THE STATE OF SOUTH CAROLINA
In the Court of Appeals

JOHN DOE, A MINOR, Appellant,

v.

ALLENDALE COUNTYSCHOOL, Respondent.

Appellate Case No. 2018-001567

The Honorable Perry M. Buckner, III
Allendale County
Trial Court Case No. 2018-CP-03-00102

APPELLANT'S REPLY BRIEF

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Without restating the issues or making redundant arguments which have been thoroughly set for in his opening brief, the Appellant offers the following points of clarification and rebuttal to the arguments raised by the Respondents.

I. THIS COURT CAN AND SHOULD CONDUCT AN APPELLATE REVIEW OF APPELLANT'S DUE PROCESS CLAIMS.

Because expulsion cases are handled similarly to administrative law or probate cases, the trial court, as in this case, the Circuit Court, serves as appellate review, with the Court of Appeals having the authority to review the Circuit Court's decision. In the case at hand, the Student appeared *pro se* before a panel of school administrators that recommended expulsion. The Allendale County School District Board of Trustees upheld the suspension, where the Student also appeared *pro se*. The Student did secure counsel for filing in Circuit Court; counsel did argue that the school had violated the student's due process. The Circuit Court order does include in its second footnote discussion of procedural due process, and the Order broadly concludes that substantial evidence supported the Board's decision.

In so much that the Board is arguing that the current issues were not presented in any fashion before the trial level court, the Student notes that the Panel of School Administrators nor the Allendale County School District Board of Trustees maintained transcripts of these hearings which is procedure in other school districts. In as much as the question of due process was not argued, the record as a whole is vague and should be liberally construed to protect the Student's rights, especially since he proceeded *pro se* at the initial or "trial" level within the School District's process. Counsel for the student raised the question of due process to the Circuit Court, and the issue is being raised here.

The School District first cites Elam v. S.C. DOT, 361 S.C. 9, 14 (2004), which discusses the timeliness of appeal due to a Rule 59(e) Motion and denying post-trial motions. This case is not applicable as it does not address the instances when a Circuit Court serves as an appellate court, nor are the issues or holdings on point to the case at hand.

The School District then cites State v. Bailey, 368 S.C. 39 (2007) arguing that this supports their position in regards to the Circuit Court acting as an appellate court. Citing Bailey, the School District states, "....courts have held that the Court of Appeals should not address an issue on appeal which the Appellant did not raise to [or was not ruled upon by] the circuit court. (Resp. Br. At 6). However, the "or was not ruled upon by" which the School District included in brackets, is misrepresentative of the Court's analysis. The Court's discussion stated as follows: "Because the preservation issue was never brought to the attention of the circuit court on appeal, no ruling on the matter was ever issued. Further, nothing in the record indicates the State brought the matter to the attention of the circuit court in a petition for rehearing." In regards to the case at hand, this is distinguishable as the issue was presented to the Circuit Court, yet the Circuit court only tangentially referenced it in its Order. The Circuit Court's failure to include such discussion does not negate the Student's raising the issue.

To the extent that the School District raises the concerns regarding Rule 59(e), the School District cites Williams v. Williams, 329 S.C. 569, 579 (Ct. App. 1998), which was overturned by 355 S.C. 386 (1999). The School District again uses Elam to support the Rule 59(e) argument, and although this case was distinguished previously, should be noted that Elam relies on Coward Hund Const. Co. v. Ball Corp., 336 S.C. 1, 518 S.E.2d 56 to define Rule 59(e). The relevant portion of Coward Hund states as follows: "The purpose of Rule 59(e), SCRCP, to alter or amend the judgment[,] is to request the trial judge to 'reconsider matters properly encompassed

in a decision on the merits.'" Id. at 4, citing Arnold v. State, 309 S.C. 157,172, 420 S.E.2d 834 (1992). The Circuit Court in the matter at hand, is not a trial court, but an appellant court.

Although the Circuit Court may not have issued a lengthy analysis regarding due process, the second footnote address indicates the Court was aware of the Student's due process claim. Because the Student's attorney raised the issue, the Court references the issue, and because students' rights and education are critical policy concerns for the State, this Court should consider the Student's due process issues.

II. THE CIRCUIT COURT ERRED IN DETERMINING THAT THE SCHOOL BOARD HAD SUBSTANTIAL EVIDENCE TO JUSTIFY ITS DECISION.

The Board states that it was tasked "with determining whether Appellant brought a firearm to school." Appellant Brief at 8. As the Board correctly states, there is no dispute that two handguns were found in the trunk of the car which the Student drove to school. The Board further agrees that the Student had no knowledge that the handguns were in the vehicle he drove to school.

