

22968

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
The Honorable Letitia H. Verdin, Circuit Court Judge

Case No. 2014-40-00993

Appellate Case No. 2016-001058

RECEIVED

JAN 23 2017

SC Court of Appeals

Justin T., a minor, by and through his parent
Caren D. Taylor

APPELLANT

vs.

Richland County School District One,
and Percy Mack

RESPONDENTS

RECORD ON APPEAL

Caren D. Taylor
2139 Oak Street
Columbia, South Carolina 29204
(803) 765-2107

Appellant *Pro Se*

Childs & Halligan, P.A.
Dwayne T. Mazyck, Esquire,
PO Box 11367
Columbia, SC 29211-1367
(803) 254 - 4035

Attorney for Respondent

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4000993

Justin T
Caren D Taylor
PLAINTIFF(S)

Richland County School District One
Percy Mack
DEFENDANT(S)

Submitted by: _____ 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.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; 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 to the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional information for the Clerk: _____

*Motion to dismiss is granted
Court does not have subject jurisdiction*

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 entered. 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
		\$
		\$
		\$

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 [Signature] Judge Code 2162 Date 4/15/16

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 20 day of April, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Alexandre Thomas Postic

Dwayne Traynor Mazyck

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court [Signature]

SCANNED

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

C.A. No. 2014-CP-400-0993

Justin T. , a minor, by and)
through his parents Caren D.)
Taylor and Carl Gibson)

Appellant)

Vs)

NOTICE OF APPEAL

Richland County School District)
One, and Percy Mack,)
Superintendent in his official)
Capacity,)
Appellee.)

JEANETTE W. McBRIDE
C.C.P. & G.S.
2014 FEB 19 PM 2:27
RICHLAND CO. FILED

The Appellant hereby gives Notice of Appeal from the judgment of the Appellee Richland County School District One (Richland One) and Superintendent in the student expulsion action to Circuit Court of Common Pleas in the County of Richland.

This Notice of Appeal is made subsequent to personal written notice of the Richland One School Board's judgment which was received by the mother on the 18th day of January 2014.

Grounds For Appeal - The Richland One School Board's decision to affirm the Hearing Officer's conclusion that John Doe "is guilty of the following Level II offense - Sexual Misconduct" is not supported by substantial evidence in the Whole Record and is set forth as follows:

1. There are no "Findings of Fact" by the Hearing Officer that are based on credible evidence, witness statements, testimony and/or a sworn statement from the alleged victim that is supported substantial evidence in the Record that Appellant is guilty of Sexual Misconduct.
2. Appellant's admission that he pulled the waistband on the jeans of the alleged victim is not equivalent to an admission of Sexual Misconduct. There is no substantial evidence in the Record as a whole for inappropriate touching being equivalent to: (1) touching a person sexually, or (2) Sexual Harassment, or (3) Sexual Misconduct as required in Richland One Discipline Code.
3. The alleged victims statement and the hearsay statements of three students about what the alleged victim told them the Appellant did to her are not substantial evidence that he is guilty of any of the four requirements for Sexual Misconduct as described in the Richland One Discipline Code.
4. The Hearing Officer failed to follow South Carolina Code of Laws §59-63-240 to

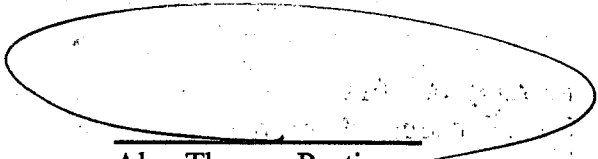
Appellant's prejudice because the parents were denied the right to question all witnesses, the three students who made hearsay statements and the alleged victim because they were not present at the expulsion hearing.

