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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Supreme Court Number: 2024-001991

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

v.

Richland County School District Two..... Respondent

RESPONDENT'S RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

This appeal rises out of a school's response to the threat of a school shooting which resulted in a student expulsion. At the time of the incident giving rise to the expulsion, T.D. was enrolled in the eighth grade at Blythewood Middle School ("BMS"). (R. p. 410.) 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. (R. p. 411; R. p. 194; R. p. 265 line 7-p. 267, line 9.) Thereafter, 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. (*Id.*) T.D. was taken into custody by Richland County Sheriff's Department for unlawful communications, school threats, and incorrigibility. (R. p. 441.)

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. (R. pp. 412-413.) 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*[1] *I'm shooting both of y'all and a ton of other people*." (*Id*.; R. pp. 419-430.)

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. (R. p. 194; R. p. 232, line 16- p. 234, line 8; R. p. 194; R. p. 265, line 7 – p. 266, line 16.) The administration also contacted T.D. in an attempt to obtain his side of the story or a written statement. (R. p. 194; R. p. 266, line 16 – p. 267, line 8.) The administration was advised by T.D.'s guardian that he denied the allegations and would not be providing a statement. (*Id*.)

Thereafter, by letter dated December 5, 2018, Principal Mazyck notified Superintendent Baron Davis that T.D. was being suspended for the fourth time[2] and being recommendation for expulsion. (R. p. 431.) In addition, 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, for actions leading to suspension or expulsion, specifically for using social media to threaten other students. (R. p. 35; R. pp. 498-504.) Appellants were also advised that they would receive notification regarding the time and place of the expulsion hearing. (R. p. 35; R. p. 157.)

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[1] A Juul is an electronic cigarette, and among the incidents in T.D.'s discipline records, was an offense regarding having a Juul at school. (R. p. 407.)

[2] At the time of the recommendation, T.D. was on strict probation at school following an offense involving a Juul and had most recently been suspended for an incident in which he allegedly used social media to send inappropriate messages to a faculty member. (R. p. 407, R. p. 194; R. p. 230, lines 20-25.)

A hearing was held before the Hearing Officer, Lottie Chishom, on December 12, 2018.[3] (R. p. 194; R. p. 217, line 12- p. 260, line 5.) During the hearing, Appellants testified that on the evening T.D. allegedly threatened to shoot up the school or students, he was playing with a bullet and a fragment went into his finger, which had to be removed at the emergency room. (R. p. 194; R. p. 246, lines 15-19; R p. 248, line 19- p. 249, line 9; R. p. 256, line 14- p. 259, line 8; R. p. 244, line 11- p. 245, line 9; R. pp. 206-211.) According to Appellants, T.D. was mad because he had that fragment in his hand and his grandmother made him go to the emergency room. (*Id.*)

The school administration testified during the hearing, and noted on the disciplinary referral, it had been advised by the investigator that T.D confessed to sending the messages. (R. p. 411; R. p. 194; R. p. 231, lines 2-16.) The Hearing Officer questioned T.D. regarding his alleged admission to law enforcement by reading from an investigative report from law enforcement that provided, in relevant part, "*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 (12/1/18) that he was using his biological mother's phone. He was pissed off because K. 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 C. and H. made a copy of the message and it was also sent to K…*" (R. pp. 417-418.)

Appellants were not provided with any documents or evidence obtained by law enforcement or the administration prior to the hearing. 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.,

[3] Prior to the hearing, the school administration conferenced with the Appellants regarding circumstances giving rise to the expulsion recommendation, providing T.D. with another opportunity to share his side of the story. (R. p. 194; R. p. 214, line 1- p. 217, line 11.)

communicating a threat of a destructive device, weapon, or event with the intent of intimidation, threatening, or interfering with school activities) in violation of Level III, Item 11 of the School District's Code of Conduct, JICDA and Administrative Rule JICDA-R. (R. pp. 29-32.) Appellants appealed to the School Board, and then through legal counsel, supplemented their written appeal and requested an appeal hearing before the School Board. (R. pp. 36-55.) 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 School 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. [4] (R. pp. 489-494.) Normally the Board will not grant a personal appearance to either party in an appeal, unless there are extenuating circumstances, and the School Board, in its discretion, determines to grant such an appearance. (*Id*.) In this case, the School Board did not grant Appellants the right to a new evidentiary hearing before the School Board, but afforded Appellants, and their legal counsel, the opportunity to make a personal appearance before the School Board in connection with the appeal. (R. pp. 484-485.)

