

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM COURT OF COMMON PLEAS

The Honorable Perry M. Buckner, III

Allendale County

Case No.: 2018-CP-03-00102

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SC Court of Appeals

John Doe, a Minor, Appellant,

v.

Allendale County School Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. DID APPELLANT PRESERVE FOR APPELLATE REVIEW HIS ISSUES REGARDING THE ALLEGED DENIAL OF DUE PROCESS BY THE ALLENDALE COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES WHEN HE DID NOT FILE A RULE 59(E) MOTION TO RECONSIDER ISSUES NOT RULED UPON BY THE CIRCUIT COURT?

- II. DID THE CIRCUIT COURT ERR IN UPHOLDING THE EXPULSION OF APPELLANT BASED UPON SUBSTANTIAL EVIDENCE IN THE RECORD?

- III. DID THE ALLENDALE COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES DENY APPELLANT PROCEDURAL AND SUBSTANTIVE DUE PROCESS IN EXPELLING APPELLANT WHEN APPELLANT ADMITTED THAT TWO HANDGUNS WERE PRESENT IN A VEHICLE APPELLANT DROVE ONTO SCHOOL GROUNDS?

STATEMENT OF THE CASE

On April 13, 2018, a panel of school administrators recommended a 365-day expulsion of Appellant following the discovery of two handguns in a vehicle Appellant drove onto the school grounds of Allendale-Fairfax High School. On May 1, 2018, Appellant appealed the expulsion recommendation to the Allendale County School District Board of Trustees, which upheld the expulsion. Thereafter, Appellant appealed the expulsion to the Circuit Court, which also upheld the expulsion in an order dated July 25, 2018. Appellant filed his Notice of Appeal of the Circuit Court order on August 23, 2018.

STATEMENT OF THE FACTS

Appellant, a senior student of Allendale County Schools (“District”), is appealing the circuit court’s order affirming the District’s Board of Trustees’ (“Board”) decision to expel him from Allendale-Fairfax High School (“AFHS”) for 365 days so long as he is provided home-based educational services. (R. p. 1).

On March 22, 2018, the District conducted a random search of students’ backpacks and vehicles at Allendale-Fairfax High School. (R. p. 6). During this search, school officials found two handguns in a vehicle which Appellant drove to school. (R. p. 6). Allendale County Sheriff’s Department Deputy Samuel Holmes completed an incident report detailing the circumstances of the search and the location where the handguns were found in the vehicle. (R. p. 59). Based on those findings, the District recommended Appellant for expulsion in accordance with State law and District policy. (R. p. 57). Appellant was immediately suspended from school as the District initiated its expulsion procedures. (R. p. 58). Darlene Hall, Principal of Allendale-Fairfax High

School, notified the Appellant's parents, in writing, that the Appellant was being referred to the District's Hearing Officer, Patterson Moses, as Appellant was charged with having a handgun at school. (R. p. 13). This letter notified the Appellant that he had "the right to legal counsel and all other legal [rights] including the right to question witnesses." (R. p. 13).

Appellant's first hearing was on April 13, 2018, during which Appellant was not represented by counsel. (R. p. 57). The hearing was held before a three-member panel consisting of Dr. Beverly McCullough, Principal of Fairfax Elementary School; Mike Grant, Assistant Principal of Allendale-Fairfax Middle School; and Mr. Corey Haynes, School Counselor/Behaviorist with Hearing Officer Moses presiding. (R. pp. 13, 21). Prior to deciding the matter, the panel reviewed Appellant's discipline, academic, and attendance records, as well as Deputy Holmes' incident report. (R. p. 12). The panel found Appellant "guilty" of "possession of a firearm at AFHS" and recommended that he be expelled from school for 365 calendar days, while permitting him to enroll in an Alternative Educational Program which would not be housed at AFHS. (R. p. 57).