5. On January 14, 2014 at the Appeal Hearing to the Richland One School Board, the Hearing Officer stated: 'she asked the Student to look on page 10 of the Discipline Code at (I) Sexual Misconduct and pick what he was guilty of, and he said sexual harassment.' Subsequently, she then concluded that the Appellant was guilty of Sexual Misconduct. The Hearing Officer's conclusion that Appellant was guilty of Sexual Misconduct is not based on substantial evidence in the whole Record, and is arbitrary and capricious.
6. Given the exemplary record of the Appellant, the Appellant disputes the severity of the School Board's decision. The law in South Carolina does not make expulsion mandatory for a pupil committing a crime (§ 59-63-210 of the South Carolina Code of Laws). According to the 2013-2014 Richland One Discipline Code, possible sanctions for the offense include a written warning, a probation contract and return to school, placement in an alternative program, or expulsion. No explanation was given by the Board to choose the most extreme sanction.
7. The Appellant's constitutional rights to due process of law and equal protection of the laws under the 14th Amendment to the U.S. Constitution and Article 1 §3 of the South Carolina Constitution have been violated.
8. As a matter of Record, the Forest Acres Police filed charges against John Doe for Assault and Battery 3rd degree in the Family Court which conflicts with the unsworn statement of the alleged victim, the Forest Acres Incident Report and the statement of John Doe given to the School Resource Officer, to the Hearing Officer at the Expulsion Hearing and to the School Board at the Appeal Hearing.

The appellant reserves the right to amend the appeal at a later date. A Memorandum of Law in Support of the Appeal may be filed at a later date.

February 14, 2014
Columbia, South Carolina

Respectfully submitted,



Alex Thomas Postic
1830 Marion Street
Columbia, SC 29201
(803) 771- 8081

Mailing Address:
Post Office Box 11926
Columbia, SC 29211

Attorney for Appellant

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

C.A. No. 2014-CP-400-

Justin T. , a minor, by and)
through his parents Caren D.)
Taylor and Carl Gibson)

Appellant)

CERTIFICATE OF SERVICE

vs.)

Richland County School District)
One, and Percy Mack,)
Superintendent in his official)
Capacity)

Appellee.)

JEANETTE W. McBRIDE
C.P. & G.S.
2014 FEB 19 PM 2:27
RICHLAND COUNTY
FILED

I certify that I have served the Notice of Appeal on Appellee, Richland County School District One and Percy Mack, Superintendent, by depositing copies of it on February 14, 2014 in the United States Mail, first class, postage prepaid to them as follows:

Mrs. Susan Williams, Esq.
Attorney for Richland One
1616 Richland Street
Columbia, South Carolina 29201

Respectfully submitted,

February 14, 2014
Columbia, South Carolina

Alex Thomas Postic
1830 Marion Street
Columbia, SC 29201
(803) 771- 8081

Mailing Address:
Post Office Box 11926
Columbia, SC 29211

Attorney for Appellant

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

C.A. No. 2014-CP-400-0993

Justin T. , a minor, by and)
through his parents Caren D.)
Taylor and Carl Gibson)

Appellant)

AMENDED
NOTICE OF APPEAL

Vs)

Richland County School District)
One, and Percy Mack,)
Superintendent in his official)
Capacity,)

Appellee.)

2014 MAR -4 AM 10:05
JEANETTE W. McBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

The Appellant hereby gives Notice of Appeal from the judgment of the Appellee Richland County School District One (Richland One) and Superintendent in the student/expulsion action to Circuit Court of Common Pleas in the County of Richland.

This Notice of Appeal is made subsequent to personal written notice of the Richland One School Board's judgment which was received by the mother on the 18th day of January 2014.

Grounds For Appeal - The Richland One School Board's decision to affirm the Hearing Officer's conclusion that the appellant "is guilty of the following Level II offense - Sexual Misconduct" and further to remove him from AC Flora High School is not supported by substantial evidence in the Whole Record and is set forth as follows:

1. There are no "Findings of Fact" by the Hearing Officer that are based on credible evidence, witness statements, testimony and/or a sworn statement from the alleged victim that is supported substantial evidence in the Record that Appellant is guilty of Sexual Misconduct.
2. Appellant's admission that he pulled the waistband on the jeans of the alleged victim is not equivalent to an admission of Sexual Misconduct. There is no substantial evidence in the Record as a whole for inappropriate touching being equivalent to: (1) touching a person sexually, or (2) Sexual Harassment, or (3) Sexual Misconduct as required in Richland One Discipline Code.
3. The alleged victim's statement and the hearsay statements of three students about what the alleged victim told them the Appellant did to her are not substantial evidence that he is guilty of any of the four requirements for Sexual Misconduct as described in the Richland One Discipline Code.
4. The Hearing Officer failed to follow South Carolina Code of Laws §59-63-240 to

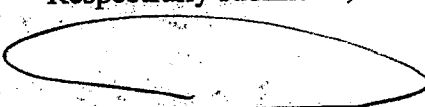
Appellant's prejudice because the parents were denied the right to question all witnesses, the three students who made hearsay statements and the alleged victim because they were not present at the expulsion hearing.

