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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

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

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 School District Five.....Respondent.

FINAL BRIEF OF RESPONDENT

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I. STATEMENT OF ISSUES ON APPEAL

Issues presented by this Appeal from the order of the Honorable R. Lawton McIntosh are:

(1) Whether the issue before this Court is moot;

(2) Whether the Circuit Court properly determined that the Board's decision to expel minor Appellants was based on substantial evidence;

(3) Whether the Circuit Court properly determined that minor Appellants' due process rights were not violated; and

(4) Whether the Circuit Court properly determined that minor Appellants' First Amendment rights were not violated.

II. STATEMENT OF THE CASE

The Respondent, Anderson School District Five ("District"), respectfully submits this brief requesting the Circuit Court's order in favor of the Respondent be affirmed. After carefully considering the entire record in this matter, the Circuit Court determined: (1) that there was substantial evidence in the Record to justify the Board of Trustees' ("Board") decision to uphold minor Appellants' expulsions; (2) that minor Appellants' due process rights were not violated by the expulsions or the procedures taken by the District following the expulsions; (3) and that at no point were the minor Appellants' First Amendment rights encroached upon. (R. pp. 2-8). Specifically, the Circuit Court correctly granted the necessary deference to the District's authority to define, interpret, and enforce its own rules and policies. Respondent prays that this Court affirm the order entered by the Circuit Court.

By way of background, this case arises out of the decision by the Board to expel T.G., K.B., and S.B. ("minor Appellants") from T.L. Hanna High School ("T.L. Hanna") for the remainder of the 2013-2014 school year for gang and gang-related

activity. The District's hearing officer, Mike Ruthsatz, convened all three expulsion hearings on November 13, 2013. (R. pp. 30-69.) By letter dated November 25, 2013, Mr. Ruthsatz advised Appellants in writing of his decision to expel the Minor Appellants for the remainder of the 2013-2014 school year. (R. pp. 131-136.) Additionally, Minor Appellants were required to successfully complete the 2013-2014 year at the Anderson County Alternative School ("ACAS") before being eligible to return to T.L. Hanna.

Minor Appellants timely appealed Mr. Ruthsatz's decision to the Board on December 18, 2013. (R. p. 9.) The appeal was considered by the Board at its meeting on January 27, 2014. The Board voted to uphold the recommendation that Minor Appellants be expelled for the remainder of the 2013-2014 school year and by letter dated January 30, 2014, Appellants were notified of the Board's decisions. (R. pp. 137-139.) Following this decision, on March 3, 2014, Appellants appealed the matter before the Circuit Court pursuant to S.C. Code Ann. § 59-63-240, seeking to overturn the Board's decision. On October 2, 2014, a formal Order was entered in this matter granting judgment in favor of the Respondent. (R. pp. 2-8.) The present appeal was filed on October 31, 2014. (R. p. 1.)

III. STATEMENT OF FACTS

The District became aware of Appellants' gang and gang-related activity when one of the three students had "Outlaw" written on his shorts. (R. p. 57.) The student stated that this was part of a "mission" he was instructed to do by other members of the gang. (R. p. 58.) This member confessed to being in a gang and provided the names of three other members. (R. pp. 59-60.) In light of this confession, school administrators collected evidence including staff and student statements, Twitter screenshots, and student drawings. (R. pp. 41-42, 63-64, 79-80.) The students were all

suspended on October 30, 2013, and recommended for expulsion under the Student Code of Conduct, Section V – Gang and Gang Related Activities, a Level III offense. (R. pp. 20-25.)[1]

While the Appellants 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 the Board, there was substantial evidence to support the decision to expel the minor Appellants for the remainder of the 2013-2014 school year.

IV. STANDARD OF REVIEW

This matter initially came before the Circuit Court pursuant to S.C. Code Ann. § 59-63-240, which specifically governs student expulsions and 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). Thereafter, the Court of Appeals will review the Circuit Court order to determine if it properly applied its standard of review. *Converse Power Corp. v. S. Carolina Dept. of Health and Environment Control*, 350 S.C. 39, 46, 564 S.E.2d 341, 345 (Ct. App. 2002); *see also*

[1]This infraction is listed under Level III/Criminal Conduct in the District's Code of Conduct. Further, 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."

