

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2014-CP-0400381

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SC Court of Appeals

Tariq Geer, by his mother,
Lisa Geer; Ka'Darrius
Brownlee, by his mother
Lakesha Brownlee; Shamarion
Brownlee, by his mother Kim
Brownlee,

Appellants,

v.

Anderson County School
District 5

Respondent.

RECORD ON APPEAL

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**AMENDED FORM 1
NOTICE OF APPEAL IN A CIVIL CASE**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case Nos.: 2014-002377; 2014-CP-04-00381

Tariq Geer, by his mother,
Lisa Geer; Ka'Darius Brownlee,
by his mother, Lakesha Brownlee;
Shamarion Brownlee, by his mother,
Kim Brownlee,

Appellants,

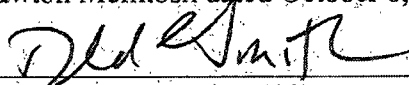
v.

Anderson County District Five,

Respondent.

NOTICE OF APPEAL

Appellants appeal the order of the Honorable R. Lawton McIntosh dated October 6, 2014.


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STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

CLERK'S OFFICE
IN THE COURT OF COMMON PLEAS
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Tariq Geer, by his mother, Lisa Geer;
Ka'Darrius Brownlee, by his mother,
Lakesha Brownlee; Shamarion Brownlee;
by his mother, Kim Brownlee,

COMMON PLEAS AND
GENERAL SESSIONS

C.A. No. 2014-CP-04-00381

ORDER

Petitioners,

vs.

Anderson County School District 5,

Respondent.

A TRUE COPY

OCT - 6 2014

Elizabeth A. Jones
CLERK OF COURT

This is a direct appeal of the Anderson School District Five ("District") Board of Trustees' ("Board") decision to expel Tariqus Geer, Ka'Darrius Brownlee, and Shamarion Brownlee for the remainder of the 2013-14 school year. This appeal was brought on Petitioners' behalfs pursuant to S.C. Code Ann. § 59-63-240 (Rev. 1990). Tariqus, Ka'Darrius and Shamarion were expelled for gang and gang-related activity. Petitioners claim that the District failed to prove the alleged gang activity for which the expulsions were brought. In addition, Petitioners assert a lack of due process and constitutional violations. Respondent contends that the District's procedures were in all respects fair and legal and that there was substantial evidence in the record to justify the Board's expulsions of Tariqus, Ka'Darrius, and Shamarion. Additionally, Respondent argues that Petitioners' appeal became moot with the conclusion of the 2013-14 school year and their subsequent re-enrollment at either T.L. Hanna High School, or in Ka'Darrius' case, the alternative school. This Court acknowledges the issue of mootness raised by the Respondent; however the Court is assuming *arguendo* for the purposes of this appeal that the matter is not moot.

Section 59-63-240 of the South Carolina Code provides that a school board's decision to expel a student may be appealed to the proper court. Thus, it is this Court's role to review the

record to determine whether there is substantial evidence to support the Board's decision and determine whether the expulsion hearing provided sufficient due process, as well as review any relevant statutory or constitutional claims which an aggrieved party may make regarding any aspect of the procedures. After carefully considering the entire record in this matter, including the memoranda of law submitted on behalf of the parties, this Court finds that Petitioners were afforded due process based upon statutory and case law, and that there is substantial evidence in the record to support the Board's action.

I. FACTUAL SUMMARY

As noted above, this case arises out of the decision by the Board to expel Petitioners for the remainder of the 2013-14 school year for gang and gang-related activity. Factually, school administrators became aware of the gang-related activity when one of the three students had "Outlaw" written on his shorts. The student stated this was part of a mission he was instructed to do by other members of the gang. This member confessed to being in a gang and provided the names of three other members. In light of this confession, school administrators collected evidence including staff and student statements, Twitter screenshots, and student drawings. The students were all suspended on October 30, 2013. The District's hearing officer, Mike Ruthsatz, convened the expulsion hearing on November 13, 2013. All three hearings were held on this date. By letter dated November 25, 2013, Mr. Ruthsatz advised the parents in writing of his decision to expel the students for the remainder of the school year. Additionally, Petitioners were required to successfully complete the year at the Anderson County Alternative School before being eligible to return to TL Hanna High School.

Petitioners timely appealed Mr. Ruthsatz's decision to the Board on December 18, 2013. The appeal was considered by the Board at its meeting on January 27, 2014. The Board voted to uphold the recommendation that Petitioners be expelled for the remainder of the 2013-14 school year and by letter dated January 30, 2014, Petitioners were notified of the Board's decisions.

II. CONCLUSIONS OF LAW

A. This Court's Review Is Limited To Determining Whether There Is Substantial Evidence In The Record To Support The Decision Of The Board.

Petitioners are before the Court pursuant to S.C. Code Ann. § 59-63-240 (Rev. 1990), 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. 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).

Section 59-63-240 does not set forth a standard of review; however, S.C. Code Ann. § 59-25-480, part of the Teacher Employment and Dismissal Act, which provides for appeals concerning the continuation of a teacher's employment, is similar to § 59-63-240. Section 59-25-480 "does not delineate the scope and standards applicable to judicial review of school board decisions...." *Laws v. Richland County School District One*, 270 S.C. 492, 243 S.E.2d 192, 193 (1978). In such review of school board decisions, South Carolina courts have applied the substantial evidence rule to administrative appeals on the ground that a court should not substitute its judgment for that of school authorities. See *Laws*, 243 S.E.2d at 193; *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). The same analysis justifies application of the substantial evidence rule in appeals of student expulsions pursuant to S.C. Code Ann. § 59-63-240. 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.

Furthermore, S.C. Code Ann. § 59-19-90(3) authorizes school trustees to prescribe rules of “conduct and behavior... notwithstanding that such rules may result in the ineligibility of pupils... and the suspension and permanent dismissal of such pupils.” Section 59-63-210 grants school trustees the power to expel students from public school. The South Carolina Supreme Court has reaffirmed the broad discretions that school boards possess in exercising their powers. *Gamble v. Williamsburg County Sch. Dist.*, 305 S.C. 288, 408 S.E.2d 217 (1991). *See also*, *Laws*, 243 S.E.2d at 193; *H.H. Singleton v. Horry County Sch. Dist.*, 289 S.C. 223, 345 S.E.2d 751, 754 (Ct. App. 1986).

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). Otherwise, application of the *de novo* standard to expulsion appeals could convert every such proceeding into a full blown civil trial, and this could not have been the Legislature’s intent. *Cf. Midlands Utility, Inc. v. S.C. Dep’t of Health and Environmental Control*, 287 S.C. 483, 339 S.E.2d 862, 864 (1986). Accordingly, Petitioners’ appeal should be confined to the record and reviewed under the substantial evidence standard of review.

B. There Is More Than Substantial Evidence In The Record To Uphold The Board’s Decision.

There is ample evidence in the Record to support the Board’s decision to uphold the Petitioners’ expulsions from school. Disciplinary offenses in the District are divided into three levels with Level I being the least serious and Level III consisting of the most serious offenses. The District’s policies and practices also provide students recommended for expulsion with different levels of hearings, including the initial evidentiary hearing before the District’s hearing

officer and an appeal to the full Board. The Petitioners' conduct was clearly in violation of District policy and school rules. Board Policy JICF (Secret Societies/Gang Activity) "prohibits incidents involving initiations, hazing, intimidations or related activities of such group affiliations that are likely to cause bodily danger, physical harm, or personal degradation or disgrace resulting in physical or mental harm to students." Further, a student may be recommended for expulsion for violating the Student Code of Conduct, Section V – Gang and Gang Related Activities, a Level III offense.

The evidence presented to the hearing officer and the Board supports the decision to expel Tariqus, Ka'Darrius, and Shamarion for the remainder of the 2013-14 school year. Specifically, two of the Petitioners entered the 2013-14 school year under a behavior contract. The behavior contract signed by the two Petitioners states that the students may not have any Level I, II, or III disciplinary offenses. The student who was not subject to the behavior contract confessed to being a member of the gang. As previously stated, gang and gang-related activities is considered a Level III offense. Outlaw is classified as a gang based on the following:

- A student's statement that "missions" are run daily;
- Twitter comments that include references to "the set";
- A student's statement that his "set" was disrespected by someone saying "fuck Outlaw";
- A student's statement that they are a gang that is a smaller set under the larger umbrella of "Hit Squad";
- A student's statement of a "mission" that included an assault and battery over the weekend; and
- A student's statement that his head would be bashed in if he is found to be a snitch.

Petitioners were identified as members of the gang "Outlaw" based upon a student's statement, gang signs, markings on notebooks and gym shorts, references to "Hit Squad," and pictures on Twitter.

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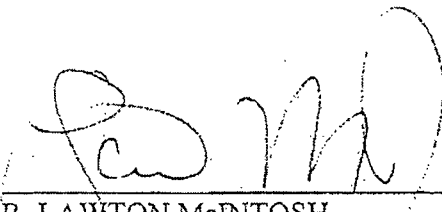
Petitioners' position is the District failed to prove the alleged gang activity for the expulsions were brought. Petitioners cite the South Carolina Criminal Gang Prevention Act in S.C. Code Ann. § 16-8-230, which defines a criminal gang. Here, the students were not charged in criminal court for gang activity. Petitioners were expelled because they demonstrated all the signs of gang activity as determined by the school administration, in consultation with law enforcement and the Anderson County Gang Taskforce. In addition, Petitioners argue that their due process rights at their hearings were violated. However, 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).

With regard to Petitioners' constitutional argument, in *Tinker v. Des Moines Independent Community School District*, the Supreme Court addressed the constitutionality of school policies restricting students' rights to free expression. *Tinker*, 393 U.S. at 514. In this seminal decision, the Court reasoned that school officials could impose a "prohibition of expression of one particular opinion" only if "necessary to avoid material and substantial interference with schoolwork or discipline." *Id.* at 511. In this case, school administrators were required to act for the safety of all students and faculty once they learned the Petitioners were identified as members of a gang and that "missions" were run at school, that a "mission" included an assault and battery over the weekend, and that one of the students feared his head would be bashed in if he is found to be a snitch.

III. CONCLUSION

In summary, because substantial evidence exists to support the Board's decision in this matter, this Court upholds the findings and expulsions of Petitioners for the remainder of the 2013-14 school year.

AND IT IS SO ORDERED.



R. LAWTON McINTOSH
Chief Administrative Judge, Tenth Judicial Circuit

10-2, 2014

Anderson, South Carolina

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COMMON PLEAS AND
GENERAL SESSIONS

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December 18, 2013

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P O Box 11367
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RE: Tarique George, Shamarian Brownlee and KaDarrias Brownlee.

Dear Ms. Hanna:

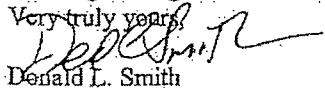
The children in this matter hereby respectfully appeal the rulings of the hearing officer issued from the hearings that took place on November 13, 2013. The bases for the appeals center on the following reasons:

1. The District failed to prove the alleged gang activity for which the actions for expulsion were brought.
2. The findings of the hearing officer illustrate an affirmation of the unconstitutional disregard for the freedom of speech.
3. The findings of the hearing officer illustrate an affirmation of the unconstitutional disregard for freedom of association.
4. The findings of the hearing officer affirm expulsions based on race, which is also unconstitutional.
5. The findings of the hearing officer are arbitrary and capricious as they are not supported by the greater weight of the evidence.

I hope that this list is sufficient. However, if you should deem it to be insufficient, please let me know post haste. I do not wish for my children to not have the opportunity for due process based on my ignorance of the Administrative Hearing process.

With highest regards, I remain

Very truly yours,


Donald L. Smith

DLS/ds

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January 9, 2014

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P.O. Box 11367
Columbia, SC 29211

RE: Tariqus Geer, Shamarion Ahkeim Brownlee and KaDarrius Brownlee
Appeal of Expulsions from TL Hanna High School for SY 2013-2014

PROCEURAL POSTURE

Three separate evidentiary expulsion hearings for Tariqus Geer, Shamarion Ahkeim Brownlee, and KaDarrius Brownlee were conducted on November 13, 2013 on the recommendation of Sheila Hilton, Principal, T L Hanna High School, pursuant to the Code of Laws for South Carolina, Section 59-63-240 and District Policy JIDCA. The hearing was before Hearing Officer Mike Ruthsatz wherein the students were represented by attorney Donald L. Smith, Esquire.

On November 25, 2013, Hearing Officer Ruthsatz determined that the students violated the Student Code of Conduct, Section V- Gang and gang-related activities. Accordingly, Hearing Officer Ruthsatz expelled the students from TL Hanna High School for the remainder of the school year. The School Board, according to the Code of Laws for South Carolina, Section 59-63-240, is authorized to expel students from school. Although the Board may receive recommendations for expulsion from others, it solely is empowered to take the final expulsion action. In this District, the board of trustees has delegated discipline hearing responsibilities to a

hearing officer with the right of appeal back to the School Board. The doctrine of exhaustion of administrative remedies is generally considered a rule of policy, convenience, and discretion, rather than one of law. *Adamson*, 332 S.C. at 125, 503 S.E.2d at 754. The doctrine is not jurisdictional. *Id.* Whether administrative remedies must be exhausted is a matter within the circuit court's sound discretion, and this decision will not be disturbed on appeal absent an abuse of discretion. *Hyde v. S.C. Dept. of Mental Health*, 314 S.C. 207, 208, 442 S.E.2d 582, 582-83 (1994). Attorney Smith filed a notice of appeal on December 12, 2013 and comes now with his brief of the issues presented in the notice of appeal.

BACKGROUND

It appears that the event that precipitated the allegations of gang activity began on October 7, 2013, after Coach Hamby was informed about two students engaged in a heated verbal exchange in the main locker room.¹ Shamarian Brownlee was one of the students. After Coach Hamby reported to Principal Hilton that the other student had said, "F* Outlaw," which precipitated the argument, the principal surmised from the encounter that it was regarding a gang. During Brownlee's expulsion hearing, Principal Hilton stated, without any support, that "this would have been an insult to his set, and gang members are required to defend their set whenever it is insulted." Coach Hamby further notified an academic director that the word "Outlaw" was written on the football shorts of S. Brownlee. The same word, and the group's symbol was found on the school notebooks of appellants. Principal Hilton stated that in a meeting with S. Brownlee and other teachers, the student stated that he was directed to write the word "Outlaw" on his shorts as one of his missions, further that he was required to fight someone over the past weekend. According to the principal, "this would constitute gang activity, in that

¹ The following references come from the separate evidentiary proceedings for each expelled student held on November 13, 2013.

gang members are required to participate in criminal, illegal activities as part of their membership in a gang." Hilton also stated at the hearing that the Outlaw gang was affiliated with the Hit Squad, which was another gang. The Hit Squad, indeed demonstrated the fact that it was a gang by throwing flags in school, and subjecting the lunch room to a large fight, two to three years prior to these hearings. There was no evidence presented that the three expelled boys had any relation to or held membership in the Hit Squad. The evidence showed that Principal Hilton drew her expertise on gangs from the gang task force which comes in to speak with the faculty annually. While Principal Hilton explained that gang members commit actions that place "everyone in the room in danger," there was no evidence that the activities in social media, writing on notebooks or gym shorts actually placed any student of TL Hanna High School in danger.

ANALYSIS

The District Failed To Prove The Alleged Gang Activity For Which The Actions For Expulsion Were Brought

The expulsions of all three students should be overturned because the District did not meet its burden to show that gang or gang related activity had occurred. The expulsion hearing did not bring to light anything that constituted a gang. The South Carolina Criminal Gang Prevention Act in 16-8-230 defines criminal gang as: "a formal or informal ongoing organization, association, or group that consists of five or more persons who form for the purpose of committing criminal activity and who knowingly and actively participate in a pattern of criminal gang activity." Further, a pattern of criminal gang activity is defined as four or more of the enumerated offenses occurring within a two-year period including *inter alia* violent offenses, grand larceny, or blackmail. Here, the students expelled for membership in a gang and gang activity did not engage in criminal activity, alleged or otherwise. Officer Hill testified

during the hearing that during his investigation at the school for gang activity, he noticed five boys standing on the stage area of the mall all wearing white t-shirts. This became part of the evidence against the appellants: wearing white t-shirts. The principal alleged that this innocuous activity was a part of the gang activity: standing together and wearing white shirts. The Officer found no evidence of criminal activity and none was suspected throughout the investigation of appellants.

While the school has a right to protect the interest of all of its students, this right does not provide the school with the license to violate the rights maintained by students, even in a school setting. The Latin phrase *In loco parentis* basically means that while a student is in the custody of a school, the school can and often should act as a parent. In this duty of the school, many decisions can be made that are outside the normal governmental purview. The other basic reason for violation of student rights has to do with the goal of school — to educate. If an act of a student can interfere with the educational process, that act may, in many cases, be suppressed. A public school must prove that its violations are for a higher purpose or stem from its *in loco parentis* responsibilities, which TL Hanna has failed to show. Rather, the administration has failed to show how innocent activities become gang activities.

The three expelled students all maintained during their respective hearings that there is no gang. Further, the principal admitted that in speaking with each of the boys during the investigation, all but Shamarion Brownlee maintained that their group was not a gang, but a rap group. Brownlee testified at his hearing that his statements were misconstrued, and that while the principal continued to insist that the rap group was a cover for gang activity, he maintained his statement that Outlaw was a rap group. Accordingly, the expulsions of appellants should be

overturned because the District did not meet its burden to show that gang or gang related activity had occurred.

The Findings Of The Hearing Officer Illustrate An Affirmation Of Unconstitutional Disregard For The Freedom Of Speech

As members of a rap group, and in general, despite their student-status, the appellants all enjoy the right to freedom of speech, denied by the hearing officer, in finding activities such as writing on clothing, notebooks, and Twitter the word Outlaw constituted gang activity. Appellants have the constitutional right to engage in the above activities without being encroached upon by the school administration. In *Bethel School v Fraser* (478 US 675 [1986]), the Court ruled that a school was not violating a student's rights when it suspended a student for the use of crude language in a speech to a school assembly. Said the Court: "It does not follow ... that simply because the use of an offensive form of expression may not be prohibited to adults making what the speaker considers a political point, the same latitude must be permitted to children in a public school... The determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board." In *Tinker v Des Moines*, 393 US 503 (1969), the Supreme Court ruled that students wearing black arm bands to protest the Vietnam War could not be forced to remove the arm bands by school officials. As written in *Tinker*, "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." The Supreme Court said in *Tinker* that "[If] conduct by the student, in class or out of it, which for any reason — whether it stems from time, place, or type of behavior — materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the

constitutional guarantee of freedom of speech." This is the hinge upon which this school violated appellant's free speech protections.

While school administration testified about the general impressions of the student body of the appellants and their rap group, the impression of which that the appellants were in a gang, neither Principal Hilton nor any witness represented that the appellants materially disrupted classwork or were involved in substantial disorder. *Tinker* was all about freedom of expression. The students in *Tinker* merely wore black arm bands, they did not disrupt school activities in any other way. The actions of the students are often used to distinguish the right of speech and expression for students from the rules that can govern those rights.

Again, the distinction hinges on the impact of the expression on the educational process. Indeed, in 2007, in the case of *Morse v Frederick* (06-278 [2007]), the Court narrowly decided that student speech off campus can be suppressed by school administrators if the speech promotes illegal activity — drug use, in this case. In the case, Frederick erected a banner touting "bong hits for Jesus" along a route used to transport the Olympic torch during Olympic opening ceremonies. The route was flanked by students from Frederick's high school and his Principal saw the banner, had it removed and had Frederick suspended, on the premise that the banner ran counter to the school's anti-drug themes and policies. Drawing on both *Tinker* and *Fraser*, the Court decided that the message and its most reasonable interpretations, and not the place the message was displayed, was the deciding factor: "Student speech celebrating illegal drug use at a school event, in the presence of school administrators and teachers, thus poses a particular challenge for school officials working to protect those entrusted to their care from the dangers of drug abuse."

There is not a single case where the Court has upheld that students lack freedom of

expression insofar as their speech was displayed in this case. At best, the School Board proved that one student had the word "Outlaw" written on his shorts, another with the word written in his notebook. The Sheriff's Department never affirmed the Outlaw to mean gang activity, and in fact, denied that any gang activity was occurring at TL Hanna, following an investigation and "lock down" of the entire campus during the school day. In fact, Deputy Gregory of the Anderson County Sheriff's Department Gang Task Force testified to the following, when speaking of one of the students: "I want to clarify something. I don't believe anybody has ever documented your son, or your client, as a criminal gang member. Nobody in this room called your son a criminal gang member." Without any connection to criminal activity, the constitutional rights of these students have been violated and their expulsions should be reversed.