Subsequently, on April 23, 2018, the Appellant requested that the Interim Superintendent, Dr. Walter Tobin ("Dr. Tobin"), modify the panel's decision pursuant to his authority under S.C. Code Ann. § 59-63-235. (R. p. 56). Dr. Tobin offered to modify the panel's decision to provide that the Appellant would be expelled for the remainder of the 2017-2018 academic year only. (R. p. 53). After such time, Appellant would be permitted to submit a request for readmission to the District's new superintendent for the 2018-2019 academic year. (R. p. 53) Appellant declined this modification and sought to appeal the decision to the Board. (R. p. 53).

By letter dated May 1, 2018, Appellant appealed his expulsion to the Board. (R. p. 54.) In a letter dated May 4, 2018, notifying Appellant of the hearing before the Board, Appellant was advised that he had the right to: question all witnesses; present his own witnesses or other evidence; and be represented by counsel. (R. p. 52).

The Board held its hearing on May 8, 2018, during which, Appellant was not represented by counsel. (R. pp. 51, 52). The Board reviewed Appellant's academic, discipline, and attendance records, including Appellant's projected graduation date; SRO Holmes' incident report; and the April 13, 2018 hearing outcome form. (R. p. 24). The Board further reviewed District Policies JICI and JKE relating to the District's expulsion procedures as well as S.C. Code Ann. §§ 59-63-235 and 59-63-240. (R. p. 24). Additionally, the Board heard testimony from District administration, Appellant, and Appellant's parents. (R. p. 45, 49). Appellant and Appellant's parents testified that Appellant did not know the guns were in the vehicle. (R. p. 43).

After consideration, the Board voted to uphold the 365-day expulsion so long as Appellant was provided home-based educational services for the duration of the expulsion. (R. pp. 43, 45). As such, Appellant was allowed to continue with his courses and remain on track to receive his high school diploma in the Spring of 2019. (R. p. 43). Appellant and his parents were formally notified of this decision by letter dated May 10, 2018. (R. p. 45). The following day, Appellant's parents requested that his home-based educational services be resumed. (R. p. 46).

Subsequently, on May 17, 2018, Appellant again requested that Dr. Tobin modify the one-year expulsion pursuant to his authority under S.C. Code Ann § 59-63-235. (R. p. 43) Specifically, Appellant requested that Dr. Tobin allow him to return to AFHS for the

2018-2019 academic year. (R. p. 43). Notwithstanding his pending request for modification, Appellant filed an appeal with the circuit court on May 21, 2018. (R. p. 2). Despite Appellant's pending appeal, by letter dated June 1, 2018, Dr. Tobin proposed a second modification which provided that Appellant remain expelled for the 2017-2018 academic year with the provision of home-based educational services. However, Appellant would be permitted to return to the District and enroll in dual credit courses at the University of South Carolina Salkehatchie in August 2018. (R. p. 42). Appellant never accepted this modification and chose to proceed with his circuit court appeal.

During the circuit court appeal, Appellant again conceded that two handguns were found in the trunk of the vehicle he drove to school. (R. p. 6). Appellant further conceded that the Board provided timely notice, conducted a timely hearing, and provided a timely written decision. (R. p. 6). However, Appellant sought reversal of the Board's decision on the following grounds: (1) the "sentencing" document cites a non-existent statute and thereby the Board lacked a statutory basis for its action; (2) the Board did not have sufficient evidence to support its decision; (3) the protections embedded in S.C. Code Ann. § 59-63-235 were illusory under the circumstances; and (4) S.C. Code Ann. § 59-63-235 may well be unconstitutional on due process and/or equal protection grounds. (R. pp. 6-9).

The Honorable Perry M. Buckner heard oral arguments in this matter on July 16, 2018. (R. p. 1) Shortly thereafter, Judge Buckner issued an order finding that the Board's determination that Appellant brought two firearms to school was supported by substantial evidence. (R. p. 4). Judge Buckner further found that the error contained in the "sentencing" letter did not warrant overturning the Board's decision. (R. p. 3). Judge

Buckner did not make a decision regarding any alleged violation of Appellant's due process and/or equal protection rights. (R. pp. 1-5).

