THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2019-001603
C.A. No.: 2019-CP-40-01615

T.D., by and through his guardians, A.D. and J.D. ..... Appellants

v.

Richland County School District Two ..... Respondent.

RESPONDENT'S INITIAL BRIEF

HALLIGAN MAHONEY WILLIAMS SMITH
FAWLEY & REAGLE, PA

Jasmine Rogers Drain, S.C. Bar No. 76156
jdrain@hmwlegal.com

Vernie L. Williams, S.C. Bar No. 9511
vwilliams@hmwlegal.com

1301 Gervais Street, Suite 1400
P.O. Box 11367
Columbia, SC 29211
(803) 254-4035

Attorneys for Respondent

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STATEMENT OF THE CASE

This case arises out of the decision by Respondent Richland School District Two's Board of Trustees ("Board") to uphold the District's recommendation to expel Student T.D. for the remainder of the 2018-2019 school year for using social media to threaten to shoot other students. Following this decision, on March 20, 2019, T.D., by and through his guardians, A.D. and J.D., ("Appellants") appealed the matter before the Circuit Court pursuant to S.C. Code Ann. § 59-63-240, seeking to overturn the Board's decision.[1] (R. p. _, Appeal and Complaint.) On August 21, 2019, a formal written order was entered in this matter denying Appellants' appeal and requested relief. (R. pp. _, Order.) Appellants filed a Notice of Appeal on September 20, 2019. (R. pp.__, Notice of Appeal.)

[1] In addition, through that action, Appellants, among other things, sought temporary injunctive relief and/or an immediate stay of the decision of the District. Also, Appellants sought declaratory relief for 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 and 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. (*Id.*)

It is Respondent's position that the Circuit Court properly afforded the necessary deference to school authorities in defining, interpreting and enforcing its own rules and policies. It is Respondent's position that the Circuit Court correctly concluded that T.D. was afforded due process based upon applicable statutory and case law and that there was substantial evidence in the record to support the Board's decision. Further it is Respondent's position that the administrative findings, inferences, conclusions, or decisions of the Board were not (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the Board; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Accordingly, the Circuit Court correctly concluded there was no basis to award Appellants the declaratory judgment relief sought or grounds to modify or reverse the Board's decision. Therefore, Respondent prays this Court to affirm the order entered below.

II. STATEMENT OF FACTS

At the time of the incident giving rise to the expulsion, T.D. was enrolled in the eighth grade at Blythewood Middle School ("BMS"). (R. p. _, Grades and Attendance, Ex. 8 of A.R.[2]) 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. (R. pp. __, Discipline Referral for T.D., Ex. 1 of A.R.; R. p.____, 2/12/19 audio recording, Ex. 19 of R.D.A.M.R.[3]) Thereafter, law

[2] Amended Certification of Record is referenced herein as A.R. (R. pp. ____, Amended Certification of Record.)

[3] Respondent's Designation of Additional Matter for Record is referenced herein as R.D.A.M.R. (R. pp. ___, Respondent's Designation of Additional Matter for Record.)

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. (*Id.*) T.D. was taken into custody by Richland County Sheriff's Department for unlawful communications, school threats, and incorrigibility. (R. p. __, Letter dated 1/8/19 from J. Smith to K. Mazyck, Ex. 21 of A.R.)

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. (R. p. __, Incident Report, Ex. 15 of A.R.) 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*[4] *I'm shooting both of y'all and a ton of other people.*" (*Id.*; R. p. __, Screenshots of social media/text exchanges, Ex. 18 of A.R.)

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. (R. pp. ___, 12/12/19 audio recording, part 2, at Ex. 35 of A.R.; R. pp. ___, 2/12/19 audio recording, Ex. 19 of R.D.A.M.R.) The administration also contacted T.D. in an attempt to obtain his side of the story or a written statement. (R. pp ____, 2/12/19 audio recording, Ex. 19 of R.D.A.M.R.) The administration was advised by T.D.'s guardian that he denied the allegations and would not be providing a statement. (*Id.*)

Thereafter, by letter dated December 5, 2018, Principal Mazyck notified Superintendent Baron Davis that T.D. was suspended for the fourth time[5] and being

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[4] A Juul is an electronic cigarette, and among the incidents in T.D.'s discipline records, was an offense regarding having a Juul at school. (R. p. __, T.D. Discipline History Report (A.R. Ex. 5))

[5] At the time of the recommendation, T.D. was on strict probation at school following an offense

recommendation for expulsion. (R. p. __. Amended letter from K. Mazyck to B. Davis dated 12/5/18, A.R. Ex. 3.) In addition, 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. (R. p. __, Letter dated 12/5/18 from K. Mazyck to A.D. and J.D, Ex. 9 of A.R; R. pp. ____, Policy JICDA/JICDA-R, Ex. 15 of R.D.A.M.R.) Appellants were also advised that they would receive notification regarding the time and place of the expulsion hearing. (R. p. __, Letter dated 12/5/18 from Mazyck to A.D. and J.D, Ex. 9 of A.R; R. p. ___, Attachment A to Respondent's Memorandum of Law in Opposition to Appeal/Motion.)

