

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
Case No. 2019-CP-40-01615

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Oct 19 2020

SC Court of Appeals

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

Appellants,

v.

Richland County School District Two,

Respondent.

AMENDED RECORD ON APPEAL - VOLUME I

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October 19, 2020.

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² This transcript and the Transcript of Hearing before the Board on February 12, 2019, were prepared by Creel Court Reporting after the Appellant's filed the Notice of Appeal and Appellant's Initial Brief with this court. This Court granted the Respondent's Motion to include these two transcripts in the Record on Appeal by Order dated April 23, 2020.

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ORDERS, DECISIONS and DECREES

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

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

C.A. No. 2019-CP-40-01615

Plaintiffs/ Appellants,)

**ORDER DENYING APPEAL AND
MOTION
FOR INJUNCTIVE RELIEF/
DECLARATORY JUDGMENT**

vs.)

Richland County School District Two,)

Defendant/ Respondent.)

I. STATEMENT OF CASE

This is a direct appeal of Respondent Richland School District Two ("District") Board of Trustees' ("Board") decision to expel Student T.D. for the remainder of the 2018-19 school year for using social media to threaten to shoot other students. This appeal was brought by T.D. through his guardians, A.D., and J.D., ("Appellants") pursuant to S.C. Code Ann. § 59-63-240. In addition, through this action, Appellants seek injunctive relief and declaratory judgement related to the disciplinary action. Specifically, as a First Cause of Action, the Appellants seek to appeal the suspension and expulsion of T.D. and request the Court reverse and vacate the decision and reinstate T.D. As a Second Cause of Action, the Appellants seek temporary injunctive relief and/or an immediate stay of the decision of the District excluding T.D. from all district schools and programs and immediate reinstatement into an alternative education setting until such time as these matters can be heard and resolved. As a Third Cause of Action, the Appellants have asserted a claim for declaratory relief pursuant to S.C. Code Ann. §15-53-20, in which 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. Finally, as a Fourth Cause of Action, 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.

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.¹ 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.²

A hearing was held before the Hearing Officer, Lottie Chishom, on December 12, 2018.³ 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

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

² 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.

³ 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.

story.

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 juul⁴ 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.

⁴ 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 So. 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 (8th 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 (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 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, 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.

2026

L. Casey Manning
The Honorable L. Casey Manning

Columbia, South Carolina

8-16-19, 2019

ELECTRONICALLY FILED - 2019 Aug 21 9:29 AM - RICHLAND - COMMON PLEAS - CASE#2019CP4001615

R027

PLEADINGS

CONFIDENTIAL

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February 12, 2019

VIA E-MAIL ONLY

D. Michael Mathison, Esq.
Richland County Public Defender's Office
1701 Main Street, Suite 103
Columbia, SC 29201

RE: Richland School District Two/D [REDACTED] E.

Dear Mike:

This letter is in response to your email this morning requesting a written version of the verbal proposal that we discussed yesterday. As will be discussed further below, I will summarize the proposed resolution; however, two of the three questions that you asked would have to be decided by the Board at a Board meeting.

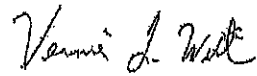
With regard to the proposed resolution, in light of the due process concerns that you raised, we proposed essentially remanding this matter for a second due process hearing to be heard by Roosevelt Garrick, who is a retired administrator. Mr. Garrick has no prior knowledge of this incident and would be making a decision based on the record that will be presented to him. Our reason for this proposal was in light of the concerns that you raised that, even if the Board were to make a decision, included in the record for the Board's consideration are law enforcement records to which you object based on your client's status as a juvenile. With regard to your numbered request, we can confirm that based on the administration's practices in these matters, the tapes will be available for Board members, should they wish to review the tapes. Items 2 and 3 in your request are matters that would have to be considered by the Board, and voted upon after their consideration and discussion of these items. Our position with regard to the witnesses being present is at most, the Board could vote to request the presence of any witnesses they deem appropriate; however, the Board does not have the authority to compel the presence of witnesses in these type matters. We also proposed recommending an amendment to the Board's policy regarding student records, to include provisions regarding the handling of juvenile criminal records.

We trust this is responsive to your concerns. We will look forward to discussing these matters with you further.

R029

CONFIDENTIAL

Sincerely yours,



Vernie L. Williams
vwilliams@hmvlegal.com

/mlp

c: Jasmine Rogers Drain, Esq.

R0205

R030

ELECTRONICALLY FILED - 2019 Apr 18 5:03 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4001615

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

T.D. by and through his guardians, A.D.)
and J.D.,) C.A. No. 2019-CP-40-01615

Plaintiffs/Appellants,)
) ANSWER AND RETURN

vs.)

Richland County School District Two,)

Defendant/Respondent.)
)
)

Defendant/Respondent, Richland School District Two, by and through its undersigned counsel, hereby responds to the Appeal and Complaint of Plaintiffs, and denies each and every allegation of the Appeal and Complaint except as may be expressly admitted herein, and further responds to the specific allegations of Plaintiffs' Appeal and Complaint, in accordance with the numbered paragraphs thereof, as follows:

INTRODUCTION

1. This paragraph is jurisdictional in nature, does not contain factual allegations, and states legal conclusions as to which no response is required. To the extent a response may be required, Defendant admits only that by this action Plaintiffs seek, among other things, to appeal a school suspension and expulsion under the referenced laws and authority, that this court has jurisdiction to review the appeal of this matter, but denies violating any of the cited statutes or that Plaintiffs are entitled to any relief requested under the statutes cited or other legal authority.

