



seek declaratory relief pursuant to S.C. Code Ann. §15-23-20, for an order finding that the District's "policy of denying students recommended for expulsion the ability to ask questions of all witnesses" to be in violation of Article 1, Section 22 of the South Carolina Constitution and S.C. Code Ann. §59-63-240.

Respondent contends that Student T.D. was afforded due process and that there was substantial evidence in the record to justify the expulsion of T.D. Additionally, Respondent argues that Appellants' request for injunctive relief is moot, that Respondents' reliance on or use of juvenile records in connection with student disciplinary matters is not in violation of South Carolina law, and that South Carolina law does not require school districts to compel non-party students who have submitted statements in connection with school discipline investigations to attend due process hearings and be subjected to questioning and cross examination. After carefully considering the entire record in this matter, including the memoranda of law submitted by and oral arguments made on behalf of, the parties, the Court finds that T.D. was afforded due process based upon statutory and case law and that there is substantial evidence in the record to support the Board's decision. This Court also finds Appellants request for injunctive relief moot at this time and that there is no basis to award Appellants the declaratory judgment relief sought.

## II. FACTUAL SUMMARY

At the time of the incident giving rise to the expulsion, T.D. was enrolled in the eighth grade at Blythewood Middle School ("BMS"). On Sunday, December 2, 2018, BMS Principal, Karis Mazyck, received a call from the School Resource Officer regarding concerns of threats to BMS and was notified that an investigator from the Richland County Sheriff's Department would be contacting her to provide additional information. Later that day, law enforcement notified Principal Mazyck that Student T.D. had confessed to making threats and that T.D. had been advised that he could not return to school until contacted by the administration.

According to the police incident report, a parent of a BMS student contacted law

enforcement to report a troubling message her daughter had seen which was sent or posted by T.D. on Snapchat, a form of social media. The message at issue read, "*I want my shit Monday or all I know is U and him is getting shot in school... I don't give a fuck I want my shit Monday, My pistol is coming to school with me... and if I don't get my juul I'm shooting both of y'all and a ton of other people.*"

After being contacted by law enforcement regarding the threat, the BMS administration began investigating the matter by interviewing and collecting written statements from students who had been identified as having information regarding the threat.<sup>1</sup> The administration also contacted T.D. in an attempt to obtain his side of the story or a written statement. The administration was advised by T.D.'s guardian that he denied the allegations and would not be providing a statement. Thereafter, the administration issued T.D. a one day suspension and recommendation for expulsion.

By letter dated December 5, 2018, Principal Mazyck advised Appellants that T.D. was being recommended for expulsion in accordance with School Board Policies JICDA and JICDA-R, Level(s) III, Item 11; under actions leading to suspension or expulsion, specifically for using social media to threaten other students. Appellants were also advised that they would receive notification regarding the time and place of the expulsion hearing.<sup>2</sup>

A hearing was held before the Hearing Officer, Lottie Chishom, on December 12, 2018.<sup>3</sup> Following the hearing, the Hearing Officer upheld the school administration's recommendation for expulsion, finding T.D. did commit the alleged infractions of illegal use of technology (i.e., communicating a threat of a destructive device, weapon, or event with the intent

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<sup>1</sup> There is a discrepancy in the record as to the date in which the statements were prepared and obtained.

<sup>2</sup> By letter dated December 5, 2018 from Hearing Officer Lottie Chishom, Appellants were advised of the time and place of the hearing. For reasons unknown, this letter was inadvertently omitted from the student's file but submitted to the Court prior to the hearing.

<sup>3</sup> Prior to the hearing, the school administration conferenced with the Appellants regarding circumstances giving rise to the expulsion recommended, providing T.D. with another opportunity to share his side of the

of intimidation, threatening, or interfering with school activities) which was in violation of Level III, Item 11 of the School District's Code of Conduct, JICDA and Administrative Rule JICDA-R.