Appellant did not file a SCRCP 59(e) motion requesting the circuit court make a determination on his due process and/or equal protection arguments. Instead, Appellant filed the instant appeal before this Court on August 23, 2018. Appellant argues the following: (a) the District's implementation of its zero-tolerance policy denied Appellant his educational opportunity and due process; (b) the District violated Appellant's substantive due process by failing to gather or consider relevant information; and (c) zero-tolerance policies are harmful as they disconnect students and exacerbate the dropout rate.

STANDARD OF REVIEW

As an initial matter, S.C. Code Ann. § 59-63-235 requires that school boards "expel for no less than one year a student who is determined to have brought a firearm to a school." The statute further provides that the expulsion must follow the procedures established pursuant to Section 59-63-240. *Id.* Accordingly, a student expelled pursuant to Section 59-63-235 is entitled to "the right to legal counsel and to all other regular legal rights." S.C. Code Ann. § 59-63-240.

Additionally, Section 59-63-240 provides that a school board's decision to expel a student from school may be appealed to the proper court. *Id.* However, State law limits judicial review to ascertaining whether the board's decision is supported by substantial evidence. Doe v. Richland County School District Two, 382 S.C. 656, 659 (Ct. App. 2009). Courts have defined substantial evidence as "evidence which, 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 v. Dorchester County

Vocational Educ., 287 S.C. 545, 548 (1986). A “court cannot substitute its judgment for that of the [school board].” Law v. Richland County School District No. 1, 270 S.C. 492, 495 (1978).

ARGUMENT

I. THIS COURT CANNOT CONDUCT AN APPELLATE REVIEW OF APPELLANT’S DUE PROCESS CLAIMS AS SUCH CLAIMS WERE NOT PRESENTED TO AND DECIDED UPON BY THE CIRCUIT COURT.

Appellant’s failure to file a motion for reconsideration of any issue related to a purported violation of his due process rights deprives this Court of the appellate authority to consider the issue.

Issues and arguments are preserved for appellate review only when (1) they are raised before the lower court and (2) ruled on by the trial judge. Elam v. S.C. DOT, 361 S.C. 9, 23 (2004). In the case of the circuit court acting as an appellate body, 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. State v. Bailey, 368 S.C. 39, 44 (Ct. App. 2006); City of Columbia v. Erwin, 330 S.C. 516, 519-520 (1998). Post-trial motions are used to preserve those issues that have been raised to the trial court but not yet ruled upon by the Court. Elam, 361 S.C. at 23.

Accordingly, the circuit court has been vested with the authority to hear motions to alter or amend the judgment when it sits in an appellate capacity as these motions are required to preserve issues for further review by the Court of Appeals in cases where the circuit court initially fails to address an issue raised by a party. Williams v. Williams, 329 S.C. 569, 579 (Ct. App. 1998). Consequently, a party “must file a [SCRCP 59(e)] motion

when an issue or argument has been raised but not ruled on, in order to preserve it for appellate review.” Elam, 361 S.C. at 24.

In the instant action, Appellant has made two fatal errors which warrants the dismissal of this appeal. First, Appellant asserts arguments before this Court which were not presented to the circuit court. Specifically, the Appellant did not assert any argument related to the District’s alleged “zero-tolerance” policy violating his right to Constitutional substantive due process. Rather, Appellant asserted that the statute, S.C. Code Ann. § 59-63-235, “may well be unconstitutional on due process/equal protection grounds.” State v. Oxner, 391 S.C. 132, 134 (2011) (stating that an argument that is not raised to an intermediate appellate court is not preserved for appellate review). As such, Appellant’s argument related to any zero-tolerance policy was not preserved for appellate review as the lower court was not given the opportunity to address such an argument.