A hearing was held before the Hearing Officer, Lottie Chishom, on December 12, 2018.[6] (R. p.__, 12/12/18 audio recording part 2 at Ex. 35 of A.R.) 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 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.[7] (R. pp. __, 1/11/19 decision letter and summary of hearing/resolution from L. Chishom, Exs. 23 and 24 of A.R.) Appellants appealed to the Board, and then

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involving a Juul and had most recently been suspended for an incident in which he allegedly used social media to send inappropriate messages to a faculty member. (R. p. __, T.D.'s Student Disciplinary Summary, A.R. Ex. 5; R. p. ___, Discipline Referral for T.D. dated November 27, 2019, R.D.A.M.R. Ex. 20, p. 249; R. p. ___, 12/12/18 audio, part 2, AR. Ex. 35.)

[6] Prior to the hearing, the school administration conferenced with the Appellants regarding circumstances giving rise to the expulsion recommendation, providing T.D. with another opportunity to share his side of the story. (R. p. __, 12/12/18 recording part 1 at Ex. 34 of A.R.)

[7] Students have the responsibility to know the rules of conduct and that violations can result in discipline. (R. p.___; Policy JIC, Student Conduct, Ex. 14 of R.D.A.M.R.)

through legal counsel, supplemented their written appeal and requested an appeal hearing before the Board. (R. pp.__, Letter dated 1/6/19 from A.D. to Board and Supplemental Grounds for Appeal dated 2/5/19, Exs. 22, 26 of A.R.)

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. (R. pp.___, Policy JKE-JKE-R, Ex. 16 of R.D.A.M.R.) 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. (*Id.*) 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. (R. p.__, e-mail from J. Drain to D. M. Mathison dated 2/8/19, Ex. 28 of A.R.) Following the appeal, the Board voted to uphold the expulsion. (R. p. _, Letter dated 2/18/19 from C. Smith to A.D. and J.D., Ex. 33 of A.R.)

NOTE CONCERNING THE RECORD

As a first point of clarification, it is important to note that due to privacy considerations concerning minors, Respondent filed a Motion to Seal certain records and audio recordings identified in the Amended Certification of Record and Respondent's Designation of Additional Matter for Record.[8] Pursuant to the Motion to Seal, the referenced documents and recordings were to be submitted to the Court for in-camera

[8] *See* Letter from D.M. Mathison to J. McBride dated April 19, 2019, Letter from J. Drain to J. McBride dated April 24, 2019, Consent Motion to Extend Time to Certify and File Record, and Motion to Seal. R. pp. _____.

review at the time of the hearing or made available electronically or via hand-delivery to the Court's chambers upon agreement by the parties. (R. pp. __, Motion to Seal dated May 2, 2019.) The motion was not ruled upon prior to the hearing, but the records were submitted to chambers prior to the hearing. (R. p. _, Letter from J. Drain to Judge Manning dated 7/15/19.)

As a second point of clarification, student discipline hearings before the Hearing Officer are recorded, and "minutes" are taken in connection with the hearing which are only a condensed version of the proceedings and not verbatim transcripts of the hearing. As such, "minutes" of T.D.'s December 12, 2018 hearing were prepared and provided to the Appellants prior to T.D.'s appeal to the Board, along with the audio recordings from the proceedings. (R. pp. _____, original condensed version of non-verbatim minutes; Ex. 25 of A.R.; R. pp._____, email communications between J. Drain and D. M. Mathison dated 1/10/19 through 1/15/19, Exs. 3 and 4 of R.D.A.M.R.) When Appellants, though legal counsel, raised concerns regarding the contents of the condensed version of the non-verbatim "minutes," the office of legal counsel for Respondent, in a good faith effort and courtesy to Appellants, attempted to supplement portions of the recording from the actual hearing that were not included in the "minutes," highlighting information added. (R. pp. _____, revised version of condensed non-verbatim minutes, Ex. 27 of A.R.; R. pp.___, email communications between J. Drain and D. M. Mathison dated 2/5/19 through 2/6/19, Ex. 11 of R.D.A.M.R.) At that time, Appellants also were extended an opportunity to advise of any particular additional portions of the recordings or minutes that were not cited in their written appeal that needed to be called to the Board's attention. (*Id.*) Appellants made a recording of the appeal proceeding before the Board on February 12, 2019, which was subsequently designated to be included in the record before the Circuit Court. (R. p. ___, Appellants' Designation of Matter dated March 20, 2019.)

As part of their Initial Brief, Appellants have raised issues regarding the accuracy of the record reviewed and relied upon by the Board and Circuit Court. Appellants contend there are major and meaningful discrepancies between audio recordings and "transcripts," i.e. the condensed, non-verbatim minutes from T.D.'s hearing. Appellants also raise allegations stating or inferring that Respondent, through its employees or representatives, have intentionally altered or mispresented documents contained in the record. Such allegations are false and a mischaracterization of the record, and Respondent reserves the right to address these accusations in the appropriate forum or venue.