Appellants appealed to the Board, and then through legal counsel, supplemented their written appeal and requested an appeal hearing before the Board. Under Policy JKE/JKE-R, *Expulsions of Students*, the hearing officer's decision may be appealed by either the student or the administration to the Board. Per the policy, an appeal will normally be limited to the established record which will consist of the recording of the hearing, including any documentary evidence presented by either party, and the record will also contain the hearing officer's decision letter and expulsion summary sheet and the appealing party's written notice of intent to appeal. Normally the Board will not grant a personal appearance to either party in an appeal, unless there are extenuating circumstances, and the Board, in its discretion, determines to grant such an appearance. In this case, the Board did not grant Appellants the right to a new evidentiary hearing, but afforded Appellants the opportunity to make a personal appearance before the Board in connection with the appeal. Following the appeal, the Board voted to uphold the expulsion. This appeal follows the Board's decision.

### III. STANDARD OF REVIEW

This matter is properly before the Court pursuant to S.C. Code Ann. § 59-63-240, which specifically governs student expulsions. Section 59-63-240 provides that "the action of the [school] board [in student expulsion cases] may be appealed to the proper court." The hearing before the Circuit Court is to be a review of the record below, not a *de novo* hearing. See *Rumsey v. Anderson Sch. Dist. Five*, Case No. 92-CP-04-481 (S.C. Common Pleas, May 5, 1992); *Kemp v. Beaufort County Sch. Dist.*, Case No. 92-CP-07-799 (S.C. Common Pleas, June 2, 1992); *Brock v. Chesterfield County Sch. Dist. Bd. of Educ.*, Case No. 91-CP-13-301 (S.C.

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Common Pleas June 30, 1992), and *Ferguson v. Laurens County Sch. Dist. 56*, Case No. 98-CP-30-277 (S.C. Common Pleas, April 14, 1999).

Although Section 59-63-240 does not set forth the appropriate standard of review of by school boards reviewing appeals of student expulsions, South Carolina courts have applied the substantial evidence rule to these administrative appeals on the ground that a court should not substitute its judgment for that of school authorities. See *Laws v. Richland County School District One*, 270 S.C. 492, 495, 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, 146 (1986); *Hendrickson v. Spartanburg County Sc. Dist. No. Five*, 307 S.C. 108, 413 S.E.2d 871 (Ct. App. 1992). 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. 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).

Relying on *McIntyre v. Sec. Comm’r of South Carolina*, Appellants contend that the substantial evidence or any deferential review is not appropriate or adequate in light of the alleged procedural due process violations. 425 S.C. 439, 823 S.E.2d 293, *cert. denied* June 28, 2019. However, unlike in this case, *McIntyre* did not involve a decision of school authorities or appellate review following a lower level evidentiary hearing, and when one does exist, South Carolina courts have held that alleged violations or deficiencies relating to due process concerns can be cured on appeal at the Board level. See *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 70, 492 S.E.2d 62, 72–73 (1997) (finding administrative boards’ independent consideration of grievance cured any constitutional due process violation.). Further, South Carolina courts have not

hesitated to apply the substantial evidence review standard even when there have been allegations of procedural defects or violations of due process in student discipline hearings. *Doe v. Richland Sch. Dist. Two*, 382 S.C. 656 (Ct. App. 2009); *Greer v. Anderson Sch. Dist. Five*, Case No. 2014-CP-04-00381 (S.C. Common Pleas, October 6, 2014); *Savage v. Richland Sch. Dist. Two*, Case No. 2012-CP-40-00455 (S.C. Common Pleas, September 2, 2015); *Doe v. Richland Sch. Dist. 2*, Case No. 2006-CP-6525 (S.C. Common Pleas Feb. 16, 2007). Accordingly, this Court declines to depart from controlling, well established precedent, and the appeal should be confined to the record and reviewed under the substantial evidence standard of review.