Prior to and during the appeal before the School Board, the option to remand the case to hold a *de novo* hearing before another hearing officer, along with exclusion of certain records, was entertained as a remedy to address or cure alleged due process concerns regarding the initial hearing raised by Appellants in their appeal to the School

[4] Appellants allege Respondent, through its employees or representatives, have intentionally altered or mispresented documents contained in the record. Respondent's rebuttal is reflected in Respondent's Final Brief. (Respondent's Final Brief pp. 5-7.) Such allegations are false and defamatory, and Respondent reserves the right to address these defamatory accusations in the appropriate forum or venue.

Board. (R. pp. 56-59; R. pp. 486-488.) Although Appellants were offered this opportunity, they did not accept the offer, unless such hearing was conducted pursuant to their terms, noting a remand would not provide fundamental due process for T.D. (R. pp. 56-59; R. pp. 194, 262, 301, 486-488.) Following review of the record, the School Board voted to uphold the expulsion. (R. pp. 27-28.)

ARGUMENT

A. Petitioner Has Not Identified Any Special And Important Reasons For This Court To Grant A Writ of Certiorari.

SCACR 242(b), **Considerations Governing Review**, provides as follows:

> A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons which will be considered:

(1) Where there are novel questions of law.

(2) Where there is a dissent in the decision of the Court of Appeals.

(3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.

(4) Where substantial constitutional issues are directly involved.

(5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

These reasons are not present. First, the application of the law as it applies to due process for student expulsions is not a novel issue and has been fairly well settled under *Goss v. Lopez*, 419 U.S. 565, 95 S.Ct. 729 (1975) and *Stinney v. Sumter School District 17*, 391 S.C. 547, 707 S.E.2d 397 (2011). Second, there was no dissent, or even a concurring opinion in the Court of Appeals. Third, Appellants have not identified any

decision of the Supreme Court which is in conflict with the Court of Appeals' decision in this case on the material issues presented. While Appellants assert a violation of a constitutional right to procedural due process, Appellants are actually seeking to conflate a right to confront witnesses with a government entities lack of statutory subpoena power to compel witnesses, and Respondent respectfully submits that the Court of Appeals made a full review of the record in this case and certiorari review is not needed to read behind the Court of Appeals. In addition, given the fact that the expulsion occurred over 6 years ago, the matter, or at least the relief sought, is moot. *See Curtis v. State*, 345 S.C. 557, 567–68, 549 S.E.2d 591, 596 (2001); *Mathis v. South Carolina State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973) ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief.") Thus, the factors set forth in SCACR 242(b) strongly support a denial of certiorari in this case.

B. The Court of Appeals Properly Applied The Substantial Evidence Standard of Review to T.D.'s Expulsion When Issues of Due Process Violations Were Raised.

Although the appeal at issue asserts procedural due process violations, the proper standard of review for school boards' decisions in student expulsion cases was properly applied. When reviewing the Circuit Court's reversal of a school board's expulsion, finding the School Board's decision was not supported by substantial evidence and did not violate the student's due process rights, the Court of Appeals in *Doe v. Richland Sch. Dist. Two*, 382 S.C. 656 (Ct. App. 2009) applied the following standard of review:

> A school board's decision to expel a student from school "may be appealed to the proper court." S.C. Code Ann. § 59–63–240 (Supp.2008); *see Davis v. Sch. Dist.*

> *of Greenville County*, 374 S.C. 39, 44, 647 S.E.2d 219, 222 (2007) (stating the expulsion provision in the statute, unlike the suspension provision, expressly grants the student a right to appeal to the proper court). Judicial review of the school board's decision is limited to ascertaining whether the board's decision is supported by substantial evidence. *Laws v. Richland County Sch. Dist. No. 1 , 270 S.C. 492, 495, 243 S.E.2d 192, 193 (1978)*. However, this court cannot substitute its judgment for that of the educational authorities. *Id*.