Additionally, Appellant asserts an argument before this Court which was presented to the circuit court but not ruled upon by the circuit court. The circuit court did not make a determination as to whether the District violated Appellant’s due process rights. As such, the burden was on the Appellant to seek reconsideration of any and all alleged due process violations by the District. An appellate court cannot determine error regarding an issue not addressed by the circuit court. City of Rock Hill v. Suchenski, 374 S.C. 12, 16 (2007). Accordingly, the Appellant’s failure to file a SCRCP 59(e) motion warrants dismissal of this appeal as Appellant’s due process arguments were not preserved for appellate review.

This Court should dismiss this appeal to the extent that the Appellant relies on arguments which were not presented to or ruled upon by the circuit court.

II. THE CIRCUIT COURT CORRECTLY DETERMINED THAT THE SCHOOL BOARD HAD SUBSTANTIAL EVIDENCE TO JUSTIFY ITS DECISION.

The circuit court correctly found that the Board's decision to expel Appellant was supported by substantial evidence.

A court cannot substitute its judgment for that of the school board; instead, courts are limited to determining whether the school board's decision is supported by substantial evidence. Law, 270 S.C. at 495; Doe, 382 S.C. at 659. Consequently, a court must affirm a school board's decision if the "evidence which, 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, 287 S.C. at 548.

In the instant case, the Board was required to expel any student determined to have brought a firearm to school but retained the discretionary authority to provide educational services to such a student in an alternative environment. S.C. Code Ann. § 59-63-235. Therefore, the Board was tasked with determining whether Appellant brought a firearm to school.

As an initial matter, Appellant has never disputed that two handguns were found in the trunk of a car which he drove to school. (R. pp. 6, 43). Notwithstanding Appellant's concession that he violated the statute, the Board reviewed Deputy Holmes' incident report, Appellant's 2017-2018 discipline, academic, and attendance records, as well as relevant school policies. (R. p. 24). Additionally, the Board heard testimony from Appellant and his parents which conceded that the guns were present in the vehicle but further indicated that he did not know the guns were in the vehicle. (R. pp. 43, 45, 49). After review of this evidence, the Board upheld the decision to expel Appellant for 365

days so long as the District provided him with home-based educational services. (R. p. 45). While this decision removed Appellant from the school environment, the Board permitted Appellant to continue his courses and remain on track to receive his diploma in the Spring of 2019. (R. pp. 43, 45, 46). The Board's decision reflects appropriate consideration of all evidence including Appellant's alleged lack of knowledge.

This Court should dismiss this appeal as the circuit court correctly determined that the Board's decision was justified by substantial evidence.

III. TO THE EXTENT THIS COURT FINDS THAT APPELLANT PRESERVED HIS DUE PROCESS ARGUMENTS, THE DISTRICT DID NOT VIOLATE APPELLANT'S DUE PROCESS RIGHTS AS HE WAS PROVIDED ALL RIGHTS TO WHICH HE WAS ENTITLED.

The District provided Appellant all procedural and substantive due process rights to which he was entitled under S.C. Code Ann. §§ 59-63-235 and 59-63-240 to protect his educational opportunity.

Pursuant to S.C. Code Ann. § 59-63-235,

[t]he district board must expel for no less than one year a student who is determined to have brought a firearm to a school or any setting under the jurisdiction of a local board of trustees. The expulsion must follow the procedures established pursuant to Section 59-63-240. The one-year expulsion is subject to modification by the district superintendent of education on a case by case basis. Students expelled pursuant to this section are not precluded from receiving educational services in an alternative setting.

Accordingly, students expelled under section 59-63-235 are entitled to the same procedural due process protections as students expelled under section 59-63-240.

Specifically, section 59-63-240 provides the following, in pertinent part:

[i]f procedures for expulsion are initiated, the parents or legal guardian of the pupil shall be notified in writing of the

time and the place of a hearing either before the board or a person or committee designated by the board. At the hearing, the parents or legal guardian shall have the right to legal counsel and to all other regular legal rights including the right to question all witnesses. If the hearing is held by any authority other than the board of trustees, the right to appeal the decision to the board is reserved by either party. The hearing shall take place within fifteen days of the written notification at a time and place designated by the board and a decision shall be rendered within ten days of the hearing. The pupil may be suspended from school and all school activities during the time of the expulsion procedures. The action of the board may be appealed to the proper court.