#### **IV. LEGAL ANALYSIS AND CONCLUSIONS**

##### **A. There Is Substantial Evidence In The Record To Support The Board's Decision.**

The record in this matter includes a police report reflecting that a parent of a BMS student contacted law enforcement to report a troubling message her daughter had seen which was sent or posted by T.D. on Snapchat. According to the police report, the message read, "*I want my shit Monday or all I know is U and him is getting shot in school... I don't give a fuck I want my shit Monday, My pistol is coming to school with me... and if I don't get my juul<sup>4</sup> I'm shooting both of y'all and a ton of other people.*" There is a screen shot of this message, along with other related screenshots. As part of its investigation, the school administration interviewed students who were identified as having knowledge regarding the threatening messages and obtained statements. The statements are below:

**Incident Statement (student-K.M.):** T.D. sent me a message saying he wants the jul back. T.D. said that he was going to find where I live and shoot up my house. T.D. said if he doesn't get the jul back by Monday he is going to come to school with a gun and shoot me. T.D. threaten me multiple times and was asking what's my address. T.D. said he was going to try and find me and shoot me.

<sup>4</sup> Juul is a type of electronic cigarette.

**Incident Statement (student-H.G.):** We were sitting on my bed and we get these text and they say: Yo bring me my juul or something is coming out my boot, and we say we don't have it, then T.D. says he knows we do. Then we sent T.D. a picture of it and he says yes and I better get it. Then the other student says or what and T.D. says or you're getting shot, simple enough. At that point me and the other student didn't believe T. and started messaging with him and said go ahead shoot me and we'll go tell before you can. Then T.D. said we can go tell them and if they search him, he'll shoot up the school and if he doesn't get his juul, he'll shoot up the school. Then we say ok, and T.D. responds like a hour later and says "I'm not scared of school or cops I'll shoot anyone.

**Incident Statement (student-C.G.):** After T.D. was saying threatening things to us he came to me and the other student he was texting by phone. The first thing he texted me was: where is my juul? I didn't respond to him. A few minutes later, he text me and said if I don't have my juul before Monday someone is going to get shot at school. The third message was if you think I'm joking, I'm not and if you all report me to the school, I'm going to pull the gun out of my boot and shoot everybody. While he was texting me this, I got the other friend to take a picture of the message on my phone. He took the photos of all of the things that T.D. said.

In addition, Student C.G. also provided the following statement to law enforcement prior to being interviewed by the school administration:

**Incident Statement (student-C.G.):** Friday night I went to H.'s house we stayed at the house the whole time we were there. I had already had T.D. blocked on snap chat but he decided to make another snap chat and added me on it that night. I looked at my phone and he started texting me. The first text was "Who has my juul" I didn't respond to that about 5 minutes later he sends a text saying if he doesn't have his juul by Monday he is going to shoot up our school after he said this he said "I know K.M. took it". And the last message he sent was "And if ya'll make me get searched at school im pulling a gun out of my boot and shooting everyone". While he was saying all of this I was getting H.G. to take pictures of it on his phone. When he finished saying this stuff I blocked him on snap chat. I never knew who had the juul or if anybody ever took it from him.

The school administration testified during the hearing, and noted on the disciplinary referral, having been advised by the investigator that T.D. confessed to sending the messages. The Hearing Officer questioned T.D. regarding his admission to law enforcement by reading from an investigative report that provided, "T.D. stated he had sold his cell phone and did not have a cell phone. Then he [T.D.] stated that when he was at the emergency room last night that

he was using his biological mother's phone. He was pissed off because a student and the other boys took his juul and he did not know which one of them had it but that he wanted it back. Due to the fact that he was mad he sent the message to the student..."

During the hearing, T.D. maintained that someone had gotten into his account and sent the message because he did not have a phone at that time, having sold it in November. His grandparents, who were also in attendance at the hearing, explained that on that evening T.D. tried "to play gun with a bullet," hit it, and a piece of fragment went into his finger which had to be taken out. One of his grandparents reported that T.D. was mad because he had that fragment in his hand and his grandmother made him go to the emergency room. According to the grandparents, T.D. and his mom were sitting in the emergency room taking pictures but T.D. never got his hands on her phone, and after she left, she took the phone with her. Appellants denied T.D. had access to a pistol but admitted he had a 22 rifle, a 3030 rifle, and a shot gun which were locked in a bedroom and only used for hunting.