2. Admitted in part and denied in part. Defendant admits only that Plaintiffs are seeking injunctive relief through this action but denies that Plaintiffs are entitled to any relief requested.

3. This paragraph does not contain factual allegations and states legal conclusions as

to which no response is required. To the extent a response may be required, Defendant admits only that by this action Plaintiffs seek declaratory judgment but denies violating any of the cited statutes or that Plaintiffs are entitled to any relief requested under the statutes cited or other legal authority.

4. This paragraph does not contain factual allegations and states legal conclusions as to which no response is required. To the extent a response may be required, Defendant admits only that by this action Plaintiffs seek declaratory judgment but denies violating any of the cited statutes or that Plaintiffs are entitled to any relief requested under the statutes cited or other legal authority.

PARTIES AND VENUE

5. Admitted upon information and belief.
6. Admitted upon information and belief.
7. Admitted upon information and belief.
8. Admitted.

ABBREVIATED STATEMENT OF THE FACTS AND THE CASE

9. Admitted in part and denied in part. Defendant admits upon information and belief only that a parent contacted law enforcement on December 1, 2018, regarding alleged threatening messages related to Blythewood Middle School (BMS) and or its students. Defendant further admits the referenced incident report speaks for itself and would defer to the referenced incident report completed by law enforcement as the best source regarding its contents. Any remaining allegations contained in this paragraph are denied.

10. Denied as stated. Defendant admits only that on December 2, 2018, BMS Principal Karis Mazyck received notification from School Resource Officer Brooks regarding alleged threats to Blythewood Middle School and/or students and that Principal Mazyck was contacted later that day by an investigator from the Richland County Sheriff's Department

regarding the same. Any remaining allegations contained in this paragraph are denied.

11. Denied as stated. Defendant admits only that on or around December 4, 2018, the BMS administration attempted to contact T.D. to discuss allegations received from law enforcement and afford him an opportunity to share his side of the story. Defendant further admits that at that time, T.D.'s grandfather reported, among other things, that T.D. was asleep and T.D. would not be providing a statement to the school administration because he had already denied the allegations to law enforcement. Any remaining allegations contained in this paragraph are denied or denied as stated.

12. Admitted in part and denied in part. Defendant admits only that as consistent with applicable law, Principal Mazyck requested a copy of the incident report from law enforcement. Defendant further admits that by email dated December 4, 2018, law enforcement provided the incident report, and other unrequested information to Principal Mazyck via email, and would defer to those emails as the best source regarding the records transmitted by law enforcement to Principal Mazyck at that time. Any remaining allegations contained in this paragraph are denied.

13. Denied as stated. Defendant admits only that the BMS administration recommended T.D. for expulsion. Any remaining allegations contained in this paragraph are denied.

14. Admitted in part and denied in part. Defendant admits only that the BMS administration, as consistent with standard practice, submitted documentation supporting the administration's expulsion recommendation to the Hearing Officer in advance of the hearing and would defer to the record as the best source regarding the information submitted. Any remaining allegations contained in this paragraph are denied.

15. Admitted in part and denied in part. Defendant admits only that the BMS administration obtained written statements from BMS students in connection with its

investigation of the alleged incident involving the threat to the school and/or students, that the statements speak for themselves, and would defer to those statements as the best sources regarding their actual contents. Any remaining allegations contained in this paragraph are denied.

16. The paragraph contains factual allegations in addition to legal conclusions to which no response is required. To the extent a response is required, Defendant admits only that its policies, applicable state and federal law, and case law decided thereunder, are the best sources concerning rights of Plaintiffs, and denies violating any of those policies or statutes. Defendant would defer to the referenced audio recordings, in their entirety, as the best source regarding the communications between the BMS administration and Plaintiffs prior to and during the hearing on December 12, 2018. Any remaining allegations contained in this paragraph are denied.

17. Denied as stated. Defendant admits only that prior to the due process hearing the BMS administration discussed with Plaintiffs the nature of information received from law enforcement and would defer to the referenced audio recordings, in their entirety, as the best source regarding communications between the BMS administration and Plaintiffs prior to and during the hearing on December 12, 2018. Any remaining allegations contained in this paragraph are denied

18. Admitted in part and denied in part. Defendant admits only that the BMS administration introduced the referral, student statements, and the incident report during the hearing to support the school's administration expulsion recommendation, that the documents speak for themselves, and would defer the actual documents as the best source regarding their contents. In addition, Defendant admits the audio recording, in its entirety, speaks for itself and would defer to the audio recording as the best source regarding documents introduced and information shared during the hearing. Any remaining allegations contained in this paragraph

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are denied.

19. Denied.

20. Denied as stated. Defendant admits only that during the hearing on December 12, 2018, Plaintiffs testified that T.D. sold his cell phone prior to the alleged incident and would defer to the recording of the hearing as the best source regarding Plaintiffs' testimony during the hearing. Any remaining allegations contained in this paragraph are denied.

21. Denied.

22. Denied as stated. Defendant admits only that the Hearing Officer received and questioned T.D. about information contained in a report or document labeled "Investigative Follow-Up" and would defer to that the document as the best source concerning its contents. In addition, Defendant admits the audio recording of the hearing is an accurate reflection of communications of those in attendance during the hearing and would defer to the recording as the best source regarding communications made by or documents referenced by the Hearing Officer during the hearing. Any remaining allegations contained in this paragraph are denied.