Essentially, Appellant argues that (1) the procedural protections afforded were insufficient to protect his due process rights as a nonjudicial body expelled him for 365 days, and (2) his substantive due process rights were violated when the District defaulted to the broadest definition of the phrase “to bring.” However, the procedures articulated in Section 59-63-240 have been determined to be sufficient to protect the due process rights of students being expelled. Stinney v. Sumter School District 17, 391 S.C. 547, 551 (2011). Furthermore, Appellant conceded before the lower court that that the Board provided timely notice, conducted a timely hearing, and provided a timely written decision. (R. p. 6). As it relates to the District’s interpretation of Section 59-63-235, the statute is clear on its face; “the district board must expel for no less than one year a student who is determined to have brought a firearm to a school.” Accordingly, the Board was not required to engage in statutory construction beyond the face of the statute as this language is clear and unambiguous.

A. The Appellant was provided sufficient procedural due process as it relates to the District’s decision to expel him for 365 days with the provision of home-based educational services.

The procedures set forth in Section 59-63-240 have been held to be constitutionally sufficient to protect students subject to expulsion. Stinney, 391 S.C. at 551. The South Carolina Supreme Court, in Stinney, found the “procedures and protections outlined in Section 59-63-240 to be constitutionally sufficient.” Id. The court reasoned that the statute afforded the students notice, opportunity to be heard, the right to be represented by counsel, and the right to present evidence and question witnesses. Stinney, 391 S.C. at 551. Accordingly, the fact that a student chooses not to be represented by counsel, present evidence, or question witnesses does not create a due process violation. Id. at 551-52.

Here, Appellant was promptly notified of his rights via letter from Principal Hall, to include “the right to legal counsel and all other legal [rights] including the right to question witnesses.” (R. p. 13). Appellant declined to exercise his right to legal counsel. (R. p. 51). Thereafter, Appellant was provided a hearing before a panel consisting of Dr. McCullough, Assistant Principal Grant, and Mr. Haynes who decided the matter by recommending expulsion. (R. p. 21). Appellant then requested that Dr. Tobin modify the expulsion. (R. p. 56). Dr. Tobin met with Appellant and his parents and offered a modification which Appellant declined. (R. p. 55).

Immediately following the meeting with Dr. Tobin, Appellant appealed to the Board as permitted by Section 59-63-240. (R. p. 54). The Appellant previously conceded to receiving a timely notice, hearing, and written decision. (R. p. 6). Appellant was afforded all legal rights to offer evidence and testimony and be represented by counsel. (R. pp. 49). While Appellant and his parents provided witness testimony, Appellant was not represented by counsel. (R. pp. 49, 51). Nevertheless, Appellant’s decision not to

retain counsel during the hearing does not result in a violation of due process. Stinney, 391 S.C. at 551-52. Significantly, Appellant did not express any concerns with the sufficiency of the procedures utilized before the panel or Board. (R. p. 6). While Appellant alleges that his procedural due process rights were violated because a nonjudicial body expelled him, this argument is misplaced as the State Supreme Court has already determined that the statutory framework for expulsion hearings, with the Board sitting in a quasi-judicial capacity, provides a student due process. Id. at 551-552.

Prior to appealing to circuit court, Appellant requested a second modification by Dr. Tobin in an effort to avail himself of the mitigation procedures provided in the statute. (R. p. 43). Dr. Tobin proposed a second modification; however, Appellant declined. (R. p. 42). Accordingly, Appellant was afforded all procedural rights required by Section 59-63-235 and Section 59-63-240, including the right to seek mitigation provided in the statute.