5. On January 14, 2014, at the Appeal Hearing to the Richland One School Board, the Hearing Officer stated: 'she asked the Student to look on page 10 of the Discipline Code at (I) Sexual Misconduct and pick what he was guilty of, and he said sexual harassment.' Subsequently, she then concluded that the Appellant was guilty of Sexual Misconduct. The Hearing Officer's conclusion that Appellant was guilty of Sexual Misconduct is not based on substantial evidence in the whole Record, and is arbitrary and capricious.
6. Given the exemplary record of the Appellant, the Appellant disputes the severity of the School Board's decision. The law in South Carolina does not make expulsion or even removal from his/her school environment mandatory for a pupil committing a crime (§ 59-63-210 of the South Carolina Code of Laws). According to the 2013-2014 Richland One Discipline Code, possible sanctions for the offense include a written warning, a probation contract and return to school, placement in an alternative program, or expulsion. No explanation was given by the Board to choose the most extreme sanction.
7. The Appellant's constitutional rights to due process of law and equal protection of the laws under the 14th Amendment to the U.S. Constitution and Article 1 §3 of the South Carolina Constitution have been violated.
8. As a matter of Record, the Forest Acres Police filed charges against the Appellant for Assault and Battery 3rd degree in the Family Court which conflicts with the unsworn statement of the alleged victim, the Forest Acres Incident Report and the statement of John Doe given to the School Resource Officer, to the Hearing Officer at the Expulsion Hearing and to the School Board at the Appeal Hearing.

The appellant reserves the right to amend the appeal at a later date. A Memorandum of Law in Support of the Appeal may be filed at a later date.

March 4, 2014
Columbia, South Carolina

Respectfully submitted,


Alex Thomas Postic
1830 Marion Street
Columbia, SC 29201
(803) 771- 8081

Mailing Address:
Post Office Box 11926
Columbia, SC 29211

Attorney for Appellant

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Justin T. , a minor, by and)
through his parents Caren D.)
Taylor and Carl Gibson)

Appellant)

vs.)

Richland County School District)
One, and Percy Mack,)
Superintendent in his official)
Capacity)

Appellee.)

IN THE COURT OF COMMON PLEAS

C.A. No. 2014-CP-400-0993

**AMENDED
CERTIFICATE OF SERVICE**

JEANETTE W. MORRIS
C.C.P. & G.S.

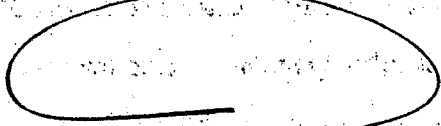
2014 MAR -4 AM 10:05

RICHLAND COUNTY
FILED

I certify that I have served the Notice of Appeal on Appellee, Richland County School District One and Percy Mack, Superintendent, by hand delivering copies of it on March 4, 2014, as follows:

Dr. Percy A. Mack
Superintendent for Richland One
1616 Richland Street
Columbia, South Carolina 29201

Respectfully submitted,



March 4, 2014
Columbia, South Carolina

Alex Thomas Postic
1830 Marion Street
Columbia, SC 29201
(803) 771- 8081

Mailing Address:
Post Office Box 11926
Columbia, SC 29211

Attorney for Appellant

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Justin T. , a minor, by and through)
his parents Caren D. Taylor and Carl)
Gibson,)

C.A. No. 2014-CP-400-0993

Plaintiffs,)

DEFENDANT'S MOTION TO DISMISS

vs.)

Richland County School District One, and)
Percy Mack, Superintendent in his official)
Capacity,)

Defendants.)

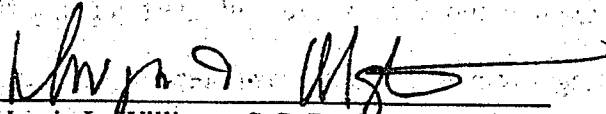
FILED
2014 MAR 11 AM 11:57
CLERK OF COURT
C.C.P. & G.S.