Respondent contends that the above referenced facts provide ample evidence of substantial evidence to support the Board's decision. Appellants, however, argue that there is no probative, reliable or substantial evidence of guilt in the record, because all of the evidence is highly unreliable hearsay. This Court disagrees. An administrative agency need not adhere to strict rules of evidence when acting in a judicial capacity, but the substantial rights of the party must be preserved. *City of Spartanburg v. Parris*, 251 Sc. 187, 190, 161 S.E.2d 228, 299 (1968). In fact, courts have repeatedly held that strict rules of evidence do not apply in student discipline matters, and among other things, hearsay evidence is admissible. See *Newsome v. Batavia Local School District*, 842 F.2d 920 (6th Cir. 1988); *Boykins v. Board of Educ.*, 492 F.2d 697 (5th Cir. 1974); *Tasby v. Estes*, 643 F.2d 1103 (5th Cir. 1981); *Jones v. Board of Trustees*, 524 So. 2d 968, (Miss. 1988); *Racine Unified Sch. Dist. v. Thompson*, 107 Wis. 2d 657, 321 N.W.2d 334,

(1982). Specifically, the Fifth Circuit Court in *Boykins* stated:

There is a seductive quality to the argument—advanced here to justify the importation of technical rules of evidence into administrative hearings conducted by laymen - that, since a free public education is a thing of great value, comparable to that of welfare sustenance or the curtailed liberty of a parolee, the safeguards applicable to these should apply to it.... In this view we stand but a step away from the application of the strictissimi juris due process requirements of criminal trials to high school disciplinary processes. And if to high school, why not to elementary school? It will not do.

The requirements of due process are sufficiently flexible to accommodate themselves to various persons, interests and tribunals without reduction to a stereotype and hence to absurdity.... Basic fairness and integrity of the fact-finding process are the guiding stars. Important as they are, the rights at stake in a school disciplinary hearing may be fairly determined upon the “hearsay” evidence of school administrators charged with the duty of investigating the incidents. We decline to place upon a board of laymen the duty of observing and applying the common-law rules of evidence.

*Id.* at 924-925 (quoting *Boykins*, 492 F.2d at 701.). Also, it is important to note that where hearsay in an administrative hearing is merely cumulative to other evidence, its admission is harmless. See *Jackson v. Speed*, 326 S.C. 289, 305, 486 S.E.2d 750, 758 (1997).

Based on a review of the record, the Court finds there is substantial, reliable evidence to support the Board’s decision. Included in the record is the screenshot of the threatening social media post from T.D.’s account. See e.g. *U.S. v. Needham*, 852 F.3d 830, 837 (8<sup>th</sup> Cir. 2017) (finding social media screenshots not hearsay under FRE 801.) Absent from the record is any evidence linking the threatening Snapchat post to another user other than T.D. or that someone hacked his Snapchat account. Further, Student T.D. testified he could not have sent the message

because he sold his phone prior to the incident, but this does not explain the fact that he could have accessed or created the account from another device. Importantly, the investigative report from law enforcement documents T.D.'s admission to using his mother's phone to send the threatening message, which this Court's views as a prior inconsistent statement or admission by a party opponent. SCRE Rule 801. This Court also notes law enforcement records would be admissible as a hearsay exception. SCRE Rule 803. In light of the evidence, giving it its due weight and creditability, this Court finds there is substantial evidence in the record to support the Board's decision and its decision should be affirmed.

**B. Student T.D. Was Provided Due Process.**

Appellants argue that T.D. was deprived of due process based on certain alleged procedural defects that occurred at the hearing officer level and on appeal before the Board.

S. C. Code § 59-63-240 outlines the procedures for student expulsion and provides, in relevant part, as follows:

...If 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 to either party. ...