In particular, it appears that during the December 12, 2018 hearing, an administrator misread the word "messaging" into the record instead of "messing" when reading a student's statement into the record and the word "us" instead of a student's initials. (R. pp.___, 12/12/19 recording part 2, Ex. 35 of A.R; R. p. __, Statement of H.G. dated 12/5/18; Ex. 11 of A.R.; R. p. ___, Statement of C.G. dated 12/5/18, Ex. 12 of A.R.; R. pp. ___, Original Condensed version of minutes, Ex. 25 of A.R.; R. pp. __, February 12, 2019 Student Appeals Report to Board, Ex. 32 of A.R.) These errors or oversights, unfortunately, were inadvertently adopted into the record at each level. While Respondent does not dispute that the minutes do not contain everything in the recordings, or that these errors were present, failing to have verbatim "minutes" of student discipline hearing does not serve as a basis for reversable error or substantial prejudice, particularly when Appellants were privy to the recordings from the proceedings and had the opportunity to raise these issues in the forums below. Further, despite these discrepancies in the minutes, the evidence, when considering the record as a whole, still would allow reasonable minds to reach the conclusion that the Board reached or must have reached in order to justify its decision to expel T.D.

However, Respondent believes this Court should have the ability to review and

consider any information from the record in the most efficient manner. Therefore, subsequent to the filing of this appeal, Respondent, though its legal counsel, obtained certified transcripts of the audio recordings from a third party, Creel Court Reporting Services, Inc., and has moved for the Court to allow the record to be supplemented to include these official transcripts.

III. STANDARD OF REVIEW

When reviewing the Circuit Court's reversal of a school board's expulsion, finding the Board's decision was not supported by substantial evidence and violated the student's due process rights, this Court in *Doe v. Richland Sch. Dist. Two*, 382 S.C. 656 (Ct. App. 2009) applied the following standard of review:

> A school board's decision to expel a student from school "may be appealed to the proper court." S.C. Code Ann. § 59–63–240 (Supp.2008); see *Davis v. Sch. Dist. of Greenville County*, 374 S.C. 39, 44, 647 S.E.2d 219, 222 (2007) (stating the expulsion provision in the statute, unlike the suspension provision, expressly grants the student a right to appeal to the proper court). Judicial review of the school board's decision is limited to ascertaining whether the board's decision is supported by substantial evidence. *Laws v. Richland County Sch. Dist. No. 1, 270 S.C. 492, 495, 243 S.E.2d 192, 193 (1978)*. However, this court cannot substitute its judgment for that of the educational authorities. *Id.*

IV. ARGUMENTS

A. The Circuit Court Correctly Concluded There Was Substantial Evidence In The Record To Support The Board's Decision to Expel T.D. For The Remainder of the 2018-2019 School Year.

In upholding the Board's decision to expel T.D for the remainder of the 2018-2019 school year, the Circuit Court correctly determined that there was substantial evidence to support this disciplinary action. "Substantial evidence is 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. Bd. of Trs., 287 S.C. 545, 548, 340 S.E.2d 144, 146 (1986). Therefore, the question before the Court is whether the Board's decision to uphold the expulsion of T.D. for committing an offense of illegally using technology to communicate a threat of a weapon or event with the intent of intimidation, threatening, or interfering with school activities is supported by substantial evidence. As explained below, the answer is yes.

As noted by the Circuit Court, 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. (R. p.__, 12/1/18 incident report, Ex. 15 of A.R.) 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 I'm shooting both of y'all and a ton of other people.*" (*Id.*) There is a screen shot of this message, along with other related screenshots. (R. pp. __, screenshots/photographs of social media/and or text exchanges, Ex. 18 of A.R.). As part of its investigation, the school administration interviewed students who were identified as having knowledge regarding the threatening messages and obtained statements.[9] The statements are below:

> **Incident Statement (student-K.M.):** T.D. sent me a message saying he wants the juul back. T.D. said he was going to find where I live and shoot up my house. T.D. said if he doesn't get the juul back by Monday he was going to come to school with a gun and shoot me. T.D. threatened me multiple times and was asking what's my address. T.D. said he was going to try and find me and shoot me. (R. p. __, BMS Incident Statement from K.M. dated 12/5/18, Ex. 10 of A.R.)
>
> **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 that we don't have it then T.D. say

[9] The language in the students' statements below is intended to cure the errors in versions contained in the minutes, summary, and/or Order.

that he knows we do. Then we sent T.D. a picture of it and he say "Yes and I better get it." Then C.G. says "or what" and T.D. says or your getting shot, simple enough. At that point me and C.G. don't' believe T.D. and start messing with him and say go ahead shoot me we'll go and tell before you can. Then T.D. say that we can 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. The we say ok, and T.D. responds like an hour later & says I'm not scared of school or cops I'll shoot anyone. (R. p. __, BMS Incident Statement from H.G. dated 12/5/18, Ex. 11 of A.R.)

Incident Statement (student-C.G.): After T.D. was saying threatening things to K.M. he came to me and H.G. He was texting my 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 says "If I don't have my Juul by Monday someone is going to get shot at school. The 3rd message was "If you think im joking, I'm not! And if yall report me to the school I'm going to pull a gun out my boot and shoot everybody." While he was texting me this, I got H.G. to take a picture of the message on my phone. He took the photos of all of the things T.D. said. (R. p. __, BMS Incident Statement from C.G. dated 12/5/18, Ex. 12 of A.R.)

