Plaintiffs re: Student T.D., concerning request for extension to supplement appeal.

49. Email communications dated January 31, 2019, between Ms. Drain and Mr. Mathison re: Student T.D.- Audio of Previous Expulsion Hearing and Student T.D.

50. Email communications from January 31, 2019 – February 1, 2019, between Ms. Drain and Mr. Mathison re: Student T.D.- Audio of Previous Expulsion Hearing and Student T.D.

51. Supplemental Grounds for Appeal to Richland Two Board of Trustees dated February 5, 2019.

52. Emails dated February 5, 2019 and February 6, 2019, between Ms. Drain and Mr. Mathison re: T.D.

53. Revised/updated version of minutes from December 12, 2019 hearing.

54. E-mail dated February 8, 2019 from Ms. Drain to Mr. Mathison advising on Board's decision to grant personal appearance in connection with appeal.

55. Letter dated February 8, 2019 from attorney Michael Mathison to Board and Jasmine Drain Re: Appeal Hearing on February 12, 2019/Request for Witnesses.

56. Letter dated February 12, 2019, from legal counsel for Richland School District Two, Vernie L. Williams, to Michael Mathison, Esq, re: appeal related issues.

57. Email communications dated February 12, 2019 between Mr. Williams and Mr. Mathison re: Richland School District Two/D., T.

58. Plaintiffs' list of documents for inclusion in the record in connection with

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February 12, 2019 appeal before the Board.

59. February 12, 2019 Student Appeals report to Board for session regarding Student T.D.

60. Letter dated February 18, 2019 from Cleveland J.C. Smith, Chief Administrative Services Officer to A.D. and J.D. regarding Board's decision.

61. Respondent's Policy JRA and corresponding Administrative Rule JRA-R, entitled "Student Records."

62. Respondent's Policy JIC entitled "Student Conduct."

63. Respondent's Policy JICDA and corresponding Administrative Rule JICDA-R, entitled "Code of Conduct."

64. Respondent's Policy JKE and corresponding Administrative Rule JKE-R entitled "Expulsion of Students."

65. Respondent's Policy JK entitled "Student Discipline."

66. Respondent's Policy JKD and corresponding Administrative Rule JKD entitled "Suspension of Students."

67. Audio recording of December 12, 2018 hearing – Part I.[2]

68. Audio recording of December 12, 2018 hearing – Part II.

69. Audio recording of February 12, 2019 appeal before Board.

70. Documentation regarding Student T.D.'s November 27, 2018 suspension.[3]

[2] Audio recordings included in Exhibits 67,68, and 69 will be submitted to the Court through confidential manner to be determined by the Court.

[3] Plaintiffs' Supplemental Appeal dated February 5, 2019 references testimony and documents regarding T.D. November 2018 suspension. Therefore, these records are being included for the Court's consideration, should the Court deem necessary and proper.

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Respectfully submitted,

HALLIGAN MAHONEY WILLIAMS SMITH
FAWLEY & REAGLE, PA

By: s/ Jasmine Rogers Drain

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Attorneys for Defendant/Respondent

April 18, 2019

Columbia, South Carolina

R103

RICHLAND COUNTY PUBLIC DEFENDER
YOUTH REENTRY PROGRAM

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PHONE (803) 766-5174
FAX (803) 766-5180

April 19, 2019
VIA E-Filing System

The Honorable Jeanette W. McBride
Richland County Clerk of Court
1701 Main Street
Columbia, South Carolina 29201

Re: T.D. v. Richland County School District Two; Case No. 2019-CP-40-01615

Removal of Document Pursuant to Rule 41.2(e)

Dear Ms. McBride,

Earlier today, counsel for the Plaintiffs and counsel for the Defendant each attempted to submit letters requesting that the exhibit to the document entitled "Certification of Record" filed by the Defendant on April 18, 2019, at 5:03 p.m. be removed from the publicly accessible CMS. The parties have agreed to withdraw this document from the CMS's public access. Please allow this letter to serve as our joint request to have this document removed from the CMS.

If you have any questions or concerns don't hesitate to contact me.

I Consent:

S/Jasmine Rogers Drain
Jasmine Rogers Drain
Attorney for the Defendant
Halligan Mahoney & Williams, PA
1301 Gervais St. SC 2911
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T: (803) 254-4035
Email: Jdrain@hmwlegal.com

I Consent:

S/D. Michael Mathison
D. Michael Mathison
Attorney for the Plaintiffs
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F: (803) 748-5180
Email: Mathison.Michael@richlandcountysc.org

cc: Vernie L. Williams, Esq.