Consistent with *Doe v. Richland School District Two,* the Court of Appeals properly applied this same standard despite the assertion of procedural defects and due process violations.

Appellants' argument concerning the application of the correct standard of review misconstrues the scope of appellate review of agency or administrative decisions. Substantial evidence review and procedural due process review are not at odds. Rather, the substantial evidence standard of review includes whether the administrative agency decision is based on lawful process. (*See e.g.*, *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 492 S.E.2d 62 (1997), and *Palmetto Alliance, Inc. v. South Carolina Public Service Commission*, 282 S.C. 430, 319 S.E.2d 695 (1984) (both cases discussing procedural due process issues in context of substantial evidence review of administrative agency decisions.)

Assuming *arguendo*, this Court finds *Young v. Charleston Cnty. Sch. Dist*., 397 S.C. 303, 725 S.E.2d 107 (2012) to be persuasive in the analysis regarding the proper standard of review of a school board's decision in a student expulsion case, the record clearly supports the Court of Appeals' analysis in this case. In reviewing the appeal, it cannot be disputed that the Court of Appeals considered whether the Board's decision was: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the Board; (c) made upon unlawful procedure; (d) affected by other error of

law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. *T.D. by & through A.D. v. Richland Cnty. Sch. Dist. Two*, No. 2019-001603, 2024 WL 4143596, at *3-7 (S.C. Ct. App. Sept. 11, 2024). Further, unlike in *Young*, the School Board made a decision on the evidence presented by both parties. While Appellants may dispute the conclusion reached by the Court of Appeals, it does not negate the fact the Court of Appeals applied the proper standard of review in reaching its determination.

While Appellants rely on *McIntyre v. Sec. Comm'r of S.C.*, 425 S.C. 439, 823 S.E.2d 193 (Ct. App. 2018) to establish error in the Court of Appeals' application of the standard of review, *McIntyre* is clearly distinguishable as it involved a limited liability company managers' action against the Securities Commissioner, alleging that the Commissioner denied the managers procedural due process in imposing penalties, following an administrative hearing which lacked promulgated rules. *McIntyre* concerned an administrative hearing which lacked promulgated rules, unlike T.D.'s hearing before the Hearing Officer and appeal before the school board. *Id.* Further, even if there was an error with the procedural process at the hearing or Board level, substantial prejudice is required to establish a violation of due process. *Tall Tower, Inc. v. S.C. Procurement Review Panel*, 294 S.C. 225, 363 S.E.2d 683 (1987). Specifically, in reviewing this matter, the Court of Appeals did not find Appellants were substantially prejudiced when they had an opportunity to present evidence at the appeal stage and had the opportunity to have a *de novo* hearing, but declined this opportunity. Further, Appellants have failed to identify any authority in which a South Carolina appellate court

has declined to apply a substantial evidence standard of review in a student expulsion case even when claims of due process violations exist. Therefore, the Court of Appeals applied the proper standard of review for T.D.'s appeal, and this Court should deny certiorari.

C. The Court of Appeals Properly Declined To Find Respondent's Failure To Compel Student Witnesses To Appear and Testify At T.D.'s Expulsion Hearing Violated T.D.'s Due Process Rights.

In declining to reverse T.D.'s expulsion on the basis of due process violations, the Court of Appeals significantly emphasized any prejudiced suffered by the family during the initial hearing before the first hearing officer would have been cured at a new hearing before a different hearing officer. *T.D. by & through A.D. v. Richland Cnty. Sch. Dist. Two*, No. 2019-001603, 2024 WL 4143596, at *6-7 (S.C. Ct. App. Sept. 11, 2024); *See also Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 67, 492 S.E.2d 62 (1997). (Any lack of opportunity to respond to charges in a pre-termination hearing was clearly remedied by full and meaningful participation in the post-termination hearing.) Although a new hearing would have provided Appellants and their attorney the opportunity to present their case before a new hearing officer, remove inadmissible evidence, create a new record, and question law enforcement officials concerning critical inconsistencies in the record and T.D.'s alleged admission, Appellants declined this request. *T.D.*, 2024 WL 4143596, at *6-7.