T.D. refused to provide a written statement to the administration or law enforcement. (R. p. __, Statement form from Richland County Sheriff's Department, Ex. 14 of A.R.) In addition, Student C.G. emailed 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. 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. 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. (R. p. __, Email dated 12/2/18 from C.G. to S. Boyd, Ex. 19 of A.R.)

Finally, H.G. provided the following statement to law enforcement:

> Me and my friend C.G. were sitting down and then C.G. just randomly gets a message from T.D. and it said that he wants his Juul and if he didn't get it he would shoot our houses up. Then he says nevermind I want it on Monday and if I don't get it then I will shoot up the school. Also he said he was bringing a 9mm in his bag and if he got searched he would shoot up the school and target us. He said he doesn't care about cops or school and he'll just shoot anyone. (R. p. __, Statement from H.G. dated 12/2/18 to Richland County Sheriff's Department, Ex. 20 of A.R.)

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. (R. p. __, Discipline Referral for T.D. dated 12/4/18, Ex. 1 of A.R,; R. p. ___, 12/12/18 recording part 2, Ex. 35.) The Hearing Officer questioned T.D. regarding his alleged admission to law enforcement by reading from an investigative report from law enforcement that provided, in relevant part, "*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 (12/1/18) that he was using his biological mother's phone. He was pissed off because K. 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 C. and H. made a copy of the message and it was also sent to K...*" (R. pp. __, Richland County Sheriff's Department Investigative Follow Up, Ex. 17 of A.R.)

During the hearing, T.D. denied sending the threatening messages. (R. pp. ___ 12/12/18 recording part 2, Ex. 35; R. pp. ___; Revised Version of Condensed Non-Verbatim Minutes, A.R. Ex. 27, pp. 188-190.) He 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. (*Id.*) His grandparents, who were also in attendance at the hearing, testified T.D. had sold his phone before the incident and explained that on the evening T.D. was alleged to threaten to shoot up the school or students, he was playing with a bullet a fragment went into his finger which had to be removed. (R. pp. __, 12/12/18 recording

part 2, Ex. 35; R. pp. [illegible], Revised Version of Condensed Non-Verbatim Minutes, A.R. Ex. 27, pp. 191-196.) 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. (*Id.*) 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. (*Id.*) 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. (*Id.*)

While it cannot be disputed that a few words in the students' statements were not accurately transmitted or accurately reflected into the record, these unintentional discrepancies do not change the entire context of the statements or the record as a whole and did not serve as the sole basis for the Board' decision. Despite the discrepancies, the record as a whole still provides ample evidence of substantial evidence to support the Board's decision. Further, as noted by the Circuit Court, the rules of evidence applicable to civil actions do not strictly apply to administrative or quasi-judical hearings. *Richards v. City of Columbia*, 227 S.C. 538, 88 S.E.2d 683 (1955) (stating that an administrative or quasijudicial body is not governed by the ordinary legal rules of evidence); *Jacoby v. S.C. State Bd. of Naturopathic Examiners*, 227, S.C. 538, 64 S.E.2d 138 (1951) (finding that an administrative or quasi judicial body is allowed a wide latitude of procedure and is not restricted to strict rule of evidence adhered to in judicial court). 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).

Included in the record is the screenshot of the threatening social media post from T.D.'s account. (R. p. __, screenshots/photographs of social media/and or text exchanges, Ex. 18 of A.R.). *See e.g. U.S. v. Needham,* 852 F.3d 830, 837 (8th Cir. 2017) (finding social media screenshots not hearsay under FRE 801.) As noted by the Circuit Court, 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, 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 statement that he sold the phone and his admission to using his mother's phone to send the threatening message, which the Circuit Court viewed as a prior inconsistent statement or admission by a party opponent. SCRE Rule 801. This admission was then reported to school officials who noted it in their disciplinary referral. (R. pp. __; Disciplinary Referral dated 12/4/18, Ex. 1 of A.R.) The Circuit Court also noted 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, the Circuit Court correctly concluded there was substantial evidence in the record to support the Board's decision. To conclude otherwise would mean that fellow students, law enforcement officials and school officials all fabricated testimony and/or documents to frame T.D. for an offense he did not commit. Such a sinister conspiracy theory is outlandish and is not supported by the evidence.

Appellants argue that the Circuit Court erred in applying a substantial evidence review in reviewing this matter. However, as noted in the lower Circuit Court's order, the substantial evidence review was not applied to all issues raised in the appeal, particularly those concerning questions of law or statutory interpretation. Accordingly, the lower court's determination that there was substantial evidence in the record to support the Board's decision should be affirmed.

B. The Circuit Court Correctly Concluded T.D. Was Afforded Due Process Based On Applicable Statutory And Case Law.

In upholding the Board's expulsion of T.D., the Circuit Court correctly concluded

that T.D. was afforded due process. 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. 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 expressly 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. (*Id.*)

In reviewing the evidence presented before the Circuit Court, it is clear that T.D. not only received the minimal due process guaranteed to him under *Goss* but also the statutory procedural rights set under state law.