PLEASE TAKE NOTICE that Defendants, Richland County School District One, and Percy Mack, Superintendent in his official Capacity ("Defendants"), by and through their undersigned counsel, will move, and hereby does move, this court for an order dismissing Plaintiffs' Appeal pursuant to S.C. R. Civ. P. 12(b)(1) and (6), on the ground that this court lacks subject matter jurisdiction over the claim. Specifically, the South Carolina Supreme Court has held that the Section 59-63-240 provision, which allows appeals of decisions of a school Board to the circuit court, only applies in cases where the decision of the Board is an actual expulsion. (Davis v. School District of Greenville County, 374 S.C. 39, 647 S.E. 2d 219.) As in Davis, Plaintiff was initially recommended for expulsion; however, he was instead assigned to the High School's evening program. This court further lacks subject matter jurisdiction over Plaintiffs' appeal because Plaintiffs have not, and cannot, assert that the District has violated any right or interest of theirs concerning which violation they would be entitled any relief.

In support of this motion, Defendants will rely on the pleadings on file in this case, the applicable statutory and case law, the South Carolina Rules of Civil Procedure, and the memorandum of law, which will be filed with the court prior to a hearing on this motion.

Respectfully submitted,

CHILDS & HALLIGAN, P.A.

By: 
Vernie L. Williams, S.C. Bar No. 9511
vwilliams@childs-halligan.net

Dwayne T. Mazyck, S.C. Bar No. 70240
dmazyck@childs-halligan.net

P.O. Box 11367
Columbia, South Carolina 29211
(803) 254-4035

Attorney for Defendants

March 7, 2014

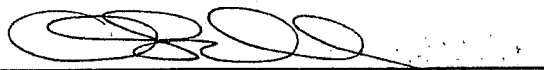
Columbia, South Carolina

CERTIFICATE OF SERVICE BY MAIL

The undersigned of Childs & Halligan, P.A., hereby certifies that she has served the following counsel of record with the foregoing **DEFENDANT'S MOTION TO DISMISS** by mailing a copy of same, postage prepaid and return address clearly indicated, to the following on this 7th day of March, 2014:

Alex Thomas Postic, Esq.
The Law Offices of Alex Thomas Postic, PA
PO Box 11929
Columbia, SC 29211

FILED
2014 MAR 11 AM 11:57
C.C.P. & G.S.



Andrea E. Shull

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Justin T. , et al

Plaintiff,

-VS-

Richland County School
District One,

Defendant.

) COURT OF COMMON PLEAS

) Case No(s) : 2014CP4000993

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TRANSCRIPT OF RECORD

April 15, 2016
Columbia, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

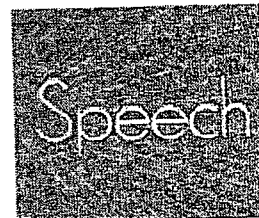
A P P E A R A N C E S:

ALEXANDRE T. POSTIC, Esquire
Attorney for the Plaintiff

DWAYNE T. MAZYCK, Esquire
Attorney for the Defendant

Teresa B. Johnson, CVR-M
Certified Court Reporter
P.O. Box 2812
Greenville, S.C. 29602

Records are
taken and
produced via



CAT 7SM

I N D E X

DIRECT CROSS REDIRECT RECROSS

Motions

4

Certificate of Reporter

7

EXHIBITS PAGE

NO.

DESCRIPTION

ID EV

PLAINTIFF EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 15th day of April, 2016 at approximately 10:52 a.m.)

THE COURT: versus Richland County School District One. The defendant has, uh, -- defendant or respondent in this case has a motion to dismiss; is that correct?

MR. MAZYCK: Yes, Your Honor.

THE COURT: Yes, sir.

MR. MAZYCK: May I proceed?

THE COURT: Certainly.

MR. MAZYCK: Your Honor, this is well established in South Carolina through the Supreme Court. There's two statutes that are question here, 59-63-240, which is the expulsion, and 59-63-250, which is transfer of pupils.

What's before the Court here is we have a young man who had been recommended for expulsion due to some sexual misconduct at one of our high schools, local high schools. He went through a process, Your Honor. The hearing officer did not uphold the recommendation for expulsion, but, in lieu, wanted to transfer him to the alternative

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school.

Now, you can't appeal a transfer. 59-63-250 is very clear that the only body that can appeal a transfer is the Board. Now, what they are trying to do is circumvent the system and use 59-63-240, which is an expulsion statute, which says, if you are expelled, you can then appeal your expulsion in circuit court. Okay. But it does not allow you to transfer that once you've been sent to an alternative program. You can't use that statute because the process started out as an expulsion.