The Findings Of The Hearing Officer Illustrate An Affirmation Of Unconstitutional Disregard
For The Freedom Of Association

The interrelated freedoms of assembly and association stem from the First Amendment which states in part that "Congress shall make no law . . . abridging the right of the people to peaceably assemble." U.S. CONST. Amend. I. The Freedom of Assembly Clause protects the rights of citizens to engage in lawful public assemblies, to make public speeches, to discuss their own affairs, and to enlist the support of others. Here, the students at issue were expelled for having Twitter accounts referencing the word outlaw, scribbles in notebooks, words on shorts, and so-called missions to affect these specific activities.

The Supreme Court has repeatedly recognized that the right of free speech would be virtually meaningless without a corollary right to join with others to advance First Amendment freedoms. See e.g. *NAACP v. Alabama*, 357 U.S. 449, 460 (1958); *De Jonge v. Oregon*, 299 U.S. 353, 364 (1937). This implicit freedom preserves citizens' rights to form organizations, to

advance particular viewpoints, and to associate with like-minded individuals "in pursuit of a wide variety of political, social, economic, educational, religious and cultural ends." *Boy Scouts of America v. Dale*, 530 U.S. 640, 647-48 (2000); *See also Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984). The appellants, all uncontested musicians have the right to advance their music and bond through social media, attire, and organization. To find otherwise, as the hearing officer has, is a violation of the First Amendment rights of appellants. Therefore, whereas appellants' freedoms of assembly and association were violated, their expulsions should be reversed and they should be re-instated at TL Hanna High School.

The Findings Of The Hearing Officer Affirm Unconstitutional Expulsions Based On Race

The culture of the students appeared to be on trial as much, and indeed more than the facts. Three African American boys, engaged in the creation of rap music since the sixth grade, wearing white T-shirts *must* be members of a gang. This characterization is baseless and could only stem by prejudice on the part of Principal Hilton and, subsequently, the hearing officer. To the extent that the appellant's race was considered in determining their gang membership, the school board should reverse appellant's expulsions.

The Findings Of The Hearing Officer Are Arbitrary And Capricious As They Are Not Supported By The Greater Weight Of Evidence

Viewing the evidence in the light most favorable to the school board, the board failed to show that appellants were members of a criminal gang. Further, the students' due process rights at their hearings were violated. While afforded the opportunity to be represented at the hearing by an attorney as required by statute, the hearing officer systematically ignored his valid arguments with regard to what constituted a gang at TL Hannah. However, inapposite, the

hearing officer permitted answers from Principal Hilton such as Twitter accounts and hashtags constituting gang activity. The principal stated at the hearings that other students at school appeared to accept that the Outlaws were a gang based on their social media presence. "I think they can be in a gang and a rap group at the same time. Rap groups do not give people missions to do. That's why we have classified "Outlaw" as a gang. Because, they are handing out missions and signing gang graffiti on their notebooks. There was also on twitter the hash tag: #Outlaw which was often associated with the hash tag: #hit squad." This evidence is far from proof beyond any standard of evidence that appellants were members of a gang or participating in gang activities. The activities cited as so-called missions to allegedly prove gang membership all have equally innocent origins and innocuous meanings.

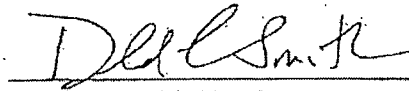
There was no evidence presented that the appellants were members of a criminal gang, as defined by statute, rather than the rap group that they maintained during the hearing they were. Appellant Ka'Darius Brownlee testified during his hearing that "Outlaw" is not a gang. In sixth grade, the boys started rapping and at one point they changed their name to "Outlaw". "Teachers wanted to hear our music, so we burnt CD's and gave them to the teachers." Appellants never encountered any association until they came to a school with an admitted gang problem long before the appellants began attending the school. We don't carry flags in our back pockets. Furthermore, the appellants were not linked to any criminal activity as part of the gang or otherwise. The evidence, in the light most favorable to the school board, did not amount to a violation of the District policy prohibiting gang membership and activity at school.

CONCLUSION

The expulsions of the appellants should be overturned in the best interests of all students in this District, specifically, that of the appellants in this matter. The rights of freedom of

speech, freedom of association, and due process as afforded by the Constitution and the State of South Carolina should not be trounced upon by school officials. Whereas appellant's rap and social group entitled Outlaw fails to meet the definition of criminal gang and no instances of disruption of student activities were reported, the determination of appellants' membership in gang is clearly against the weight of evidence, and as such, the determination should be reversed.

Respectfully submitted,



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Anderson, South Carolina
January 7, 2014.

*Policy***CODE OF CONDUCT**Code **JICDA** Issued **09/08**

Purpose: To establish the basic structure for a code of conduct and discipline for students and maintain order in the schools.

The board and the administration offer a list of offenses along with the required or recommended dispositions for the information of students, parent/legal guardian and school personnel. Disciplinary actions will include appropriate hearings and review. The removal of a student from the learning environment will occur only for just cause and in accordance with due process of law.

The following rules, regulations and due process procedures are designed to protect all members of the educational community in the exercise of their rights and responsibilities. These rules apply to any student during the following times and in the following places.

- who is on the school property
- who is in attendance at school or any school-sponsored activity
- who is off the school grounds at a school activity, function or event
- whose conduct at any time or in any place has a direct and immediate effect on maintaining order and discipline in the schools
- who is en route to and from school on a school bus or other school vehicle

Level I - disorderly conduct

1. Disorderly conduct includes any activity in which a student engages that tends to impede orderly classroom procedures or instructional activities, orderly operation of the school, or the frequency or seriousness of which disturbs the classroom or school.
2. Acts of disorderly conduct may include, but are not limited to, the following.
 - a. classroom tardiness
 - b. cheating on examinations or classroom assignments
 - c. lying
 - d. acting in a manner so as to interfere with the instructional process
 - e. abusive language between or among students
 - f. failure to complete assignments or carry out directions
 - g. use of forged notes or excuses
 - h. cutting class
 - i. school tardiness
 - j. truancy
 - k. other disorderly acts as determined by the board
 - l. dress code infraction (during school hours)
 - m. identification badge infraction (during school hours and while riding on school buses, where applicable)
3. The staff will follow these basic enforcement procedures in instances of disorderly conduct.
 - a. When the staff member observes (or is notified about and verifies) an offense, the staff member will take immediate action to correct the misconduct. The staff member will use an

appropriate sanction and, where necessary, maintain a record of the misconduct and the sanction.

- b. If a certain misconduct is not immediately correctable, the staff member should refer the problem to the appropriate administrator for action specified under this policy.
 - c. The administrator should meet with the reporting staff member, and, if necessary, the student and the parent/legal guardian, and should effect the appropriate disciplinary action.
 - d. Where necessary, the administrator will maintain a complete record of the procedures.
4. The staff may apply sanctions in cases of disorderly conduct which may include, but are not limited to, the following.
- a. verbal reprimand
 - b. withdrawal of privileges
 - c. demerits
 - d. detention
 - e. in-school suspension
 - f. referral to outside agency
 - g. other sanctions approved by the board

Level II - disruptive conduct

1. Disruptive conduct includes those activities in which students engage that are directed against persons or property and the consequences of which tend to endanger the health or safety of themselves or others in the school. Some instances of disruptive conduct may overlap certain criminal offenses, justifying both administrative sanctions and court proceedings.

The administration may reclassify disorderly conduct (Level I) as disruptive conduct (Level II) if the student engages in the activity three or more times.

2. Acts of disruptive conduct may include, but are not limited to, the following.
- a. use of an intoxicant
 - b. fighting
 - c. vandalism (minor)
 - d. stealing
 - e. threats against others
 - f. bullying, harassment or intimidation (see JICFAA)
 - g. trespassing
 - h. abusive language to staff
 - i. refusal to obey school personnel or agents (such as volunteer aides or chaperons) whose responsibilities include supervision of students
 - j. possession or use of unauthorized substances, as defined by law or local school board policy
 - k. illegally occupying or blocking school property in any way with the intent to deprive others of its use
 - l. unlawful assembly
 - m. disrupting lawful assembly
 - n. inappropriate verbal or physical conduct of a sexual nature
 - o. unlawful possession of an electronic communication device
 - p. any other acts as determined by the board
3. The staff will follow these basic enforcement procedures in instances of disruptive conduct.

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- a. When the administrator observes (or is notified and verifies) an offense, he/she will investigate the circumstances of the misconduct and confer with staff on the extent of the consequences.
 - b. The administrator will notify the parent/legal guardian of the student's misconduct and related proceedings. The administrator will meet with the student and, if necessary, the parent/legal guardian, confer with them about the student's misconduct, and effect the appropriate disciplinary action.
 - c. The administrator will keep a complete record of the procedures.
4. The administration may apply sanctions in cases of disruptive conduct which may include, but are not limited to, the following.
- a. temporary removal from class
 - b. alternative education program
 - c. in-school suspension
 - d. out-of-school suspension
 - e. *transfer
 - f. referral to outside agency
 - g. expulsion
 - h. restitution of property and damages, where appropriate, should be sought by local school authorities
 - i. other sanctions as approved by the board

***Disciplinary transfers (Anderson School District Five Board Policy JFABC)**

The board or its designee may make disciplinary transfers to another school in lieu of suspension or expulsion but only after a conference or hearing with the parent/legal guardian and consultation with both principals.

Disciplinary transfers of students may be based on the commission of a crime, gross immorality, gross misbehavior, persistent disobedience or for violation of the written rules, policies or regulations established by the Anderson School District Five Board of Trustees or the state board of education.

Level III - criminal conduct

1. Criminal conduct includes those activities in which students engage that result in violence to themselves or to another's person or property or which pose a direct and serious threat to the safety of themselves or others in the school. These activities usually require administrative actions which result in the immediate removal of the student from the school, the intervention of law enforcement authorities, and/or action by the board.
2. Acts of criminal conduct may include, but are not limited to, the following.
 - a. assault and battery
 - b. extortion
 - c. bomb threat
 - d. possession, use or transfer of dangerous weapons
 - e. sexual offenses
 - f. vandalism (major)
 - g. theft, possession or sale of stolen property
 - h. arson
 - i. furnishing or selling unauthorized substances, as defined by board policy
 - j. furnishing, selling or possession of controlled substances (drugs, narcotics or poisons)

- k. distribution, sale, purchase, manufacture or unlawful possession of a controlled substance while in or within a radius of one-half mile of school grounds
 - l. threatening to take the life of or inflict bodily harm upon a teacher, principal or members of their immediate family
3. The staff will follow these basic enforcement procedures in instances of criminal conduct.
- a. When an administrator observes (or is notified of and verifies) an offense, the administrator will confer with the staff involved, effect the appropriate disciplinary action, and, if appropriate, meet with the student.
 - b. If warranted, the administrator should immediately remove the student from the school environment. The administrator will notify a parent/legal guardian as soon as possible.
 - c. If appropriate, school officials should contact law enforcement authorities.
 - d. Staff will follow established due process procedures when applicable.
 - e. The administrator will keep a complete record of the procedures.
4. The administration may apply sanctions in cases of criminal conduct which may include, but are not limited to, the following.
- a. out-of-school suspension
 - b. assignment to alternative schools
 - c. expulsion
 - d. restitution of property and damages, where appropriate, should be sought by local school authorities
 - e. referral to outside agency
 - f. other sanctions as approved by the board

Extenuating, mitigating or aggravating circumstances

The board may give the appropriate administrator the authority to consider extenuating, mitigating or aggravating circumstances which may exist in a particular case of misconduct. The age of the student could be a mitigating factor when dealing with elementary students. The administrator should consider such circumstances in determining the most appropriate sanction.

Electronic communication device

1. No student may possess an electronic communication device while:
- a. on school property
 - b. attending a school sponsored or school related activity on or off school property

The district will make an exception to this rule under the following circumstances.

- 1. A student under age 18 may possess an electronic communication device if:
 - a. the student needs the electronic communication device for a legitimate medical reason.
- 2. A student age 18 or over may possess an electronic communication device if:
 - a. the student is an active member of a volunteer firefighting organization.
 - b. the student is an active member of a volunteer emergency service organization.
 - c. the student needs the electronic communication device for a legitimate medical reason.

Before a student may have an electronic communication device at school, the principal must have written, approved evidence on file of the student's medical need or membership in voluntary firefighting or emergency medical service organization.

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The principal of each school will decide what constitutes a legitimate medical reason consistent with any guidelines established by this board and/or by the state department of education.

A student who has an electronic communication device without permission as outlined in this policy is subject to discipline as provided by board policy.

A person who finds a student in possession of an electronic communication device without permission must report the student to the school principal. The principal will confiscate the device. The student's parent/legal guardian may pick up the confiscated device from the school at their convenience.

Mace/Pepper gas

The possession and/or use of mace, pepper gas and any other substance which is generally used for personal defense and which may cause skin and/or eye irritation is prohibited. The possession of such a substance will be considered a violation of disruptive conduct (Level II). The use of mace or any other similar substance, as defined above, may be considered as an assault prohibited under criminal conduct (Level III) depending upon the facts of the incident.

Discipline of disabled students

Disciplinary process

Disabled students are not exempt from school disciplinary processes, nor are they entitled to remain in a particular educational program when their conduct substantially impairs the education of other children in the program. However, federal and state laws and regulations require the public schools to meet the individual educational needs of disabled children to the extent that current educational expertise permits.

Program prescriptions

A disabled student's staffing committee may prescribe or prohibit specified disciplinary measures for an individual student by including appropriate provisions in the student's Individual Education Plan (IEP). The committee must take into consideration the student's disabling condition when deciding whether or not staff may use a particular form of discipline. Administrative authorities should observe any such provisions contained in a disabled student's individual education plan, except that a staffing committee may not prohibit the initiation of proceedings for suspension or expulsion which are conducted in accordance with regulation.

Suspensions

The administration may suspend a disabled student unless a suspension is prohibited by the student's individual education plan. At the end of the suspension, the school should return the student to the same educational placement, if appropriate. The district may remove immediately, for a short period of time, a handicapped student who is endangering himself or others. The school may suspend students for up to 10 days for a minor disciplinary infraction but for not more than 30 days in any one school year.

However, students who bring weapons to school or a school function or knowingly possess or use illegal drugs or solicit the sale of controlled substances while at school or a school function may be removed for up to 45 days at a time. If school officials believe that a child with a disability is substantially likely to injure self or others in the child's regular placement, they may ask an impartial

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hearing officer to order that the child be removed to an interim alternative educational setting for a period up to 45 days.

Expulsions

Expulsion of a disabled student is equivalent to a change in educational placement and therefore requires special procedures. Before a disabled student may be expelled, a multi-disciplinary team must determine whether or not there is a connection or causal relationship between the disabling condition and the misconduct. If so, then expulsion resulting in cessation of educational services for the student would be unallowable.

The district will continue to provide a free and appropriate education as set forth in a student's IEP to expelled students with disabilities.

Immediate removal

Nothing contained in this regulation will be construed as limiting an administrator's ability to remove a disabled student from school immediately under emergency conditions.

Adopted 1/17/89; Revised 8/20/91, 7/19/94, 5/16/95, 3/19/96, 5/18/04, 8/17/04, 4/19/05, 12/12/06, 9/17/08

Legal references:

- A. S.C. Code of Laws, 1976, as amended:
 - 1. Section 59-19-90 - General powers and duties of school trustees.
 - 2. Sections 59-63-210 through 270 - Grounds for which trustees may expel, suspend or transfer pupils; petition for readmission; notices and parent conferences; expulsion for remainder of year and hearings; transfer of pupils; corporal punishment; regulation or prohibition of clubs or like activities.
 - 3. Section 59-67-240 - Other duties of bus driver; discipline of students for misconduct.
- B. State Board of Education Regulations:
 - 1. R43-279 - Minimum standards of student conduct and disciplinary enforcement procedures to be implemented by local school districts.

*Administrative Rule***EXPULSION OF STUDENTS**

Code JKE-R Issued 12/09

Investigation and action taken by the principal

If a school principal or his/her designee or a district administrator investigates a report of student misbehavior and decides to recommend expulsion, the administrator should suspend the student and notify the student's parent/legal guardian of his/her right to meet with the administrator within three school days of the date of the suspension. If after meeting with the parent/legal guardian (or if the parent/legal guardian has not come in for a meeting by the third school day), the school principal or his/her designee still intends to recommend expulsion, the matter will be referred directly to a district hearing officer. This procedure will be followed in all cases, regardless of the offense charged.

Notice of expulsion recommendation

By the end of the third school day following receipt of an expulsion recommendation, the hearing officer or other persons designated by the superintendent (hereinafter "hearing officer") shall notify the student and parent/legal guardian in writing of:

- the rule(s) infraction alleged to have occurred;
- the right of the student to review his/her records, including the investigative documents and any other evidence the administration intends to present at the expulsion hearing;
- the right of the student to a hearing on the evidence;
- the time and place of the hearing, which must be held within fifteen (15) days of the date of written notification of the expulsion recommendation (unless the parent/legal guardian or his/her representative agree otherwise); and
- the procedure to be followed at the hearing, including the right to be represented by counsel.

Hearing procedure

The school principal or his/her designee, the district administrator, the student, the parent/legal guardian and/or the student's representative may be present at the hearing. If the hearing officer and the parent/legal guardian agree, the student may be dismissed during portions of the hearing. The administrator and the student, or their representatives, will be allowed to present witnesses or witnesses' statements and, within the discretion of the hearing officer, cross-examine the other party's witnesses. The hearing officer may ask the witnesses questions. The parent/legal guardian and/or the student's representative will be given an opportunity to argue their position or express their views on the case. A recording of the testimony or written minutes of the hearing will be kept on file by the hearing officer for at least one (1) calendar year.

Action following the hearing

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Within ten (10) days of the hearing, the hearing officer will decide whether the student committed the alleged rule(s) violation or misconduct, based upon the evidence presented at the hearing, and the appropriate punishment. If the hearing officer determines that grounds for expulsion exist, he/she may **expel for the remainder of the current school year, permanently expel, or give punishment other than expulsion, including but not limited to, suspension or probation.**

Probation means special restrictions have been placed on the student's right to attend school. Violations of these restrictions will result in immediate suspension and a recommendation for expulsion.

The hearing officer will report his/her decision in writing to the parent/legal guardian, the superintendent and the school. If the hearing officer determines that grounds for expulsion do not exist, all absences resulting from the suspension may be excused, if appropriate, and the student's record will reflect the decision of the hearing officer. The student will be allowed to make up all missed work, as appropriate.

Expulsion Appeals

Only the hearing officer's decision to expel the student from all district schools may be appealed by the student to the board of trustees, if provided written notice of appeal is made to the superintendent within ten (10) days of written notification of the hearing officer's decision. An appeal will normally be limited to the established record, and no new testimony will be allowed, unless the board desires to hear additional testimony. The board may uphold, reverse or alter the expulsion decision of the hearing officer. If the recommendation for expulsion is reversed on appeal, all absences resulting from the suspension will be excused and the student's record cleared. The student will be allowed to make up all missed work.

If written notification of appeal is received within 15 days of the next scheduled board meeting, the board shall conduct the expulsion appeal at that meeting. If written notification of appeal is received less than 15 days prior to the next regularly scheduled board meeting, the board may hear the appeal at a special called board meeting to be held no later than 15 days after the regularly scheduled board meeting. The expulsion appeal will be held at a time and place designated by the board and the board will render a decision within seven (7) days of the hearing.

Petitions for readmission

All students who have been expelled must make a written request to the superintendent or the superintendent's designee for readmission. The request must specify the reasons why the student should be allowed to return.

If the superintendent or the superintendent's designee, denies the student's request, or in all cases of permanent expulsion, the student may make a written request to the Board of Trustees of Anderson School District Five for readmission and may include a request to appear before the board. If the request is denied by the board, the student may submit another request prior to the following school year.