B. Appellant's substantive due process rights were not violated as the State legislature intended Section 59-63-235 to operate as a strict liability statute while granting school districts with a limited ability to address unique circumstances.

The District did not violate Appellant's substantive due process rights as it correctly applied the statute and continued to provide Appellant with educational services.

While Appellant argues that the Board's default to the broadest definition of the phrase "to bring" in Section 59-63-235 deprived him of his educational opportunity as well as due process, this is unsupported by the record. The purpose of statutory construction is to "ascertain and effectuate the intent of the legislature." Hodges v. Rainey, 341 S.C. 79, 85 (2000). However, "where the statute's language is plain and

unambiguous and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to [look for or] impose another meaning.” Id. (citing Paschal v. State Election Commission, 317 S.C. 434 (1995)).

“Legislative intent must prevail if it can be reasonably discovered in the language used” in light of the intended purpose of the statute. Ray Bell Constr. Co. v. School Dist., 331 S.C. 19, 26 (1998). Section 59-63-235 explicitly states that “[t]he district board must expel for no less than one year a student who is determined to have brought a firearm to a school.” Here, the primary purpose of this statute is school safety; and, therefore, the statute requires that all students who have brought a firearm to school be expelled.

The legislature did not include a knowledge or intent factor because otherwise districts would be tasked with determining under what circumstances is it permissible for a student to bring a firearm to school. It is not unreasonable that the legislature intended to have the statute act as a strict liability statute as student safety is of foremost concern, given the incidents of violence in schools at the time of the adaptation of the statute in 1995 and in recent years.¹ The ordinary meaning of this statute would not lead to absurd results unintended by the legislature. South Carolina Board of Dental Examiners v. Breeland, 208 S.C. 469, 480 (1946) (holding that “a court will reject the ordinary meaning of words used in a statute when, to accept the ordinary meaning, will lead to a result so plainly absurd that it cannot possibly have been intended by the legislature”). Accordingly, the plain language of the statute should not be disregarded.

¹ Respondent requests that the Court take judicial notice of the shooting at Oakland Elementary School in Greenwood County in 1988; the shooting of Earnest Dunlap at Eau Claire High School in 1994; the Columbine High School (Colorado) shooting in 1999; the Sandy Hook Elementary School shooting in Connecticut in 2012; the Townsville Elementary School shooting in Anderson County in 2016; and the Stoneman Douglas High School shooting in Parkland, Florida in 2018.

Additionally, Section 59-63-235 has two built in safeguards to mitigate against the initial mandatory nature of the statute. Appellant has been offered participation in both safeguards. In particular, the statute permits the district's superintendent to modify the one-year term of the expulsion on a case-by-case basis. S.C. Code Ann. § 59-63-235. Additionally, the statute notes that students expelled under its provisions may receive educational services in an alternative setting. Id.

While Appellant contends that the authority of Dr. Tobin to modify the term of his expulsion was insufficient to protect him, he engaged in this process twice. (R. pp. 43, 46, 47, 53). Both times, Dr. Tobin proposed a modification which provided Appellant home-based educational services during the expulsion period and the opportunity to return to AFHS for the 2018-2019 academic year. (R. pp. 43, 53). Appellant declined both modifications and chose to appeal his expulsion. Appellant's argument that such modifications were a conflict of interest is simply not supported by the record. His decision not to accept either of Dr. Tobin's proposed modifications does not create a due process violation. Stinney, 391 S.C. at 551-52.

Furthermore, Appellant has been permitted to receive educational services in an alternative setting. (R. pp. 43, 46). As evidenced in the record, Appellant requested that his home-based educational services resume the day after the Board notified him of its decision. (R. p. 46). Accordingly, Appellant has not been deprived of his educational opportunity.