So this court, in this appeal before you, has no subject matter -- this court has no subject matter jurisdiction because this child was not expelled. He was transferred, and he never came back to our schools. He transferred to a local private school, Heathwood Hall, here in the community. This is from November of 2013, Your Honor. This is now 2016. I think -- I know he's a senior about to graduate. I think this case is not only moot, but I also don't think that this court has subject matter jurisdiction and it should be dismissed.

THE COURT: Thank you, sir. Well,

1 anything -- I tend to agree with defense
2 counsel from what I know of these statutes. Is
3 there anything that you can --

4 **MR. POSTIC:** Your Honor, we would just --
5 just for the record, I state that we feel that
6 there are adequate grounds of what this -- what
7 did -- equals for this defendant who had -- I'm
8 sorry -- this appellant who had an exemplary
9 school record, was an intelligent student.
10 Sending him to an alternative school was equal
11 to being expelled. We would ask that -- we
12 stand on our grounds that we placed in our
13 notice of appeal that we filed back in February
14 of 2014.

15 **THE COURT:** All right. Based on the, uh,
16 -- based on the information that I've read and
17 the defense's memorandum in this case, I do
18 find that this court does not have subject
19 matter jurisdiction. Therefore, I grant the
20 motion to dismiss.

21 **MR. MAZYCK:** Thank you, Your Honor.

22 **THE COURT:** Thank you.

23 **MR. POSTIC:** Thank you, Your Honor.

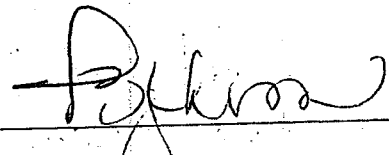
24 **(WHEREUPON,** the proceeding concludes at
25 approximately 10:54 a.m.)

CERTIFICATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland, South Carolina, on this 9th day of June, 2016.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.



Teresa B. Johnson
Official Court Reporter

NOTICE OF MOTION SCHEDULE

April 05, 2016



Motion "APPNOA - Appeal/Notice of Appeal" for Case: 2014CP4000993 - Justin T [redacted], plaintiff, et al vs Richland County School District One, defendant, et al has been added to the following Motions Roster:

941 - APPEAL ROSTER APRIL 15, 2016

This hearing of this motion has been scheduled for 4/15/2016 at 11:00 AM.

The above referenced case is scheduled for an Hearing before Letitia H. Verdin in 3B

All requests for continuances must be in writing with a \$25.00 filing fee and received by the Chief Administrative Judge prior to the hearing. A request for a continuance does not guarantee that a case will be continued. Please notify the Court in writing if the Motions are resolved prior to the hearing. Please file any briefs or memorandum the Wednesday before the week of the hearing.

Mail Notice To:

Dwayne Traynor Mazyck
PO Box 11367
Columbia, SC 292111367

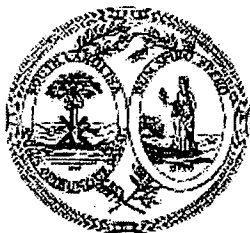
Court Info:

Richland County Common Pleas
Richland County Judicial Center
1701 Main Street
Columbia, SC 29201-9201

Judge Alison R. Lee
Chief Administrative Judge
Fifth Judicial Circuit

NOTICE OF MOTION SCHEDULE

April 05, 2016



Motion "APPNOA - Appeal/Notice of Appeal" for Case: 2014CP4000993
- Justin T [redacted], plaintiff, et al vs Richland County School District
One, defendant, et al has been added to the following Motions Roster:

941 - APPEAL ROSTER APRIL 15, 2016

This hearing of this motion has been scheduled for 4/15/2016 at 11:00
AM.

The above referenced case is scheduled for an Hearing before Letitia H. Verdin in 3B

All requests for continuances must be in writing with a \$25.00 filing fee and received by the
Chief Administrative Judge prior to the hearing. A request for a continuance does not
guarantee that a case will be continued. Please notify the Court in writing if the Motions are
resolved prior to the hearing. Please file any briefs or memorandum the Wednesday before
the week of the hearing.