The record is clear that before the School Board voted on T.D.'s appeal, counsel for the Appellants unequivocally took the position that a remand for a new hearing, absent the attendance of student witnesses at the hearing, would not provide fundamental due process for T.D. (R. pp. 56-59; R. pp. 194, 262, 301, 486-488). Accordingly, the

Court of Appeals did not err in declining to find that failure to make the students available for cross examination during the hearing constituted a violation of due process, when Appellants had the opportunity to have a new hearing which would have allowed for examination of the officer to whom T.D. allegedly made an admission. It cannot be concluded that state law would have prevented the officer from testifying about T.D's admission. Contrary to Appellants' contention, S.C. Code Ann. § 63-19-2030 (A) does not expressly preclude a law enforcement official from testifying in connection with a student discipline hearing. *See e.g. Reese v. Richland School District Two, et. al,* No. 3:13-03040-MGL, 2015 WL 9239785, *6 (D.S.C. Dec. 7, 2015) (School Resource Officer was made available to testify after counsel for student requested a continuation of expulsion hearing to allow for cross examination of the officer involved in writing the incident report supplied to school officials.) Further, S.C. Code Ann. § 63-19-2030(A) only governs the confidentiality of juvenile records, and it would be illogical to conclude this statute prevents a law enforcement official from testifying about an eyewitness account or admission of a material fact in a proceeding.

Appellants now rely on *Stinney v. Sumter School District 17* to advance an argument that their acceptance of a remand would have constituted a waiver of due process rights. *Stinney v. Sumter School District 17*, 391 S.C. 547, 707 S.E.2d 397 (2011). While the *Stinney* Court noted the fact that a student failing to take advantage of statutory rights does not create a procedural due process violation, it should not be construed to support the absurd argument that had T.D. been unsatisfied with the result from a remanded proceeding, he would have been precluded from appealing to circuit court and asserting due process violations. *Stinney*, 391 S.C. at 551-552 (2011). Thus,

Stinney does not justify Appellants' failure to have taken advantage of a timely opportunity to cure any potential due process violations and which could have possibly returned the student back to an educational setting at the time.

Although Appellants argue the Court of Appeals' rationale and decision is based on hypotheticals, South Carolina law simply does not mandate student witnesses to attend expulsion hearings for their peers for the purposes of confrontation. Appellants continue to argue that a remand for a new hearing that did not compel minors to be witnesses, who T.D. allegedly had threatened with gun violence, to miss instructional time to appear at T.D.'s hearing off campus and be subjected to cross examination by T.D.'s attorney and/or T.D.'s grandparents, would have been futile and in violation of S.C. Code Ann. § 59-63-240. This argument is foreclosed by S.C. Code Ann. § 59-63-240 which does not itself specifically and unambiguously grant a school district or school board authority to compel student witnesses to appear and testify at expulsion hearings:

> 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. <u>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</u>…

As noted by both lower courts, nothing in applicable state law gives South Carolina school districts the subpoena power to compel non-party students to miss instructional time to attend confidential disciplinary hearings for other students.

Importantly, prior to the issuance of the Court of Appeals decision, on May 21, 2024, S.1188 was signed into law, which amended S.C. Code § 59-63-240. The revised statute now states as follows:

> 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. ***The written notification to the parents or legal guardian of the pupil must include their right to have legal counsel present at the hearing, the right to question all witnesses, and contact information for a legal aid service provider which may determine eligibility for free legal representation. The notification must also include the right to access the investigative file in its entirety, to include all documents and videos, at least three days prior to the hearing, with appropriate exemptions and redactions as required by the Family Educational Rights and Privacy Act, 20 U.S.C. Section 1232g.*** 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 hearing shall take place within fifteen days of the written notification at a time and place designated by the board and a decision shall be rendered within ten days of the hearing. The pupil may be suspended from school and all school activities during the time of the expulsion procedures. The action of the board may be appealed to the proper court. The board may permanently expel any incorrigible pupil.
>
> (Emphasis added)

The amended portion of the statute is reflected in bold and italics. Importantly, removed from the statute is language granting entitlement to "all other legal rights." Even more importantly, absent from the amendment was language giving the School

Board subpoena power or the ability to compel student witnesses, or any witnesses, to attend the expulsion proceedings.