The United States Supreme Court first addressed what process is due in the school discipline context in *Goss v. Lopez*, 419 U.S. 565, 95 S.Ct. 729 (1975). Although *Goss* specifically limited its holding to the short term suspension, not exceeding 10 days, courts have stated that it "nevertheless establish[ed] the minimum requirements for long-term expulsions as well." *Goss*, 419 U.S. at 584, 95 S.Ct. 729; *Newsome v. Batavia Local Sch. Dist.*, 842 F.2d 920, 927 (6th Cir.1988); *Remer v. Burlington Area School Dist.*, 286 F.3d 1007, 1010-11 (7th Cir. 2002). Specifically, *Goss* requires only that a student be given (1) notice of the charges against

him, (2) an explanation of the evidence, and (3) an opportunity to present his side of the story. *Goss*, 419 U.S. at 581, 95 S.Ct. 729.

Although the South Carolina Supreme Court has not articulated a standard for minimal due process in a student expulsion case, in *Stinney v. Sumter School District 17*, the court noted an expulsion is a more serious disciplinary action than is suspension, and therefore, the procedures and protections given to the accused student should be greater than the informal, immediate hearing that was authorized in *Goss*. *Stinney*, 391 S.C. 547, 551-552 (2011). Nonetheless, without deciding the constitutional minimum that must be given in these circumstances, the South Carolina Supreme Court has found those procedures and protections outlined in S.C. Code Ann § 59-63-240 to be constitutionally sufficient.

After T.D. was recommended for expulsion, he received a letter from the Hearing Officer noting procedural rights afforded to him and referencing the expulsion policy which would have outlined the same. The record does not reflect Appellants took advantage of all rights afforded. Prior to the evidentiary hearing before the Hearing Officer, Appellants received explanation of the violation T.D. was being accused of committing. During the hearing, T.D. had the opportunity to question the witnesses present, the administration, and present a defense. All three appellants, in addition to another relative, provided testimony during the hearing. Appellants could have presented more witnesses to testify or offer evidence of their own, but they did not. Appellants noted during oral arguments that they were not provided with evidence prior to the hearing, and that the court in *Doe v. Richland Sch. Dist. Two* has found such deprivation of evidence to be a violation of due process warranting reversal of an expulsion. 382 S.C. 656 (Ct. App. 2009); *see also Doe v. Richland Sch. Dist. 2*, Case No. 2006-CP-6525 (S.C. Common Pleas Feb. 16, 2007). *Doe*, however, is distinguishable on the grounds that reversal was based on a lack of substantial evidence to support the expulsion as well as the fact that the evidence the student was deprived of reviewing (a video which was the only piece of evidence

depicting the minor's conduct in dispute and question) was not made available to the student and parent even prior to appeal before the Board. That is not the case here where Appellants were provided all evidence prior to appeal before the Board.

Appellants further contend that reversal should be granted because the Hearing Officer demonstrated clear partiality by serving as both prosecutor and fact finder. To the extent proceedings before the Hearing Officer on December 12, 2018, were unfair or impartial, such alleged violation or deficiency would have been cured on appeal at the Board level, and there is no evidence to support the Hearing Officer engaged in material *ex parte* communications with the Board. *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 70, 492 S.E.2d 62, 72-73 (1997). Through the appeal process, Appellants had the opportunity, through legal counsel, to receive and review all the records, including, but not limited to, a summary of the evidence against the student, copies of all statements, and law enforcement records; identify any errors; raise any legal arguments; provide a defense; and make a personal appearance before the Board. Also, this Court notes that Appellants were also offered an opportunity to have a *de novo* hearing before another hearing officer prior to appeal before the Board, but did not accept the offer unless conducted pursuant to their terms.