Mail Notice To:

Alexandre Thomas Postic
PO Box 11926
Columbia, SC 29211

Court Info:

Richland County Common Pleas
Richland County Judicial Center
1701 Main Street
Columbia, SC 29201-9201

Judge Alison R. Lee
Chief Administrative Judge
Fifth Judicial Circuit

**Richland County Common Pleas
CASE HISTORY FOR CASE 2014CP4000993**

Justin T. , plaintiff, et al vs Richland County School District One , defendant, et al

FILED DATE: 2/19/2014

CASE TYPE: CP/Use AP Case Type 999

STATUS: Appeal

JUDGE:

CASE PARTIES:

Plaintiff Justin T

Plaintiff Attorney Postic, Alexandre Thomas
PO Box 11926, Columbia, SC 29211

Defendant Richland County School District One

Defendant Mack, Percy

Plaintiff Taylor, Caren D

Plaintiff Gibson, Carl

Plaintiff Doe, John

Plaintiff Doe, Mary

Defendant Attorney Mazyck, Dwayne Traynor
PO Box 11367, Columbia, SC 292111367

CASE HISTORY FOR CASE 2014CP4000993

Justin T.

Age: Unknown
DL#:

DOB: Unknown
SSN: 000-00-0000

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
Action: Petition/Filing Fee Required Civil Filing Fee County 44%/100%	\$44.00	\$0.00	\$44.00	999

Print Date: 04/15/2016
Print Time: 11:18:09AM
Requested By: EB232681

CaseHistory.rpt V6.1

Page 1 of 2

CASE HISTORY FOR CASE 2014CP4000993

Civil Filing Fee State 56%	\$56.00	\$0.00	\$56.00	999
SCJD Filing Fee Proviso \$50 / \$25	50.00	0.00	50.00	999
<hr/>				
Action: Motion/Motion Filing Fee				
Motion/Order Filing Fee \$25	25.00	0.00	25.00	999
<hr/>				
Total:	\$175.00	\$0.00	\$175.00	

DATE	TIME	EVENT DESCRIPTION
2/19/2014	2:25 PM	Filing recorded: Petition/Filing Fee Required
2/19/2014	2:26 PM	Appeal/Notice of Appeal
2/19/2014	4:30 PM	Filing recorded: Service/Certificate Of Service
2/19/2014	12:21 PM	Filing recorded: Appeal/Notice of Appeal
3/4/2014	11:16 AM	Filing recorded: Amended Notice of Appeal
3/11/2014	11:57 AM	Filing recorded: Motion/Motion Filing Fee
4/4/2014	10:39 AM	Filing recorded: Verification/Verified
2/19/2014	2:26 PM	Received payment of \$150 from Alexandre Thomas Postic for Justin T . Printed receipt #173480.
3/11/2014	11:58 AM	Received payment of \$25 from Childs for Justin T . Printed receipt #174684.
3/5/2014	12:00 AM	MORENOC recorded the following Case Note: Certificate of Service
3/8/2016	12:00 AM	AH233224 recorded the following Case Note: Motion APPNOA - Appeal/Notice of Appeal added to Roster: 941 - APPEAL ROSTER APRIL 15, 2016 Roster Begin Date 2016-04-15 - End Date 2016-04-15

Print Date: 04/15/2016
 Print Time: 11:18:09AM
 Requested By: EB232681

CaseHistory.rpt V6.1

Page 2 of 2

Richland County Common Pleas
CASE HISTORY FOR CASE 2014CP4000993

Justin T , plaintiff, et al vs Richland County School District One , defendant, et al

FILED DATE: 2/19/2014

CASE TYPE: CP/Use AP Case Type 999

STATUS: Dismissed

JUDGE:

CASE PARTIES:

Plaintiff Justin T

Plaintiff Attorney Postic, Alexandre Thomas
 PO Box 11926, Columbia, SC 29211

Defendant Richland County School District One

Defendant Mack, Percy

Plaintiff Taylor, Caren D

Plaintiff Gibson, Carl

Plaintiff Doe, John

Plaintiff Doe, Mary

Defendant Attorney Mazyck, Dwayne Traynor
 PO Box 11367, Columbia, SC 292111367

CASE HISTORY FOR CASE 2014CP4000993

Justin T	Age: Unknown	DOB: Unknown
	DL#:	SSN: 000-00-0000

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
Action: Petition/Filing Fee Required Civil Filing Fee County 44%/100%	\$44.00	\$0.00	\$44.00	999

Print Date: 05/10/2016
 Print Time: 4:37:37PM
 Requested By: DW233612

CaseHistory.rpt V6.1

Page 1 of 2

CASE HISTORY FOR CASE 2014CP4000993

Civil Filing Fee State 56%	\$56.00	\$0.00	\$56.00	999
SCJD Filing Fee Proviso \$50 / \$25	50.00	0.00	50.00	999
<hr/>				
Action: Motion/Motion Filing Fee				
Motion/Order Filing Fee \$25	25.00	0.00	25.00	999
<hr/>				
Total:	\$175.00	\$0.00	\$175.00	