23. Admitted in part and denied in part. The allegations contained in the first sentence of this paragraph are denied. With regard to the allegations contained in the second sentence of this paragraph, including all subparts and footnotes, Defendant admits the referenced documents speak for themselves and would defer to the referenced documents as the best source concerning their contents. Defendant further admits that the audio recording of the December 12, 2018, hearing accurately depicts documents referenced or introduced during the hearing and the testimony from those present and would defer to the audio recording as the best source regarding the same. Any remaining allegations contained in this paragraph are denied.

24. Denied as stated. Defendant admits only that Expulsion Summary Sheet speaks for itself and would defer to the referenced document as the best source concerning its contents.

Any remaining allegations contained in this paragraph are denied.

25. Denied as stated. Defendant admits only that minutes provided in connection with student disciplinary hearings are condensed and not intended to be a verbatim transcript and that the copies of the original minutes and revised minutes speak for themselves and would defer to the minutes as the best sources concerning their contents. Any remaining allegations contained in this paragraph are denied.

26. Denied as stated. Defendant admits only that its legal counsel by correspondence dated January 15, 2015, January 22, 2019, and January 31, 2019, provided requested information, including records and recordings, to counsel for Plaintiff, and that once it was discovered the written statements from students had been inadvertently omitted from prior productions, those documents were provided to Plaintiffs' counsel February 1, 2019. In addition, Defendant admits that the referenced records and recordings provided to counsel for Plaintiffs speak for themselves and would defer to the documents and recordings as the best source regarding their contents. Any remaining allegations contained in this paragraph are denied.

27. Admitted in part and denied in part. Defendant admits only that Plaintiff A.D. submitted a letter of appeal to the Board dated January 6, 2019, and that thereafter legal counsel for Plaintiffs supplemented the appeal on February 4, 2019 and February 5, 2019. Defendant further admits that the referenced appeals submitted on by and on behalf of Plaintiffs speak for themselves and would defer to the documents as the best sources regarding their contents. Defendant denies violating any of the cited statutes and any remaining allegations contained in this paragraph.

28. Admitted.

29. Admitted.

30. Denied as stated. Defendant admits only that by letter dated February 8, 2019

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counsel for Plaintiffs, among other things, requested clarification regarding the request for an in person hearing. Defendant further admits that during a discussion on February 11, 2019, and also by letter dated February 12, 2019, legal counsel for Defendant addressed Plaintiffs' counsel requests. Defendant further admits that the referenced letters speak for themselves and would defer to the letters as the best source regarding their contents. Any remaining allegations contained in this paragraph are denied.

31. Denied as stated. Defendant admits only that by letter dated February 12, 2019, legal counsel for Defendant addressed Plaintiffs' counsel requests regarding issues pertaining to the request for an in-person appearance. Defendant further admits that the referenced letter speaks for itself and would defer to the letter as the best source regarding its contents. Any remaining allegations contained in this paragraph are denied.

32. Denied as stated. Defendant admits that no parties were "copied" on the submission to the Board as appeals are automatically uploaded through an internal system called "Board Docs." Any remaining allegations contained in this paragraph are denied.

33. Denied as stated. Defendant admits only that audio recording of the hearing before the Board speaks for itself and would defer to the recording in its entirety, or a transcript thereof, as the best source regarding comments made by those in attendance during the hearing. Any remaining allegations are denied.

34. Denied as stated. Defendant admits only that audio recording of the hearing before the Board speaks for itself and would defer to the recording in its entirety, or a transcript thereof, as the best source regarding comments made by those in attendance during the hearing. Any remaining allegations are denied.

35. Denied as stated. Defendant admits only that audio recording of the hearing before the Board speaks for itself and would defer to the recording in its entirety, or a transcript thereof, as the best source regarding comments made by those in attendance during the hearing.

Defendant denies violating any referenced statutes and any remaining allegations contained in this paragraph.

36. Denied as stated. Defendant admits only that during the general session of its Board meeting on February 12, 2019, the Board voted to deny Plaintiffs' appeal. Any remaining allegations contained in this paragraph are denied.

37. Denied as stated. Defendant admits only that by letter dated February 18, 2019, from Cleveland J.C. Smith, Chief Administrative Officer, Plaintiffs were notified of the Board decision and that a courtesy copy of that same was emailed to legal counsel for Plaintiffs on February 18, 2019. Any remaining allegations contained in this paragraph are denied.

STANDARD OF REVIEW

38. This paragraph, including subparts, contains legal conclusions as to which no response is required. To the extent a response is required, Defendant admits only that Section 59-63-240 provides that "the action of the [school] board [in student expulsion cases] may be appealed to the proper court and that the hearing before the Circuit Court is to be a review of the record below, not a de novo hearing. In addition, Defendant admits that that the cited rules and statutes in this paragraph are the best source regarding their contents and that cases decided thereunder are the best sources concerning their application. Defendant denies violating any referenced statutes and any remaining allegations contained in this paragraph.

GROUND FOR APPEAL

39. This paragraph contains factual allegations in addition to legal conclusions to which no response is required. To the extent a response is required, Defendant admits only that that the cited statutes in this paragraph are the best source regarding their contents and that cases decided thereunder are the best source concerning their application. In addition, Defendant admits that the Board of Trustees' decision to uphold T.D.'s expulsion was based upon substantial evidence and pursuant to Defendant's Policy JICDA and corresponding

Administrative Rule JICDA-R entitled "Code of Conduct" as well as Defendant's Policy JKE and corresponding Administrative Rule JKE-R entitled "Expulsion of Students." Further, Defendant admits it has policy to protect and safeguard student records, including juvenile records, and that that policy is the best source regarding its contents. Defendants deny violating any referenced statutes or policy and any remaining allegations contained in this paragraph.