Expungement of Expulsion Records

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The District is aware that the expulsion of a student is an event that potentially has life-long consequences. Thus, although expulsion from the regular school setting is often necessary in order to address a student's misconduct and ensure a safe learning environment for other students, the District does not desire to permanently impair a student's future educational and employment options. Accordingly, in an effort to assist students who, after being expelled, have successfully attended the Anderson County Alternative Program or a pre-approved program as determined by the administration, and made a sincere effort to ensure that their conduct upon return to the regular educational setting is above reproach, the District will consider expunging an expulsion from a student's permanent record in the following circumstances.

Expungement requests must be made in writing to the school principal where the expulsion occurred and must include the student's full name, school of expulsion and school year of expulsion. For non-seniors, expungement requests must be made within one calendar year of the expulsion. For seniors, expungement requests must be made within one year after graduation.

Expungement requests for expulsions that occurred before November 2009 must be made by the end of the student's senior year.

Those who may qualify for an expulsion expungement are as follows:

1. A student who has committed any offense or offenses justifying expulsion but whose academic record and discipline history are otherwise acceptable as determined by the Superintendent and Board, may petition to have the expulsion expunged from his/her record.
2. A student who has been charged with a criminal offense that occurred off school grounds and/or after school hours justifying expulsion, but whose academic record and discipline history are otherwise acceptable as determined by the Superintendent or his/her designee, may petition to have the expulsion expunged from his/her record.

In order for an expulsion to be expunged from a student's permanent record, the following criteria must be met.

1. Only an expulsion that results from an incident occurring while the student is enrolled in the District may be expunged pursuant to these guidelines, if determined to be appropriate.
2. A student may request expungement for one expulsion only. In no circumstances will more than one expulsion be expunged from a student's record.
3. A student must successfully attend the Alternative Program or pre-approved program as determined by the administration, and complete all programmatic requirements in order to request an expungement.
4. Students expelled prior to the twelfth grade - The student must have a satisfactory discipline and academic record, as determined by his/her current Principal and the Superintendent or his/her designee, for at least one semester after returning to the regular education setting before requesting an

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expungement. If a student moves out of the district prior to the completion of a semester, he/she may request an expungement at the time of withdrawal.

A student who requests an expungement and who has two (2) or more Level II offenses and/or an accumulation of at least three (3) Level I offenses during the first semester after his/her return from a period of expulsion will not be eligible for expungement. Other offenses or circumstances will be considered on an individual basis.

5. Students expelled during the twelfth grade – The student may request an expungement within one year after graduation.

6. Upon receipt of request for an expungement, the student's most recent Principal and the Superintendent or his/her designee will review the student's discipline and academic records from before the expulsion, during the period of expulsion, and the semester following the expulsion (or before the expulsion and during the period of expulsion in the case of a student who has graduated or moved from the District prior to the completion of a semester). Once the records have been reviewed, the Superintendent will recommend that the Board of Trustees either expunge the student's record or leave the expulsion on the record.

7. At a subsequent meeting, the Board will review all relevant documentation, which will include the student's academic and discipline records, the Superintendent's written recommendation, and any information presented in writing by the student or his/her parent/guardian when requesting the expungement. The Board's review will be limited to this written information and personal appearances before the Board will not be granted. After the Board makes a decision on the request for expungement, the student will be notified in a timely manner.

8. The Board's decision not to expunge a student's record is final and may not be appealed.

Issued 8/20/91; Revised 7/15/97, 7/20/04, 3/15/05, 12/15/09

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IN RE:

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T.L. HANNA HIGH SCHOOL

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VS.

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TARIQUS GEER

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EXPULSION HEARING

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November 13, 2013

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EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29202
803-212-0012

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1 APPEARANCES

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3 Mr. Mike Ruthsatz, Hearing Officer

4 Donald L. Smith, Esquire

5 Ms. Lisa Geer

6 Mr. Tariqus Geer

7 Mr. Chris Bowen

8 Mr. Mark Gregory

9 Mr. Jamie Hill

10 Ms. Mary Nell Anthony

11 Ms. Sheila Hilton

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1 ten days as required by state law and board
2 policy. Are there any questions on these
3 procedures?

4 Okay. Before we begin, I'd like to
5 confirm the fact that the parents and student
6 or their counsel have been properly notified
7 in advance of the scheduling of this hearing
8 and the recommendation for expulsion.

9 MR. SMITH: We have been.

10 HEARING OFFICER: Okay. Thank you.

11 No further questions? We'll start with
12 Ms. Hilton.

13 MS. HILTON: Tarique Geer's grades for
14 the first grading period of 2013 were five Fs
15 and two Ds, and as a condition of his behavior
16 contract, Tarique was required to seek
17 assistance from his teachers for any bad
18 grades, Ms. Sosa, Mr. Francis, Mr. Bartal, Ms.
19 Hudson, and Mr. Beckham all report that he did
20 not seek assistance from them, nor did he take
21 advantage of any offers of assistance when
22 they were offered.

23 He also had never attended after school
24 Power Hour tutoring for any of his classes,
25 even though he failed five classes during the

1 first nine weeks. There were no issues with
2 his attendance.

3 Tariqus and his mother, Lisa Geer, met
4 with me on July 17, 2013, to request that he
5 be able to return to T. L. Hanna after being
6 expelled the previous year, mainly for drug
7 possession and use.

8 In this conference, I explained that he
9 would only be allowed to return under
10 contract, meaning that he and his parent would
11 sign the document stating clearly that he
12 would be required to follow all school rules.

13 If he chose not to follow these rules,
14 and thus be in violation of this agreement, he
15 would be immediately suspended for ten days
16 and would be recommended for expulsion from T.
17 L. Hanna High School.

18 They indicated their understanding and
19 agreement to follow this document by their
20 signatures. See signed contract in the
21 expulsion packet.

22 Mr. Smith, I'm going to do this one
23 differently, so we can be more specific about
24 what has taken place, and why we feel this is
25 gang activity.

1 Beginning on October 7, 2013, we had two
2 students who had an altercation, a heated
3 exchange in a main gym locker room. One of
4 the students approached Coach Derek Hamby and
5 told him that there was a student in the
6 locker room waiting on him to enter the locker
7 room to fight.

8 Coach Hamby walked down to the locker
9 room and talked with both of these boys. One
10 of the students stated that the other student
11 had said, fuck Outlaw, and excuse me for
12 saying exactly what that said.

13 This would have been an insult to his
14 set, and gang members are required to defend
15 their set whenever it is insulted. So Coach
16 Hamby knew that this was a gang altercation at
17 the time.

18 Coach Hamby reported this incident to
19 Mary Nell Anthony, ninth grade academy
20 director, and she conferenced with this
21 student who had said his set had been
22 disrespected, telling him that gang activity
23 would not be allowed at T. L. Hanna.

24 He neither confirmed nor denied his
25 membership in a gang at that time. Coach

1 Hamby then observed Angelique Petrowski's math
2 class. At that time, Coach Hamby notified
3 academy director, Mary Nell Anthony, that he
4 had seen something written on the football
5 shorts of a C team football player. The word
6 written was Outlaw, which is the name of an
7 offshoot gang of a larger gang in the Anderson
8 community.

9 On October 22, 2013, a student was
10 questioned in my office with Ms. Anthony
11 present and Officer Jamie Hill present and
12 myself. I told this student that I didn't
13 have gang members on T. L. Hanna sports teams,
14 nor did I allow gang members to attend T. L.
15 Hanna High School.

16 He said that he was made to write the
17 word outlaw on his shorts as one of the
18 missions, or tasks, that he was given to do by
19 other gang members. Officer Hill asked him
20 what his last mission was prior to writing the
21 word outlaw on his shorts.

22 He replied that he was required to fight
23 someone over the weekend, which would have
24 been an assault and battery, according to
25 Officer Hill.

1 This would constitute gang activity, in
2 that gang members are required to participate
3 in criminal, illegal activities as part of
4 their membership in the gang. I asked this
5 student who else was in the gang at Hanna. He
6 shook his head negatively to indicate that he
7 could not tell.

8 I told him that his presence at T. L.
9 Hanna and his doing these missions put others
10 in the school in danger, and I could not allow
11 this to occur, so I would be recommending his
12 expulsion.

13 At that point, he became upset at the
14 thought of being expelled and began to cry and
15 beg and swear on his grandfather's grave that
16 he would not do any other missions at school.
17 When he refused to tell me who had given him
18 this mission to do, he said if he told, his
19 head would be bashed in as a result of his
20 snitching.

21 I pointed out to him that his refusal to
22 do a mission would probably result in the same
23 punishment, and that I could not risk his
24 presence on the T. L. Hanna campus with his
25 being compelled to do these missions or risk

1 bodily harm to himself.

2 I told him that he was not helping us
3 out, at all, with information that could keep
4 the school safe. At that point, he said that
5 he would tell us the names. He also said the
6 Outlaw Gang was affiliated with Hit Squad,
7 which was another gang. I handed Officer Hill
8 a sheet of paper, and he wrote down the
9 following names of the members of the Outlaw
10 Gang, who were students at T. L. Hanna, the
11 same students who were giving him missions to
12 do at school as part of the requirements of
13 his membership and his being able to move up
14 in the gang.

15 Tariqus was one of the names that he
16 gave. Since two of the boys have the same
17 last names as his, I asked if there was a
18 family relationship, and he said they were
19 cousins. I then asked if family members would
20 exert bodily harm on other family members in a
21 gang, and he nodded affirmatively.

22 He said there were other gang members in
23 this gang, but no others that were at T. L.
24 Hanna. He indicated that there were some who
25 were older or who were already expelled from

1 school.

2 At the beginning of the school year,
3 Officer Jamie Hill noticed five boys standing
4 on the stage area of the mall in the a.m.,
5 prior to school beginning, all wearing white
6 t-shirts. This is one of the signs of gang
7 activity, both the white t-shirts and a group
8 all standing together wearing them.

9 The boys in the group wearing them
10 were -- and I have a list of who they were.
11 This turned out to be some of the members of
12 the Outlaw Gang who attend T. L. Hanna. The
13 gangs wearing specific colors is common.
14 These colors change constantly, and cannot be
15 used as proof of gang activity, so no
16 disciplinary action was taken against the
17 students.

18 Officer Hill spoke with the boys to let
19 them know that he noticed them wearing the
20 same color, and it was not seen again. In
21 speaking with each of the boys during the
22 investigation, all of them maintained that
23 they were not in a gang, except for this one
24 student. They denied any involvement in the
25 gang.

1 Other students at school, appeared to
2 accept that the Outlaws were a gang because of
3 their identification of themselves on social
4 media sites, such as Twitter, using both
5 pictures, gang names, gang signs, and often
6 having the word outlaw associated with their
7 names.

8 This student we were interviewing told us
9 that he wanted to get out of the gang. We
10 asked if his mother knew he was in a gang, and
11 he said at first he was unsure, that he and
12 his friends had said the word outlaw out loud
13 at his house and that she might know.

14 This story wavered back and forth about
15 whether or not she knew. He, again, said that
16 he was in the gang, but wanted badly to get
17 out. I asked Officer Hill, at that point, if
18 there were any supports in the Anderson
19 community for helping someone get out of a
20 gang.

21 We discussed this for a few minutes, but
22 he was not aware of any organization that did
23 such work as there are no larger cities.

24 Officer Hill told the student to go home that
25 night and tell his mother about the gang

1 activity, and the student said that he would.

2 As our investigation was continuing, we
3 allowed the student to leave and go back to
4 class at that point. We understood that he
5 was going to be in danger.

6 Because we were now aware that he would
7 be in danger, if someone saw him in the
8 office, we allowed him to take his shorts back
9 that had outlaw written on them, with him,
10 knowing that if he showed up at football
11 practice without them, it would be questioned,
12 and that if he did not fulfill his mission,
13 that he also would be in trouble and perhaps
14 get his bed head bashed in.

15 We escorted him out the back of the
16 office, rather than out my office door, which
17 exits into the highly visible mall area.

18 He came around my desk and hugged my neck
19 and thanked me for trying to help him. Later
20 he was asked to write a statement. He wrote
21 about writing outlaw on his Hanna shorts, but
22 did not write down the names of the other
23 people in the gang or about his telling us
24 about them.

25 As far as Tariqus, when we did a search,

1 there were three indicators to support that he
2 was involved in this gang, in addition to this
3 student telling us that he was. One of the
4 signs that the Sheriff's department and police
5 department have put in place, a checklist, per
6 se, that we can use. One says drawings,
7 writings, spraying graffiti to advertise,
8 prevent, provoke, or challenge on but not
9 limited to walls of buildings, notebooks,
10 books, backpacks.

11 When we did a search on Twitter, we did
12 find some things: A gang sign that was drawn
13 in his math notebook and a picture, I believe,
14 that was on Twitter; also, associating with
15 other gang members; using vocabulary.

16 I'm not sure I'm reading the right ones
17 here. We have a project that's in the packet
18 where he had done a project, I believe, that
19 was for Mr. Francis' math class, and he had to
20 do a diagram of the city.

21 He drew one location on here as Outlaw
22 High, he drew one of the roads as Outlaw
23 Drive, and he drew another road as Hit Squad
24 Avenue, I believe it was, which are all
25 related to gangs.

1 According to the checklist, drawings,
2 writings, sprayings, that fell into that
3 category, and also associating with other
4 known participants with specific gangs. The
5 Section 5 of the Anderson School District Five
6 Code of Conduct talks about clothing,
7 communication, gestures, tagging, or otherwise
8 writing symbols or slogans on things related
9 to gang activity, coercion, solicitation,
10 conspiracy, and it does say that under the
11 Code of Conduct, that gang and gang-related
12 activities are considered level two and level
13 three infractions.

14 Tariqus entered the school year on a
15 contract. He did not abide by his contract
16 with regards to the seeking assistance with
17 failing grades by seeking help or attending
18 tutoring.

19 His contract also states that the student
20 may not have any level one, two, or three
21 disciplinary offenses without being suspended
22 ten days and being recommended for expulsion.

23 Gang and gang-related offenses are
24 considered level two and level three
25 infractions, as indicated above. Because of

1 Tariqus Geer's failure to adhere to the
2 requirements of his behavior contract, failure
3 to adhere to Anderson School District Five's
4 Student Code of Conduct, his positive
5 identification as a gang member using the
6 Anderson County Sheriff's Department and
7 Anderson Police Department's gang
8 identification checklist, and my duty to keep
9 T. L. Hanna High School safe and its 2000
10 students, faculty, and staff, I'm recommending
11 Tariqus for expulsion.

12 MS. ANTHONY: Ms. Hilton, Tariqus is also
13 the Twitter page that has the shout out to all
14 of my Outlaw -- I don't remember the wording,
15 and it's from someone who identified
16 themselves as being with Hit Quad.

17 MS. HILTON: Okay.

18 MS. ANTHONY: So that is a link between
19 Outlaw and Hit Squad, as well.

20 MR. SMITH: Could I see that fine Twitter
21 page that you're talking about?

22 AAH: It was provided to you.

23 MR. SMITH: Right. You're aware that's
24 not his Twitter page, right?

25 MS. ANTHONY: It appeared to be his

1 his allegation.

2 MR. SMITH: They're lying about that.

3 HEARING OFFICER: If this isn't your
4 Twitter page, why are you in every picture?

5 MR. TARIQUS GEER: I'm not in this one.
6 I'm not in this picture.

7 MS. LISA GEER: Okay. A lot of these
8 things that you got in here, these are songs
9 that -- this is music.

10 HEARING OFFICER: Is this him?

11 MR. TARIQUS GEER: Yes. That's me.

12 MS. LISA GEER: Yeah. That's him.

13 HEARING OFFICER: Okay. These are you,
14 this is your hashtag.

15 MR. TARIQUS GEER: No. That's not me.

16 HEARING OFFICER: Well, why do they have
17 your picture?

18 MR. TARIQUS GEER: Because I'm in the
19 picture with him. And that's him and that's
20 him and that's him and that's him and that's
21 him and that's him by himself.

22 HEARING OFFICER: Wait a minute. That's
23 you.

24 MR. TARIQUS GEER: Yeah. That's me
25 but --

1 MS. LISA GEER: He's saying he's in the
2 picture because he's on the --

3 MR. TARIQUS GEER: This guy is my best
4 friend. He's in my house every day.

5 MS. LISA GEER: (Inaudible). What he's
6 saying is, he's just taking pictures with him.

7 And the pictures they take, these
8 pictures, he just post it on the other guy's
9 page. That's what he's saying.

10 MR. TARIQUS GEER: Except that picture
11 because I'm not in that picture with him.

12 MS. ANTHONY: Which --

13 MS. LISA GEER: Okay. That's okay.

14 HEARING OFFICER: This is whose?

15 MR. TARIQUS GEER: Ka'Darrius.

16 MS. ANTHONY: But he had a different
17 page. We found his Twitter page and printed
18 it.

19 HEARING OFFICER: Excuse me. Excuse me.
20 The main picture on here is you.

21 MR. TARIQUS GEER: No.

22 HEARING OFFICER: He's off to the side.

23 MS. LISA GEER: He's saying the main
24 picture.

25 MR. TARIQUS GEER: That's because the

1 MR. TARIQUS GEER: No. But he said that
2 he --

3 MS. LISA GEER: Why wouldn't it have
4 mattered if he was jerked out of class and
5 treated as though all this stuff was already
6 there, at that moment in time?

7 Why does it -- because, you know, after
8 this date, you all went and found this
9 information. I understand that, but it does
10 matter because at that point in time, you
11 know, he didn't -- Tariqus specifically told
12 me the same thing. Tariqus' name popped up
13 because of who he socializes with, so it
14 didn't matter then as much as it matters now.

15 HEARING OFFICER: It always matters.

16 MS. LISA GEER: Yeah. It does.

17 HEARING OFFICER: It always matters who
18 you associate with.

19 MS. LISA GEER: (Inaudible).

20 HEARING OFFICER: Let me tell you what my
21 purpose is here. I want you to understand
22 that.

23 I'm listening to their evidence that they
24 presented. I want you to be able to also
25 present any evidence that you have. And what

1 was said prior to, or what he told you, has
2 nothing to do with this evidence that's on the
3 table, so you need to, if you have questions
4 about this evidence, just as you did about the
5 Twitter page, or anything else, then that's
6 what we need to discuss.

7 I've got to take the evidence before me
8 and make a decision, and so that's why I want
9 you -- what he said she said in regards to
10 that, does not matter. This evidence is all
11 what they compiled maybe after the fact, or
12 maybe after he was told this, but that's what
13 I've got to rule on.

14 So that's what I want us to concentrate
15 on and get to and so I can make a decision.
16 And then that other stuff is things that you
17 maybe need to talk to Ms. Hilton or, you
18 know -- I want to get the evidence --

19 MS. LISA GEER: I understand. But as far
20 as Tariquis' grades, Tariquis' grades are bad
21 this year because Tariquis was on the football
22 team. I asked Tariquis to join the football
23 team, you know, so you could have something
24 positive to do.

25 He got on the football team. Football

1 MR. SMITH: What criminal thing did he
2 do, did Tariqus do?

3 HEARING OFFICER: We're not -- this is
4 not --

5 MS. HILTON: Nobody did anything
6 criminal.

7 HEARING OFFICER: We're not talking
8 criminal.

9 MR. SMITH: Okay.

10 HEARING OFFICER: We're talking school
11 board code --

12 MR. TARIQUS GEER: But they say a gang.

13 HEARING OFFICER: School Board Code of
14 Conduct.

15 MR. TARIQUS GEER: Can I ask a question?
16 All right. Say nobody committed any criminal
17 acts, right? So isn't a gang, three or more
18 people, committing criminal activity?

19 AAH: There's a criminal gang activity,
20 and we're not in criminal court. You've not
21 been charged with a crime. There is a
22 difference in the student code of conduct and
23 criminal law.

24 It's against the school rules to be
25 tardy, and you can be disciplined for that,

1 but that's not a crime, but the school can
2 still take action. It's against the rules to
3 use profanity at school, and that's not
4 against the law, either.

5 In this case, you've not been charged
6 with a crime. The school administration has
7 said you engaged in non-criminal, but gang
8 activity, and there's a difference.

9 You've not been arrested by the police.
10 You've been not been referred to DJJ.

11 MS. LISA GEER: So the record shows that
12 what you're saying is he associates with gang
13 members. Is that what you're saying?

14 MR. SMITH: When the cheerleading team
15 sells cookies, they're soliciting, right, and
16 they're a group. Are they a gang?