DATE	TIME	EVENT DESCRIPTION
2/19/2014	2:25 PM	Filing recorded: Petition/Filing Fee Required
2/19/2014	2:26 PM	Appeal/Notice of Appeal
2/19/2014	4:50 PM	Filing recorded: Service/Certificate Of Service
2/19/2014	12:21 PM	Filing recorded: Appeal/Notice of Appeal
3/4/2014	11:16 AM	Filing recorded: Amended Notice of Appeal
3/11/2014	11:57 AM	Filing recorded: Motion/Motion Filing Fee
4/4/2014	10:39 AM	Filing recorded: Verification/Verified
4/18/2016	2:44 PM	Form 4 Order Motion to dismiss is granted. Court does not
2/19/2014	2:26 PM	Received payment of \$150 from Alexandre Thomas Postic for Justin T . Printed receipt #173480.
3/11/2014	11:58 AM	Received payment of \$25 from Childs for Justin T . Printed receipt #174684.
3/5/2014	12:00 AM	MORENOC recorded the following Case Note: Certificate of Service
3/8/2016	12:00 AM	AH233224 recorded the following Case Note: Motion APPNOA - Appeal/Notice of Appeal added to Roster: 941 - APPEAL ROSTER APRIL 15, 2016 Roster Begin Date 2016-04-15 - End Date 2016-04-15
4/18/2016	12:00 AM	AH233224 recorded the following Case Note: Form 4 Order Motion to dismiss is granted. Court does not have subject matter jurisdiction

Print Date: 05/10/2016
 Print Time: 4:37:37PM
 Requested By: DW233612

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Justin T. , a minor, by and through)
his parents Caren D. Taylor and Carl)
Gibson,)

C.A. No. 2014-CP-400-0993

Plaintiffs,)

**DEFENDANT'S MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO DISMISS**

vs.)

Richland County School District One, and)
Percy Mack, Superintendent in his official)
Capacity,)

Defendants.)

I. PROCEDURAL HISTORY AND STATEMENT OF FACTS

This matter began as a recommendation for expulsion based on Justin allegedly committing a violation of Richland School District One's ("District") Discipline Code section IV (I) Sexual Misconduct which includes consensual intercourse, sexual harassment, groping or indecent exposure. Justin was charged with simple assault by the Forest Acres Police Department for the incident that occurred at A.C. Flora High School on November 19, 2013. Justin was suspended and recommended for expulsion on November 20, 2013, by Mr. Richard McClure, Principal of A.C. Flora High School, as a result of his violation of the District's Discipline Code. The expulsion hearing before the District's Hearing Officer was held on Monday, November 25, 2013. The Hearing Officer placed Justin at Richland One Evening High School in lieu of expulsion. Justin and his family appealed the decision to the Board. The Board heard the appeal on Tuesday, January 14, 2014. The Board upheld the administration's decision. This appeal follows.

II. ARGUMENT

A. The decision of the administration and Board to transfer Justin in lieu of expulsion is not appealable to Circuit Court.

Under well-established South Carolina law, student suspensions are not subject to appeal to Circuit Court. The South Carolina Supreme Court considered this issue in the Davis v. School District of Greenville case. With regard to appeals of transfers to alternative schools in lieu of expulsion the Court held that transfers of students are governed by section 59-63-250, which provides:

"The Board or a designated administrator may transfer a pupil to another school in lieu of suspension or expulsion but only after a conference or hearing with the parents or legal guardian. The parents or legal guardian may appeal a transfer made by an administrator to the board."

The limited appeal provisions of Davis apply despite the fact that the matter began as a recommendation for expulsion. In Davis, the student was also initially recommended for expulsion. The District ultimately decided to assign the student to an alternative school in lieu of expulsion, as was done with the Plaintiff in this matter. In response to Davis, the Plaintiff's argument that the matter was appealable to Circuit Court because it began as a recommendation for expulsion, the Court held:

"Respondent contends, however, that because the proceedings began as expulsion proceedings, and the procedure initially followed by the District was pursuant to the expulsion statute, see § 59-63-240, he retains the full appellate rights outlined in that statutory section. Respondent further maintains that because the statutory language provides that the 'action of the board may be appealed to the proper court'-without regard to whether the action resulted in an actual expulsion-the circuit court properly found it had the power to review the Board's action in this case. We disagree."