40. This paragraph contains factual allegations in addition to legal conclusions to which no response is required. To the extent a response is required, Defendant admits only that its policies, applicable state and federal law, and case law decided thereunder, are the best source concerning rights of Plaintiff, and denies violating any of those laws or Plaintiffs' rights. In addition, Defendant admits that the referenced documents speak for themselves and would defer to those documents as the best source regarding their contents and that the recordings of the applicable proceedings speak for themselves and are the best source regarding comments made by individuals in attendance during those proceedings. Any remaining allegations contained in this paragraph are denied.

41. This paragraph contains factual allegations in addition to legal conclusions to which no response is required to the extent a response is required, Defendant defers to applicable state and federal law, and case law decided thereunder, as the best source regarding rights of students as it relates to discipline and denies violating in any of those rights. Any remaining allegations contained in this paragraph are denied.

42. This paragraph contains factual allegations in addition to legal conclusions to which no response is required. To the extent a response is required, Defendant admits only that the referenced documents speak for themselves and would defer to those documents as the best sources regarding their contents. Defendant further admits that the referenced statutes and case laws speak for themselves and would defer to the referenced case law and statutes as the best

source regarding their contents and application and denies violating any statutes or laws.

Defendant further admits that T.D. has been out of a school setting since on or around February 18, 2019. Any remaining allegations contained in this paragraph, including subparts thereof, are denied.

43. This paragraph contains factual allegations in addition to legal conclusions to which no response is required. To the extent a response is required, Defendant admits only that the cited case speaks for itself and would defer to the case as the best source regarding its contents and application. Defendant further admits that the audio recording from the hearing before the Board on February 12, 2019, speaks for itself, and would defer to the recording, in its entirety, as the best source regarding any comments made by those in attendance. Any remaining allegations are denied.

44. Defendant denies Plaintiffs are entitled to any of the relief requested.

FOR A SECOND CAUSE OF ACTION

(Injunctive Relief – Rule 65, SCRCP)

45. Defendant incorporates by reference its responses to Paragraphs 1 through 44 of the Complaint/Appeal as if stated herein verbatim.

46. Denied.

47. This paragraph contains a legal conclusion or statement as to which no response is required. To the extent a response is required, Defendant admits only the cited case law speaks for itself and would defer to the cited case as the best source regarding its contents and application but denies violating any rights of Plaintiffs. Any remaining allegations contained in this paragraph are denied.

48. Denied.

49. Denied as stated. Defendant admits only that T.D. was expelled from Richland School District Two for making threats in violation of applicable District policy. Defendant

would defer to the applicable laws of this state regarding student attendance as the best source regarding student enrollment. Any remaining allegations contained in this paragraph are denied.

50. Denied as stated. Defendant admits only that T.D. was afforded the opportunity to receive instruction pending his appeal and defers to the audio recording of the Board hearing, in its entirety, as the best source regarding comments made during the hearing, including those of legal counsel. Any remaining allegations are denied.

51. Defendant denies Plaintiffs are entitled to the relief requested.

FOR A THIRD CAUSE OF ACTION – DECLARATORY JUDGMENT ACT

52. This paragraph states a legal conclusion and requires no response. To the extent a response is required, Defendant admits only that the cited statute speaks for itself and would defer to the cited statute, and case law decided thereunder, and the best source regarding its contents and application and denies violating the cited statute. Any remaining allegations contained in this paragraph are denied.

53. This paragraph states a legal conclusion and requires no response. To the extent a response is required, Defendant admits only that the cited statute speaks for itself and would defer to the cited statute, and case law decided thereunder, and the best source regarding its contents and application and denies violating the cited statute. Any remaining allegations contained in this paragraph are denied.

54. This paragraph states a legal conclusion and requires no response. To the extent a response is required, Defendant admits only that the cited statute speaks for itself and would defer to the cited statute, and case law decided thereunder, and the best source regarding its contents and application and denies violating the cited statute. Any remaining allegations contained in this paragraph are denied.

55. Denied as stated. Defendant admits that Policy JRA/JRA-R governs the

R041

maintenance and confidentiality of student records, which would include all records maintained by the District regarding its students, and would defer to the policy as the best source regarding its contents. Any remaining allegations contained in this paragraph are denied.

56. Defendants deny Plaintiffs are entitled to the relief requested.

57. Defendants deny Plaintiffs are entitled to the relief requested.

58. Defendants deny Plaintiffs are entitled to the relief requested.

FOR A FOURTH CAUSE OF ACTION – DECLARATORY JUDGMENT ACT

59. This paragraph states a legal conclusion and requires no response. To the extent a response is required, Defendant admits only that the cited statute speaks for itself and would defer to the cited statute, and case law decided thereunder, and the best source regarding its contents and application and denies violating the cited statute. Any remaining allegations contained in this paragraph are denied.

60. This paragraph states a legal conclusion and requires no response. To the extent a response is required, Defendant admits only that the cited statute speaks for itself and would defer to the cited statute, and case law decided thereunder, and the best source regarding its contents and application and denies violating the cited statute. Any remaining allegations contained in this paragraph are denied.

61. Denied as stated. Defendant admits only that Policy JKE speaks for itself and would defer to the policy as the best source regarding its contents.

62. Denied.

63. Defendant denies that Plaintiffs are entitled to the relief requested.

64. Defendant denies that Plaintiffs are entitled to any of the relief requested in the Complaint and Appeal or any other recovery whatsoever.

65. Defendant denies each and every other allegation of the Complaint and Appeal except for those expressly admitted herein.

FIRST AFFIRMATIVE DEFENSE

To the extent the Complaint fails to state facts sufficient to constitute a cause of action, Defendant is not liable.