1. The Record Supports T.D. Was Afforded Due Process

Prior to the evidentiary hearing before the Hearing Officer, Appellants received written notice of the violation that T.D. was accused of committing, and school officials also discussed the allegations with the family. (R. pp. __, Letter from K. Mazyck to A.D. and J.D, dated 12/5/18, Ex. 9 of A.R.; R. pp. ___, 12/12/18 audio recording, part 1, Ex. 34 of A.R.) During the hearing, Appellants had the opportunity to question the witnesses present, the administration, and to present a defense. (R. pp. ___; 12/12/18 audio recording, part 2, Ex. 35 of A.R.) All three Appellants, in addition to another relative, provided testimony during the hearing. Appellants could have presented more witnesses to testify or offered evidence of their own, but they did not. As the *Stinney* Court noted, the fact that a student does not take advantage of statutory rights does not create a procedural due process violation. *Stinney*, 391 S.C. 547, 551-552 (2011).

The record does not show T.D. was provided all information law enforcement distributed to the administration, or written statements obtained from students, prior to his hearing before the Hearing Officer on December 12, 2018. While Respondent acknowledges this Court in *Doe v. Richland Sch. Dist. Two* has found such deprivation of evidence can be a violation of due process warranting reversal of an expulsion; *Doe*, however, is distinguishable. 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* was reversed on a lack of substantial evidence to support the expulsion, as well as the grounds that 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, including the juvenile records, prior to appeal before the Board and had an opportunity make a personal appearance before the Board[10]. (R. pp. ____, Letter from A.D. to Board dated 1/6/19, Supplemental Grounds to Appeal dated 2/5/19, and Plaintiff's list of documents for inclusion in record in connection with 2/12/19 Board appeal at Exs. 22, 26, and 31 of A.R.) Therefore, it cannot be disputed that Appellants were provided all relevant information prior to the appeal hearing before the Board, and at that time, through legal counsel, was able to make a record incorporating any facts or discrepancies from those additional records thought by Appellants to be critical to their appeal and argument.

2. The Record Does Not Support Substantial Prejudice

Even if there was an error with the procedural process at the hearing or Board level, substantial prejudice is required to establish a violation of due process. *Tall Tower, Inc. v. S.C. Procurement Review Panel*, 294 S.C. 225, 363 S.E.2d 683 (1987). The Circuit Court correctly concluded Appellants were not substantially prejudiced.

Appellants claim they were prejudiced by their inability to cross examine students who provided written statements to the administration and law enforcement officials who provided the investigative report. However, absent these statements and reports, there was still compelling evidence to support the Board's conclusion as noted in the administration's testimony and the copies of the actual screenshot messages. 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

[10] Appellants conceded they had received the juvenile records on January 15, 2019, prior to the Board appeal on February 12, 2019. (Tr. p. 6, R. p.__.)

deficiency would have been cured on appeal at the Board level, and there is no evidence to support the a contention that 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, as noted by the Circuit Court, 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. (R. pp.___, Letter from D.M. Mathison to Board and J. Drain dated 2/8/19 and 2/12/19 Letter from V. Williams to D.M. Mathison, Exs. 29, 30 of A.R.; R. pp. ___, email communications between Williams and Mathison, dated 2/12/19, Ex. 12 of R.D.A.M.R.)

Board policy does not require a *de novo* evidentiary hearing before the Board when a matter is reviewed on appeal. (R. pp. ___, Policy JKE/JKE-R, Ex. 16 of R.D.A.M.R.) Further, Appellants have not identified any authority which would require a South Carolina 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 in 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). As noted by the Circuit Court, 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, which are generally based solely on the record, the evidence does not suggest that

the opinions of the Board members were predetermined, fixed, or unchanged. (R. pp. ____, 2/12/19 audio recording, Ex. 19 of R.D.A.M.R.) 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. (*Id.*) He did not. (*Id.*)

The Board objectively reviewed this matter and properly determined that the recommendation to expel T.D. should be upheld. Appellants contend the Board refused to consider certain evidence from law enforcement but fail to acknowledge their contradictory position or objection expressed on appeal to the Board that the reliance on, or use of, such records by school officials would be in violation of the law. (R. pp.__, Supplemental Grounds for Appeal dated 2/5/19 and Plaintiff's list of documents to be included in appeal Exs. 26 and 31 of A.R.) Further, Appellants cannot dispute they had the opportunity to submit two written appeals, including any documentation to the Board for consideration. (*Id.*) Appellants fail to note that their written appeal contained, or could have contained, information from law enforcement records they believed should have been called to the Board's attention. (*Id.*) To the extent the Board chose to give little weight to certain evidence presented by T.D. or his credibility is wholly within the discretion of the Board.

Despite the issues raised by Appellants concerning the procedures before the Hearing Officer and the Board, the evidence does not show T.D. was meaningfully impaired in his ability to defend against the administration's recommendation for expulsion to such an extent that the disposition of the disciplinary proceedings was likely affected. While Appellants may dispute the Board's outcome, the Circuit Court correctly concluded that any procedural errors either were not substantially prejudicial to T.D., or were cured on appeal, and that T.D. was afforded due process required under applicable law. Accordingly, the Circuit Court's decision should be affirmed.