17 HEARING OFFICER: Sir, we've already gone
18 down this road before.

19 MR. SMITH: I've not talked about
20 cheerleaders.

21 HEARING OFFICER: Okay. And we're not
22 going to.

23 MR. SMITH: Oh, okay.

24 HEARING OFFICER: So, you know, again,
25 the evidence. If there's nothing else, I'd

1 like to adjourn this meeting.

2 MR. SMITH: Yes, sir.

3 HEARING OFFICER: And in ten days, as I
4 specified, I will have a decision to you in
5 writing.

6 AAH: And before we adjourn can we make
7 it clear, again, Mr. Chamblee is available by
8 phone, if you have any questions for him.

9 MR. SMITH: I'll talk to him another
10 time.

11 AAH: Okay.

12 (The hearing was adjourned.)

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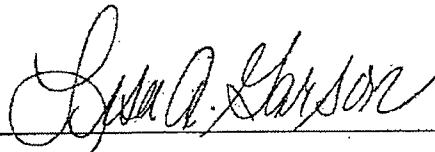
CERTIFICATE OF REPORTER

I, the undersigned, Lisa A. Garson, Court Reporter and Notary Public in and for the State of South Carolina, do hereby certify that the foregoing transcript was prepared by me at my hand;

That I was not present at said proceeding; That the within statements are an accurate transcription of the audio file transcribed, to the best of my ability;

I further certify that I am neither counsel nor solicitor to any of the parties in said suit, nor interested in the event of the cause.

In witness whereof, I have hereunto set my hand and seal this 17th day of December, 2013.



Lisa A. Garson
Court Reporter
Notary Public
State of South Carolina at Large
My Commission expires:
December 19, 2019

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IN RE:

T.L. HANNA HIGH SCHOOL

vs.

SHAMARIAN BROWNLEE

EXPULSION HEARING

November 13, 2013

EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29202
803-212-0012

APPEARANCES

Mr. Mike Ruthsatz, Hearing Officer

Donald L. Smith, Esquire

Ms. Kim Brownlee

Mr. Shamarian Brownlee

Mr. Chris Bowen

Mr. Mark Gregory

Mr. Jamie Hill

Ms. Mary Nell Anthony

Ms. Sheila Hilton

1 hearing by legal counsel.

2 I would like to all those present to
3 identify themselves for the record. Please
4 clearly state your name and your role. All
5 testimony must be taken under oath; therefore,
6 at this time, I would like for each of you to
7 raise your hand and respond after me.

8 Actually, I need you each -- I'm sorry.
9 I need you each to identify yourselves and
10 your role first.

11 MS. KIM BROWNLEE: Kim Brownlee.

12 MR. SHAMARIAN BROWNLEE: Shamarian
13 Brownlee.

14 MR. BOWEN: Chris Bowen, assistant
15 principal.

16 MR. HILL: Jamie Hill, school resource
17 officer, Hanna High School.

18 MS. ANTHONY: Mary Nell Anthony, academy
19 director.

20 MS. HILTON: Sheila Hilton, principal.

21 MR. GREGORY: Mark Gregory, Anderson
22 County Sheriff's Office.

23 HEARING OFFICER: Thank you. Please
24 raise your hand.

25 Do you solemnly swear or affirm that the

1 testimony you are about to give in this case
2 will be the truth, the whole truth, and
3 nothing but the truth? If so, say I do.

4 GROUP: I do.

5 HEARING OFFICER: Thank you. The order
6 of presentation at this hearing will be as
7 follows: The administration will first
8 present its evidence in support of the
9 recommendation.

10 If the administration presents witnesses,
11 the parents, student, and counsel of the
12 student, will have the opportunity to cross
13 examine those witness. The administration may
14 also seek to introduce documents or witness
15 statements.

16 Any rulings on the admissibility of
17 additional statements will be made by me as
18 the hearing officer. As hearing officer, I
19 will preside over this hearing. I will rule
20 on the evidence and on any objections. I may
21 also ask questions of either party and may
22 choose to limit the evidence and/or testimony
23 as I deem appropriate.

24 Following the presentation of the
25 administrator's case, the administration's

1 case, the family or their counsel will present
2 its evidence.

3 At the conclusion of the evidence, this
4 hearing will be adjourned, and I will
5 deliberate on the matter. I will issue a
6 decision in writing within ten days as
7 required by state law and board policy.

8 Are there any questions on these
9 procedures?

10 Before we begin, I would like to confirm
11 the fact that the parents and the student, or
12 their counsel, have been properly notified in
13 advance of the scheduling of this hearing and
14 the recommendation of expulsion.

15 MR. SMITH: We have.

16 HEARING OFFICER: Ms. Hilton?

17 MS. HILTON: During first semester, first
18 nine weeks of 2003, Shamarian had five Ds in
19 four courses, one A in PE, and one C in
20 Peachstone.

21 His attendance fell within the guidelines
22 of being acceptable, so far. He had two
23 disciplinary infractions, both relating to
24 gang activity.

25 On October 7, 2013, Shamarian and another

1 student had a heated exchange in the main gym
2 locker room. The other student approached
3 Coach Derek Hamby and told him that Shamarian
4 was waiting on him to enter the locker room to
5 fight.

6 Coach Hamby walked down to the locker
7 room and talked to both boys. Shamarian
8 stated that the other student had said, fuck
9 Outlaw. This would have been an insult to his
10 set, and gang members are required to defend
11 their set whenever it's insulted.

12 Coach Hamby reported this incident to
13 Mary Nell Anthony, ninth grade academy
14 director and she conferenced with Shamarian,
15 telling him that gang activity would not be
16 allowed at T. L. Hanna.

17 He neither confirmed nor denied his
18 membership in a gang, at that time. After
19 observing Angelique Petrowski's math class,
20 Coach Derek Hamby notified academy director
21 Mary Nell Anthony that he had seen something
22 written on the football shorts of C team
23 football player, Shamarian Brownlee.

24 The word written was Outlaw, which is the
25 name of an offshoot gang of a larger gang in

1 the Anderson community. On October 22, 2013,
2 Shamarian was questioned in my office with
3 Mary Nell Anthony, Officer Jamie Hill, and
4 myself, present.

5 I told him that I did not have gang
6 members on T. L. Hanna sports teams, nor did I
7 allow gang members to attend T. L. Hanna. He
8 said that he was made to write the word Outlaw
9 on his shorts as one of the missions, or
10 tasks, he was given to do by other gang
11 members.

12 Officer Hill asked him what his last
13 mission was prior to writing word Outlaw on
14 his shorts. He replied that he was required
15 to fight someone over the past weekend, which
16 would have been an assault and battery,
17 according to Officer Hill.

18 This would constitute gang activity, in
19 that gang members are required to participate
20 in criminal, illegal activities as part of
21 their membership in the gang. I asked
22 Shamarian who else was in the gang at Hanna.

23 He shook his head negatively to indicate
24 that he could not tell. I told him that his
25 presence at T. L. Hanna and his doing these

1 missions put others in -- put others in the
2 school in danger. I could not allow this to
3 occur, so I would be recommending his
4 expulsion.

5 At that point, he became upset at the
6 thought of being expelled and began to cry and
7 beg and swear on his grandfather's grave that
8 he would not do any other missions at school.
9 When he refused to tell me who had given him
10 this mission to do, he said that if he told
11 his head would be bashed in as a result of his
12 snitching.

13 I pointed out to him that his refusal to
14 do a mission would probably result in the same
15 punishment, and I could not risk his presence
16 on the T. L. Hanna campus with his being
17 compelled to do these missions or risk bodily
18 harm to himself.

19 I told him that he was not helping us out
20 at all with information that would keep the
21 school safe. At that point, he said that he
22 would tell us the names. He also said that
23 the Outlaw Gang was affiliated with Hit Squad,
24 which was another gang. I handed Officer Hill
25 a sheet of paper, and he wrote down the

1 following names of the members of the Outlaw
2 Gang, who were students at T. L. Hanna, the
3 same students who were giving him missions to
4 do at school as part of the requirements of
5 his membership and his being able to move up
6 in the gang. And Officer Hill wrote down
7 those names.

8 Since two of the boys have the same last
9 name as his, I asked if there was a family
10 relationship. He said they were cousins. I
11 then asked if family members would exert
12 bodily harm on other family members in the
13 gang, and he nodded affirmatively.

14 He said there were other gang members in
15 this gang, but no others were at T. L. Hanna.
16 At the beginning of the school year, Officer
17 Jamie Hill noticed five boys standing on the
18 stage area of the mall, in the morning, prior
19 to school beginning, all wearing white
20 t-shirts.

21 This is one of the signs of gang
22 activity -- both the white shirts and the
23 group all standing together wearing them. The
24 boys in the group wearing them were a group --
25 and I have their names listed in the document.

1 This turns out to be members of the
2 Outlaw Gang, who attend T. L. Hanna. Though
3 gangs wearing specific colors in common, these
4 colors change constantly and cannot be used as
5 proof of gang activity, so no disciplinary
6 action was taken against the students. Many
7 of these members wearing the white t-shirts
8 were the names that Shamarian gave us on that
9 day.

10 Officer Hill spoke with the boys, at that
11 time, to let them know he noticed they were
12 wearing the same color, and it was not seen
13 again. In speaking with each of the boys
14 during the investigation, all but Shamarian
15 maintained that their group was not a gang,
16 but a rap group. They denied any involvement
17 in a gang.

18 Other students at school appeared to
19 accept that the Outlaws were a gang because of
20 their identification of themselves on social
21 media sites, such as Twitter, using both
22 pictures, gang names, gang signs, and often,
23 having the word Outlaw associated with their
24 names.

25 Shamarian told us that he wanted to be

1 out of the gang. We asked if his mother knew.
2 He said, at first, he was unsure that he and
3 his friends had said the word Outlaw out loud
4 at his home, and that she might know.

5 The story wavered back and forth. He
6 again said that he was in the gang, but wanted
7 badly to get out. I asked Officer Hill if
8 there were any supports in the Anderson
9 community for helping someone get out of a
10 gang.

11 We discussed this for a few minutes, but
12 he was not aware of any organizations that did
13 such work, as there are in larger cities.
14 Officer Hill told Shamarian to go home that
15 night and tell his mother about the gang
16 activity, and Shamarian said he would.

17 As our investigation was continuing, we
18 allowed Shamarian to leave and go back to
19 class. Because we were now aware that he
20 might be in danger if someone saw him in the
21 office, we allowed him to take the football
22 shorts back with him that had Outlaw written
23 on them because he was going to have to go
24 football practice where the other gang members
25 probably were, and we did not want them to see

1 him without the shorts.

2 We also had him escorted out the back
3 door of the office, rather than out my office
4 door, which exits into the highly visible mall
5 area. He came around my desk and hugged my
6 neck before he left. Shamarian was later
7 asked to write a statement.

8 He wrote about writing Outlaw on his
9 Hanna football shorts, but he did not write
10 down about his telling us the other members of
11 the gang. From the Anderson County Sheriff's
12 Department and Anderson City Police
13 Department's Notice of Gang Related Activity
14 Forum, Shamarian has the following attributes
15 of a gang member: He admits to being a member
16 of a gang; he admitted to being a member of
17 the Outlaw gang; writing the word Outlaw on
18 his shorts as one of his missions; fighting
19 another person over a weekend is one of his
20 missions; having to be punished for refusing
21 to complete missions; being afraid of his head
22 being bashed in for not doing them; and being
23 required to retaliate against anyone who
24 disrespects the set; wearing specific articles
25 of clothing, jewelry, or other items of a

1 specific color; the shorts with the word
2 Outlaw written on them; intently staring down
3 at staff or students to intimidate, harass, or
4 provoke a fight; the incident in the gym
5 locker room with another student was
6 retaliation for his set being disrespected; he
7 alleged that the other student said, fuck
8 Outlaw; number four, drawings, writings
9 spraying graffiti to advertise, prevent,
10 provoke, or challenge on, but not limited to,
11 walls of buildings, notebooks, books,
12 backpacks, et cetera; the shorts with the word
13 Outlaw written on them; fighting, menacing,
14 bullying; the altercation in the gym locker
15 room falls into this category; waiting on the
16 student to arrive with plans to confront the
17 student for disrespecting his set.

18 Section five of the Anderson School
19 District Five Code of Conduct distributed to
20 students in 2013, states the following with
21 regards to gang activity, and I won't read
22 through all that because it is listed in
23 there, but it does prohibit gang-related
24 activity, and there are seven different items.

25 Several of these that I just listed as

1 Shamarian's actions do fall under that.
2 Unless otherwise specified, gang and gang
3 related activities are considered level two
4 and level three infractions in the code of
5 conduct.

6 Because of this policy, his positive
7 identification as a gang member using the
8 Anderson County Sheriff's Department and the
9 Anderson Police Department's Gang
10 Identification Checklist, and my duty to keep
11 T. L. Hanna High School and its 2000 students,
12 faculty and staff safe, I am recommending
13 Shamarian for expulsion.

14 MR. SMITH: Ma'am, when did you write
15 that?

16 MS. HILTON: I don't remember.

17 MR. SMITH: Did you record the
18 interaction with Shamarian so we could hear
19 him say all these things?

20 MS. HILTON: No.

21 MR. SMITH: I think we have gone over
22 this here. There is no evidence of criminal
23 activity; is that right?

24 MS. HILTON: No.

25 MR. SMITH: Can you tell me, Officer

1 MR. SMITH: Yeah.

2 MS. HILTON: Can you ask him why he gave
3 me a hug?

4 MR. SMITH: Why did you give her a hug?

5 MR. SHAMARIAN BROWNLEE: Because she let
6 me go home knowing that it was a rap group.
7 Like, I basically, like, kept on telling her
8 it was a rap group, but then, like, they kept
9 on saying, like, that's just a cover-up.

10 MS. ANTHONY: He never said that.
11 Shamarian --

12 MR. SHAMARIAN BROWNLEE: So you never
13 said that?

14 MS. ANTHONY: No. I never said that.

15 MR. SHAMARIAN BROWNLEE: No. I'm not
16 talking about -- you didn't say it, she said
17 it.

18 MS. HILTON: Shamarian.

19 MS. ANTHONY: Shamarian sat in the office
20 and cried, and you told us that you wanted
21 out --

22 MR. SHAMARIAN BROWNLEE: I cried because
23 you all were pressuring me and I was mad.

24 MS. ANTHONY: -- and that you were afraid
25 of getting your head bashed in. You weren't

1 MR. HILL: The last thing I said to you,
2 Shamarian, when I went and got you to bring
3 you to your mom, I looked at you, and I told
4 you, look at me. And I said you got your mom
5 up here defending you and coming on your
6 behalf, and you haven't told her the truth.

7 You, me, Ms. Anthony, and Ms. Hilton were
8 in that office together. And you know what --
9 we know what was said in that office, and you
10 know that, and I told you, you needed to be
11 honest with your mother because that's the
12 woman looking out for you.

13 MS. KIM BROWNLEE: He has been honest
14 with me.

15 MR. HILL: So we all know what was said,
16 and you've got to live with that.

17 MR. SHAMARIAN BROWNLEE: (Inaudible).

18 MR. HILL: Okay.

19 HEARING OFFICER: Shamarian, are you in a
20 gang?

21 MR. SHAMARIAN BROWNLEE: No, sir.

22 HEARING OFFICER: Is there anything else
23 that you'd like to say?

24 Okay. Then I'll adjourn this meeting,
25 and in ten days I will have something to you.

1 Okay. Thank you.
2 (The hearing was adjourned.)
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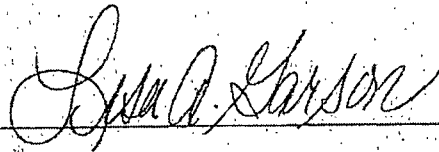
CERTIFICATE OF REPORTER

I, the undersigned, Lisa A. Garson, Court Reporter and Notary Public in and for the State of South Carolina, do hereby certify that the foregoing transcript was prepared by me at my hand;

That I was not present at said proceeding; That the within statements are an accurate transcription of the audio file transcribed, to the best of my ability;

I further certify that I am neither counsel nor solicitor to any of the parties in said suit, nor interested in the event of the cause.

In witness whereof, I have hereunto set my hand and seal this 17th day of December, 2013.



Lisa A. Garson
Court Reporter
Notary Public
State of South Carolina at Large
My Commission expires:
December 19, 2019

IN RE:

T.L. HANNA HIGH SCHOOL

vs.

Ka'DARRIUS BROWNLEE

- - -
EXPULSION HEARING

- - - -
November 13, 2013

EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29202
803-212-0012

1 APPEARANCES

2
3 Mr. Mike Ruthsatz, Hearing Officer

4 Donald L. Smith, Esquire

5 Ms. Lakeisha Brownlee

6 Mr. Ka'Darrius Brownlee

7 Mr. Chris Bowen

8 Mr. Mark Gregory

9 Mr. Jamie Hill

10 Ms. Mary Nell Anthony

11 Ms. Sheila Hilton

1 its evidence.

2 At the conclusion of the evidence, this
3 hearing will be adjourned, and I will be
4 deliberate on the matter. I will issue a
5 decision in writing within ten days, as
6 required by state law and board policy.

7 Any questions on the procedures?

8 MR. SMITH: Not from the claimant.

9 HEARING OFFICER: Okay. Before we begin,
10 I would like to confirm the fact that the
11 parents and the student, or their counsel,
12 have been properly notified in advance of the
13 scheduling of this hearing and the
14 recommendation for expulsion.

15 MR. SMITH: We have.

16 HEARING OFFICER: Thank you. Okay.

17 Ms. Hilton?

18 MS. HILTON: All right. I'd like to go
19 over some preliminary information which we
20 normally do at the expulsion hearing.

21 First, Ka'Darrius' grades for the first
22 grading period of 2013 were four Fs and one D
23 and one A, which was in PE. As a condition of
24 his behavioral contract, Ka'Darrius was
25 required to seek additional academic

1 assistance from his teachers when he was
2 having academic difficulties.

3 Ms. Hungerford, Ms. Sanders, Mr. Graham,
4 Mr. Hull, and Ms. O'Brien state that he never
5 asked for additional assistance, nor took
6 advantage when they offered it.

7 He also never attended Power Hour, after
8 school tutoring, for any of his classes in
9 which he was doing poorly. There were no
10 issues with his attendance. Ka'Darrius
11 Brownlee and his mother, Lakeisha Brownlee met
12 with me on July 9, 2013 to request that he be
13 able to return to T. L. Hanna after being
14 expelled the previous year, mainly for
15 disrupting classes and refusing to obey school
16 personnel on multiple occasions.

17 In this conference, I explained that he
18 would only be allowed to return under
19 contract, meaning, that he and his parent
20 would sign a document stating clearly that he
21 would be required to follow all school rules.
22 If he chose not to follow these school rules,
23 and thus, be in violation of this agreement,
24 he would be immediately suspended for ten days
25 and would be recommended for expulsion from T.

1 L. Hanna High School.

2 They indicated their understanding and
3 agreement to following this document by their
4 signatures, and there should be included in
5 the expulsion packet, a signed contract.

6 In addition to the gang activity that
7 we're going to go over, I also received an
8 e-mail from Jenny O'Brien at the Anderson Five
9 Career Campus, who had written a referral that
10 she had not sent to the office for Ka'Darrius
11 for bullying.

12 She stated in that e-mail that Ka'Darrius
13 had yelled at another student on several
14 occasions in culinary arts. He repeatedly
15 said I hate you, man, to another student.
16 Several student came to her and said that he
17 had threatened the other students many times,
18 and when she was working with another group,
19 however, student would not tell on him because
20 he was scared him.

21 She said she asked Ka'Darrius to be nice
22 several times. This was a Mexican student who
23 was very quiet, but she said he had a passion
24 for culinary arts and worked hard. She did
25 not turn in that --

1 MR. SMITH: This is the first time I've
2 done this, sir, and the idea of hearsay,
3 that's not around here; is that right? That's
4 not applicable here.

5 HEARING OFFICER: Yes. It is.
6 And the fact that there's a statement
7 written by the teacher of that class -- is
8 that what you're telling me?

9 MS. HILTON: Yes.

10 HEARING OFFICER: So there was a
11 statement, and what was the date of that
12 statement?

13 MS. HILTON: The teacher wrote me this on
14 November 12th as a pending referral she had,
15 but she did not send it in because he had been
16 suspended.

17 MR. SMITH: I clearly don't have a copy
18 of that statement.

19 ALLISON: We can make a copy. Ms. Hilton
20 just brought this to the hearing just now. It
21 just came to her attention yesterday, so we
22 can make a copy and provide it to you.