Appellant's attempt to compare his punishment with that of a student who intentionally brings a firearm to school with the intent to harm others fails. To support this conclusion, Appellant repeatedly asserts that the District did not consider his lack of

knowledge or intent. However, Appellant was provided every statutory protection at the District's disposal under Section 59-63-235. Specifically, he was offered two modifications which effectively limited his expulsion to the 2017-2018 academic year and was provided home-based educational services during his expulsion precisely because the Board considered his academic, discipline, and attendance records as well as witness testimony. While Appellant's arguments seem to take these opportunities for granted, these opportunities are not granted to every student expelled pursuant to the provisions of Section 59-63-235; rather, it was within the District's discretion.

Appellant argues that the Board's action in this case should be subject to strict scrutiny in determining whether a substantive due process violation occurred. As a threshold matter, the Supreme Court of the United States has held that education is not a fundamental right requiring strict scrutiny analysis. San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 38-40 (1973) (holding rational basis test is to be applied to State action which infringes a person's right to obtain an education). Nonetheless, the Board's action under S.C. Code Ann. § 59-63-235 passes the rational basis test as well as the strict scrutiny test.

As an initial matter and of particular importance, Appellant has not been denied his educational opportunity as the record indicates that his home-based educational services were resumed on May 11, 2018. (R. pp. 43, 46). While Appellant does not address this important fact, the record demonstrates that Appellant has not been deprived of his educational opportunity. Rather, Appellant's argument lies in his separation from AFHS. As Appellant argued before the circuit court, Appellant contends that Section 59-63-235 "imposes a punishment via an abridgement of a student/citizen's right to attend

the high school of his home area.” (R. p. 7). However, our State’s Constitution grants children only the right to a free public education not the right to be educated in the child’s preferred environment. S.C. Const. art. XI, § 3.

Under the rational basis test, so long as the official action is directed to a legitimate or substantial purpose that is rationally related to achieving that purpose, it is not unconstitutional. Plyler v. Doe, 457 U.S. 202, 224 (1982). Thus, the legislature policy of promoting student safety on a strict liability basis survives the rational basis analysis.

To the extent that the State constitution establishes education as a fundamental right requiring strict scrutiny, the Board’s action in this case does not violate Appellant’s substantive due process rights. The strict scrutiny standard for review of State action requires the State to establish a compelling State interest for its action in denying or impinging a fundamental right and the action must be narrowly tailored to achieve that interest. Rodriguez, 411 U.S. at 38. Under the strict scrutiny analysis sought by Appellant, the statute itself and the Board’s implementation of the statute are narrowly tailored to achieve the compelling State interest of promoting student safety.

First, the statute on its face is narrowly tailored as it provides the opportunity to mitigate the harsh results of the statute on a case-by-case basis. In addition, the statute provides for the continuation of education services to a student expelled under its provisions in an alternative setting. As implemented, the Board expelled Appellant because he was determined to have brought two firearms to school. (R. p. 45). Appellant does not dispute this finding. (R. p. 6). Appellant was expelled to protect all students attending AFHS given this State’s compulsory school attendance laws. Under these circumstances, the Board was tasked with balancing Appellant’s right to an education

with the safety of other students. Accordingly, the Board required the District to provide home-based educational services to Appellant but chose to separate him from the school environment given his violation of Section 59-63-235 and in an effort to protect other students from potential violence. (R. p. 45). The Board's decision demonstrates that its action was narrowly tailored to fit the Appellant's unique circumstances. The Board's action meets not only the rational basis test but also the strict scrutiny test and does not violate Appellant's substantive due process rights.

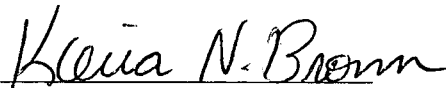
As such, this Court should dismiss Appellant's appeal as Appellant was not deprived of his educational opportunity, the statute was unambiguous on its face, and the statute provided sufficient procedural and substantive due process to protect Appellant under these unique circumstances.

CONCLUSION

For the aforementioned reasons, the District respectfully requests that this Court affirm the circuit court's order finding that Appellant's expulsion was supported by substantial evidence and dismiss this appeal.

Respectfully Submitted,

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