Similarly, in this case, although Justin's case began as a recommendation for expulsion, because that recommendation ultimately was rejected, the decision to transfer him in lieu of expulsion is not appealable.

The court further held in Davis that:

"Section 59-63-250 expressly provides for discipline in the form of a transfer "in lieu of suspension or expulsion;" therefore, it plainly envisions the possibility that the student may be involved in expulsion proceedings prior to being transferred. The statute then specifically provides for only one level of appeal. Had the Legislature intended for a transferred student to have all the rights outlined in the expulsion statute, it could have provided specifically for that procedure in section 59-63-250. We therefore hold the Legislature intended that when a student is merely transferred, and not expelled, the review of the decision ends with the Board. See §59-63-250; Hodges v. Rainey, supra (the cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature).

Indeed, a contrary interpretation would create a significant conflict between sections 59-63-240 and 59-63-250, allowing further appellate review of a transfer if the proceedings were initiated under the expulsion statute, but not of a transfer initiated under the transfer statute. Hodges v. Rainey, supra (statutes should be harmonized whenever possible to prevent an interpretation that would lead to a result that is plainly absurd); see also Aledo Indep. Sch. Dist. v. Reese, 987 S.W.2d 953, 958 (Tex. App. 1999) (where the court held that a student's transfer to an alternative education program was not an expulsion, in part because the applicable statutes provided no district court review for alternative placements but allowed further court review for expulsions). Thus, once the hearing officer rejected expulsion and imposed the sanction of transfer, the transfer statute became applicable. That section's appellate procedure simply does not provide for appeal of the Board's decision to the circuit court. See 59-63-250. Accordingly, the circuit court lacked subject matter jurisdiction to review the Board's decision."

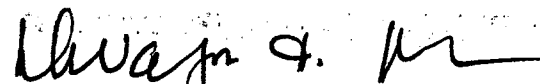
For the above-stated reasons, Defendants submit that this court lacks subject matter jurisdiction in this matter and that, accordingly, the appeal should be dismissed.

[SIGNATURE LINE ON FOLLOWING PAGE]

Respectfully submitted,

CHILDS & HALLIGAN, P.A.

By:



Dwayne T. Mazyck, S.C. Bar No. 70240
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P.O. Box 11367
Columbia, South Carolina 29211
(803) 254-4035

Attorney for Defendants

April 15, 2016

Columbia, South Carolina

CERTIFICATE OF SERVICE BY MAIL

The undersigned of Childs & Halligan, P.A., hereby certifies that she has served the following counsel of record with the foregoing **DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS** by mailing a copy of same, postage prepaid and return address clearly indicated, to the following on this 15th day of April 2016:

Alex Thomas Postic, Esq.
The Law Offices of Alex Thomas Postic, PA
PO Box 11929
Columbia, SC 29211

Shelley M. Kohr

RECEIVED

JAN 23 2017

CERTIFICATE

SC Court of Appeals

The undersigned hereby certifies that the Record on Appeal contains all material proposed by the Appellant and contains only one item proposed by the Respondents and not any other material.

SC Appellate Court Rule 210 (c) provides in pertinent part:

(c) Content. The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. The Record shall not, however, include matter which was not presented to the lower court or tribunal. ...

Subsequently, Respondents' Designated Matter listed below was not included in the Record on Appeal pursuant SC Appellate Court Rule 210 (c) because they were not filed in the Richland County Circuit Court (R. pages 21-24):

1. Letter from Sharon D. Minnieweather to Caren Taylor dated January 16, 2014
2. Letter from Sharon D. Minnieweather to Caren Taylor dated December 11, 2013
3. Letter from Sharon D. Minnieweather to Caren Taylor dated December 10, 2013
4. Letter from Sharon D. Minnieweather to Caren Taylor dated December 6, 2013
5. Letter from Sharon D. Minnieweather to Caren Taylor dated November 21, 2013
6. District Policy on Level II offense: I-Sexual Misconduct
7. City of Forest Acres Incident Report case number 11-13-1796

January 23, 2017

Caren D. Taylor

Caren D. Taylor
2139 Oak Street
Columbia, South Carolina 29204
(803) 765-2107

Appellant *Pro Se*