As it relates to the legislative history concerning recent amendments to the expulsion statute, in Appellants' Petition, reference is made to the South Carolina House of Representative's Education and Public Works Committee Subcommittee meeting on April 16, 2024. Particularly, Appellants note that during this meeting, a representative from the South Carolina Association of School Administrators proposed including clarification that only witnesses present at the hearing would be subject to questioning and that the suggestion was rejected. This is a mischaracterization of the subcommittee's discussion and of the legislative intent as it relates to the application and interpretation of the statute. To the contrary, despite acknowledgement of a general presumption to have a right to face an accuser, during the discussion, the point was raised and discussed that if there was an intent for every student who provided a statement to be in attendance at the hearing, then there would also be some legislative authority granting districts the ability to subpoena or compel student witnesses to attend these student discipline hearings. *See e.g.* S.C. Legislative Video Archive, House Education and Public Works Committee, K-12 Subcomittee Meeting, April 16, 2024, at 38:00 – 45:00.

Such authority to compel student witnesses did not exist at the time of T.D.'s expulsion proceeding, and it still does not exist at this time following amendment of the expulsion statute in May 2024. In contrast, the South Carolina Teacher and Employment Dismissal Act grants a school board express authority to compel witnesses, through subpoena power, to attend administrative hearings and provides clear procedures for

service of the same. *See* S.C. Code Ann. §§ 59-25-460(D), 500, 520. Clearly, if the legislature intended for all student witnesses to attend the expulsion hearings for the purposes of cross-examination, it, likewise, would have incorporated language giving a school district or board the authority to compel the attendance of all witnesses when it was first adopted S.C. Code Ann. § 59-63-240, or when it amended the statute in May 2024. While Appellants' attempt to equate a school administrator's authority to question students during the day concerning school related matters pursuant to the District's handbook; this comparison is grossly misplaced as a situation in which a minor is required to appear off campus to be subjected to cross-examination by an attorney or parent of another student, without parental consent.

Further, even if South Carolina school districts had the authority to compel student witnesses to attend expulsion hearings, the United States District Court for South Carolina has found a school's failure to provide a student with non-redacted documents prior to an expulsion hearing did not violate 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. *Reese v. Richland School District Two, et. al*, No. 3:13-03040-MGL, 2015 WL 9239785, *6 (D.S.C. Dec. 7, 2015); (*citing Newsome v. Batavia Local School Dist.*, 842 F.2d 920, 924-25 (6th Cir.1988)); *Brewer ex rel. Dreyfus v. Austin Indep. Sch. Dist*., 779 F.2d 260, 263 (5th Cir. 1985). Accordingly, if South Carolina courts have found the use of anonymous or redacted statements in expulsion hearings not to violate due process, and if the federal Family Educational Rights and Privacy Act allows for the redaction of the identities of students who author statements used in connection with discipline of other students in light of student privacy considerations, it cannot be concluded that the failure to compel those

students to attend a hearing in which their statements are submitted is a violation of S.C. Code Ann. § 59-63-240. *See,* 20 U.S.C. § 1232g; *Letter to Watcher,* U.S. Department of Education Office of Management, December 7, 2017.

While Appellants continue to rely on *City of Spartanburg v. Parris*, 251 S.C. 187, 161 S.E.2d 228 (1968) to urge this Court to adopt a different view, *Parris* does not involve a student disciplinary proceeding or minors being removed from the educational setting, during instructional time, transported to another location, absent permission or consent from their parents. School districts must balance the needs of educational settings, including the need to protect student witnesses and encourage them to come forward, and the value of compelling students to attend such hearings. Here, any value in compelling student witnesses is outweighed by the burden that would be placed upon school districts. Further, as recognized by the Court of Appeals, school disciplinary hearings and criminal proceedings are distinct processes and schools must have a certain degree of flexibility in school disciplinary proceedings. *Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171–72, 656 S.E.2d 346, 350 (2008) (citations omitted); *Kowalski v. Berkeley Cnty. Sch.*, 652 F.3d 565, 575 (4th Cir. 2011) (citations omitted). "[S]chool officials have been afforded substantial leeway to depart from the prohibitions and procedures that the Constitution provides for society at large. Such leeway is particularly necessary when school discipline is involved." *Wofford v. Evans*, 390 F.3d 318, 323 (4th Cir. 2004).