C. The Circuit Court Correctly Concluded Use Of Juvenile Records In Connection With The Disciplinary Proceedings Did Not Warrant Grounds For Reversal Or Declaratory Judgment And Was Not In Violation Of State Law.

Appellants contend the Circuit Court erred by not dismissing the case for clear violations of S.C. Code Ann. § 63-19-2020(E) and § 63-19-810 (C), statutes which govern the confidentiality and disclosure of juvenile records. To support this contention, Appellants contend Respondent's policies do not comply with the referenced statutes and that the use of the documents in connection with the student disciplinary proceeding violated state law.

In this case, law enforcement notified the BMS principal when it had been alerted of a threat against the school and the students there. (R. pp. ___, Disciplinary Referral dated 12/4/18, Ex. 1 of A.R.; R. pp. ____, 12/12/18 audio recording, part 2, Ex. 35 of A.R.; R. pp. ____, 2/12/19 audio recording, Ex. 19 of R.D.A.M.R.) Pursuant to S.C. Code. § 63-19-2030, the BMS principal was entitled to request and/or receive a copy of the incident report, and any additional juvenile records provided by law enforcement to the BMS administration were unsolicited. (R. pp____, Text and email communications between K. Mazyck and Truluck, dated 12/4/18, Ex. 16 of A.R.; R. pp. ___, Attachment to email dated 12/4/18 from R. Truluck to Mazyck; R. pp____, Ex. 21 of R.D. A.M.R. ; email dated 1/22/19 from Drain to Mathison at Ex. 7 of R.D.A.M.R.) 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. (R. pp.____; Policy JRA/JRA-R, Ex. 13 of R.D.A.M.R.) 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. *(Id.)* The policy also contained a provision regarding the retention of records. (*Id.*) Although Respondent's records policy did not contain the express language from § 63-19-2020(E), it met with the spirit and intent by placing restrictions governing the confidentiality of all student records, which would have included juvenile records, and it contained language regarding the retention and destruction of the records. (*Id.*) Also, the policy was updated in April 2019. (R. p. _, Respondent' s Memorandum of Law In Opposition to Appeal, p. 34.)

Further, as noted by the Circuit Court, South Carolina law allows juvenile records to be used for supervising, monitoring, and meeting the educational needs of students. S.C. Code Ann. § 63-19-810; S.C. Code Ann. § 63-19-2020. 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.[11] Importantly, student discipline and supervision has been recognized as part of a school's broader generic governmental function of providing students an education. *See A.F. v. Hazelwood School District*, 491 S.W.3d 628, 634 (Mo. App. E.D. 2016) (noting disciplining and supervising students while at school are simply part of a school district's overall purpose of educating the students); *Morris v. State*, 228 So.3d 670, 673 (Fla. 1st DCA 2017) (describing teachers' general duty of supervision as encompassing discipline.)

[11] In fact, Policy JK, Student Discipline, notes discipline is a means of teaching. (R. pp. ____; Policy JK, Ex. 17 of R.D.A.M.R.)

Appellants failed to identify to the lower court and now in connection with this appeal, any South Carolina direct 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. Moreover, such arguments appear to be based on alleged Fourth Amendment violations, which are misplaced in the context of this appeal. As recognized by the Circuit Court, 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. (R. pp.__, Supplemental Grounds for Appeal dated 2/5/19 and Plaintiff's list of documents to be included in appeal Exs. 26 and 31 of A.R.) As the Circuit Court correctly noted, to the extent information was received unlawfully from law enforcement 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). Accordingly, the Circuit Court correctly determined the District's actions were not in violation of State law warranting reversal of the Board's decision pursuant to S.C. Code Ann. § 1-23-380(5) or warranting the issuance of declaratory relief for Appellants. Therefore, the Circuit Court's decision should be affirmed.

D. The Circuit Court Correctly Concluded Respondent Did Not Violate S.C. Code Section 59-63-240 By Not Mandating Non-Party Students To Attend An Expulsion Hearing Or Board Appeal.

As grounds for their appeal, Appellants contend the Circuit Court erred in affirming the Board's decision because it refused to grant a remand in which students who provided

written statements to the administration during its investigation would be compelled to attend an evidentiary hearing for the purposes of cross-examination. 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…

This statutory requirement of S.C. Code Ann. § 59-63-240 was fulfilled when appellants had the opportunity to, and did, question all witnesses present, including the BMS principal and assistant principal, during T.D.'s hearing on December 12, 2018. As noted by the Circuit Court, nothing in applicable state law gives South Carolina school districts the subpoena power to compel non-party students to miss instructional time to attend confidential disciplinary hearings for other students. Appellants' position that this statute, and the accompanying Board policy, should be interpreted to require every school district in South Carolina 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, is completely illogical and impractical. Appellants' misapplication of this statute is unsupported by South Carolina legal authorities, legislative intent, or practices of other school districts in the state of South Carolina. Appellants have not identified any South Carolina authority granting school district's subpoena power to compel non-employees to attend student disciplinary hearings. While Appellants rely on *City of Spartanburg v. Parris*, 251 S.C. 187 (1968) to urge this

Court to adopt a different view, *Parris* does not involve minors being removed from the educational setting, during instructional time, transported to another location, absent permission or consent from their parents. Further, even if the Board excluded the statements from the students who were not subject to cross-examination, there was still substantial evidence in the record to support the Board's decision.