Board policy does not require a *de novo* evidentiary hearing before the Board when a matter is reviewed on appeal. Further, Appellants have not identified any authority which would require a school board to do so. The appeal was conducted in accordance with the Board's policies, and there is no legal authority to support that this policy is inconsistent with applicable State law. To nullify a ruling of a quasi-adjudicatory body on the basis of bias or prejudgment requires a substantial showing of a "predetermined purpose to reach a determined end." *Kizer v. Dorchester Cty. Vocational Educ. Bd. of Trustees*, 287 S.C. 545, 552-53, 340 S.E.2d 144, 148-49 (1986). Although Appellants fault the Board for not granting them everything requested in connection with their appeal hearing or for not deviating from the

Board's standard practice in such type of appeals generally based solely on the record, the evidence does not suggest that the opinions of the Board members were predetermined, fixed, or unchanged. To the contrary, in keeping with its standard practice for personal appearances, Board members encouraged T.D. to provide his account of the story so they could consider what he had to say at that time.

While Appellants may dispute the Board's outcome, this Court finds that any procedural errors either were not prejudicial to T.D., or were cured on appeal, and that the Student was afforded due process required under applicable law. Accordingly, the Board's decision is affirmed.

**C. Appellants Request For Injunctive Relief Is Moot.**

"A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court," and finding an issue moot because a ruling on the issue "would have no practical effect whatsoever". See *Seabrook v. Knox*, 369 S.C. 191, 197, 631 S.E.2d 907, 910 - 911 (2006). In this case, T.D. was expelled for the remainder of 2018-2019 school year. At this time, the school year has concluded, a new school year is about to commence, and T.D. is permitted to apply for readmission. Thus, the temporary relief that that Appellants sought (i.e. reinstating T.D. in an adequate eighth grade setting) is impractical and impossible for the Court to grant at this time. Accordingly, the request for injunctive relief is now moot and need not be addressed.

**D. Respondents' Reliance on Juvenile Records In Connection With The Disciplinary Proceedings Does Not Warrant Grounds for Reversal Or Declaratory Judgment.**

Appellants allege that Respondent violated by S.C. Code Ann. § 63-19-2020(E) and § 63-19-810 (C), statutes which govern the confidentiality and disclosure of juvenile records, by using or relying upon such information in connection with a disciplinary proceeding. Further,

Appellants seek an order finding the District in violation of S.C. Code Ann. §63-19-2020(E) and 2030(E) by failing to develop and implement policies to protect the privacy and due process rights of juveniles accused of crimes.

In this case, law enforcement notified the BMS principal when it had been alerted of a threat against the school and the students there. By law, the BMS principal was entitled to request and receive a copy of the incident report, and any additional juvenile records provided by law enforcement to the BMS administration were unsolicited. At the time of the incident, the District's Student Records Policy, Policy JRA, provided for the principal being the legal custodian of all student records for that school. The policy also provided that the school would maintain student records in a confidential manner and comply with all state and federal law, including the Family Educational Rights and Privacy Act ("FERPA"), regarding publication and dissemination of student records. The policy also contained a provision regarding the retention of records. Although Respondent's records policy did not contain the express language from § 63-19-2020(E), it met with the intent by placing restrictions to govern the confidentiality of all student records, which would have included juvenile records, and it contained language regarding the retention and destruction of the records.

Further, South Carolina law allows juvenile records to be used for supervising, monitoring, and meeting the educational needs of students. Appellants have failed to identify any clear, controlling persuasive authority to support that the scope of the language (i.e., supervising, monitoring, and meeting the educational needs of students) would not include disciplinary purposes, which would ultimately be directly related to a student's supervision, monitoring, placement and instructional services, or any authority in which schools are expressly prohibited from using such records for such purposes.

Appellants have failed to identify any South Carolina authority to support an argument that the constitutional principle in criminal cases excluding evidence which is “fruit of the poisoned tree” should be applied to student discipline hearings. This Court also recognizes that Appellants had complete access to all juvenile records prior to the appeal and were not precluded from relying on any of that information in connection with the appeal. To the extent information was obtained or relied upon unlawfully regarding a threat to shoot students at school, it would not preclude the Respondent from considering the information. Further, in *Reese v. Richland Sch. Dist. Two, et. al.*, issues were raised regarding the use of police records involving students in connection with an expulsion proceeding, and the Court did not find this to be a violation of the expelled student’s rights. *Reese*, No. 3:13-03040-MGL, 2015 WL 9239785, \*6 (D.S.C. Dec. 7, 2015). This Court does not find Respondents actions in violation of State law and does not believe Respondent’s reliance or consideration of the records, as a matter of law, would warrant reversal of the Board’s decision. Accordingly the Board’s decision is affirmed, and Appellant’s request for declaratory judgment is denied.