Reliance Ins. Co. v. Smith, 327 S.C. 528, 535-36 n.6, 489 S.E.2d 674, 678 n.6 (Ct. App. 1997) (noting the standards of review established under § 1-23-610 (D) and § 1-23-380 (A)(6) are essentially identical.) Under this standard of review, "[the Court] may not substitute [its] judgment for that of an agency as to the weight of the evidence on questions of fact unless the agency's findings are clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record." *Converse Power Corp.*, 350 S.C. at 46, 564 S.E.2d at 345.

Although § 59-63-240 does not set forth the appropriate standard of review, South Carolina's court decisions interpreting 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, have applied the substantial evidence standard. Section 59-25-480 "does not delineate the scope and standards applicable to judicial review of school board decisions...." *Laws v. Richland Cnty. Sch. Dist. 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 Cnty. Vocational Educ. Bd. Of Trustees*, 287 S.C. 545, 340 S.E.2d 144, 146 (1986); *Hendrickson v. Spartanburg Cnty. 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 discretion 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 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). Accordingly, this appeal should be confined to the record and reviewed under the substantial evidence standard.

V. ARGUMENTS

A. This Appeal Presents A Moot Question And Should Be Dismissed.

This appeal should be dismissed as moot as a result of the minor Appellants either re-enrolling, or receiving permission to re-enroll, in a District school at the beginning of the 2014-2015 school year. The Supreme Court of South Carolina has defined mootness as follows: "[a] case becomes moot when judgment, if rendered, will have no practical legal effect upon an existing controversy. This is true when some event

occurs making it impossible for a reviewing court to grant effectual relief." *Mathis v. S. Carolina State Highway Department*, 260 S.C. 344, 345, 195 S.E.2d 713, 715 (1973) (dismissing an appeal for mootness where respondent would be entitled to return of his license as of a date that had passed upon call of the case); see also *Byrd v. Irmo High Sch.*, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996); *Seabrook v. City of Folly Beach*, 337 S.C. 304, 306, 523 S.E.2d 462, 463 (1999); *Peterson Outdoor Advertising Corporation v. Beaufort Cnty.*, 291 S.C. 533, 535, 354 S.E.2d 563, 564 (1987); *State v. Green*, 337 S.C. 67, 71, 522 S.E.2d 602, 604 (Ct. App. 1999). Further, a court will not pass on moot and academic questions or adjudicate where no actual controversy remains. *Mathis*, 260 S.C. at 345, 195 S.E.2d at 714; *Fabian's Uptown v. S. Carolina Tax Commission*, 247 S.C. 164, 166, 146 S.E.2d 608, 609 (1966).

In *Curtis v. State*, 345 S.C. 557, 567-68, 549 S.E.2d 591, 596 (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 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, S.B. and T.G. were both recommended to return to T.L. Hanna at the beginning of the 2014-2015 school year. Unfortunately, due to K.B.'s behavior at ACAS, he was not recommended to return to T.L Hanna, and started the 2014-2015 school year at ACAS. Specifically, upon information and belief, S.B. is still

enrolled at T.L Hanna and has successfully completed the fall semester of his sophomore year. T.G. did not re-enroll at T.L Hanna and records reflect that he transferred out of the District. K.B. was dismissed from ACAS on February 23, 2015, for disruptive behavior, a repeat violation of his behavior contract. The Respondent submits that, in light of the opportunity for minor Appellants to be re-admitted to the District's schools, minor Appellants cannot reasonably be said to meet any of the three exceptions. Therefore, the Court cannot grant effectual relief, and as such, minor Appellants' expulsions from school present a moot issue.

Further, § 59-63-240 provides, in part, that in cases of expulsion actions by school boards, "[t]he action of the board may be appealed to the proper court." S.C. Code Ann. § 59-63-240. Thus, the foundation and impetus for this appeal is the Board's decision to expel minor Appellants for the remainder of the 2013-2014 school year. Consequently, if the Court found the Board's decision was in error, the only appropriate remedy would be to reverse the expulsion decisions, which would have the effect of readmitting minor Appellants to District schools. As the minor Appellants have already either been re-admitted, or had the option to re-enroll, a ruling on the pending issues will have no practical effect. It is axiomatic that a justiciable controversy must be present for a 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, 567, 314 S.E.2d 26, 28 (Ct. App. 1984); *Guimarin & Doan v. Georgetown Textile & Mfg. Co.*, 249 S.C. 561, 566, 155 S.E.2d 618, 621 (1967).