As recognized by the Circuit Court, school disciplinary hearings and criminal proceedings are distinct processes. Because of this, 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. As noted by the Circuit Court, 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. The students did not attend Reese's expulsion hearing. 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). Accordingly, if South Carolina courts have found the use of redacted statements in expulsion hearings do not violate due process, it cannot be concluded that the failure to compel those students to attend a hearing in which their statements are submitted is a violation of S.C. Code 59-63-240.

Based on the order, the Circuit Court did not find the case turned solely on the credibility of T.D. and the students who submitted the statements. Also, as noted by the Circuit Court, 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 a student's due process rights.

The Circuit Court noted numerous cases by both parties 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.[12] *See Newsome v. Batavia Local Sch. Dist.,* 842 F.2d 920 (6th Cir. 1998); *Doe v. Baum*, 882 F.3d 579 (6th Cir. 2018); *Doe v. Miami University*, 882 F.3d 579 (6th Cr. 2018); *Brewer ex rel. Dreyfus v. Austin Indep. Sch. Dist.*, 779 F.2d 260, 263 (5th Cir. 1985); *Winnick v. Manning*, 460 F.2d

[12] See Respondent's Memorandum of Law In Opposition to Appeal and Appellants' Reply Brief. R. pp. ____.

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 (8th Cir.1979). However, even despite the non-controlling opinions in which courts have found or determined a student should have the right to confront a witness, the Circuit Court correctly recognized 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. Although Appellants contend *Stone v. Prosser*, 971 P.2d 125 (Wash App., 1999), is instructive, it should be distinguished as there was no admission or photographs/screenshots to support the alleged offense committed by the student.

The Circuit Court correctly concluded that absent more controlling or persuasive authority, it saw no basis for adopting Appellants' argument, particularly in light of *Reese*, which has found *Newsome* to be persuasive. Accordingly, the Circuit Court correctly declined to grant Appellants' request for a declaratory judgment and correctly determined that Respondent did not violate applicable state law concerning student expulsions by failing to compel the student witnesses to attend an evidentiary hearing for T.D. Accordingly, the Circuit Court's ruling should be affirmed.

V. CONCLUSION

The Circuit Court correctly concluded there was substantial evidence to support the Board's decision and that T.D. was afforded due process. Moreover, as noted above, the record does not support that the administrative findings, inferences, conclusions, or decisions of the Board were (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the Board; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Accordingly, the Circuit Court correctly concluded that there was no basis to modify or reverse the Board's decision pursuant to the standards set forth in S.C. Code Ann. 1-23-380(5) or grant Appellants' request for declaratory judgment. Accordingly, the Circuit Court's ruling should be affirmed.

HALLIGAN MAHONEY WILLIAMS SMITH FAWLEY & REAGLE, PA

Jasmine Rogers Drain, S.C. Bar No. 76156
jdrain@hmwlegal.com

Vernie L. Williams, S.C. Bar No. 9511
vwilliams@hmwlegal.com

1301 Gervais Street, Suite 1400
P.O. Box 11367
Columbia, SC 29211
(803) 254-4035

Attorneys for Respondent

March 27, 2020

Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2019-001603
C.A. No.: 2019-CP-40-01615

T.D., by and through his guardians, A.D. and J.D. ..... Appellants

v.

Richland County School District Two ..... Respondent.

PROOF OF SERVICE

I certify that I have served copies of Respondent's Initial Brief and Respondent's Designation of Matter To Be Included In the Record by depositing copies in the United States Mail, on March 27, 2020, addressed to D. Michael Mathison, of the Richland County Public Defender's Office, Post Office Box 192, Columbia, SC 29202, and by sending copies electronically to Mathison.Michael@richlandcountysc.gov.

HALLIGAN MAHONEY WILLIAMS SMITH FAWLEY & REAGLE, PA

Jasmine Rogers Drain, S.C. Bar No. 76156
jdrain@hmwlegal.com

Vernie L. Williams, S.C. Bar No. 9511
vwilliams@hmwlegal.com

1301 Gervais Street, Suite 1400
P.O. Box 11367
Columbia, SC 29211
(803) 254-4035

Attorneys for Respondent

HALLIGAN MAHONEY
& WILLIAMS

HALLIGAN MAHONEY WILLIAMS
SMITH FAWLEY & REAGLE, PA
THE TOWER AT 1301 GERVAIS STREET, SUITE 1400
PO BOX 11367 | COLUMBIA, SC 29211
PH 803.254.4035

HMWLEGAL.COM

WILLIAM F. [BICK] HALLIGAN •
KATHRYN LONG MAHONEY
ALLEN D. SMITH
JOHN M. REAGLE ◇
VERNIE L. WILLIAMS
THOMAS K. BARLOW ◆◇
ALLISON AIKEN HANNA