SECOND AFFIRMATIVE DEFENSE

Defendant is immune from liability under § 15-78-60(25) of the South Carolina Tort Claims Act to the extent Plaintiff's alleged loss resulted from an exercise of the District's responsibility or duty to supervise, protect, and control its students, and Defendant School District did not exercise its responsibility or duty in a grossly negligent manner.

THIRD AFFIRMATIVE DEFENSE

Defendant is immune from liability under § 15-78-60(5) of the South Carolina Tort Claims Act to the extent Plaintiff's alleged loss resulted from an exercise of discretion or judgment by a governmental entity or employee or the performance or failure to perform an act or service which is in the discretion or judgment of a governmental entity or employee.

FOURTH AFFIRMATIVE DEFENSE

It is denied, further, that any constitutionally guaranteed right or rights of Plaintiffs have been violated by Defendant.

FIFTH AFFIRMATIVE DEFENSE

Defendant is immune from liability under the South Carolina Tort Claims Act to the extent Plaintiff's alleged loss, if any, resulted from the adoption, enforcement, or compliance, or the alleged failure to adopt, enforce, or comply, with any law, rule, regulation, or written policy.

SIXTH AFFIRMATIVE DEFENSE

. Defendant School District pleads as a further bar and limitation on this action each and

every provision of the South Carolina Tort Claims Act, including its limitations on damages and its exceptions to the waiver of sovereign immunity.

SEVENTH AFFIRMATIVE DEFENSE

Defendant is immune from liability under the South Carolina Tort Claims Act to the extent Plaintiff's alleged loss, if any, resulted from the institution or prosecution of any judicial or administrative proceeding.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs have been provided all due process available under the law for the disciplinary consequences applied in Plaintiffs' case.

NINTH AFFIRMATIVE DEFENSE

To the extent that Plaintiffs seek recovery for conduct outside the scope of official duties or which constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude, Plaintiffs claims are barred by the immunities set forth in the South Carolina Tort Claims Act.

TENTH AFFIRMATIVE DEFENSE

Defendant District is immune from liability under the South Carolina Tort Claims Act to the extent Plaintiffs' alleged loss, if any, resulted from: a) legislative, judicial, or quasi-judicial action or inaction; or b) administrative action or inaction of a legislative, judicial, or quasi-judicial nature.

ELEVENTH AFFIRMATIVE DEFENSE

T.D.'s expulsion was based on substantial and sufficient evidence.

TWELFTH AFFIRMATIVE DEFENSE

Defendant at all times acted in good faith. Further, Defendant's employees acted with a reasonable, good faith belief in the lawfulness and constitutionality of their actions, and their alleged wrongful conduct did not violate clearly settled law or established rights. The conduct of Defendant's employees was lawful, justified, and made in good faith.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claim for equitable relief must fail to the extent they have failed to join all necessary parties.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs have made no showing that they will suffer irreparable harm without an injunction and Plaintiffs have adequate remedies at law.

WHEREFORE, having fully answered the Complaint and Appeal, Defendant respectfully prays that the Court dismiss Plaintiffs' claims against them, with all costs and expenses awarded to the Defendant, together with any and all further relief that the Court deems equitable and just.

Respectfully submitted,

HALLIGAN MAHONEY WILLIAMS SMITH
FAWLEY & REAGLE, PA

By: s/ Jasmine Rogers Drain

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R045

Jasmine Rogers Drain, S.C. Bar No. 76156
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Attorneys for Defendant/Respondent

April 18, 2019

Columbia, South Carolina

ELECTRONICALLY FILED - 2019 Apr 18 5:03 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4001615

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

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

C.A. No. 2019-CP-40-01615

Plaintiffs/Appellants,)

CERTIFICATION OF RECORD

vs.)

Richland County School District Two,)

Defendant/Respondent.)

TO: THE COURT OF COMMON PLEAS, FIFTH JUDICIAL CIRCUIT

Please take notice that inasmuch as a Summons and Appeal and Complaint has been served upon Richland County School District Two ("District") in the above-entitled action, Respondent, Richland County District Two, hereby certifies to the Court the following written record herein, subject to SCRCP 41.2:

1. Discipline referral for Student T.D. dated December 4, 2018.
2. Letter dated December 5, 2018, from Blythewood Middle School (BMS) Principal, Karis Mazyck, to Dr. Baron Davis, Superintendent, regarding expulsion recommendation for Student T.D.
3. Amended letter dated December 5, 2018, from Blythewood High School Principal, Karis Mazyck, to Dr. Baron Davis, Superintendent, advising of expulsion recommendation for Student T.D.
4. Parent/guardian information and emergency contact information form for T.D.
5. T.D.'s student discipline summary for 2018-2019 term.
6. Attendance record for T.D.
7. Historical Grades for T.D.
8. Grades and Attendance for T.D. for 2018-2019 term.