23 MR. SMITH: Yes, ma'am.

24 MS. HILTON: Okay. So that was an
25 additional thing that also would have been a

1 violation of his contract.

2 At the beginning of the school year,
3 Ka'Darrius Brownlee was seen with several
4 other students wearing white t-shirts and
5 standing together.

6 This is one of the signs of gang activity
7 that we are trained to notice. Both the
8 wearing of a particular color and a group of
9 people wearing a particular color who are all
10 standing together. This turned out to be
11 members of the Outlaw Gang who attend T. L.
12 Hanna.

13 Though gangs wearing specific colors is
14 common, these colors change constantly and
15 cannot be used as proof of gang activity, so
16 no disciplinary action was taken against the
17 students. Officer Hill spoke with the boys to
18 let them know that he noticed they were
19 wearing the same color, and it was not seen
20 again.

21 In mid-October, we handled a situation
22 reported by Coach Derrick Camby and then
23 reported to Academy Director, Mary Nell
24 Anthony, in which the word Outlaw was written
25 on an item. This is the name of an offshoot

1 gang of a larger gang in the Anderson
2 community -- Hit Squad.

3 We questioned students in the office with
4 Ms. Anthony Officer Hill, and myself. We told
5 all students questioned that we would not
6 tolerate gang activity at T. L. Hanna.

7 Through this investigation, we found that
8 there is a gang at T. L. Hanna called Outlaw.
9 There are four members that go to T. L. Hanna
10 and other members that do not go here. The
11 gang is a smaller set of a larger group called
12 Hit Squad.

13 As is typical of a gang, members are
14 given missions to do as a requirement of
15 membership in the gang, or as a means of
16 advancing in the hierarchy of the gang. Some
17 of the missions are criminal in nature and
18 these missions are given to members to
19 complete, both inside and outside of school.

20 It appears to be common knowledge among
21 the student body, who is in the gang, mainly
22 through social media, because the gang has
23 identified themselves on Twitter through
24 pictures and comments they have made. As we
25 interviewed people, we've explained that gang

1 members do missions that placed everyone in
2 the building in danger.

3 As we talked with each person identified
4 as a gang member, we searched telephones, if
5 the phones were not locked, book bags and
6 other classroom materials. On Twitter,
7 Ka'Darrius had a picture of himself with the
8 title, I'm an Outlaw -- see picture in
9 expulsion packet.

10 He was identified by others as being a
11 member of Outlaw through their use of Twitter
12 and other social media. Ka'Darrius was in
13 possession of a gang sign that was found in a
14 spiral notebook -- see drawing in expulsion
15 packet.

16 Jeff Taylor, academic coach, questioned
17 one of our informants who identified the
18 drawing as representing Southside Homeland
19 Park. This informant stated that Outlaw was a
20 relatively new gang, only about two years old,
21 but it was growing quickly and many feared it
22 would be causing a lot of trouble in the
23 future.

24 From the Anderson County Sheriff's
25 Department and Anderson City Police

1 Department's Notice of Gang Related Activity
2 Forum, Ka'Darrius has the following attributes
3 of a gang member: Drawings, writings,
4 spraying graffiti to advertise, prevent,
5 provoke, or challenge on, but not limited to,
6 walls, builds, notebooks, books, backpacks.

7 And of that particular one, a gang sign
8 drawing in his math notebook and a picture on
9 Twitter of Ka'Darrius himself with the
10 caption, I'm an Outlaw.

11 Number two. Associating with other known
12 participants or with a specific gang
13 identified by other students as a member of
14 Outlaw based on his Twitter account and other
15 social media.

16 Number three. Displaying the colors.
17 His wearing of a white t-shirt at the
18 beginning of school, standing with other
19 members, later identified as a member of the
20 Outlaw gang.

21 Number four. Using vocabulary that
22 relates to gang involvement, his Twitter page,
23 using the word Outlaw.

24 Number five. Making certain hand
25 gestures or hand signs to signal gang

1 participation, affiliation, or action. The
2 picture drawn in his notebook is a hand sign
3 with two hands making the sign, gang sign.

4 Because Section Five of the Anderson
5 School District Five Student Code of Conduct
6 distributed to students in 2013 states the
7 following with regards to gang activity: No
8 student shall commit any act that furthers
9 gangs or gang-related activities. A gang is
10 any ongoing organization, association, or
11 group of three or more persons, whether formal
12 or informal, having as one of its primary
13 activities, commission of criminal acts or the
14 purposeful violation of any district policy,
15 and having a common name or common identifying
16 sign, colors, or symbol.

17 Conduct prohibited by this policy
18 includes: Clothing, wearing, possessing,
19 using, distributing, displaying, or selling
20 any clothing, jewelry, emblems, badges,
21 symbols, signs, visible tattoos, and body
22 markings, or other items, or being in
23 possession of literature that shows
24 affiliation with a gang, or is evidence of
25 membership or affiliation in any gang, or that

1 promotes gang affiliation.

2 B; Communication. Communicating either
3 verbally or nonverbally, gestures, hand
4 shakes, slogans, drawings, to convey
5 membership affiliation in any gang or that
6 promotes gang affiliation.

7 Three. Vandalism or destruction of
8 property. Tagging or otherwise defacing
9 school or personal property with gang or gang
10 related symbols or slogans.

11 D. Intimidation or threats requiring
12 payment for protection, money, or insurance,
13 or otherwise intimidating or threatening any
14 person related to gang activity.

15 Coercion. Inciting other students to
16 intimidate or to act with physical violence
17 upon any persons related to gang activities.

18 Solicitation. Soliciting others for gang
19 membership.

20 Conspiracy. Conspiring to commit any
21 violation of this policy or committing or
22 conspiring to commit any other illegal act or
23 other violation of school district policies
24 that relate to gang activity. Unless
25 otherwise specified, gang and gang-related

1 MR. SMITH: Why don't you know the color
2 of the Cripps. The Cripps is a pretty big
3 gang, isn't it?

4 MS. HILTON: Well, I'm not aware we have
5 any Cripps at T. L. Hanna. We've never had
6 any Cripps at Hanna. We've had Cripps,
7 (inaudible), we've had Outlaws. We've had --
8 Cripps and Bloods are much larger gangs that
9 you find in much larger cities.

10 So usually what we have are much smaller
11 gangs, and they can have affiliations, but the
12 gangs that we have come in contact with have
13 been local neighborhood gangs.

14 And so, I have not known us to have any
15 of those larger gangs at T. L. Hanna. I've
16 not known anybody to call themselves Cripps
17 and Bloods at T. L. Hanna since I've been
18 there.

19 MR. SMITH: And you and I both know who
20 Fonzie is, right? I mean, Fonzie wore a white
21 t-shirt. Was he a bad guy?

22 I'm wearing a white t-shirt right now.
23 Am I a gang member?

24 MS. HILTON: That's one of the signs that
25 a gang --

1 HEARING OFFICER: Mr. Smith --

2 MR. SMITH: Yes, sir.

3 HEARING OFFICER: I want to go through
4 the evidence for this case, and I want you to
5 be able to ask questions regarding the
6 evidence.

7 MR. SMITH: Yes, sir.

8 HEARING OFFICER: I don't think that that
9 line of questioning is really pertinent to the
10 case.

11 What we're trying to determine -- what
12 I'm trying to determine is whether or not this
13 occurred, which, if the evidence is there that
14 it did occur, I'd like to hear it from your
15 clients and, of course, if you would like to
16 ask questions regarding the evidence, that is
17 quite -- you're welcome to do that.

18 This is not a place for that line of
19 questioning. So, you know, just keep it to
20 the evidence, if you don't mind. If you want
21 to question, you know, I'll listen to it, and
22 if I don't think it's pertinent to the
23 situation, we'll move on.

24 MR. SMITH: Yes, sir. Have you ever
25 listened to rap music?

1 just like to see something that supports them.
2 I mean, that's all I'm asking.

3 HEARING OFFICER: Well, let me ask you if
4 you have this?

5 MR. SMITH: Yes, sir. I believe in sign
6 language that means I love you.

7 HEARING OFFICER: No. What's this?

8 MR. SMITH: It looks like a backwards C.

9 HEARING OFFICER: Okay. Can you attest
10 that this is the sign of the Outlaws?

11 MR. GREGORY: I cannot. All I can --

12 HEARING OFFICER: Okay. What we have is
13 evidence that shows that that is the sign of
14 the Outlaws, that has been given to us from
15 someone else, and you were going to continue
16 but --

17 MR. GREGORY: I can't specifically tell
18 you what that hand sign is.

19 HEARING OFFICER: Okay.

20 MR. GREGORY: Every gang or hybrid gang
21 in different communities have -- it's left up
22 to the imagination to how they want to
23 identify with a group.

24 In this instance, what I can tell you is
25 that, one, it's not normal, and two, it's

1 rest of them two people, all they had was
2 white t-shirts on. They don't communicate, so
3 how would they know that he's the only white
4 t-shirt. I don't communicate with nobody,
5 so -- and the mission. I don't get about
6 mission.

7 A mission is when you going with a girl.
8 That's a mission. If you're going somewhere,
9 that's a mission. I don't know what you all
10 talking about that mission was, saying that.
11 I ain't ever gave nobody a mission, so. And
12 then, these are all CDs, if you really want to
13 know. These are our CDs.

14 HEARING OFFICER: We can include that in
15 evidence.

16 MR. SMITH: The idea that this is just a
17 cover, I mean, these are -- I listen to rap
18 music, so I believe this is quality. Okay?
19 With the stuff that I listened to, it's clear
20 that these boys have really put effort into
21 creating these CDs. It's not like, oh, we've
22 been called a gang, we better whip up a couple
23 CDs.

24 I mean, this is what they do. This is
25 what they dream of. They're not like the rest

1 acts, they have professional rap videos.

2 And so, I know you're saying what does
3 that have to do with it, but when you're
4 saying he's not in a gang because he's in a
5 legitimate rap group, they have legitimate rap
6 songs, Boulevard is a gang that has
7 professional rap videos. You can Google
8 YouTube and get them. They're very well done,
9 but that doesn't make them less of a gang.

10 MR. SMITH: So you're putting him,
11 Ka'Darrius, into that group because he's a --
12 but he's not doing anything.

13 I understand the points that you've made.
14 Okay? I mean, so what you're saying is don't
15 associate with other people that like rap
16 music.

17 MS. ANTHONY: No. What we're saying is
18 Outlaw has all the characteristics and signs
19 of a gang and Ka'Darrius is a known member of
20 Outlaw.

21 MR. SMITH: Okay.

22 MS. ANTHONY: That's what we're saying.

23 HEARING OFFICER: I think we need to
24 bring it back in and talk about the evidence
25 and any other questions that you have

1 regarding the evidence, and then, you know,
2 try to come to a finalization of this hearing.

3 So what else -- did you have questions
4 about anything that they presented?

5 MR. SMITH: I was just --

6 AAH: I do have -- if I could interrupt.

7 I do have -- we do have available Eric
8 Chamblee. I didn't know which hearing you
9 wanted him for.

10 He's available by phone, if you need him,
11 so if you have a question for him, we can call
12 him.

13 MR. SMITH: I'll deal with him, I think,
14 at another time. Defacing personal property.
15 That's -- you're not allowed to draw in your
16 own notebook? Is that one of the things?

17 HEARING OFFICER: I think that was just a
18 general --

19 MS. HILTON: That was just --

20 HEARING OFFICER: Pleading in the entire
21 thing. It wasn't --

22 MR. SMITH: Has he done that?

23 HEARING OFFICER: That's not the issue.
24 It's the whole code of conduct is what she was
25 reading. It wasn't -- that's just one of the

1 clear. Because he drew that in his notebook
2 and they said that they have these allegations
3 that he's a gang, that automatically puts him
4 as evidence as a gang.

5 I'm just trying -- I'm trying to
6 understand.

7 HEARING OFFICER: Again, I'm just
8 listening to the evidence that's being
9 presented. I'm not ruling on something like
10 that. It's not -- that's not what I'm here
11 for.

12 MS. LAKEISHA BROWNLEE: Okay. I
13 understand.

14 HEARING OFFICER: I understand what
15 you're saying. I see what you're saying
16 but --

17 MS. LAKEISHA BROWNLEE: I'm just curious.
18 So if the art teacher tells him to draw it,
19 it's fine. But if -- all right.

20 HEARING OFFICER: Do you have anymore
21 questions for Ms. Hilton and T. L. Hanna?

22 MR. SMITH: I had a lot of questions, but
23 I don't think they are allowed to answer. He
24 is clearly --

25 AAH: You can certainly ask any questions

1 about the evidence.

2 MR. SMITH: The evidence is clear. His
3 grades -- not so good. So if we're here about
4 that, he has nothing to say to that. I mean,
5 his grades are poor, and he didn't -- he
6 wasn't aggressive in trying to do something
7 about it. Our issues here are the label
8 that's been put on him, and that's mainly what
9 it is.

10 His grades speak for themselves.

11 HEARING OFFICER: If that's all there is,
12 then I'd like to adjourn this meeting. And as
13 I said, I'll rule on this within ten days, and
14 you will get something in writing.

15 Thank you.

16 (The hearing was adjourned.)
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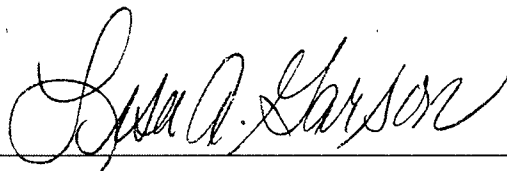
CERTIFICATE OF REPORTER

I, the undersigned, Lisa A. Garson, Court Reporter and Notary Public in and for the State of South Carolina, do hereby certify that the foregoing transcript was prepared by me at my hand;

That I was not present at said proceeding; That the within statements are an accurate transcription of the audio file transcribed, to the best of my ability;

I further certify that I am neither counsel nor solicitor to any of the parties in said suit, nor interested in the event of the cause.

In witness whereof, I have hereunto set my hand and seal this 17th day of December, 2013.



Lisa A. Garson
Court Reporter
Notary Public
State of South Carolina at Large
My Commission expires:
December 19, 2019

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

COURT OF COMMON PLEAS

Tariq Geer, by his mother, Lisa)
Geer; Ka'Darrius Brownlee,)
by his mother, Lakesha Brownlee;)
Shamarion Brownlee, by his)
mother, Kim Brownlee,)

Case Nos.:

2014-CP-04-02377

2014-CP-04-00381

Plaintiffs,)

v.)

Anderson County District Five,)

Defendant.)

ORIGINAL

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on September 2, 2014, before The Honorable R. Lawton McIntosh, in the Anderson County Courthouse, 100 South Main Street, Anderson, SC, 29622; attended by counsel as follows:

APPEARANCES:

Donald Loren Smith, Esq.,
Appearing for The State.

Mary Allison Caudell, Esq.,
Allison Aiken Hanna, Esq.,
Appearing for Defendant.

Vivian H. Cross

Circuit Court Reporter – 10th Judicial Circuit

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Belton, South Carolina 29627

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Hearing of September 2, 2014
Before The Honorable R. Lawton McIntosh

I-N-D-E-X

**TARIQ GEER, BY HIS MOTHER, LISA GEER; KA'DARRIUS
BROWNLEE, BY HIS MOTHER, LAKESHA BROWNLEE; SHAMARION
BROWNLEE, BY HIS MOTHER, KIM BROWNLEE**

-V-

ANDERSON COUNTY DISTRICT FIVE.

SEPTEMBER 2, 2014

(APPEAL HEARING)

(2014-CP-04-02377, 00381)

PAGE

COLLOQUY

3

REPORTER'S CERTIFICATE:

E X H I B I T S

IDENTIFICATION ENTERED

NO EXHIBITS OFFERED

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1 Mr. Smith?

2 **MR. SMITH:** Yes, sir, it is.

3 **THE COURT:** All right, be glad to hear from you.

4 **MR. SMITH:** Um, may it please The Court?

5 **THE COURT:** Yes, sir.

6 **MR. SMITH:** Your Honor, this, uh -- uh, appeal stems
7 from a, uh, administrative action in which three students
8 were expelled from T. L. Hanna for gang or gang-related
9 activities. Uh---

10 **THE COURT:** And that was for the year 2013/14?

11 **MR. SMITH:** Yes, sir, it was.

12 **THE COURT:** Okay.

13 **MR. SMITH:** Uh, our arguments then are that the
14 legal -- legal protection does not apply in this re- --
15 in this particular instance. The gang, gang-related
16 activities, which is section five of -- of the handbook,
17 specifically talk about how a gang's, uh -- primary
18 activities, commission of a crim- -- uh, criminal acts,
19 uh, both in violation of District policy. There is no
20 evidence of that from my clients. My clients weren't
21 in any trouble, they weren't, uh -- they weren't doing
22 any -- anything such, uh, intimidating, coercing,
23 soliciting. They -- they'd been rapping, uh, for --
24 since sixth grade and all were at least ninth grade.

25 Uh, according to this gang, gang-related activities,

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Hearing of September 2, 2014
Before The Honorable R. Lawton McIntosh

1 uh, anyone that's in an organization -- football is -- is
2 a gang; that's -- that's what this says. However, we
3 single out these -- these gentlemen with no criminal
4 activities and take away their right to edu- --
5 education, sending them off -- shunning them, and putting
6 them off into some alternative school when, uh, they
7 didn't do anything wrong. I mean, all's they did was,
8 uh, aspire to have a, uh, a career as rappers and, of
9 course, because they, uh, appreciate their group and all
10 that they write on their notebooks. And that -- I
11 personally wrote on my notebooks and different things,
12 uh, throughout my high school, and---

13 **THE COURT:** Are you making yourself the standard of
14 gold that we should look at in this case, Mr. Smith?

15 **MR. SMITH:** Ab- -- absolutely not. Uh, I -- I
16 withdraw.

17 **THE COURT:** (Chuckle) All right.

18 **MR. SMITH:** Uh, the -- but -- but the very gang
19 definition here requires criminal acts or a violation of
20 district policy. They have not, uh, illustrated one
21 instance of that. It -- this gang, gang-related
22 activities is clearly overbroad and it puts everybody
23 within that realm and unfortunately we only apply it to,
24 uh -- uh, the black gentlemen who are, uh, aspiring
25 rappers. We don't see any cheerleaders on here, despite

Hearing of September 2, 2014
Before The Honorable R. Lawton McIntosh

1 the fact that they're organized, wear uniforms, and all
2 this other business.

3 Um, they simply didn't meet, uh, the criminal acts
4 that are necessary to be gang or gang-related activities.
5 And with that in mind, we believe that it's -- it's
6 unconstitutional, in violation of their right to freedom
7 of speech which, of course---

8 **THE COURT:** So your appeal is based on
9 constitutional grounds or is it based on any other basis
10 other than the constitutionality of the school's policy
11 and procedures?

12 **MR. SMITH:** Well, I -- like I said, I think the --
13 it's overbroad, the, uh, definition of gang, gang-related
14 activities. But, when it comes down to it, they did
15 not -- they weren't committing criminal acts and they
16 weren't purposely violating any District policy. And
17 that -- that's what their, uh, definition is and they
18 weren't doing that. So, I don't know how that meets that
19 and beyond that it's -- it's unconstitutional.

20 **THE COURT:** All right, let me ask you this. The,
21 um, School District in this case says that I should
22 review this from a, uh, use of discretion of any -- any
23 evidence in the record to support or substantial evidence
24 in the record to support the ruling by the, uh, District.

25 Um, do you agree or disagree with that standard?

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1 **MR. SMITH:** I don't -- I don't necessarily have a --
2 a belief as to how that standard addresses this.
3 However, there is no evidence. I mean, substantial,
4 there -- there's no evidence saying that they vio- --
5 they violated this, uh, aspect of, uh, the school's
6 handbook. And that's -- that's what they got expelled
7 for is the handbook; the gang, gang-related activities.
8 There's no -- they didn't do it. I mean, there's no
9 evidence. I asked them repeatedly what -- what did they
10 do? What criminal act did they do? There -- there's
11 none, and it's---

12 **THE COURT:** Does -- okay.

13 **MR. SMITH:** I'm sorry---

14 **THE COURT:** That's all right.

15 **MR. SMITH:** ---I'm sorry.

16 **THE COURT:** Uh, Ms. Hanna, does -- does the policy
17 as written by the School District require and does it
18 prerequisite the, uh -- that they engage in criminal
19 acts?