**E. Respondent Did Not Violate S.C. Code § 59-63-240.**

The record generated in this matter contains statements from student witnesses interviewed by school administrators as well as reports from law enforcement. Neither the students who submitted statements nor law enforcement officials attended T.D.’s evidentiary hearing and provided testimony. Because of this, as grounds for appeal, Appellants contend that the Board erred in refusing to remand the case to a separate hearing officer to conduct a hearing that complies with S.C. Code § 59-63-240, including affording Appellants the right to ask questions of all witnesses. Also, Appellants seek declaratory relief pursuant to S.C. Code Ann. §15-23-20, for an order finding that the District’s “policy of denying students recommended for expulsion the ability to ask questions of all witnesses” to be in violation of Article 1, Section 22

of the South Carolina Constitution and S.C. Code Ann. §59-63-240. South Carolina Code § 59-63-240, provides, in relevant part, that:

The Board may expel for the remainder of the school year a pupil for any of the reasons listed in Section 59-63-210. If 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...

It cannot be disputed that during the December 12, 2018 hearing, Appellants had the opportunity to, and did, question all witnesses present, the BMS principal and assistant principal. Accordingly, Respondent argues this statutory requirement of S.C. Code Ann. § 59-63-240 was fulfilled. Respondent further contends school districts lack subpoena power to compel students to miss instructional time to attend confidential disciplinary hearings for other students, noting an absence of any South Carolina law, or controlling authorities, expressly requiring or authorizing school districts to compel the attendance of any non-party students at discipline hearings. Yet, Appellants' position is that this statute, and the accompanying Board policy, should be interpreted to require school districts to compel students, who are interviewed by or provide written statements to the administration in connection with a school disciplinary matter, to attend disciplinary hearings where they can be subject to questioning or cross-examination by the accused student or his/ her representative. Appellants have not identified any South Carolina authority granting school district's subpoena power to compel non-employees to attend student disciplinary hearings. Therefore, Respondent argues Appellants' misapplication of this statute is unsupported by legal authorities, legislative intent, or practices of other school districts in the state of South Carolina.

School disciplinary hearings and criminal proceedings are distinct processes. Because of this, Respondent argues that school districts must balance the need to protect student witnesses and encourage them to come forward; the need to avoid excessive costs; the complexity of such

administrative proceedings; and the need to avoid duplicative testimony. This Court agrees that the value of compelling students to attend such hearings is outweighed by the burden that would be placed upon school districts by providing these additional safeguards.

While South Carolina courts have yet to directly address the issue concerning the right to confront and cross-examine minor student witnesses in public school expulsion hearings, the United States District Court for South Carolina has addressed the use of redacted student statements obtained by law enforcement and/or the school administration in connection with student discipline hearings as it relates to questions of due process. *Reese v. Richland School District Two, et. al*, No. 3:13-03040-MGL, 2015 WL 9239785, \*6 (D.S.C. Dec. 7, 2015). In that case, student Ashton Reese was expelled from school as a result of being involved in an off-campus gang-related fight. *Id.* at \*1. As part of the investigation, law enforcement and the school administration interviewed and collected statements from student witnesses, and there was an allegation that law enforcement allegedly coerced or forged some of the student statements. *Id.* at \*6. In *Reese*, the District Court found that the school's failure to provide Reese with non-redacted documents prior to his expulsion hearing did not violate his due process rights, noting federal courts have found that the use of anonymous witness statements at high school expulsion hearings is consistent with the principles of due process. *Id.*; (citing *Newsome*, 842 F.2d at 924-25; *Brewer ex rel. Dreyfus v. Austin Indep. Sch. Dist.*, 779 F.2d 260, 263 (5th Cir. 1985)). Based on the substantial evidence in the record, this Court does not find the case turns solely on the credibility of T.D. and the students who submitted the statements. Because the *Reese* Court did not find the use of the redacted statements from student witnesses to be a violation of Reese's due process rights, it would be contrary to South Carolina law to conclude a school district's failure to compel students who authored those statements to attend the hearing to be in violation of state law or the student's due process rights.