In *Seabrook v. City of Folly Beach*, 337 S.C. 304, 523 S.E.2d 462 (1999), the court provides an example instructive in the current case. In *Seabrook*, a dispute existed over the City of Folly Beach's decision to impose conditions on the approval of Defendants' subdivision plat. However, after the City removed the conditions and approved the plat, the Defendants abandoned their claim that their property was subject to a taking. Thus, the South Carolina Supreme Court found the appeal to be moot, citing that "a ruling on the pending issues will have no practical effect on the parties to [the] appeal." *Id* at 306. Moreover, though issues may start out as justiciable, "issues may become moot as a result of events occurring during the course of the proceedings." 4 S.C. Jur. Action § 22 (2015). *See, e.g., Seldon v. Singletary*, 284 S.C. 148, 326 S.E.2d 147 (1985); *McCoy v. McCoy*, 283 S.C. 383, 385-86, 323 S.E.2d 517, 519 (1984).

Likewise, the minor Appellants in the present case clearly have no justiciable controversy, as any relief the Court could grant would be ineffective and duplicative of actions taken by Respondent in the course of the proceedings leading up to this appeal. The issues involved are now moot, as minor Appellants have either completed a semester at T.L. Hanna or were allowed to re-enroll in a District school.

Also instructive is the Supreme Court of South Carolina's decision in *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 630 S.E.2d. 474 (2006). In *Sloan*, the Supreme Court reiterated that a case must be declared moot where events subsequent to the action render any decision of the court purely academic in nature. *Id.* at 25-6, 630 S.E.2d at 471. The plaintiff in *Sloan* brought a declaratory action alleging that the Friends of the Hunley was a public body subject to the Freedom of Information Act ("FOIA"). *Id.* at 24, 630 S.E.2d at 476-77. After the commencement of the litigation, the

Friends of the Hunley provided the plaintiff with the information the plaintiff requested pursuant to the FOIA. *Id.* at 26, 630 S.E.2d at 477-78. The Friends of the Hunley subsequently moved for summary judgment, arguing that the action was moot. The Supreme Court affirmed the trial court's granting of summary judgment, finding that the action became moot based upon the Friends of the Hunley's production of the requested documents subsequent to the filing of the lawsuit. *Id.*

The Court also addressed Appellants' argument that the *Sloan* case presented an exception to the mootness doctrine, as it concerned an issue that was capable of repetition, yet evading review. The Court found that, although the scenario regarding FOIA was capable of repetition, it did not evade review because any other person could bring an action against the Friends of the Hunley for a violation of the FOIA for any subsequent refusal to produce documents pursuant to the FOIA. *Id.* at 27, 630 S.E.2d at 478. Thus, a court would have an opportunity to review the issue. Similarly, should a subsequent issue arise regarding Respondent's decisions in disciplinary actions, Appellants or any other student within the District will have the opportunity to request that a court review the issue. Here, while an expulsion may be capable of repetition, it will not evade review. *See also*, *Seabrook*, 337 S.C. at 306, 523 S.E.2d 462.

B. The Circuit Court Correctly Determined That There Was Substantial Evidence In The Record To Support The Board's Decision To Expel Minor Appellants.

As reflected in the record, the minor Appellants' conduct was clearly in violation of District policy and school rules. The Circuit Court, in issuing its ruling, found that the evidence presented to the hearing officer and Board supports the decision to expel T.G., K.B., and S.B. for the remainder of the 2013-2014 school year.

Specifically, two of the minor Appellants entered the 2013-2014 school year under a behavior contract. The behavior contract signed by the two minor Appellants states that the students may not have any Level I, II, or III disciplinary offenses. (R. pp. 121-122.) S.B., the student who was not subject to a behavior contract, confessed to being a member of the gang. Minor Appellants were identified as members of the gang "Outlaw" based upon a student statement, gang signs, markings on notebooks and gym shorts, references to "Hit Squad," and pictures on Twitter. (R. pp. 114-120.)