20 **MS. HANNA:** It does not. It does not; it sa- -- it
21 says, activities include the commission of criminal acts
22 or the purposeful violation of any District policy and
23 having a common name or common identifying sign, color,
24 symbols. And it talks about that -- the actual conduct
25 that is prohibited -- and it includes 'a' through 'f',

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1 um, which is clothing, communication, vandalism or
2 destruction of property, intimidation or threats,
3 coercion and solicitation. But, it does not require
4 criminal activity. And, it's -- it's separate from the
5 criminal, um, gang activity that, um, Mr. Smith cites in
6 his brief. It's administrative.

7 **THE COURT:** Yeah, I don't have a copy of your brief,
8 Mr. Smith. Do you have an extra copy?

9 **MS. HANNA:** We have an extra copy right here.

10 **THE COURT:** Okay.

11 (BRIEF HANDED TO THE COURT.)

12 **MR. SMITH:** I appreciate that.

13 **MS. HANNA:** Sure.

14 **THE COURT:** Thank you.

15 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
16 CONFERENCE, OFF THE RECORD.)

17 (WHEREUPON, PROCEEDINGS CONTINUED.)

18 **MR. SMITH:** I -- Your Honor, I -- I did email that
19 to you, uh---

20 **THE COURT:** I'm not saying you didn't---

21 **MR. SMITH:** All right; very good.

22 **THE COURT:** ---I'm just saying I didn't have it
23 and -- okay.

24 All right, Ms. Hanna, be glad to...

25 **MS. HANNA:** Sure. The District does agree and --

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1 because they wanted to protect him.

2 Um, you know, all of this is the protection of
3 safety of all children at the school. And he said if he
4 doesn't perform a mission that he would get his head
5 bashed in as well.

6 So what if -- you know, the Administration's point
7 is, what if he is given a mission to cause some kind of
8 harm at school? You know, they just can't have other
9 students in danger here.

10 Um, and then once they -- they find this Outlaw
11 written on the books and papers and shorts and the signs,
12 they -- the Administration talked with Law Enforcement.
13 You've got Officer Jamie Hill and also talked with
14 Officer Gregory who's the head of the Anderson County
15 Gang Task Force. And they also went online -- Twitter,
16 social media, Instagram -- and looked, and the boys all
17 identified themselves as Outlaw and there's all kinds of
18 references joining together with Hit Squad, which also is
19 a known gang in Anderson.

20 Additionally, Shamarion even gave information about
21 other gangs in town, different names of gangs, and -- and
22 the different bodies.

23 So we have, in the District's opinion, more than
24 substantial evidence that this was a gang. They're
25 fighting; you know, they're trying to set up a fight on

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1 campus, they're doing missions on trying to get different
2 members. They very well may be a rap group, but you can
3 be a rap group and also be a gang. Uh, we're not
4 disputing that the boys, you know, have been rapping
5 since sixth grade. I -- we saw a copy of the CD. But,
6 just because they're a rap group doesn't mean they're
7 also not a gang.

8 So the -- the District has, again, two main points.
9 It's moot because they've already served the term of
10 their expulsion and there is more than substantial
11 evidence in the record.

12 **THE COURT:** Mr. Smith, anything in response?

13 **MR. SMITH:** Yes, sir; may it please The Court. Um,
14 the first -- the moot, uh, argument -- uh, is capable of
15 being -- is -- occurring again, and with that in mind,
16 something needs to be done. Clearly, the gang, gang-
17 related -- it says -- it says, commission of criminal
18 acts or purposeful violation of District policy. I
19 didn't hear the criminal acts or the violation of
20 District policy.

21 Um, these -- these guys, all of them, are family
22 members. So, the gang called the family. I mean, the,
23 uh, admission that the -- she speaks of was, uh,
24 witnessed not -- there's no recording, there's no
25 signature on a statement, there's nothing like that. It

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1 was a principal, a vice-principal, and a resource officer
2 and one ninth-grader in a room. He testified that it
3 was out of context; he kept maintaining this is a rap
4 group -- this is our rap group. They have CD's, so their
5 name -- they put their name on stuff. I mean they --
6 that's the -- the pride they have in their own, uh -- uh,
7 workmanship. I mean, they're -- they're proud of that.
8 I have their CD's, they are quality CD's.

9 Uh, T. L. -- T. L. Hanna football has a, uh, bad
10 season; if someone says, uh, something negative about
11 Hanna football to one player then somebody else might get
12 involved. I mean, they have pride in their football
13 team. They're a gang too because they have uniforms and
14 so forth.

15 This school was on lockdown because of my clients
16 allegedly. Uh, they went and, uh, captured -- they took
17 'em out of class, uh, took 'em to the office and so
18 forth, suspended them. But, the, uh -- the lockdown
19 didn't have anything; there was no drugs, there was no
20 paraphernalia, there was no fighting, there was no
21 swearing. These boys are no different than my own -- my
22 own sons; they don't -- they -- there's no evidence of
23 criminal activity and as I said, that the admission,
24 he -- he's not going to tell on his -- on his, uh,
25 cousins in the first place, but even if that's the case,

1 there's no proof of this alleged gang.

2 The, uh, -- she speaks of Lieutenant Gregory who
3 testified he's the gang -- head of gang, uh -- the gang
4 taskforce, he said that they're not a bad gang, they're a
5 good gang. Where is it -- the gang is just a very
6 negative term and it doesn't apply to these gentlemen.
7 They weren't -- they didn't do anything.

8 The -- the -- the boy got in a fight with someone
9 because he was talking, uh, trash about his -- his, uh --
10 uh, his group. I mean, that -- it's just two boys
11 getting in a fight and that's it; there's no head bashing
12 or anything of the sort.

13 Uh, the bottom line is this; they did nothing wrong.
14 They're hanging their hat on an admission that, frankly,
15 there's -- there's three people that were, uh, part of
16 lockdown that produced nothing. And so, in an effort to
17 save face, we're going to make something out of nothing.
18 The -- the Outlaw is their name, it's what they -- it's
19 not an affiliation, it's the -- their CD, it's their name
20 of the group. There's no -- there's no, uh -- uh,
21 writing on the school, you know, where they've come in
22 and spray-painted; there's nothing like that. They --
23 they -- they're doing their own thing, and because
24 they're doing their own thing, uh, they are, uh, set out.

25 The idea of calling things a set and everything, my

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1 Hanna High School setting and placed in an alternative
2 school which is established in this county by State law.
3 It is run by all five school districts, they have
4 certified teachers, and if the students go there and
5 apply themselves they get the same amount of credit and
6 can transfer back into their school right on track
7 without missing a beat. So, they were not prohibited an
8 education.

9 And, we do have a situation here where the -- the
10 words set and mission -- he says his clients don't know
11 what it is? One of his clients is the one who came in
12 and sat down and talked about this is our gang, this is
13 our set, this was my mission. Those were not words that
14 we made up. The -- the school district did not make them
15 up, these were the words that his clients used.

16 Again, we had a student who came in and said, I am
17 part of a gang, once he was asked. That is what lead to
18 the investigation; nothing more, nothing less. Once the
19 administration started looking, you see Outlaw, Hit
20 Squad, and references to this all over and that they had
21 been called. It -- it is a disruption. And it's for the
22 safety of the -- of the children that gang activity is
23 prohibited at school.

24 **THE COURT:** All right, thank you. All right, I'm
25 gonna read your briefs and look at the transcripts. I'll

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1 issue my opinion once I get through doing that.

2 Thank you.

3 **MS. HANNA:** Thank you very much.

4 **MR. SMITH:** Thank you, Judge.

5 (WHEREUPON, HEARING ENDED AT 11:29 A.M.)

6 *****END OF REQUESTED TRANSCRIPT*****

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Hearing of September 2, 2014
Before The Honorable R. Lawton McIntosh

1 STATE OF SOUTH CAROLINA)

2) CERTIFICATE OF REPORTER

3 COUNTY OF ANDERSON)

4

5 I, THE UNDERSIGNED VIVIAN H. CROSS, OFFICIAL COURT
6 REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF
7 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
8 TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF THOSE
9 PROCEEDINGS REQUESTED AND EVIDENCE INTRODUCED IN THE TRIAL
10 OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF
11 COMMON PLEAS FOR ANDERSON COUNTY, SOUTH CAROLINA, ON THE
12 2nd DAY OF SEPTEMBER 2014.

13 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
14 COUNSEL NOR INTEREST TO ANY PARTY HERETO.

15

16

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22 VIVIAN H. CROSS, COURT REPORTER

23 TENTH CIRCUIT AT LARGE

24 JANUARY 28, 2014

25

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AUG 29 2014

THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Richard A. Bailey
CLERK OF COURT

MEMORANDUM IN SUPPORT OF
DEFENDANTS' APPEAL OF EXPULSION
BY ANDERSON SCHOOL DISTRICT 5

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notice of appeal.

BACKGROUND

It appears that the event that precipitated the allegations of gang activity began on October 7, 2013, after Coach Hamby was informed about two students engaged in a heated verbal exchange in the main locker room. Shamarian Brownlee was one of the students. After Coach Hamby reported to Principal Hilton that the other student had said, "F* Outlaw," which precipitated the argument, the principal surmised from the encounter that it was regarding a gang. During Brownlee's expulsion hearing, Principal Hilton stated, without any support, that "this would have been an insult to his set, and gang members are required to defend their set whenever it is insulted." Coach Hamby further notified an academic director that the word "Outlaw" was written on the football shorts of S. Brownlee. The same word, and the group's symbol was found on the school notebooks of appellants. Principal Hilton stated that in a meeting with S. Brownlee and other teachers, the student stated that he was directed to write the word "Outlaw" on his shorts as one of his missions, further that he was required to fight someone over the past weekend. According to the principal, "this would constitute gang activity, in that gang members are required to participate in criminal, illegal activities as part of their membership in a gang."

Section V – Gang and Gang-Related Activities

No student shall commit any act that furthers gangs or gang-related activities. A gang is any ongoing organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of criminal acts, or the purposeful violation of any district policy, and having a common name or common identifying sign, colors or symbols. Conduct prohibited by this policy includes:

- a) **Clothing:** Wearing, possessing, using, distributing, displaying, or selling any clothing, jewelry, emblems, badges, symbols, signs, visible tattoos and body markings, or other items, or being in possession of literature that shows affiliation with a gang, or is evidence of membership or affiliation in any gang or that promotes gang affiliation;
- b) **Communication:** Communicating either verbally or non-verbally (gestures, handshakes, slogans, drawings, etc.), to convey membership affiliation in any gang or that promotes gang affiliation;
- c) **Vandalism or Destruction of Property:** Tagging, or otherwise defacing school or personal property with gang or gang-related symbols or slogans;
- d) **Intimidation/Threats:** Requiring payment for protection, money or insurance, or otherwise intimidating or threatening any person related to gang activity;
- e) **Coercion:** Inciting other students to intimidate or to act with physical violence upon any other person related to gang activity;
- f) **Solicitation:** Soliciting others for gang membership;

Hilton also stated at the hearing that the Outlaw gang was affiliated with the Hit Squad, which was another gang. The Hit Squad, indeed demonstrated the fact that it was a gang by throwing flags in school, and subjecting the lunch room to a large fight, two to three years prior to these hearings. There was no evidence presented that the three expelled boys had any relation

to or held membership in the Hit Squad. The evidence showed that Principal Hilton drew his expertise on gangs from the gang task force which comes in to speak with the faculty annually. While Principal Hilton explained that gang members commit actions that place "everyone in the room in danger," there was no evidence that the activities in social media, writing on notebooks or gym shorts actually placed any student of TL Hanna High School in danger.

ANALYSIS

The District Failed To Prove The Alleged Gang Activity For Which The Actions For Expulsion Were Brought

The expulsions of all three students should be overturned because the District did not meet its burden to show that gang or gang related activity had occurred. The expulsion hearing did not bring to light anything that constituted a gang. The South Carolina Criminal Gang Prevention Act in 16-8-230 defines criminal gang as: "a formal or informal ongoing organization, association, or group that consists of five or more persons who form for the purpose of committing criminal activity and who knowingly and actively participate in a pattern of criminal gang activity." Further, a pattern of criminal gang activity is defined as four or more of the enumerated offenses occurring within a two-year period including inter alia violent offenses, grand larceny, or blackmail. Here, the students expelled for membership in a gang and gang activity did not engage in criminal activity, alleged or otherwise. Officer Hill testified during the hearing that during his investigation at the school for gang activity, he noticed five boys standing on the stage area of the mall all wearing white t-shirts. This became part of the evidence against the appellants: wearing white t-shirts. The principal alleged that this innocuous activity was a part of the gang activity: standing together and wearing white shirts. The Officer found no evidence of criminal activity and none was suspected throughout the investigation of appellants.

While the school has a right to protect the interest of all of its students, not to the extent to violate the rights maintained by students, even in a school setting. The Latin phrase *In loco parentis* basically means that while a student is in the custody of a school, the school can and often should act as a parent. In this duty of the school, many decisions can be made that are outside the normal governmental purview. The other basic reason for violation of student rights has to do with the goal of school — to educate. If an act of a student can interfere with the educational process, that act may, in many cases, be suppressed. A public school must prove that its violations are for a higher purpose or stem from its *in loco parentis* responsibilities, which TL Hanna has failed to show. Rather, the administration has failed to show how innocuous activities become gang activities.

The three expelled students all maintained during their respective hearings that there is no gang. Further, the principal admitted that in speaking with each of the boys during the investigation, all but Shamarion Brownlee maintained that their group was not a gang, but a rap group. Brownlee testified at his hearing that his statements were misconstrued, and that while

the principal continued to insist that the rap group was a cover for gang activity, he maintained his statement that Outlaw was a rap group. Accordingly, the expulsions of appellants should be overturned because the District did not meet its burden to show that gang or gang related activity had occurred.

The Findings Of The Hearing Officer Illustrate An Affirmation Of Unconstitutional Disregard For The Freedom Of Speech

As members of a rap group, and in general, despite their student-status, the appellants all enjoy the right to freedom of speech, denied by the hearing officer, in finding activities such as writing on clothing, notebooks, and Twitter the word Outlaw constituted gang activity. Appellants have the constitutional right to engage in the above activities without being encroached upon by the school administration. In *Bethel School v Fraser* (478 US 675 [1986]), the Court ruled that a school was not violating a student's rights when it suspended a student for the use of crude language in a speech to a school assembly. Said the Court: "It does not follow... that simply because the use of an offensive form of expression may not be prohibited to adults making what the speaker considers a political point, the same latitude must be permitted to children in a public school.... The determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board." In *Tinker v Des Moines*, 393 US 503 (1969), the Supreme Court ruled that students wearing black arm bands to protest the Vietnam War could not be forced to remove the arm bands by school officials. As written in *Tinker*, "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." The Supreme Court said in *Tinker* that "[I]f conduct by the student, in class or out of it, which for any reason — whether it stems from time, place, or type of behavior — materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech." This is the hinge upon which this school violated appellants' free speech protections.

While school administration testified about the general impressions of the student body of the appellants and their rap group, the impression of which that the appellants were in a gang, neither Principal Hilton nor any witness represented that the appellants materially disrupted classwork or were involved in substantial disorder. *Tinker* was all about freedom of expression. The students in *Tinker* merely wore black arm bands, they did not disrupt school activities in any other way. The actions of the students are often used to distinguish the right of speech and expression for students from the rules that can govern those rights.

Again, the distinction hinges on the impact of the expression on the educational process. Indeed, in 2007, in the case of *Morse v Frederick* (06-278 [2007]), the Court narrowly decided that student speech off campus can be suppressed by school administrators if the speech promotes illegal activity — drug use, in this case. In the case, Frederick erected a banner touring "bong hits for Jesus" along a route used to transport the Olympic torch during Olympic opening ceremonies. The route was flanked by students from Frederick's high school and his Principal

saw the banner, had it removed and had Frederick suspended, on the premise that the banner ran counter to the school's anti-drug themes and policies. Drawing on both Tinker and Fraser, the Court decided that the message and its most reasonable interpretations, and not the place the message was displayed, was the deciding factor: "Student speech celebrating illegal drug use at a school event, in the presence of school administrators and teachers, thus poses a particular challenge for school officials working to protect those entrusted to their care from the dangers of drug abuse."

There is not a single case in where the Court has upheld that students lack freedom of expression insofar as their speech was displayed in this case. At best, the School Board proved that one student had the word "Outlaw" written on his shorts, another with the word written in his notebook. The Sheriff Department never affirmed the Outlaw to mean gang activity, and in fact, denied that any gang activity was occurring at TL Hanna, following an investigation and "lock down" of the entire campus during the school day. Without any connection to criminal activity, the constitutional rights of these students have been violated and their expulsions should be reversed.

The Findings Of The Hearing Officer Illustrate An Affirmation Of Unconstitutional Disregard For The Freedom Of Association

The interrelated freedoms of assembly and association stem from the First Amendment which states in part that "Congress shall make no law . . . abridging the right of the people to peaceably assemble." U.S. CONST. amend. I. The Freedom of Assembly Clause protects the rights of citizens to engage in lawful public assemblies, to make public speeches, to discuss their own affairs, and to enlist the support of others. Here, the students at issue were expelled for having Twitter accounts referencing the word outlaw, scribbles in notebooks, words on shorts, and so-called missions to affect this specific activities.

The Supreme Court has repeatedly recognized that the right of free speech would be virtually meaningless without a corollary right to join with others to advance First Amendment freedoms. See e.g. NAACP v. Alabama, 357 U.S. 449, 460 (1958); De Jonge v. Oregon, 299 U.S. 353, 364 (1937). This implicit freedom preserves citizens' rights to form organizations to advance particular viewpoints, and to associate with like-minded individuals "in pursuit of a wide variety of political, social, economic, educational, religious and cultural ends." Boy Scouts of America v. Dale, 530 U.S. 640, 647-48 (2000); See also Roberts v. U.S. Jaycees, 468 U.S. 609, 622 (1984). The appellants, all uncontested musicians have the right to advance their music and bond through social media, attire, and organization. To find otherwise, as the hearing officer has, is a violation of the First Amendment rights of appellants. Therefore, whereas appellants' freedoms of assembly and association were violated, their expulsions should be reversed and they should be re-instated at TL Hanna High School.

The Findings Of The Hearing Officer Affirm Unconstitutional Expulsions Based On Race

The culture of the students appeared to be on trial as much, and indeed more than the facts. Three African American boys, engaged in the creation of rap music since the sixth grade, wearing white T-shirts must be members of a gang. This characterization is baseless and could only stem by prejudice on the part of the hearing officer. To the extent that the appellant's race was considered in determining their gang membership, the school board should reverse appellant's expulsions. (Please see Plaintiff Exhibit Number 1, Excerpt from the Expulsion Hearing of Ka'Darius Brownlee, Pages 46-47.)

The Findings Of The Hearing Officer Are Arbitrary And Capricious As They Are Not Supported By The Greater Weight Of Evidence

Viewing the evidence in the light most favorable to the school board, the board failed to show that appellants were members of a criminal gang. Further, the students' due process rights at their hearings were violated. While afforded the opportunity to be represented at the hearing by an attorney as required by statute, the hearing officer systematically ignored his valid arguments with regard to what constituted a gang at TL Hannah. However, inapposite, the hearing officer permitted answers from Principal Hilton such as Twitter accounts and hashtags constituting gang activity. The principal stated at the hearings that other students at school appeared to accept that the Outlaws were a gang based on their social media presence. "I think they can be in a gang and a rap group at the same time. Rap groups do not give people missions to do. That's why we have classified "Outlaw" as a gang. Because, they are handing out missions and signing gang graffiti on their notebooks. There was also on twitter the hash tag: #Outlaw which was often associated with the hash tag: #hit squad." This evidence is far from proof beyond any standard of evidence that appellants were members of a gang or participating in gang activities. The activities cited as so-called missions to allegedly prove gang membership all have equally innocent origins and innocuous meanings.

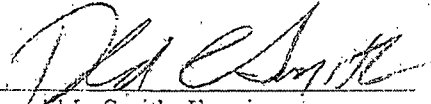
There was no evidence presented that the appellants were members of a criminal gang, as defined by statute, rather than the rap group that they maintained during the hearing they were. Appellant Ka'Darius Brownlee testified during his hearing that "Outlaw" is not a gang. In sixth grade, the boys started rapping and at one point they changed their name to "Outlaw". "Teachers wanted to hear our music, so we burnt CD's and gave them to the teachers." Appellants never encountered any association until they came to a school with an admitted gang problem long before the appellants began attending the school. We don't carry flags in our back pockets. Furthermore, the appellants were not linked to any criminal activity as part of the gang or otherwise. The evidence, in the light most favorable to the school board, did not amount to a violation of the District policy prohibiting gang membership and activity at school.