There is no dispute that the handguns belonged to the Student's father, who is a law enforcement officer, and were locked in the father's trunk, unbeknownst to the Student who shares a vehicle with his father. To the extent that S.C. Code Ann § 59-63-235 evokes the active definition of "brought," meaning the Student had knowledge, the Board's argument fails.

To the extent the Board wishes the Court to adopt the broadest definition of the meaning, the Court should not be persuaded, as the broadest definition prevents any meaningful review. The Board, through a footnote, asks the Court to take judicial notice to horrific national school shooting tragedies, naming the Stoneman Douglas High School shooting in Parkland, Florida,

the Townsville Elementary School shooting in Anderson County, the Sandy Hook Elementary School shooting in Connecticut, and the Columbine High School (Colorado) shooting, among a few others. Appellant Brief, p.13, footnote 1.t There is no dispute that these are truly evil events and no one wants a future school shooting. However, the Student would also like the Court to take judicial notice as in all those named tragedies, the shooter knowingly brought a weapon to a school campus with the intent to shoot. The Student in the present case had no knowledge and no intent. With no knowledge of a weapon, the Student poses zero safety risk to other students, law enforcement, or school officials.

The Board cites solely to South Carolina Board of Dental Examiners v. Breeland, decided in 1946, to argue that defining "brought" as requiring knowledge is "so plainly absurd." In Breeland, a dentist argued a difference in the meaning of "convicted" and "guilty" in regards to his felony rape conviction that resulted in him losing his dental license. 208 S.C. 469, 477-78 (1946). The analogy is incongruent for many reasons, but primarily as the broad versus ordinary meaning of "brought" carries a knowledge component which is critical for the determination of substantial evidence. If the Court accepts the definition of "brought" to include knowledge or intent, then the Board concedes that there is no substantial evidence to support the Student's expulsion.

III. THE BOARD'S IMPLEMENTATION OF ITS ZERO TOLERANCE POLICY VIOLATED THE STUDENT'S DUE PROCESS RIGHTS AND PERPETUATES POOR PEDAGOGICAL POLICY.

The Board argues that the legislature intended Section 59-63-235 to operate as strict liability; however, that would only be likely if the knowledge or intent component of the word "brought" was applied. It would be one thing if a student knowingly had a weapon in his or her possession on school grounds, as that knowledge could potentially lead to an escalated situation. However,

when there is no knowledge or intent, there is no threat of harm. As discussed in the Student's initial brief, if a student planted a weapon on a valedictorian, who had no knowledge of the weapon, the strict application of the broadest application of the statute would have the valedictorian expelled for 365-days, despite a situation where the perpetrator admitted to the valedictorian having no knowledge. Common sense would show that the legislature did not intend for such irrational application of red lined, zero tolerance consequences.

The Board relies heavily on Stinney v. Sumter County School District 17 to argue that the Student's Due Process rights were not violated. 391 S.C. 547, 551 (2011). However, Stinney is not analogous as the main issue regarding the summary judgment was the two-year delay between the expulsion and the appeal to circuit court. Id. at 549-50. The Student timely filed this appeal.

The Board further tries to mitigate the due process violation by offering that the not-at-school alternative services provided make the Board's action justifiable.[1] Studies show that harsh penalties taint a child's view of school and the educational system, resulting in poorer performance, greater social ills, and increases drop out rates. Rocio Rodriguez Ruiz, *School to Prison Pipeline: An Evaluation of Zero Tolerance Policies and their Alternatives*, 54 HOUS. L. REV 803 – 37, 810-11 (Winter 2017). Socialization is a critical component of school pedagogy and removing a student from the classroom without a judiciable reason prevents the child from full educational opportunity. Continued application of Zero-Tolerance policies robs students of due process. As in the case at hand, the Student had no knowledge of the weapons in his car as his father, a law enforcement office, stated that he had left his guns in his car that he shared with his son, but the school expelled the student for 365 in accordance with their Zero-Tolerance

[1] The Letters to and from Dr. Tobin the Board references in their brief, do not appear to have been part of the record to Circuit Court.

Policy application of §59-63-235. Because the School violated the Student's due process rights, and because this violation reflects policy shown to be detrimental to educating children, this Court should overturn the Board's decision and allow Student X.H. to return to school.

CONCLUSION

Based on the foregoing, in addition to the arguments made in the opening brief, Student X.H. respectfully requests that this Court overturn the expulsion and allow him to return to school.

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January 26, 2019

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Notice of Appeal by Appellant JOHN DOE, A MINOR, was served by first class pre-paid mail on the 26th of January, 2019 to:

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January 26, 2019

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Re: *John Doe v. Allendale School District*
Appellate Case No: 2018-001567

Dear Ms. Kitchens:

Enclosed please find a copy of the reply brief of the appellant. I am also enclosing a certificate of mailing on opposing counsel.

Thank you for your assistance in this matter.

Respectfully,

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