Both parties have cited numerous cases from other jurisdictions which have issued split opinions or guidance on the issue of compelling student witnesses to attend hearings and be subject to questioning and cross examination. See *Newsome v. Batavia Local Sch. Dist.*, 842 F.2d 920 (6<sup>th</sup> Cir. 1998); *Doe v. Baum*, 882 F.3d 579 (6<sup>th</sup> Cir. 2018); *Doe v. Miami University*, 882 F.3d 579 (6<sup>th</sup> Cr. 2018); *Brewer ex rel. Dreyfus v. Austin Indep. Sch. Dist.*, 779 F.2d 260, 263 (5<sup>th</sup> Cir. 1985); *Winnick v. Manning*, 460 F.2d 545, 550 (2d Cir. 1972); *E.K. v. Stamford Board of Education*, 557 F. Supp. 2d at 276 (D. Conn. 2008); *Stone v. Prosser Consol. Sch. Dist. No. 116*, 971 P.2d 125 (Wash App., 1999); *Bogle-Assegai v. Bloomfield Board of Education*, 467 F.Supp. 2d 236 (D.Conn. 2006); *Colquitt v. Rich. Tp. High School Dist.*, 599 N.E.2d 1109 (Colo. 1998); *Nicholas ex rel. Nicholas v. Destefano*, 70 P.3d 505 (Colo. App. 2002); *In Re. Expulsion of EJW from ISD No. 500*, 632 N.w.2d 775 (Minn. App., 2001); *Rone v. Winston-Salem/Forsythe Cnty Bd. of Educ.*, 701 S.E.2d 284 (N.C. App., 2010); *Graham v. Knutzen*, 351 F.Supp. 642, 666 (D.Neb.1972); *Jaska v. Regents of Univ. of Michigan*, 597 F.Supp. 1245, 1253 (E.D.Mich.1984); *Dillon v. Pulaski County Special School Dist.*, 468 F.Supp. 54, 58 (E.D.Ark.1978), *aff'd*, 594 F.2d 699 (8<sup>th</sup> Cir.1979). However, this Court recognizes that no South Carolina court in reviewing an expulsion appeal has yet interpreted or applied S.C. Code Ann. § 59-63-240 the way Appellants seek for it to be interpreted and applied, and absent more controlling or persuasive authority, this Court sees no basis for adopting Appellants' argument, particularly in light of *Reese*, which has found *Newsome* to be persuasive. Accordingly, Appellants' request for declaratory judgment is denied.

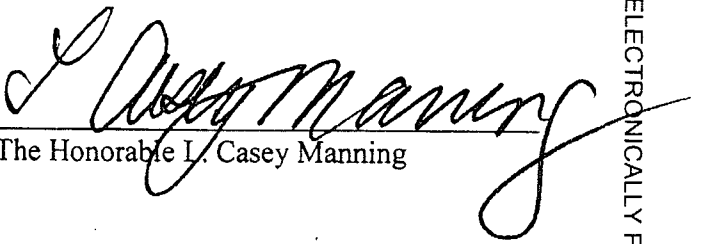
#### V. CONCLUSION

Based on all the facts and circumstances involved in this case and for the reasons articulated herein, this Court concludes that the Board's decision should be affirmed and Appellants' request for injunctive relief and declaratory judgments should be denied.

IT IS SO ORDERED.

Columbia, South Carolina

8-16-19, 2019

  
The Honorable L. Casey Manning

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