CONCLUSION

The expulsions of the appellants should be overturned in the best interests of all students in this District, specifically, that of the appellants in this matter. The rights of freedom of speech, freedom of association, and due process as afforded by the Constitution and the State of South

Carolina should not be trounced upon by school officials. Whereas appellant's rap and social group entitled Outlaw fails to meet the definition of criminal gang and no instances of disruption of student activities were reported, the determination of appellants' membership in gang is clearly against the weight of evidence, and as such, the determination should be reversed.

Respectfully submitted,



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Anderson SC 29621

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Anderson, South Carolina

August 29, 2014.



STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-0400381

Tariq Gear

FILED-CLERK'S OFFICE
ANDERSON SC

Anderson County School District Five

PLAINTIFF(S)

2014 SEP - 8 A 9:24

DEFENDANT(S)

Submitted by:

COMMON PLEAS AND
GENERAL SESSIONS

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☒ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☒ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☒ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

A TRUE COPY

JAN - 7 2015

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2155

Judge Code

Date

This judgment was entered on the 8th day of Sept., 2014 and a copy mailed first class or placed in the appropriate attorney's box on this 9th day of Sept., 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Donald Smith
122 N. Main Street
Anderson, SC 29621

Mary Allison Caudell
Childs & Halligan, PA
P.O. Box 11367
Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Vivian Cross

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Based upon this court's standard of review to determine whether the evidence supports the Shool Board's Decision to expel a student, the Court finds that in considering the evidence as a

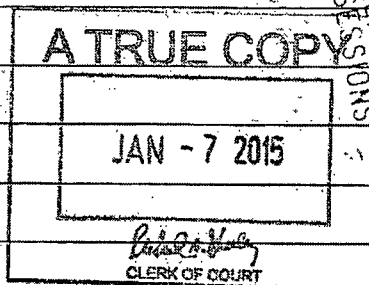
whole, the evidence is such as would allow reasonable minds to reach the conclusion that the

school board reached. See Doe v. Richland County School District Two 382 S.C. 656, 677

SE 2d 610 (Ct. App. 2009) and S.C. Code Ann. 59-63-240. Accordingly the school board's

decision is affirmed. Ms. Hanna to prepare a formal order to be submitted within 30 days of

this decision.



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COMMON PLEAS AND
GENERAL SESSIONS

113

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Tariq Geer, by his mother, Lisa Geer;
Ka'Darrius Brownlee, by his mother,
Lakesha Brownlee; Shamarion Brownlee,
by his mother, Kim Brownlee,

C.A. No. 2014-CP-04-00381

Petitioners,

**RESPONDENT'S MEMORANDUM OF
LAW IN OPPOSITION TO APPEAL**

vs.

Anderson County School District 5,

Respondent.

I. STATEMENT OF CASE

This case arises out of the decision by the Anderson School District Five ("District") Board of Trustees ("Board") to expel Tariqus Geer, Ka'Darrius Brownlee, and Shamarion Brownlee ("Petitioners") for the remainder of the 2013-14 school year. This appeal was brought on Petitioners' behalfs pursuant to S.C. Code Ann. § 59-63-240 (Rev. 1990). Tariqus, Ka'Darrius, and Shamarion were expelled for gang and gang-related activity.

Review by the Courts of the decision of a local board of trustees to expel a student is generally limited to a determination of whether the board's decision is supported by substantial evidence. In matters such as the one currently before the Court, a court should not substitute its judgment for that of school authorities. *See Laws v. Richland Cnty. Sch. Dist. No. One*, 270 S.C. 492, 243 S.E.2d 192, 193 (1978); *Kizer v. Dorchester Cnty. Vocational Educ. Bd. of Trustees*, 287 S.C. 545, 340 S.E.2d 144. *Henrickson v. Spartanburg Cnty. Sch. Dist. No. Five*, 307 S.C. 108, 413 S.E.2d 817 (Ct. App. 1992).

Factually, school administrators became aware of the gang-related activity when one of the three students had "Outlaw" written on his shorts. (COR at SB ¶¶ 5, 6.) The student stated that this was part of a "mission" he was instructed to do by other members of the gang. (COR at

SB ¶¶ 5, 6.) This member confessed to being in a gang and wrote down the names of three other members. (COR at SB ¶ 4.) In light of this confession, school administrators collected evidence including staff and student statements, Twitter screenshots, and student drawings. (COR at TG ¶ 5, KB ¶¶ 4, 5, 6, 7, 10.) The students were all suspended on October 30, 2013. (COR at TG ¶ 1, KB ¶ 1, SB ¶ 1.) The District's hearing officer, Mike Ruthsatz, convened the expulsion hearing on November 13, 2013. (COR at TG ¶ 1, KB ¶ 1, SB ¶ 1.) All three hearings were held on this date. (Id.) By letter dated November 25, 2013, Mr. Ruthsatz advised the parents in writing of his decision to expel the students for the remainder of the school year. Additionally, Petitioners were required to successfully complete the year at the Anderson County Alternative School before being eligible to return to TL Hanna High School.

Petitioners timely appealed Mr. Ruthsatz's decision to the Board on December 18, 2013. (COR at TG ¶ 11, KB ¶ 11, SB ¶ 13.) The appeal was considered by the Board at its meeting on January 27, 2014. (COR at TG ¶ 13, KB ¶ 13, SB ¶ 15.) The Board voted to uphold the recommendation that Petitioners be expelled for the remainder of the 2013-14 school year and by letter dated January 30, 2014, Petitioners were notified of the Board's decisions. (Id.)

II. STANDARD OF REVIEW

A. This Court's Review Is Limited To Determining Whether There Is Substantial Evidence In The Record To Support The Decision Of The Board.

Petitioners are before the Court pursuant to S.C. Code Ann. § 59-63-240 (Rev. 1990), 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 Cnty. Sch. Dist.*, Case No. 92-CP-07-799 (S.C. Common Pleas, June 2, 1992); *Brock v. Chesterfield Cnty. Sch. Dist. Bd. of Educ.*, Case No. 91-CP-13-301 (S.C.

Common Pleas June 30, 1992), and *Ferguson v. Laurens Cnty. 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, South Carolina's court decisions interpret a similar statute, S.C. Code Ann. § 59-25-480, part of the Teacher Employment and Dismissal Act, which provides for appeals concerning the continuation of a teacher's employment, and have held the substantial evidence standard applicable. Section 59-25-480 "does not delineate the scope and standards applicable to judicial review of school board decisions...." *Laws*, 243 S.E. 2d at 193. In such review of school board decisions, South Carolina courts have applied the substantial evidence rule to administrative appeals on the ground that a court should not substitute its judgment for that of school authorities. *Id.*; *Kizer*, 340 S.E.2d at 146; *Hendrickson*, 413 S.E.2d at 871. The same analysis justifies application of the substantial evidence rule in appeals of student expulsions pursuant to S.C. Code Ann. § 59-63-240. 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.

Furthermore, S.C. Code Ann. § 59-19-90(3) authorizes school trustees to prescribe rules of "conduct and behavior... notwithstanding that such rules may result in the ineligibility of pupils... and the suspension and permanent dismissal of such pupils." Section 59-63-210 grants school trustees the power to expel students from public school. The South Carolina Supreme Court has reaffirmed the broad discretions that school boards possess in exercising their powers. *Gamble v. Williamsburg Cnty. Sch. Dist.*, 305 S.C. 288, 408 S.E.2d 217 (1991). *See also*, *Laws*, 243 S.E.2d at 193; *H.H. Singleton v. Horry Cnty. Sch. Dist.*, 289 S.C. 223, 345 S.E.2d 751, 754 (Ct. App. 1986).

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 Sch. Bd.*, 483 So. 2d 1253 (La. Ct. App. 1986); *Birdsey v. Grand Blanc Com. Sch.*, 130 Mich. App. 718, 344 N.W.2d 342 (Mich. App. 1983). Accordingly, Petitioner's appeal should be confined to the record and reviewed under the substantial evidence standard of review.

III. ARGUMENT

A. Petitioners' Appeal Should Be Dismissed As Moot As A Result of Subsequent Re-enrollment In The District.

Subsequent to the filing of the appeal in this matter, the 2013-14 school year came to an end. At the conclusion of the 2013-14 school year, Petitioners' period of expulsion effectively ended also and Petitioners were allowed to re-enroll in the District at the beginning of the 2014-15 school year¹. The case law in South Carolina regarding mootness has clearly been outlined several times. Mootness has been defined as follows: A case becomes moot when judgment, if rendered, will have no practical legal effect upon an existing controversy because an intervening event renders it impossible for [the] reviewing Court to grant effectual relief. *Byrd v. Irmo High Sch.*, 321 S.C. 426, 468 S.E.2d 861 (S.C. 1996); *Mathis v. S. Carolina State Highway Department*, 260 S.C. 344, 195 S.E.2d 713 (S.C. 1973); *Seabrook v. City of Folly Beach*, 337 S.C. 304, 523 S.E.2d 462 (S.C. 1999); *State v. Green*, 337 S.C. 67, 522 S.E.2d 602 (Ct. App. 1999); *Peterson Outdoor Advertising Corporation v. Beaufort Cnty.*, 291 S.C. 533, 354 S.E.2d 563 (S.C. 1987).

In the case of *Curtis v. State*, 549 S.E.2d 591 (S.C. 2001) the Supreme Court outlined the three exceptions to the mootness doctrine:

In the civil context, there are three general exceptions to the mootness doctrine. First, an appellate court can take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review . . . Second, an appellate court may decide questions of imperative and manifest

¹ Due to Ka'Darrius' disruptive behavior at the alternative school, he has been notified that he will not be allowed to attend TL Hanna High School this year but does have the option to re-enroll at the alternative school.

urgency to establish a rule for future conduct in matters of important public interest. Finally, if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case.

In this case, Shamarion has signed a behavior contract and begun the 2014-2015 school year at TL Hanna High School. Tariqus has the option to re-enroll at TL Hanna High School, but to date, has not scheduled a time to sign a behavior contract. Ka'Darius will be allowed to re-enroll at the alternative school. It is axiomatic that a justiciable controversy must be present for legal action to proceed. A justiciable controversy has been defined as a "real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character." *Midland Guardian Co. v. Thacker*, 280 S.C. 563, 314 S.E.2d 26 (Ct. App. 1984); *Guimarin & Doan v. Georgetown Textile & Mfg. Co.*, 249 S.C. 561, 155 S.E.2d 618 (S.C. 1967). As a result of the students' subsequent re-enrollment or option to re-enroll at either TL Hanna High School or the alternative school, despite the fact that they were expelled during the 2013-14 school year, the issues involved are moot as a result of subsequent events occurring during the course of the legal proceedings.

In the *Byrd* case, the Court determined that the capable of repetition yet evading review exception to the mootness doctrine applied; however that case involved a short term suspension. As such, the Court noted that "[s]hort term suspensions, by their very nature, are completed long before an appellate court can review the issues they implicate. Therefore, we conclude that the present case clearly fits into the evading review exception of the mootness doctrine, even if it were otherwise not appropriate for the Court to address this appeal." As this case involved the students' expulsions, the short term removal analysis applicable in *Byrd* does not apply. Generally, in these type cases, the Court will have sufficient time prior to the expiration of the expulsion to hear the appeal, although this particular case was not heard prior to the expiration of

the expulsion. Accordingly, Petitioners' appeal should be dismissed as moot.

B. There Is More Than Substantial Evidence In The Record To Uphold The Board's Decision.

Further, there is ample evidence in the Record to support the Board's decision to uphold Petitioners' expulsions from school. Board policy JICF (Secret Societies/Gang Activity) "prohibits incidents involving initiations, hazings, intimidations or related activities of such group affiliations that are likely to cause bodily danger, physical harm, or personal degradation or disgrace resulting in physical or mental harm to students." Further, a student may be recommended for expulsion for violating the Student Code of Conduct, Section V – Gang and Gang Related Activities, a Level III offense. (COR at TG ¶ 14, KB ¶ 14, SB ¶ 16.) Disciplinary offenses in the District are divided into three levels, with Level I being the least serious and Level III consisting of the most serious offenses. The District's policy and practices also provide students recommended for expulsion with different levels of hearings, including the initial evidentiary hearing before the District's hearing officer and an appeal hearing to the full school board ("Board"). (COR at TG ¶ 15, KB ¶ 15, SB ¶ 17.)

Petitioners' position is that the District failed to prove the alleged gang activity for which the expulsions were brought. In addition, Petitioners also assert constitutional violations, including the disregard for freedom of speech, freedom of association, and a finding based on race. However, the evidence presented to the hearing officer and the Board supports the decision to expel Petitioners for the remainder of the 2013-14 school year. In short, two of the Petitioners entered the 2013-14 school year under a behavior contract. (COR at TG ¶ 9, KB ¶ 9.) Specifically, the behavior contract signed by the two Petitioners states that the students may not have any Level I, II, or III disciplinary offenses. (Id.) The student who was not subject to a behavior contract confessed to being a member of the gang. As stated previously, gang and gang related activities is considered a Level III offense. "Outlaw" was classified as a gang based on the following:

- A student's statement that "missions" are run daily;
- Twitter comments that include references to "the set";
- A student's statement that his "set" was disrespected by someone saying "fuck Outlaw";
- A student's statement that they are a gang that is a smaller set under the larger umbrella of "Hit Squad";
- A student's statement of a "mission" that included an assault and battery over the weekend; and
- A student's statement that his head would be bashed in if he is found to be a snitch.

(COR at TG ¶ 5, KB ¶ 5, SB ¶¶ 4-7.)

Petitioners were identified as members of the gang "Outlaw" based upon a student's statement, gang signs, markings on notebooks and gym shorts, references to "Hit Squad," and pictures on Twitter. (*Id.*) While the Petitioners contend that they are just members of a rap group, they demonstrated all the signs of gang activity as determined by the school administration, in consultation with law enforcement and the Anderson County gang taskforce.

Accordingly, based on all the evidence presented to the administration, the hearing officer, and Board, there is substantial evidence in the Record to support the decision to expel Petitioners for the remainder of the 2013-14 school year.

Respectfully submitted,

CHILDS & HALLIGAN, P.A.

By: Mary Allison Caudell
Allison Aiken Hanna, S.C. Bar No. 15668
ahanna@childs-halligan.net

Mary-Allison Caudell, S.C. Bar No. 101187
macaudell@childs-halligan.net

T. L. Hanna High School

An International Baccalaureate World School

Behavior Contract

July 17, 2013

Because of prior disruptive behavior, Tariqus Marquan Geer is being placed on a behavior contract for the 2013-2014 school year.

The student will have:

- No activities that caused previous expulsion or dismissal from school
- No disrespectful remarks to students or adults in the building
- No disregard for teacher instructions in the classroom.
- No excessive absences, cutting class, tardiness to class
- No verbal or physical altercations with students or adults.
- No class disruptions
- No bus violations
- Must seek assistance from teachers when having academic difficulties and pass all classes

Discipline Offenses

The student may not have any Level I, II or III disciplinary offenses.

- ⊃ Level I disciplinary offenses are minor offenses (tardiness to class, failure to complete assignments, excessive distraction of other students, etc).
- ⊃ Level II disciplinary offenses are major offenses including but not limited to abusive language, fighting, refusing to obey school personnel, disturbing school, and alcohol or drug possession, use or distribution
- ⊃ Level III are offenses that involve criminal conduct of any kind

Should the student be in violation of this agreement, he/she will be immediately suspended for ten (10) days and will be recommended for expulsion from T.L. Hanna High School.

Shelia D. Hutton
Lisa R.
Tariqus Geer

Administrator

Parent.

Student

T. L. Hanna High School

An International Baccalaureate World School

Behavior Contract

July 09, 2013

Because of prior disruptive behavior, Ka'Darrius Brownlee is being placed on a behavior contract for the 2013-2014 school year.

The student will have:

- No activities that caused previous expulsion or dismissal from school
- No disrespectful remarks to students or adults in the building
- No disregard for teacher instructions in the classroom.
- No excessive absences, cutting class, tardiness to class
- No verbal or physical altercations with students or adults
- No class disruptions
- No cheating
- Must seek assistance from teachers when having academic difficulties and pass all classes

Discipline Offenses

The student may not have any Level I, II or III disciplinary offenses.

- ☐ Level I disciplinary offenses are minor offenses (tardiness to class, failure to complete assignments, excessive distraction of other students, etc).
- ☐ Level II disciplinary offenses are major offenses including but not limited to abusive language, fighting, refusing to obey school personnel, disturbing school, and alcohol or drug possession, use or distribution
- ☐ Level III are offenses that involve criminal conduct of any kind

Should the student be in violation of this agreement, he/she will be immediately suspended for ten (10) days and will be recommended for expulsion from T.L. Hanna High School.

Shirley J. Hilton

Administrator

Ka'Darrius Brownlee

Parent

Ka'Darrius Brownlee

Student



Anderson School District Five

P.O. Box 439 / 400 Pearman Dairy Road • Anderson, South Carolina 29622

Phone: (864) 260-5000 • Fax: (864) 260-5074 • www.anderson5.net

November 6, 2013

Ms. Lisa Geer
2318 S. McDuffie Street
Anderson, SC 29624

RE: Tariqus Marquan Geer

Dear Ms. Geer:

This letter is to inform you that Tariqus has been recommended for expulsion. Ms. Sheila Hilton, Principal, made the recommendation from TL Hanna High School. The reason for this recommendation is the alleged infraction of the following rule: *Student Code of Conduct, Section V – Gang and gang-related activities.*

You have the right to a hearing on the recommended action. An evidentiary hearing has been scheduled for November 8, 2013, at 1:30 p.m. in the Boardroom of the Anderson School District Five Administrative Offices, 400 Pearman Dairy Road.

At the hearing, you will have the right to question all witnesses who appear and to present your own witnesses and/or evidence. You may choose to be represented by legal counsel but will need to notify us of such in advance of the hearing. The evidence against this student consists of: Behavior Contract, Staff Statements, Twitter Screenshots, Student Drawings, School Discipline Report, Attendance Record and Grades. You have the right to examine these records should you wish to do so.

A Hearing Officer, appointed by Anderson School District Five, will decide whether or not to uphold the recommendation of the administration to expel your student. You will be notified of the Hearing Officer's decision within ten days of your student's hearing. If you disagree with the findings you will have the right to appeal the decision to the Anderson School District Five Board of Trustees.

Anderson School District Five

As a "Schools of Promise" Flagship District, we strive to ensure that Every Child is in the Winner's Circle by providing five fundamental resources: Mentor • Protect • Nurture • Prepare • Serve

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Ms. Lisa Geer
Page 2
November 6, 2013

Upon delivery of this letter, please sign the *Response* form, indicating that you have received notice of the hearing, whether or not you plan to attend the hearing, and whether or not you plan to retain legal counsel. Your failure to sign the form could result in postponement of the hearing or in the holding of proceedings in your absence.

Sincerely,



Sue Fetter
School & Community Services

cc: Mr. Thomas A. Wilson, Superintendent
Ms. Sheila Hilton, Principal, TL Hanna High School





Anderson School District Five

P.O. Box 439 / 400 Pearman Dairy Road · Anderson, South Carolina 29622
Phone: (864) 260-5000 · Fax: (864) 260-5074 · www.anderson5.net

November 6, 2013

Ms. Kim Brownlee
219 Cedar Ridge Road
Anderson, SC 29621

RE: Shamariion Ahkeim Brownlee

Dear Ms. Brownlee:

This letter is to inform you that Shamariion has been recommended for expulsion. Ms. Sheila Hilton, Principal, made the recommendation from TL Hanna High School. The reason for this recommendation is the alleged infraction of the following rule: *Student Code of Conduct, Section V – Gang and gang-related activities.*

You have the right to a hearing on the recommended action. An evidentiary hearing has been scheduled for November 8, 2013, at 1:00 p.m. in the Boardroom of the Anderson School District Five Administrative Offices, 400 Pearman Dairy Road.