9. Letter dated December 5, 2018, from Ms. Mazyck, to A.D. and J.D. regarding the school administration's decision to recommend T.D. for expulsion.
10. BMS Incident statement from Student K.M. dated December 5, 2018.
11. BMS Incident statement from Student H.C. dated December 5, 2018.
12. BMS Incident statement from Student C.G. dated December 5, 2018.
13. Juvenile On-Demand Access form for T.D.
14. Law Enforcement Officer Recommendation Form (Youth Arbitration) for T.D. dated December 2, 2018.
15. Juvenile Petition (R18-8391) dated December 3, 2018.
16. Juvenile Petition (R18-8392) dated December 3, 2018.
17. Juvenile Petition (R18-8393) dated December 3, 2018.
18. Statement form from Richland County Sheriff's Department dated December 2, 2018, reflecting "refused" by T.D.
19. Consent to Search dated December 2, 2018.
20. Physician's Discharge Summary dated November 16, 2018.
21. Richland County Sheriff's Department Incident Report dated December 1, 2018. (Report 1)
22. Richland County Sheriff's Department Incident Report dated December 1, 2018. (Report 2)
23. Richland County Sheriff's Department Supplemental Incident Report dated December 2, 2018.
24. Richland County Sheriff's Department Investigative Follow Up.
25. Richland County Sheriff's Department Incident Report dated November 21, 2018.
26. Richland County Sheriff's Department Incident Report dated September 23, 2018.
27. Richland County Sheriff's Department Incident Report dated May 8, 2018.
28. Screenshots/photographs of social media/and or text exchanges.

29. Richland County Sheriff's Department Petition Worksheets.
30. Law Enforcement Officer's Youth Arbitration Checklist.
31. Email dated December 2, 2018 from Student C.G. to Deputy Steffany Boyd and father re: Statement.
32. Richland County Sheriff's Department Arrest Report dated December 2, 2018.
33. Richland County Sheriff's Department Custody of Minor Child form.
34. Richland County Sheriff's Department Statement from Student H.C. dated December 2, 2018.
35. Courtesy Notice/Recommendation for Expulsion dated December 18, 2018 from Roxanna Cubero of Student Services to BMS officials.
36. E-mail dated January 3, 2019 from Ms. Cubero to Dr. Bobby Cunningham, Director of W.R. Rogers Center, and Greta Carter, BMS Assistant Principal, re: OSSP services for T.D.
37. Letter dated January 8, 2019 from Deputy Chief James Smith to Ms. Mazyck.
38. Letter dated January 6, 2019, from A.D. to Richland School District Board of Trustees appealing Hearing Officer's decision and notice of appeal form reflecting appeal on file.
39. Letter dated January 11, 2019, from Lottie Chishom, Hearing Officer, to A.D. and J.D regarding decision.
40. Summary of Hearing and Resolution from Ms. Chishom.
41. Original condensed version of minutes from December 12, 2018 hearing.
42. Transmittal email communications from January 10, 2019 - January 14, 2019, between Jasmine Rogers Drain, Esq., legal counsel for Richland School District Two, and Michael Mathison, Esq., legal counsel for Plaintiffs, re: Student T.D.¹
43. Email communications dated February 15, 2019, between Ms. Drain and Mr. Mathison re: T.D. and T.D. Recording Part I.

¹ These communications, as well as other exhibits containing communications between counsel, are being included for the Court's consideration, should it deem necessary and appropriate, as it relates to evidentiary and procedural issues raised by Plaintiffs in this appeal.

44. Email communications dated January 19, 2019 and January 20, 2019 between Ms. Drain and Mr. Mathison re: Student T.D.
45. Email communication dated January 22, 2019 (2:22 p.m.) from Ms. Drain to Mr. Mathison transmitting audio recording from T.D. October 2018 hearing.
46. Email communication dated January 22, 2019 from Ms. Drain to Mr. Mathison re: Student T.D. producing requested transmittal correspondence between law enforcement and District.
47. Text and email communications between Ms. Mazyck and Sergeant Ronald Cris Truluck dated December 4, 2018.
48. Email communications dated January 22, 2019, between Mr. Mathison and Ms. Drain re: Plaintiffs re: Student T.D., concerning request for extension to supplement appeal.
49. Email communications dated January 31, 2019, between Ms. Drain and Mr. Mathison re: Student T.D.- Audio of Previous Expulsion Hearing and Student T.D.
50. Email communications from January 31, 2019 – February 1, 2019, between Ms. Drain and Mr. Mathison re: Student T.D.- Audio of Previous Expulsion Hearing and Student T.D.
51. Supplemental Grounds for Appeal to Richland Two Board of Trustees dated February 5, 2019.
52. Emails dated February 5, 2019 and February 6, 2019, between Ms. Drain and Mr. Mathison re: T.D.
53. Revised/updated version of minutes from December 12, 2019 hearing.
54. E-mail dated February 8, 2019 from Ms. Drain to Mr. Mathison advising on Board's decision to grant personal appearance in connection with appeal.
55. Letter dated February 8, 2019 from attorney Michael Mathison to Board and Jasmine Drain Re: Appeal Hearing on February 12, 2019/Request for Witnesses.
56. Letter dated February 12, 2019, from legal counsel for Richland School District Two, Vernie L. Williams, to Michael Mathison, Esq, re: appeal related issues.
57. Email communications dated February 12, 2019 between Mr. Williams and Mr. Mathison re: Richland School District Two/D., T.
58. Plaintiffs' list of documents for inclusion in the record in connection with

February 12, 2019 appeal before the Board.

59. February 12, 2019 Student Appeals report to Board for session regarding Student T.D.
60. Letter dated February 18, 2019 from Cleveland J.C. Smith, Chief Administrative Services Officer to A.D. and J.D. regarding Board's decision.
61. Respondent's Policy JRA and corresponding Administrative Rule JRA-R, entitled "Student Records."
62. Respondent's Policy JIC entitled "Student Conduct."
63. Respondent's Policy JICDA and corresponding Administrative Rule JICDA-R, entitled "Code of Conduct."
64. Respondent's Policy JKE and corresponding Administrative Rule JKE-R entitled "Expulsion of Students."
65. Respondent's Policy JK entitled "Student Discipline."
66. Respondent's Policy JKD and corresponding Administrative Rule JKD entitled "Suspension of Students."
67. Audio recording of December 12, 2018 hearing – Part I.²
68. Audio recording of December 12, 2018 hearing – Part II.
69. Audio recording of February 12, 2019 appeal before Board.
70. Documentation regarding Student T.D.'s November 27, 2018 suspension.³

² Audio recordings included in Exhibits 67, 68, and 69 will be submitted to the Court through confidential manner to be determined by the Court.