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HALLIGAN MAHONEY
& WILLIAMS

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KIMBERLY KELLEY BLACKBURN
JASMINE ROGERS DRAIN □
DWAYNE T. MAZYCK
SHENEKA S. LODENQUAI □

April 24, 2019

VIA US MAIL & EMAIL & E-Filing
Jeanette W. McBride
Clerk of Court
1701 Main St #205
Columbia, SC 29201

Re: T.D. by and through his guardians, A.D. and J.D. v. Richland County School District Two, C.A. No. 2019-CP-40-01615

Dear Ms. McBride,

Our firm represents Defendant/Respondent Richland School District Two in the above referenced matter. I understand that following a request from both parties on April 19, 2019, the attachments filed to the Certification of Record were removed from the publicly accessible CMS due to privacy and confidentiality considerations. However, at this time, Defendant would also request that the **Certification of Record** be removed from the publicly accessible CMS as the parties currently have a dispute regarding the appropriateness of the filing and other confidentiality issues and need additional time to resolve the matter.

Should the Court have any questions or concerns or require additional information regarding this matter, please do not hesitate to contact me. We appreciate the Court's consideration.

With kind regards, I am

Sincerely yours,

By: s/Jasmine Rogers Drain
Jasmine Rogers Drain, S.C. Bar No. 76156
jdrain@hmwlegal.com
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Columbia, South Carolina 29211
(803) 254-4035

JRD/rdf
cc: D. Michael Mathison, Esq., Richland County Public Defender's Office
Vernie L. Williams, Esq.

R105

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
T.D. by and through his guardians, A.D. and J.D., Plaintiffs/ Appellants, vs. Richland County School District Two, Defendant/Respondent.	)	C.A. No. 2019-CP-40-01615 **CONSENT MOTION TO EXTEND TIME TO CERTIFY AND FILE RECORD**

Respondent/Defendant, Richland School District Two, by and through its undersigned attorneys, hereby moves the Court for an Order extending the time within which to prepare, certify and file the record pursuant to SCRCP 75. Counsel for Appellants/Plaintiffs has consented to an extension through May 1, 2019. Respondent makes this request because additional time is needed to cure deficiencies of the Certification of Record filed on April 18, 2019. Accordingly, Respondent/Defendant respectfully requests that this motion be granted.

Respectfully submitted this 26th day of April 2019.

WE SO MOVE AND CONSENT:

s/ D. Michael Mathison
D. Michael Mathison, S.C. Bar No. 101803
Richland County Public Defender's Office
1420 Henderson Street
P.O. Box 192
Columbia, South Carolina 29201
(803) 766-5174

Attorney for Plaintiff/Appellant

s/ Jasmine Rogers Drain
Jasmine Rogers Drain, S.C. Bar No. 76156
Vernie L. Williams, S.C. Bar No. 9511
Halligan Mahoney Williams Smith Fawley & Reagle, PA
P.O. Box 11367
Columbia, South Carolina 29211
(803) 254-4035

Attorneys for Defendant/Respondent

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
T.D. by and through his guardians, A.D. and J.D., Plaintiff, vs. Richland County School District Two, Defendant.	)	C.A. No. 2019-CP-40-01615 **MOTION TO SEAL**

Pursuant to Rule 41.1(b) of the South Carolina Civil Rules of Procedure, Defendant/Respondent Richland School District Two hereby moves this Court for an Order to Seal the documents and audio recordings identified below that will be filed in connection with this case:

1) Exhibits 1- 35 identified in the Amended Certification of Record; and
2) Exhibits 1, 2, 19, 20, and 21 identified in Respondent's/Defendant's Designation of Additional Matter for Record.

Specifically, the above-referenced exhibits contain statements, reports, documents, education records, juvenile records, and correspondence obtained by Richland County School District concerning a disciplinary action and juvenile matter involving Minor Plaintiff T.D. Many of these documents were completed by or refer to students or minors who attended Richland School District Two at the time of the alleged incident giving rise to the disciplinary action. Sealing of these documents is necessary based upon applicable federal privacy laws related to confidential student information and the public policy of South Carolina which recognizes the importance of confidentiality with respect to juveniles. The Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, and its implementing regulations, 34

C.F.R. Part 99 have two primary components. First, the statute mandates that local school districts grant a student and his legal guardians a right to access his educational records. Second, subject to certain enumerated exceptions, FERPA requires an educational institution to maintain the confidentiality of student records containing personally identifiable information. Further, with regard to its confidentiality mandate, the purpose of FERPA is to 'assure parents of students access to their education records and to protect such individual's right to privacy by limiting the transferability (and disclosure) of their records without their consent.' *Ragusa v. Malverne Union Free School Dist.*, 549 F.Supp.2d 288, 291 (E.D. N.Y. 2008)(emphasis added and internal citations omitted).