The Circuit Court acknowledged Appellants' position that the District failed to prove the alleged gang-activity for which the expulsions were brought. (R. pp. 2-8.) However, the Circuit Court properly found that minor Appellants were expelled because they demonstrated signs of gang-activity as determined by the school administration, in consultation with law enforcement in the Anderson County Task Force. Specifically, Section V of the Anderson School District Five Student Code of Conduct, distributed to all students at the beginning of the 2013-2014 school year states the following with regard to gang-activity:

> 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 covey 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;
g) Conspiracy: Conspiring to commit any violation of this policy or committing or conspiring to commit any other illegal act or other violation of school district policies that relate to gang activity.
Unless otherwise specified, Gang and Gang-Related Activities are considered Level II and Level III infractions.

As explained by Shelia Hilton, principal of T.L. Hanna, during minor Appellant K.B.'s expulsion hearing, K.B. demonstrated the following attributes of a gang member:

1. Drawings, writings, spraying graffiti to advertise, prevent, provoke, or challenge, on but not limited to walls of buildings, notebooks, books, backpacks, etc. (Gang sign drawn in his math notebook and picture on Twitter of K.B.s himself with caption "Imma Outlaw").
2. Associating with other know participants or with a specific gang (Identified by other students as a member of Outlaw based on his Twitter account and other social media).
3. Displaying the colors (the wearing of white t-shirts at the beginning of school).
4. Using vocabulary that relates to gang involvement (Twitter page is entitled "Imma Outlaw").
5. Making certain hand gestures (hand signs) to signal gang participation, affiliation, or action (drawing in notebook is two hands making a gang sign).

(R. pp. 79-80.)

Minor Appellant S.B. demonstrated the following attributes of a gang member:

1. He admits being a member of a gang. (He admitted to being a member of the "Outlaw" gang; writing the word "Outlaw" on his shorts as one of his missions; fighting another person over a weekend as one of his missions; facing potential punishment for refusing to complete missions [having head bashed in]; and being required to retaliate against anyone who disrespects the "set").
2. Wearing specific articles of clothing, jewelry, or other items of a specific color (shorts with the word "Outlaw" written on them).
3. Intently staring down at staff and students to intimidate, harass or to provoke a fight. (Incident in gym locker room with another student in retaliation for his "set" being disrespected. He alleged that the other student said, "Fuck Outlaw").
4. Drawings, writings, spraying graffiti to advertise, prevent, provoke, or challenge, on but not limited to walls of buildings, notebooks, books, backpacks, etc. (Shorts had "Outlaw" written on them).
5. Fighting, menacing, bullying – related to gang activity. (Altercation in gym locker room falls into this category – waiting on student to arrive with plans to confront the student for disrespecting his set).

(R. pp. 63-64.)

Minor Appellant T.G. demonstrated the following attributes of a gang member:

1. Drawings, writings, spraying graffiti to advertise, prevent, provoke, or challenge, on but not limited to walls of buildings, notebooks, books, backpacks, etc. (Gang sign drawn in his math notebook and picture on Twitter of K.B. and himself with caption "Imma Outlaw").
2. Associating with other known participants or with a specific gang (Identified by other students as a member of

Outlaw based on his Twitter account and other social media).

3. Using vocabulary that relates to gang involvement (Twitter page is entitled "Imma Outlaw").

(R. pp. 41-42.)

The Circuit Court correctly determined that in matters such as the one currently before the Court, it should not substitute its judgment for that of school authorities. See *Laws v. Richland County Sch. Dist. No. One*, 270 S.C. 492, 243 S.E.2d 192, 193 (1978); *Kizer v. Dorchester County Vocational Educ. Bd. of Trustees*, 287 S.C.545, 340 S.E.2d 144. *Hendrickson v. Spartanburg County Sch. Dist. No. Five*, 307 S.C. 108, 413 S.E.2d 817 (Ct. App. 1992). Accordingly, in light of the record as a whole, including the clear evidence that minor Appellants violated District policy and the Student Code of Conduct, the Circuit Court's determination that there was substantial evidence to support the Board's decision should be affirmed and the Board's expulsion ruling should be upheld.

C. The Circuit Court Correctly Determined That Appellants' Due Process Rights Were Not Violated.

The Circuit Court properly concluded that minor Appellants' due process rights were not violated throughout the expulsion disciplinary proceedings. As the Circuit Court addressed, courts have repeatedly held that strict rules of evidence do not apply in student discipline matters and, among other things, hearsay evidence is admissible.