At the hearing, you will have the right to question all witnesses who appear and to present your own witnesses and/or evidence. You may choose to be represented by legal counsel but will need to notify us of such in advance of the hearing. The evidence against this student consists of: Staff Statements, Twitter Screenshot, Student Statements, School Discipline Report, Attendance Record and Grades. You have the right to examine these records should you wish to do so.

A Hearing Officer, appointed by Anderson School District Five, will decide whether or not to uphold the recommendation of the administration to expel your student. You will be notified of the Hearing Officer's decision within ten days of your student's hearing. If you disagree with the findings you will have the right to appeal the decision to the Anderson School District Five Board of Trustees.

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Ms. Kim Brownlee

Page 2

November 6, 2013

Upon delivery of this letter, please sign the *Response* form, indicating that you have received notice of the hearing, whether or not you plan to attend the hearing, and whether or not you plan to retain legal counsel. Your failure to sign the form could result in postponement of the hearing or in the holding of proceedings in your absence.

Sincerely,



Sue Fetters

School & Community Services

cc: Mr. Thomas A. Wilson, Superintendent
Ms. Sheila Hilton, Principal, TL Hanna High School





Anderson School District Five

P.O. Box 439 / 400 Pearman Dairy Road • Anderson, South Carolina 29622

Phone: (864) 260-5000 • Fax: (864) 260-5074 • www.anderson5.net

November 6, 2013

Ms. LaKesha Brownlee
1619 Rogers Road
Anderson, SC 29621

RE: Ka'Darius Ahmad Joquon Brownlee

Dear Ms. Brownlee:

This letter is to inform you that Ka'Darius has been recommended for expulsion. Ms. Sheila Hilton, Principal, made the recommendation from TL Hanna High School. The reason for this recommendation is the alleged infraction of the following rule: *Student Code of Conduct, Section V – Gang and gang-related activities.*

You have the right to a hearing on the recommended action. An evidentiary hearing has been scheduled for November 8, 2013, at 2:00 p.m. in the Boardroom of the Anderson School District Five Administrative Offices, 400 Pearman Dairy Road.

At the hearing, you will have the right to question all witnesses who appear and to present your own witnesses and/or evidence. You may choose to be represented by legal counsel but will need to notify us of such in advance of the hearing. The evidence against this student consists of: Behavior Contract, Staff Statements, Twitter Screenshot, Student Illustration, School Discipline Report, Attendance Record and Grades. You have the right to examine these records should you wish to do so.

A Hearing Officer, appointed by Anderson School District Five, will decide whether or not to uphold the recommendation of the administration to expel your student. You will be notified of the Hearing Officer's decision within ten days of your student's hearing. If you disagree with the findings you will have the right to appeal the decision to the Anderson School District Five Board of Trustees.

Anderson School District Five

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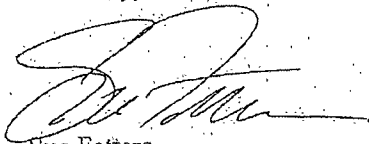
Ms. LaKeshia Brownlee

Page 2

November 6, 2013

Upon delivery of this letter, please sign the *Response* form, indicating that you have received notice of the hearing, whether or not you plan to attend the hearing, and whether or not you plan to retain legal counsel. Your failure to sign the form could result in postponement of the hearing or in the holding of proceedings in your absence.

Sincerely,



Sue Fetters

School & Community Services

cc: Mr. Thomas A. Wilson, Superintendent
Ms. Sheila Hilton, Principal, TL Hanna High School



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Sheila Hilton – Statement Regarding Gang Activity at TLH in Questioning Shamarrion Brownlee 10/22/13

Because this information contains one gang member “snitching” on other gang members, his life will be in imminent danger because of his giving this information. As much as possible, we need to keep his name confidential.

Teacher Derek Hamby notified Academy Director Mary Nell Anthony that he had seen something written on the football shorts of C team football player Shamarrion Brownlee. The word written was “outlaw,” which is the name of offshoot gang of a larger gang in the Anderson community. Shamarrion Brownlee was then questioned in my office with Mary Nell Anthony, Officer Jamey Hill, and myself present. I told him that I did not have gang members on T. L. Hanna sports teams nor did I allow gang members to attend T. L. Hanna High School. He said that he was made to write the word “outlaw” on his shorts as one the “missions” or tasks he was given to do by other gang members. Officer Hill asked him what his last mission was prior to writing the word “outlaw” on his short. He replied that he was required to fight someone over the past weekend, which would have been an assault and battery according to Officer Hill. This would constitute gang activity in that gang members are required to participate in criminal/illegal activities as part of their membership in the gang. I asked him who else was in this gang at Hanna. He shook his negatively to indicate that he could not tell. I told him that his presence at TLH and his doing these “missions” put others in the school in danger and that I could not allow this to occur, so I would be recommending his expulsion. At that point he became upset at the thought of being expelled and began to cry and beg and swear on his grandfather's grave that he would not do any other missions at school. When he refused to tell me who had given him this mission to do, he said that if he told “his head would be bashed in” as a result of his “snitching.” I pointed out to him that his refusal to do a mission would probably result in the same punishment and that I could not risk his presence on the TLH campus with his being compelled to do these “missions” or risk bodily harm to himself.

At that point he said that he would tell us the names. I handed Officer Hill a sheet of paper, and he wrote down the following names of the members of the “Outlaw Gang” who were students at TLH who were giving him “missions” to do at school as part of the requirements of his membership and his being able to move up in the gang. The names he gave were: Tariqus Geer, Ka’Karrius Brownlee, and Xavier Brownlee. Since two of these boys have the same last names as his, I asked if there was a family relationship. He said they were cousins. I then asked if family members would exert bodily harm on other family members in a gang. He nodded affirmatively.

At the beginning of the school year, Officer Jamey Hill noticed five boys standing on the stage area of the mall (in the a.m. prior to school beginning) all wearing white shirts. This is one of the signs of gang activity – both the white shirts and a group all standing together wearing them. The boys in the group wearing them were Tariqus Geer, Ka’Darrius Brownlee, Xavier Brownlee, and Devin Stovall. This turns out to be members of the “Outlaw Gang.” Though gangs wearing specific colors is common, these colors change constantly and cannot be used as proof of gang activity. Officer Hill spoke with the boys to let them know that he noticed their wearing the same color, and it was not seen again. In speaking with each of the boys, all but Shamarrion

maintained that their group was not a gang but a rap group. They denied any involvement in a gang.

Shamarion Brownlee was later asked to write a statement. He wrote about writing "outlaw" on his Hanna football shorts, but he did not write down his telling us the other members of the gang. That evening, TLH administration logged into Twitter and searched the word "#outlaw." It was at that point that we found pictures of the group identifying themselves as "Outlaw." We also searched bookbags and classroom materials and found "outlaw" written on some of these students' notebooks, papers, and projects. They have been included in the expulsion packets.

Shela J. Shilton



Anderson School District Five

P.O. Box 439 / 400 Pearman Dairy Road · Anderson, South Carolina 29622

Phone: (864) 260-5000 · Fax: (864) 260-5074 · www.anderson5.net

November 25, 2013

Ms. Lisa Geer
2318 S. McDuffie Street
Anderson, SC 29624

RE: Tariqus Marquan Geer

Dear Ms. Geer:

The expulsion hearing for Tariqus was conducted on November 13, 2013, pursuant to SC state law and District Policy JICDA. After careful review of the evidence and testimony presented, I have concluded that Tariqus did commit the following violation of the Student Code of Conduct, Section V – Gang and gang-related activities. Tariqus is hereby expelled for the remainder of the 2013-2014 school year and must successfully complete the year, in the areas of *Attendance*, *Discipline*, and *Academics*, at the Anderson County Alternative School, before being eligible to return.

During the period of expulsion, if Tariqus enters or rides through any school grounds, enters a school building, or attempts to ride a District Five bus, he will be subject to the criminal charge of *trespassing*. Specifically, this means that Tariqus may not attend any sporting events or other extracurricular activities sponsored by the District during the period of his expulsion.

Please be advised that you have the right to appeal this decision to the Board of Trustees, provided that written notice of appeal is made to the Superintendent, within ten school days of your receipt of this decision. Notice may be sent to Mr. Thomas A. Wilson, Anderson School District Five, P.O. Drawer 439, Anderson, SC 29622. (Please understand that appeals are limited to the established record and no new evidence will be allowed, unless the Board requests additional information.)

Anderson School District Five

As a "Schools of Promise" Flagship District, we strive to ensure that Every Child is in the Winner's Circle by providing five fundamental resources: Mentor • Protect • Nurture • Prepare • Serve

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Page 2
November 25, 2013

A written request on behalf of an expelled student may be made to Ms. Sheila Hilton, Principal of TL Hanna High School, asking that your student be allowed to return to school for the 2014-2015 school year. This request for readmission must include documentation of successful completion of the school year at the alternative school as stipulated.

To enroll your student at the Anderson County Alternative School, please contact Ms. Hilton. She will arrange for someone to assist you in completing the application process. Once the completed packet has been received by the Alternative School, it will be necessary for you to schedule a pre-enrollment conference with them by calling 260-4888.

Sincerely,



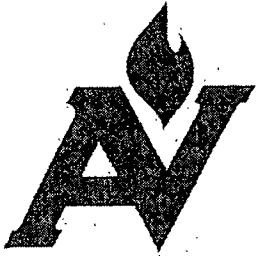
Mike Ruthsatz
Hearing Officer

MR/sf

cc: Mr. Thomas A. Wilson, Superintendent
Ms. Sheila Hilton, Principal, TL Hanna High School



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Anderson School District Five

P.O. Box 439 / 400 Pearman Dairy Road · Anderson, South Carolina 29622

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November 25, 2013

Ms. Kim Brownlee
219 Cedar Ridge Road
Anderson, SC 29621

RE: Shamarion Ahkeim Brownlee

Dear Ms. Brownlee:

The expulsion hearing for Shamarion was conducted on November 13, 2013, pursuant to SC state law and District Policy JICDA. After careful review of the evidence and testimony presented, I have concluded that Shamarion did commit the following violation of the Student Code of Conduct, Section V – Gang and gang-related activities. Shamarion is hereby expelled for the remainder of the 2013-2014 school year and must successfully complete the year, in the areas of *Attendance*, *Discipline*, and *Academics*, at the Anderson County Alternative School, before being eligible to return.

During the period of expulsion, if Shamarion enters or rides through any school grounds, enters a school building, or attempts to ride a District Five bus, he will be subject to the criminal charge of *trespassing*. Specifically, this means that Shamarion may not attend any sporting events or other extracurricular activities sponsored by the District during the period of his expulsion.

Please be advised that you have the right to appeal this decision to the Board of Trustees, provided that written notice of appeal is made to the Superintendent, within ten school days of your receipt of this decision. Notice may be sent to Mr. Thomas A. Wilson, Anderson School District Five, P.O. Drawer 439, Anderson, SC 29622. (Please understand that appeals are limited to the established record and no new evidence will be allowed, unless the Board requests additional information.)

Anderson School District Five

As a "Schools of Promise" Flagship District, we strive to ensure that Every Child Is In the Winner's Circle by providing five fundamental resources: Mentor • Protect • Nurture • Prepare • Serve

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Ms. Kim Brownlee

Page 2

November 25, 2013

A written request on behalf of an expelled student may be made to Ms. Sheila Hilton, Principal of TL Hanna High School, asking that your student be allowed to return to school for the 2014-2015 school year. This request for readmission must include documentation of successful completion of the school year at the alternative school as stipulated.

To enroll your student at the Anderson County Alternative School, please contact Ms. Hilton. She will arrange for someone to assist you in completing the application process. Once the completed packet has been received by the Alternative School, it will be necessary for you to schedule a pre-enrollment conference with them by calling 260-4888.

Sincerely,



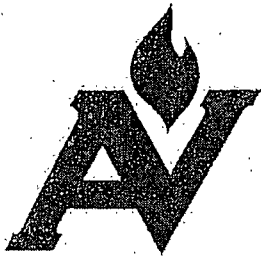
Mike Ruthsatz
Hearing Officer

MR/sf

cc: Mr. Thomas A. Wilson, Superintendent
Ms. Sheila Hilton, Principal, TL Hanna High School



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Anderson School District Five

P.O. Box 439 / 400 Pearman Dairy Road • Anderson, South Carolina 29622

Phone: (864) 260-5000 • Fax: (864) 260-5074 • www.anderson5.net

November 25, 2013

Ms. LaKeshia Brownlee
1619 Rogers Road
Anderson, SC 29621

RE: Ka'Darrius Ahmad Joquon Brownlee

Dear Ms. Brownlee:

The expulsion hearing for Ka'Darrius was conducted on November 13, 2013, pursuant to SC state law and District Policy JICDA. After careful review of the evidence and testimony presented, I have concluded that Ka'Darrius did commit the following violation of the Student Code of Conduct, Section V – Gang and gang-related activities. Ka'Darrius is hereby expelled for the remainder of the 2013-2014 school year and must successfully complete the year, in the areas of *Attendance*, *Discipline*, and *Academics*, at the Anderson County Alternative School, before being eligible to return.

During the period of expulsion, if Ka'Darrius enters or rides through any school grounds, enters a school building, or attempts to ride a District Five bus, he will be subject to the criminal charge of *trespassing*. Specifically, this means that Ka'Darrius may not attend any sporting events or other extracurricular activities sponsored by the District during the period of his expulsion.

Please be advised that you have the right to appeal this decision to the Board of Trustees, provided that written notice of appeal is made to the Superintendent, within ten school days of your receipt of this decision. Notice may be sent to Mr. Thomas A. Wilson, Anderson School District Five, P.O. Drawer 439, Anderson, SC 29622. (Please understand that appeals are limited to the established record and no new evidence will be allowed, unless the Board requests additional information.)

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Ms. LaKesha Brownlee

Page 2

November 25, 2013

A written request on behalf of an expelled student may be made to Ms. Sheila Hilton, Principal of TL Hanna High School, asking that your student be allowed to return to school for the 2014-2015 school year. This request for readmission must include documentation of successful completion of the school year at the alternative school as stipulated.

To enroll your student at the Anderson County Alternative School, please contact Ms. Hilton. She will arrange for someone to assist you in completing the application process. Once the completed packet has been received by the Alternative School, it will be necessary for you to schedule a pre-enrollment conference with them by calling 260-4888.

Sincerely,



Mike Ruthsatz
Hearing Officer

MR/sf

cc: Mr. Thomas A. Wilson, Superintendent
Ms. Sheila Hilton, Principal, TL Hanna High School



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Anderson School District Five

P.O. Box 439 / 400 Pearman Dairy Road • Anderson, SC 29622
Phone: (864) 260-5000 • Fax: (864) 260-4463 • www.anderson5.net



January 30, 2014

Ms. Lisa Geer
2318 s. McDuffie Street
Anderson, SC 29624

RE: Tarikus Marquan Geer

Dear Ms. Geer:

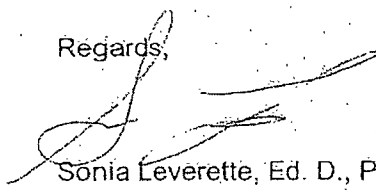
The expulsion appeal for Tarikus was held on January 27, 2014. After careful consideration and thoughtful discussion, the decision of the Board of Trustees was to uphold the November 13, 2013 expulsion decision of Mr. Mike Ruthsatz, District Five Hearing Officer. Tarikus hereby remains expelled for the remainder of the 2013-2014 school year.

If Tarikus enters or rides through any school grounds, enters a school building, or attempts to ride on a District Five school bus, he will be subject to the criminal charge of *trespassing*.

A written request on behalf of an expelled student may be made to Ms. Sheila Hilton, Principal of TL Hanna High School, asking that the student be allowed to return to school for the 2014-2015 school year. This request for readmission must be made at least 30 calendar days before the beginning of school and should state, in detail, why the student should be allowed to return to school. Documentation of the successful completion of the 2013-2014 school year at the Alternative School should be attached to your request.

I wish your student continued success at the Anderson County Alternative School for the remainder of this school year.

Regards,



Sonia Leverette, Ed. D., PHR
Assistant Superintendent for Management and Testing

cc: Mr. Thomas A. Wilson, Superintendent
Dr. Cory Williams, Director of Student Management
Ms. Sheila Hilton, Principal, TL Hanna High School
Ms. Allison Hanna, Attorney, Childs & Halligan
Mr. Donald Smith, Attorney, Donald Smith Law Firm

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Anderson School District Five

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Phone: (864) 260-5000 • Fax: (864) 260-4463 • www.anderson5.net



January 30, 2014

Ms. Kim Brownlee
219 Cedar Ridge Road
Anderson, SC 29621

RE: Shamarion Ahkeim Brownlee

Dear Ms. Brownlee:

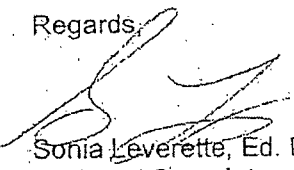
The expulsion appeal for Shamarion was held on January 27, 2014. After careful consideration and thoughtful discussion, the decision of the Board of Trustees was to uphold the November 13, 2013 expulsion decision of Mr. Mike Ruthsatz, District Five Hearing Officer. Shamarion hereby remains expelled for the remainder of the 2013-2014 school year.

If Shamarion enters or rides through any school grounds, enters a school building, or attempts to ride on a District Five school bus, he will be subject to the criminal charge of *trespassing*.

A written request on behalf of an expelled student may be made to Ms. Sheila Hilton, Principal of TL Hanna High School, asking that the student be allowed to return to school for the 2014-2015 school year. This request for readmission must be made at least 30 calendar days before the beginning of school and should state, in detail, why the student should be allowed to return to school. Documentation of the successful completion of the 2013-2014 school year at the Alternative School should be attached to your request.

I wish your student continued success at the Anderson County Alternative School for the remainder of this school year.

Regards,


Sonia Leverette, Ed. D., PHR
Assistant Superintendent for Management and Testing

cc: Mr. Thomas A. Wilson, Superintendent
Dr. Cory Williams, Director of Student Management
Ms. Sheila Hilton, Principal, TL Hanna High School
Ms. Allison Hanna, Attorney, Childs & Halligan
Mr. Donald Smith, Attorney, Donald Smith Law Firm

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Anderson School District Five

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January 30, 2014

Ms. LaKeshia Brownlee
1619 Rogers Road
Anderson, SC 29621

RE: Ka'Darius Ahmad Joquon Brownlee

Dear Ms. Brownlee:

The expulsion appeal for Ka'Darius was held on January 27, 2014. After careful consideration and thoughtful discussion, the decision of the Board of Trustees was to uphold the November 13, 2013 expulsion decision of Mr. Mike Ruthsatz, District Five Hearing Officer. Ka'Darius hereby remains expelled for the remainder of the 2013-2014 school year.

If Ka'Darius enters or rides through any school grounds, enters a school building, or attempts to ride on a District Five school bus, he will be subject to the criminal charge of *trespassing*.

A written request on behalf of an expelled student may be made to Ms. Sheila Hilton, Principal of TL Hanna High School, asking that the student be allowed to return to school for the 2014-2015 school year. This request for readmission must be made at least 30 calendar days before the beginning of school and should state, in detail, why the student should be allowed to return to school. Documentation of the successful completion of the 2013-2014 school year at the Alternative School should be attached to your request.

I wish your student continued success at the Anderson County Alternative School for the remainder of this school year.

Regards,

Sonia Leverette, Ed. D., PHR
Assistant Superintendent for Management and Testing

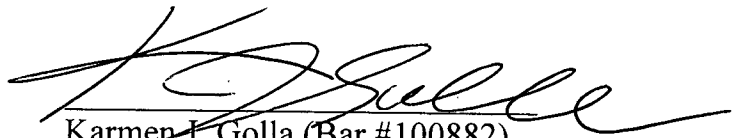
cc: Mr. Thomas A. Wilson, Superintendent
Dr. Cory Williams, Director of Student Management
Ms. Sheila Hilton, Principal, TL Hanna High School
Ms. Allison Hanna, Attorney, Childs & Halligan
Mr. Donald Smith, Attorney, Donald Smith Law Firm

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CERTIFICATE OF COUNSEL

On behalf of Appellants, I hereby certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

May 4, 2015



Karmen J. Golla (Bar #100882)

Attorney Office of Donald Smith

Attorney for Appellants

122 N. Main Street

Anderson SC 29621

Telephone: (864) 361-7635

Facsimile: (864) 642-9285

karmen.golla@gmail.com

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