FERPA defines "education records" to include those records, files, documents, and other materials that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. 20 U.S.C. § 1232g(a)(4)(A) "Record" is defined to mean any information recorded in any way, including but not limited to handwriting, print, computer media, video or audio tape, film, microfilm, and micro fiche. 34 C.F.R. 99.3. "The plain meaning of the statutory language reveals that Congress intended for the definition [of education records] to be broad in scope." *Belanger v. Nashua, New Hampshire, School Dist.*, 856 F.Supp. 40, 48 (D.N.H. 1994). In this case, the above-referenced exhibits contain confidential educational and juvenile records collected in connection with the disciplinary matter giving rise to this lawsuit. Thus, under the broad definition of "education records", these records at issue could constitute an "educational record" of students or juvenile records of T.D. Therefore, to fulfill the purpose of FERPA, and limit the disclosure of the records or the minor's identities of non-party students, sealing or redaction is appropriate.

In addition to FERPA, this Court has the inherent authority to establish parameters on discovery to protect the interests of minors. The public policy of South Carolina recognizes the importance of confidentiality with respect to juveniles. *See* S.C. Code Ann. § 63-7-1990 (all

reports made and information collected by the Department of Social Services and the Central Registry of Child Abuse and Neglect are declared confidential, and the unauthorized dissemination of such materials is a misdemeanor); S.C. Code Ann. § 63-19-2020 (the Juvenile Justice Code provides that court records involving juveniles are confidential); S.C. Code Ann. § 63-3-20(D) (providing that records in the family court concerning juveniles shall be kept confidential). Thus, South Carolina, like many other states, protects the confidentiality of juveniles by mandating that certain judicial proceedings and court records concerning minors be closed to the public. *In State ex rel. Garden State Newspapers, Inc. v. Hoke*, 205 W.Va. 611, 520 S.E.2d 186 (1999), the court noted that minors are entitled to special protection and that when educational records are introduced into court proceedings, the trial court should take measures to protect the confidentiality of the records. Accordingly, based on the clear requirements of FERPA, as well as the public policy of South Carolina, sealing or redaction would be appropriate.

The referenced documents and recordings will be submitted to the Court for in-camera review at the time of the hearing or made available electronically or via hand-delivery to the Court's chambers upon agreement by the parties.

WHEREFORE, Defendant respectfully requests that its motion to seal be granted.

Respectfully submitted,

HALLIGAN MAHONEY WILLIAMS SMITH FAWLEY & REAGLE, PA

By: s/ Jasmine Rogers Drain

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R 117

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Attorneys for Defendant/Respondent

May 2, 2019

Columbia, South Carolina

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RICHLAND COUNTY PUBLIC DEFENDER
YOUTH REENTRY PROGRAM

1420 HENDERSON ST.
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FAX (803) 766-5180

June 5, 2019
VIA E-Filing System and Hand Delivery

The Honorable Jeanette W. McBride
Richland County Clerk of Court
1701 Main Street
Columbia, South Carolina 29201

Re: T.D. v. Richland County School District Two; Case No. 2019-CP-40-01615
Filing of Exhibits

Dear Ms. McBride,

Enclosed for filing please find one (1) compact disc containing the following three (3) audio exhibits to be included in the record in connection with this appeal:

1. Audio of Hearing before Lottie Chishom on December 12, 2018, Part 1.
2. Audio of Hearing before Lottie Chishom on December 12, 2018, Part 2.
3. Audio of Hearing before the Richland County School District Two School Board on February 12, 2019.

Plaintiffs have designated these items for inclusion in the record in Plaintiffs' Designation of Matter to be Included in the Record on Appeal, dated March 20, 2019 (Items 8, 9 and 10). Defendant has identified items 1 and 2 above for inclusion in its Amended Certification of Record. See, Amended Certification of Record, dated May 1, 2019, p. 3, Items 34 and 35. Defendant has identified item 3 above for inclusion in the record in Defendant's Designation of Additional Matter for Record, dated May 2, 2019, p. 3, Item 19. An identical compact disc is being provided to Defendant's counsel by hand delivery with a copy of this letter.

If you have any questions or concerns don't hesitate to contact me.

Sincerely,

S/D. Michael Mathison
D. Michael Mathison
Email: Mathison.Michael@richlandcountysc.org

cc: Jasmine R. Drain, Esq. (Via Email and Hand Delivery)
Vernie L. Williams, Esq. (Via Email and Hand Delivery)