Further, although the South Carolina Supreme Court has not articulated a standard for minimal due process in student expulsion cases, the Fourth Circuit has held that the "essence of due process is the requirement that a person in jeopardy of serious

loss be given notice of the case and an opportunity to meet it." *See Henson v. Honor Committee of U. of Va.*, 719 F.2d 69, 73-74 (4th Cir. 1983). Specifically, in *Henson*, the Fourth Circuit found that the University of Virginia's procedures before a disciplinary expulsion afforded the plaintiff due process because the plaintiff: (1) was given notice of the charges against him; (2) had the opportunity to be heard before a disinterested tribunal; (3) was confronted by his accusers; (4) had a right of appeal; and (5) was given the benefit of student "lawyers" and was able to consult with his personally retained attorney, though the attorney was not allowed to participate in the proceedings as an advocate. *Id.*

Just as in *Henson*, the minor Appellants were afforded all the necessary due process rights. The record clearly indicates that following the recommendation for expulsion, by letter dated November 6, 2013, Appellants were advised of an evidentiary hearing before the District's hearing officer, Mr. Ruthsatz. Significantly, in this letter advising Appellants of the hearing, Appellants were notified of their procedural rights, including the right to have legal counsel present and the right to question witnesses present. (R. pp. 123-128.)

In this case, minor Appellants were each represented by legal counsel, Mr. Don Smith. In fact, not only was Mr. Smith present during the disciplinary hearings, but he also took an active role in the proceedings as an advocate. Further, any allegation that Appellants were not allowed to provide evidence or question witnesses is meritless. The discipline hearing transcripts are replete with examples of the District's hearing officer and the District's attorney attempting to focus the Appellants on the evidence, encouraging Appellants to confront and question their accusers, and allowing Appellants

to submit additional evidence. The following excerpts from the disciplinary hearings demonstrate the lengths to which the District went in an attempt to ensure that each Appellant was afforded proper due process:

> Mr. Ruthsatz: Let me tell you what my purpose is here. I want you to understand that. I'm listening to their evidence that they presented. I want you to be able to also present any evidence that you have. And what was said prior to, or what he told you, has nothing to do with this evidence that's on the table, so you need to, if you have questions about this evidence, just as you did about the Twitter page, or anything else, then that's what we need to discuss. I've got to take the evidence before me and make a decision, and so that's why I want you - - what he said she said in regards to that, does not matter. This evidence is all what they compiled maybe after the fact, or maybe after he was told this, but that's what I've got to rule on. So that's what I want us to concentrate on and get to and so I can make a decision. And then that other stuff is things that you maybe need to talk to Ms. Hilton or, you know - - I want to get the evidence –

(R. pp. 46-47.)

> Mr. Smith: And you and I both know who Fonzie is, right? I mean, Fonzie wore a white t-shirt. Was he a bad guy? I'm wearing a white t-shirt right now. Am I a gang member?
>
> Ms. Hilton: That's one of the signs that a gang –
>
> Mr. Ruthsatz: Mr. Smith –
>
> Mr. Smith: Yes, sir.
>
> Mr. Ruthsatz: I want to go through the evidence for this case, and I want you to be able to ask questions regarding the evidence.
>
> Mr. Smith: Yes, sir.
>
> Mr. Ruthsatz: I don't think that that line of questioning is really pertinent to the case. What we are trying to determine – what I'm trying to determine is whether or not

this occurred, which, if the evidence is there that it did occur, I'd like to hear it from your clients, and of course, if you would like to ask questions regarding the evidence, that is quite – you're welcome to do that. This is not a place for that line of questioning. So, you know, just keep it to the evidence, if you don't mind. If you want to question, you know, I'll listen to it, and if I don't think it's pertinent to the situation, we'll move on.

(R. pp. 82-83.)

Mr. B.: [...] And then, these are all CDs, if you really want to know. These are our CDs.

Mr. Ruthsatz: We can include that in evidence.

(R. p. 85.)

Mr. Ruthsatz: I think we need to bring it back in and talk about the evidence and any other questions that you have regarding the evidence, and then, you know, try to come to a finalization of this hearing. So what else – did you have questions about anything that they presented?