³ Plaintiffs' Supplemental Appeal dated February 5, 2019 references testimony and documents regarding T.D. November 2018 suspension. Therefore, these records are being included for the Court's consideration, should the Court deem necessary and proper.

R051

ELECTRONICALLY FILED - 2019 Apr 18 5:03 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4001615

Respectfully submitted,

HALLIGAN MAHONEY WILLIAMS SMITH
FAWLEY & REAGLE, PA

By: s/ Jasmine Rogers Drain

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Attorneys for Defendant/Respondent

April 18, 2019

Columbia, South Carolina

R052

ELECTRONICALLY FILED - 2019 Apr 19 3:37 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4001615

**RICHLAND COUNTY PUBLIC DEFENDER
YOUTH REENTRY PROGRAM**

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PHONE (803) 766-5174
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April 19, 2019
VIA E-Filing System

The Honorable Jeanette W. McBride
Richland County Clerk of Court
1701 Main Street
Columbia, South Carolina 29201

Re: T.D. v. Richland County School District Two; Case No. 2019-CP-40-01615

Removal of Document Pursuant to Rule 41.2(e)

Dear Ms. McBride,

Earlier today, counsel for the Plaintiffs and counsel for the Defendant each attempted to submit letters requesting that the exhibit to the document entitled "Certification of Record" filed by the Defendant on April 18, 2019, at 5:03 p.m. be removed from the publicly accessible CMS. The parties have agreed to withdraw this document from the CMS's public access. Please allow this letter to serve as our joint request to have this document removed from the CMS.

If you have any questions or concerns don't hesitate to contact me.

I Consent:

I Consent:

S/Jasmine Rogers Drain
Jasmine Rogers Drain
Attorney for the Defendant
Halligan Mahoney & Williams, PA
1301 Gervais St. SC 2911
Post Office Box 11367
Columbia, SC 29211
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S/D. Michael Mathison
D. Michael Mathison
Attorney for the Plaintiffs
1420 Henderson St
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Email: Mathison.Michael@richlandcountysc.org

cc: Vernie L. Williams, Esq.



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KIMBERLY KELLEY BLACKBURN

JASMINE ROGERS DRAIN *

DWAYNE T. MAZYCK

SHENEKA S. LODENQUAI *

April 24, 2019

VIA US MAIL & EMAIL & E-Filing

Jeanette W. McBride

Clerk of Court

1701 Main St #205

Columbia, SC 29201

Re: T.D. by and through his guardians, A.D. and J.D. v. Richland County
School District Two, C.A. No. 2019-CP-40-01615

Dear Ms. McBride,

Our firm represents Defendant/Respondent Richland School District Two in the above referenced matter. I understand that following a request from both parties on April 19, 2019, the attachments filed to the Certification of Record were removed from the publicly accessible CMS due to privacy and confidentiality considerations. However, at this time, Defendant would also request that the **Certification of Record** be removed from the publicly accessible CMS as the parties currently have a dispute regarding the appropriateness of the filing and other confidentiality issues and need additional time to resolve the matter.

Should the Court have any questions or concerns or require additional information regarding this matter, please do not hesitate to contact me. We appreciate the Court's consideration.

With kind regards, I am

Sincerely yours,

By: s/Jasmine Rogers Drain

Jasmine Rogers Drain, S.C. Bar No. 76156

jdrain@hmwlegal.com

P.O. Box 11367

Columbia, South Carolina 29211

(803) 254-4035

JRD/rdp

cc: D. Michael Mathison, Esq., Richland County Public Defender's Office
Vernie L. Williams, Esq.

R053

R054

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

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

C.A. No. 2019-CP-40-01615

Plaintiffs/ Appellants,

**CONSENT MOTION TO EXTEND TIME
 TO CERTIFY AND FILE RECORD**

vs.

Richland County School District Two,

Defendant/Respondent.

Respondent/Defendant, Richland School District Two, by and through its undersigned attorneys, hereby moves the Court for an Order extending the time within which to prepare, certify and file the record pursuant to SCRCP 75. Counsel for Appellants/Plaintiffs has consented to an extension through May 1, 2019. Respondent makes this request because additional time is needed to cure deficiencies of the Certification of Record filed on April 18, 2019. Accordingly, Respondent/Defendant respectfully requests that this motion be granted.

Respectfully submitted this 26th day of April 2019.

WE SO MOVE AND CONSENT:

s/ D. Michael Mathison

D. Michael Mathison, S.C. Bar No. 101803
 Richland County Public Defender's Office
 1420 Henderson Street
 P.O. Box 192
 Columbia, South Carolina 29201
 (803) 766-5174

Attorney for Plaintiff/Appellant

s/ Jasmine Rogers Drain

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 Vernie L. Williams, S.C. Bar No. 9511
 Halligan Mahoney Williams Smith Fawley
 & Reagle, PA
 P.O. Box 11367
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 (803) 254-4035

Attorneys for Defendant/Respondent

R055

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

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

C.A. No. 2019-CP-40-01615

Plaintiff,

vs.

MOTION TO SEAL

Richland County School District Two,

Defendant.