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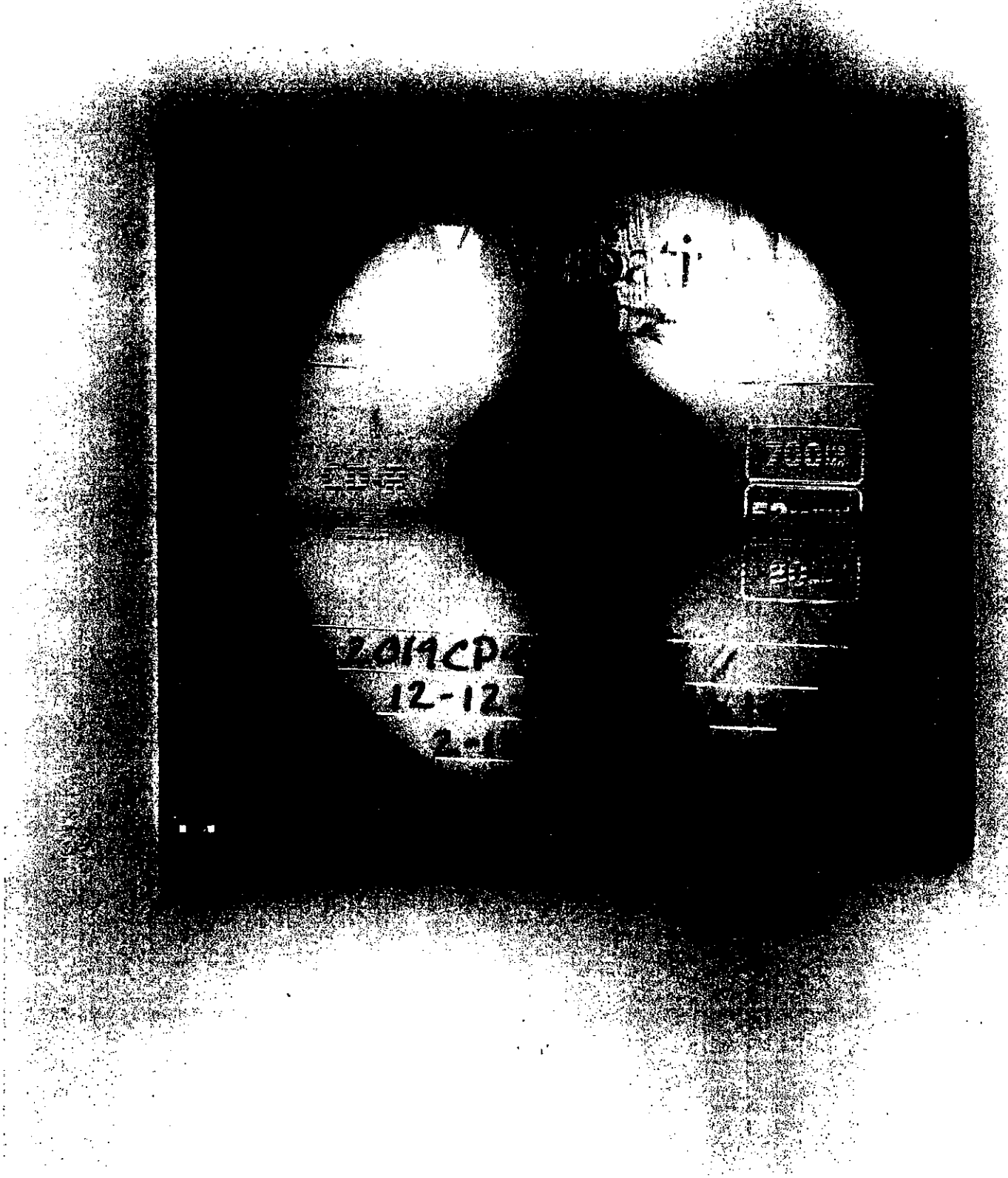

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DWAYNE T. MAZYCK
SHENEKA S. LODENQUAI □

July 15, 2019

VIA HAND DELIVERY
The Honorable L. Casey Manning
1701 Main Street, Room 214
Columbia, SC 29202

Re: T.D. by and through his guardians, A.D. and J.D. v. Richland County School District Two, C.A. No. 2019-CP-40-01615

Dear Judge Manning:

Our firm represents Respondent/ Defendant Richland County School District Two in the above referenced matter which involves an appeal and request for injunctive relief/ declaratory judgment. On May 1, 2019, we filed an Amended Certification of Record, and thereafter, on May 2, 2019, filed Respondent's/ Defendant's Designation of Additional Matter for the Record. We subsequently filed a Motion to Seal certain documents identified in the Amended Certification of Record and within Respondent's/ Defendant's Designation of Additional Matter for Record. Our Motion to Seal is still pending before the Court. However, we have received notice that a hearing on the appeal has been scheduled for July 26, 2019, before Your Honor.

In light of the procedural posture of the case, we are providing all records accompanying the Amended Certification of Record and Defendant's Designation of Additional Matter for the Record to chambers for in-camera review.

By copy of this correspondence, we are notifying opposing counsel of this communication with the Court and providing a copy of the same.

We appreciate the Court's consideration.

Respectfully,

Jasmine Rogers Drain
jdrain@hmwlegal.com

JRD/rdf
Enclosures
c: Michael Mathison, Esquire (Via Hand Delivery)