Ultimately, Appellants' argument seeks to improperly impose criminal or civil trial procedural rights on the academic disciplinary process. "Due process requires that appellants have the right to respond, but their rights in the academic disciplinary process are not co-extensive with the rights of litigants in a civil trial or with those of defendants

in a criminal trial." *Nash v. Auburn University*, 812 F. 2d 655, 664 (11th Cir. 1987). See, also, *Henson v. Honor Committee of the Unv. of Va.*, 719 F. 2d 69, 74 (4th Cir. 1983). Rather, the fundamental aspect of procedural due process is the right to be heard, and the specific nature of the hearing depends on the competing interests involved. *Goss v. Lopez*, 419 U.S. 565, 579 (1975). This is especially true in the academic disciplinary hearing context where a major purpose of the administrative hearing process is educational, developmental, and to avoid formalistic and adversarial procedures. See *LaBrecque ex rel. T.N. v. School Administrative Dist. No. 57*, (Op. No. 06-16-P-S, March 22, 2006) 2006 WL 752776 (D. Me 2006) (quoting *Gomes v. University of Me. Sys.*, 365 F. Supp. 2d 6, 16 (D. Me. 2005)). "[T]he courts ought not to extol form over substance, and impose on educational institutions all the procedural requirements of a common law criminal trial. The question presented is not whether the hearing was ideal, or whether its procedure could have been better. In all cases the inquiry is whether, under the particular circumstances presented, the hearing was fair, and accorded the individual the essential elements of due process." *Id.*

Indeed, many courts have reviewed school disciplinary procedures for compliance with procedural due process requirements and determined complex procedural rights are not required. Noting that increasing the complexity of school disciplinary hearing would unduly divert school leaders' time and attention from their primary purpose of overseeing the educational process, the court in *Brown v. Plainfield Comm. Consol. Dist. 202*, 522 F. Supp. 2d 1068 (N.D. Ill. 2007), found that, in balancing the competing interests at stake, high school students do not possess a federal due process right to cross-examine witnesses at expulsion hearings. *Id.* at 1075. See also, *L.Q.A. By and Through Arrington*

v. Eberhart, 920 F. Supp. 1208, 1219-20 (M.D. Ala 1996) (noting the school board had no power to compel attendance of witnesses at student disciplinary hearings and unavailability of witnesses for cross-examination did not constitute denial of due process); *Doe v. Fairfax County School Board*, 403 F. Supp. 3d 508, 519 (E.D. Vir 2019) (due process does not require the opportunity to cross-examine the accuser of witnesses, as the Fourth Circuit "has not found 'a basis in the law' for 'importing' the right to cross-examination 'into the academic context.'" [citations omitted]); *Hinds County School Dist. Bd. of Trustees v. R.B. ex rel. D.L.B.*, 10 So.387, 398-400 (Sup. Ct. Miss. 2008) (noting that school boards do not have subpoena power and that in school disciplinary context standards of procedural due process are not wooden absolutes and do not prohibit consideration of hearsay or require compelling witnesses or cross-examination).

Here, based on a review of the entire record as a whole, the Court of Appeals properly concluded that Richland County School District Two afforded T.D. due process of law. T.D. was provided with notice of the charges against him; he received a robust and full hearing, as well as the opportunity for an additional hearing, at which he was able to tell his side of the story with the assistance of his attorney. The hearing officer was fair and impartial, and the School Board reviewed the record and affirmed the hearing officer's decision. By all applicable standards of school disciplinary procedural due process, this satisfies the flexible requirements of due process. Therefore, the Court of Appeals properly declined to find any violation due process warranting reversal, and this Court should deny certiorari.