CONNIE P. JACKSON
KIMBERLY KELLEY BLACKBURN
JASMINE ROGERS DRAIN ▫
DWAYNE T. MAZYCK
SHENEKA S. LODENQUAI ▫
SUSAN M. FITTIPALDI ▹

March 27, 2020

VIA U.S. MAIL
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: T.D. by and through his guardians, A.D. and J.D. v. Richland County School District Two,
Appellate Case No. 2019-001603

Dear Ms. Kitchings:

Enclosed for filing please find the originals and copies of Respondent's Initial Brief and Respondent's Designation Of Matter To Be Included In the Record On Appeal, along with the Proof of Service. Please return the extra file-stamped copies to our office in the self-addressed, stamped envelope provided. Please let us know if any additional copies are needed at this time.

Thank you for your attention to this matter.

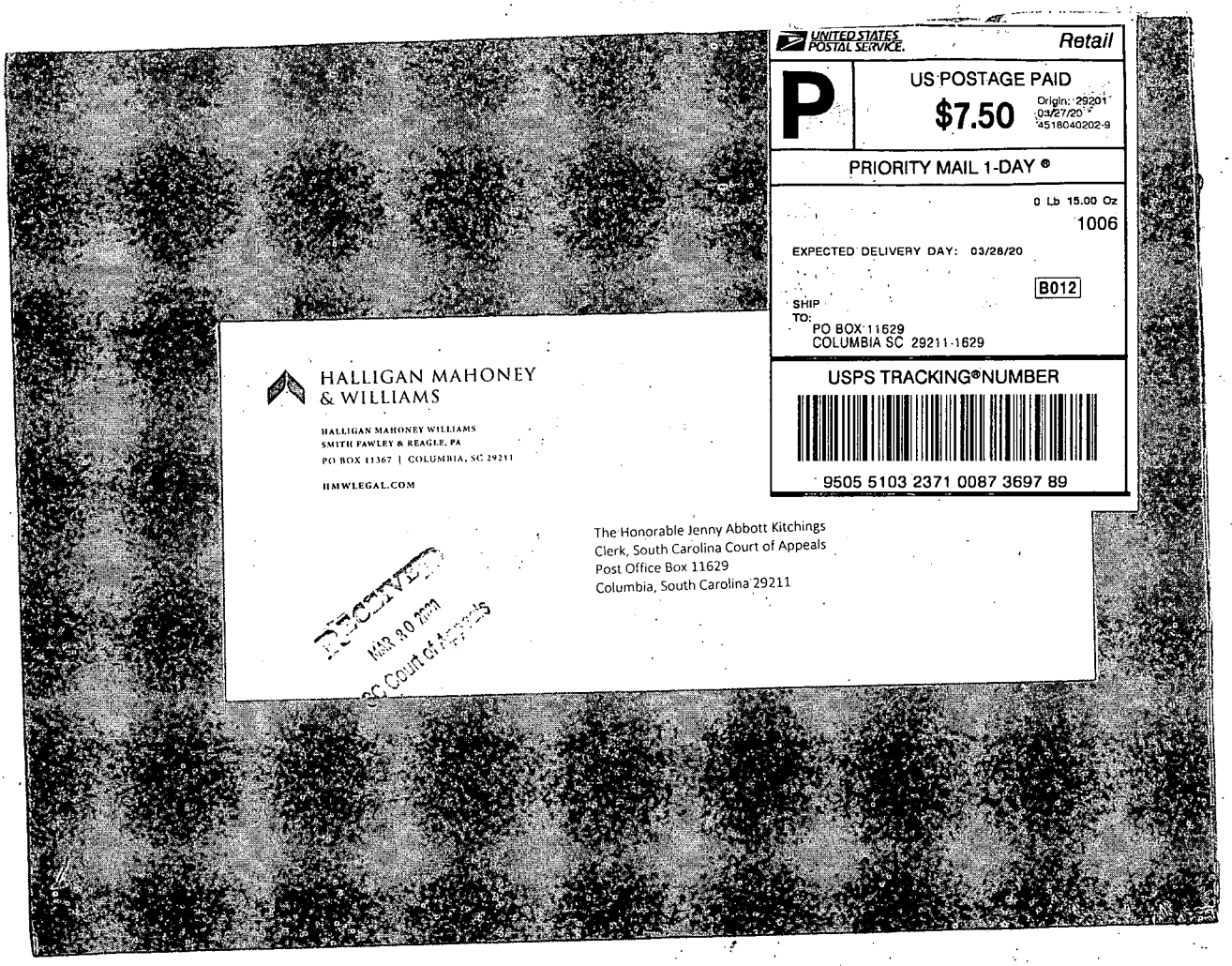
With kind regards, I am

Sincerely yours,

Jasmine R. Drain

Jasmine Rogers Drain
jdrain@hmwlegal.com

JRD/rdf
Enclosures
c: D. Michael Mathison, Esquire (via U.S. Mail and e-mail)
Vernie L. Williams, Esquire



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The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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