Mr. Smith: I was just –

District's Attorney: I do have – if I could interrupt. I do have – we do have available Eric Chamblee. I didn't know which hearing you wanted him for. He's available by phone, if you need him, so if you have a question for him, we can call him.

(R. pp. 86-87.)

Mr. Smith: I had a lot of questions, but I don't think they are allowed to answer. He is clearly –

District's Attorney: You can certainly ask any questions about the evidence.

(R. pp. 88-89.)

It is evident that Appellants were given the opportunity to present their cases during the proceedings before the hearing officer and subsequently were informed of the right to appeal the decisions after they were rendered.

D. The Circuit Court Correctly Determined That Appellants' First Amendment Rights Were Not Violated.

With regard to Appellants' constitutional argument, in *Tinker v. DesMoines Independent Community School District*, the Supreme Court addressed the constitutionality of a school policy restricting students' freedom of expression. *Tinker*, 393 US 415 (1969). The Circuit Court correctly found that school officials can impose a "prohibition of expression of one particular opinion" only if "necessary to avoid material and substantial interference with school work or discipline." *Id.* at 511.

Contrary to Appellants' position, Respondent did not have to look "outside of school" to find that the minor Appellants were engaging in gang-activity. School administrators had an obligation to act for the safety of all students when a frightened ninth grader was sobbing in the main office because he feared his head would be "bashed in" if he did not fight another student because his "set" was disrespected. Specifically, Ms. Hilton summarized the meeting with this minor Appellant as follows:

> On October 22, 2013, S.B. was questioned in my office with Mary Nell Anthony, Officer Jamie 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 S.B. 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 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 I could not risk his presence on the TLH campus with his being compelled to do these "missions" or risk bodily harm to himself. I told him that he was not helping us out at all with information that would keep the school safe.
>
> At that point he said that he would tell us the names. He also said the "Outlaw" gang was affiliated with "Hit Squad," another gang. 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, the same students 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: T.G., K. B., and X.B. 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. He said there were other gang members, but no others that were at TLH.

(R. pp. 129-130.) The administration had no option but to expel minor Appellants after: (1) minor Appellants were identified as members of gang, (2) they learned that "missions" were run at school, (3) that a "mission" included assault and battery over the weekend, and (4) minor Appellant feared his head would be "bashed in" if the other members found he was a "snitch."

Further, unsurprisingly, threats of violence are the type of speech that courts are *least* likely to consider protected by the First Amendment. Specifically:

> **School authorities, however, are not required to wait until disorder or invasion occurs.** *Quarterman*, 453 F.2d at 58. "[I]f there are substantial facts which reasonably support a forecast of likely disruption, the judgment of the school authorities in denying permission and in exercising restraint will normally be sustained." *Id.* Indeed, it has been held that the school authorities" 'have a duty to prevent the occurrence of disturbances.' **Curtailment of [a] student's exercise of the right of free speech does not demand a certainty that disruption will occur, but only the existence of facts which might reasonably lead school officials to forecast substantial disruption.**

Phillips v. Anderson Cnty. Sch. Dist. Five, 987 F. Supp. 488, 492 (D.S.C. 1997); *Chandler v. McMinnville School Dist.*, 978 F.2d 524, 529 (9th Cir. 1992) (*emphasis added*) (quoting *Karp v. Becken*, 477 F.2d 171, 175 (9th Cir. 1973)); *see also Jeglin v. San Jacinto Unified School Dist.*, 827 F. Supp. 1459, 1461 (C.D. Cal. 1993) (*emphasis added*). Similarly, in this case, the administration was concerned about the criminal activity that had already occurred off campus, the fact that "missions" were being run at the school, that students were threatening other students, and was not just, as the Appellants state, "trying to make a case against these boys before something bad happens," but was protecting all students involved.

VI. CONCLUSION

In light of the foregoing reasons, the Circuit Court correctly determined that the Board's decision was based on substantial evidence and that minor Appellants' due process rights and First Amendment Rights were not violated. Therefore, the District respectfully requests the Court affirm the Circuit Court's order and uphold the Board's expulsion decision.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

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

T.G., by his Mother, Lisa G., K.B., by His Mother, Lakesha B., S.B., by His Mother, Kim B. ..... Appellants

v.

Anderson School District Five.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that Appellant's Final Brief complies with Rule 211(b), SCACR.

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