D. The Court Of Appeals Properly Declined To Find Due Process Violations Based On Hearing Officer's Conduct.

As noted by the Court of Appeals, "it is well established that due process rights are not violated simply by the combination of the investigative, prosecutorial, and adjudicative functions in one agency. Rather, actual bias or a high probability of bias must be present before due process concerns are raised." *Marshall v. Cuomo,* 192 F.3d 473, 484 (4th Cir. 1999). Appellants contend that the hearing officer acted with overt bias which rendered the evidentiary process fundamentally unfair. However, as the Court of Appeals correctly concluded, the record contains no evidence of any actual bias. *T.D.*, 2024 WL 4143596 at *6. Although Appellants continue to assert multiple deficiencies with transcripts in the case, Appellants had the opportunity to raise these issues before the circuit and appellate courts, and based on the Court of Appeals' review of the entire record, including the audio recordings, there is an absence of any bias. *Id.* Further, as noted by the Court of Appeals, to the extent concerns existed with the hearing officer, they would have been alleviated by the remand hearing before a new hearing officer; yet, Appellants declined that opportunity. *Id*. at * 5. Therefore, this Court should deny certiorari.

E. School Officials Involved in T.D.'s Disciplinary Proceeding Did Not Violate S.C. Code Ann. § 63-19-810 (C) and S.C. Code Ann. § 63-19-2020 (E).

Appellants continue to assert that Respondent's policies do not comply with the state law governing the confidentiality of juvenile records and that the District's use of the documents in connection with T.D.'s disciplinary proceeding violated applicable state law. However, the Court of Appeals properly declined to find that school officials involved in T.D.'s disciplinary proceeding violated the statutory parameters relating to

the proper use and confidentiality of T.D.'s juvenile records as required by S.C. Code Ann. § 63-19-810 (C) and S.C. Code Ann. § 63-19-2020 (E).

In this case, law enforcement notified the BMS principal when it had been alerted of a threat against the school and its students. (R. p. 411; R. p. 231, lines 2-16; R. p. 220, lines 1-22; R. p. 265, line 7- p. 266, line 9.) Pursuant to S.C. Code. § 63-19-2030, the BMS principal was entitled to request and/or receive a copy of the incident report, and any additional juvenile records provided by law enforcement to the BMS administration were unsolicited. (R. pp. 351-354, 355-406, 480.) At the time of the incident, the District's Student Records Policy, Policy JRA, provided for the school principal being the legal custodian of all student records for their school. (R. pp. 506-512.) 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, regarding publication and dissemination of student records. *(Id.*) The policy also contained a provision regarding the retention of records. (*Id.*) Although Respondent's records policy did not contain language expressly from § 63-19-2020(E), it met the spirit and intent of the confidentiality requirement by placing confidentiality restrictions on all student records, including juvenile records, and it contains language regarding the retention and destruction of the records. (*Id.*) Also, the policy was updated in April 2019. (R. p. 154.)

Further, South Carolina law allows juvenile records to be used for supervising, monitoring, and meeting the educational needs of students. S.C. Code Ann. § 63-19-810; S.C. Code Ann. § 63-19-2020. Appellants have failed to identify any clear, controlling persuasive authority to show 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. In addition, Appellants have not identified any authority in which schools are expressly prohibited from using such records for such purposes.[5] Importantly, student discipline and supervision has been recognized as part of a school's broader function of providing students an education. *See A.F. v. Hazelwood School District*, 491 S.W.3d 628, 634 (Mo. App. E.D. 2016) (noting disciplining and supervising students while at school are simply part of a school district's overall purpose of educating the students); *Morris v. State*, 228 So.3d 670, 673 (Fla. 1st DCA 2017) (describing teachers' general duty of supervision as encompassing discipline.) Accordingly, the Court of Appeals correctly determined the District's actions were not in violation of State law and did not warrant reversal of T.D.'s expulsion. Certiorari review, therefore, should be denied.

CONCLUSION

For the foregoing reasons, Respondent respectfully submits that this Court should deny the Petition for Writ of Certiorari.

(SIGNATURE ON FOLLOWING PAGE)

[5] In fact, Policy JK, Student Discipline, notes discipline is a means of teaching. (R. p. 505.)

Respectfully submitted,

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