Pursuant to Rule 41.1(b) of the South Carolina Civil Rules of Procedure, Defendant/Respondent Richland School District Two hereby moves this Court for an Order to Seal the documents and audio recordings identified below that will be filed in connection with this case:

- 1) Exhibits 1- 35 identified in the Amended Certification of Record; and
- 2) Exhibits 1, 2, 19, 20, and 21 identified in Respondent's/Defendant's Designation of Additional Matter for Record.

Specifically, the above-referenced exhibits contain statements, reports, documents, education records, juvenile records, and correspondence obtained by Richland County School District concerning a disciplinary action and juvenile matter involving Minor Plaintiff T.D. Many of these documents were completed by or refer to students or minors who attended Richland School District Two at the time of the alleged incident giving rise to the disciplinary action. Sealing of these documents is necessary based upon applicable federal privacy laws related to confidential student information and the public policy of South Carolina which recognizes the importance of confidentiality with respect to juveniles. The Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, and its implementing regulations, 34

C.F.R. Part 99 have two primary components. First, the statute mandates that local school districts grant a student and his legal guardians a right to access his educational records. Second, subject to certain enumerated exceptions, FERPA requires an educational institution to maintain the confidentiality of student records containing personally identifiable information. Further, with regard to its confidentiality mandate, the purpose of FERPA is to ‘assure parents of students access to their education records and to protect such individual’s right to privacy by limiting the transferability (and disclosure) of their records without their consent.’ *Ragusa v. Malverne Union Free School Dist.*, 549 F.Supp.2d 288, 291 (E.D. N.Y. 2008)(emphasis added and internal citations omitted).

FERPA defines “education records” to include those records, files, documents, and other materials that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. 20 U.S.C. § 1232g(a)(4)(A) “Record” is defined to mean any information recorded in any way, including but not limited to handwriting, print, computer media, video or audio tape, film, microfilm, and micro fiche. 34 C.F.R. 99.3. “The plain meaning of the statutory language reveals that Congress intended for the definition [of education records] to be broad in scope.” *Belanger v. Nashua, New Hampshire, School Dist.*, 856 F.Supp. 40, 48 (D.N.H. 1994). In this case, the above-referenced exhibits contain confidential educational and juvenile records collected in connection with the disciplinary matter giving rise to this lawsuit. Thus, under the broad definition of “education records”, these records at issue could constitute an “educational record” of students or juvenile records of T.D. Therefore, to fulfill the purpose of FERPA, and limit the disclosure of the records or the minor’s identities of non-party students, sealing or redaction is appropriate.

In addition to FERPA, this Court has the inherent authority to establish parameters on discovery to protect the interests of minors. The public policy of South Carolina recognizes the importance of confidentiality with respect to juveniles. *See* S.C. Code Ann. § 63-7-1990 (all

reports made and information collected by the Department of Social Services and the Central Registry of Child Abuse and Neglect are declared confidential, and the unauthorized dissemination of such materials is a misdemeanor); S.C. Code Ann. § 63-19-2020 (the Juvenile Justice Code provides that court records involving juveniles are confidential); S.C. Code Ann. § 63-3-20(D) (providing that records in the family court concerning juveniles shall be kept confidential). Thus, South Carolina, like many other states, protects the confidentiality of juveniles by mandating that certain judicial proceedings and court records concerning minors be closed to the public. *In State ex rel. Garden State Newspapers, Inc. v. Hoke*, 205 W.Va. 611, 520 S.E.2d 186 (1999), the court noted that minors are entitled to special protection and that when educational records are introduced into court proceedings, the trial court should take measures to protect the confidentiality of the records. Accordingly, based on the clear requirements of FERPA, as well as the public policy of South Carolina, sealing or redaction would be appropriate.

The referenced documents and recordings will be submitted to the Court for in-camera 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.

WHEREFORE, Defendant respectfully requests that its motion to seal be granted.

Respectfully submitted,

HALLIGAN MAHONEY WILLIAMS SMITH
FAWLEY & REAGLE, PA

By: s/ Jasmine Rogers Drain

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R058

(803) 254-4035

Attorneys for Defendant/Respondent

May 2, 2019

Columbia, South Carolina

R059

RICHLAND COUNTY PUBLIC DEFENDER

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YOUTH REENTRY PROGRAM

PHONE (803) 766-5174
FAX (803) 766-5180

June 5, 2019

VIA E-Filing System and Hand Delivery

The Honorable Jeanette W. McBride
Richland County Clerk of Court
1701 Main Street
Columbia, South Carolina 29201

Re: T.D. v. Richland County School District Two; Case No. 2019-CP-40-01615
Filing of Exhibits

Dear Ms. McBride,

Enclosed for filing please find one (1) compact disc containing the following three (3) audio exhibits to be included in the record in connection with this appeal:

Audio of Hearing before Lottie Chishom on December 12, 2018, Part 1.

Audio of Hearing before Lottie Chishom on December 12, 2018, Part 2.

Audio of Hearing before the Richland County School District Two School Board on February 12, 2019.

Plaintiffs have designated these items for inclusion in the record in Plaintiffs' Designation of Matter to be Included in the Record on Appeal, dated March 20, 2019 (Items 8, 9 and 10). Defendant has identified items 1 and 2 above for inclusion in its Amended Certification of Record. See, Amended Certification of Record, dated May 1, 2019, p. 3, Items 34 and 35. Defendant has identified item 3 above for inclusion in the record in Defendant's Designation of Additional Matter for Record, dated May 2, 2019, p. 3, Item 19. An identical compact disc is being provided to Defendant's counsel by hand delivery with a copy of this letter.

If you have any questions or concerns don't hesitate to contact me.

Sincerely,

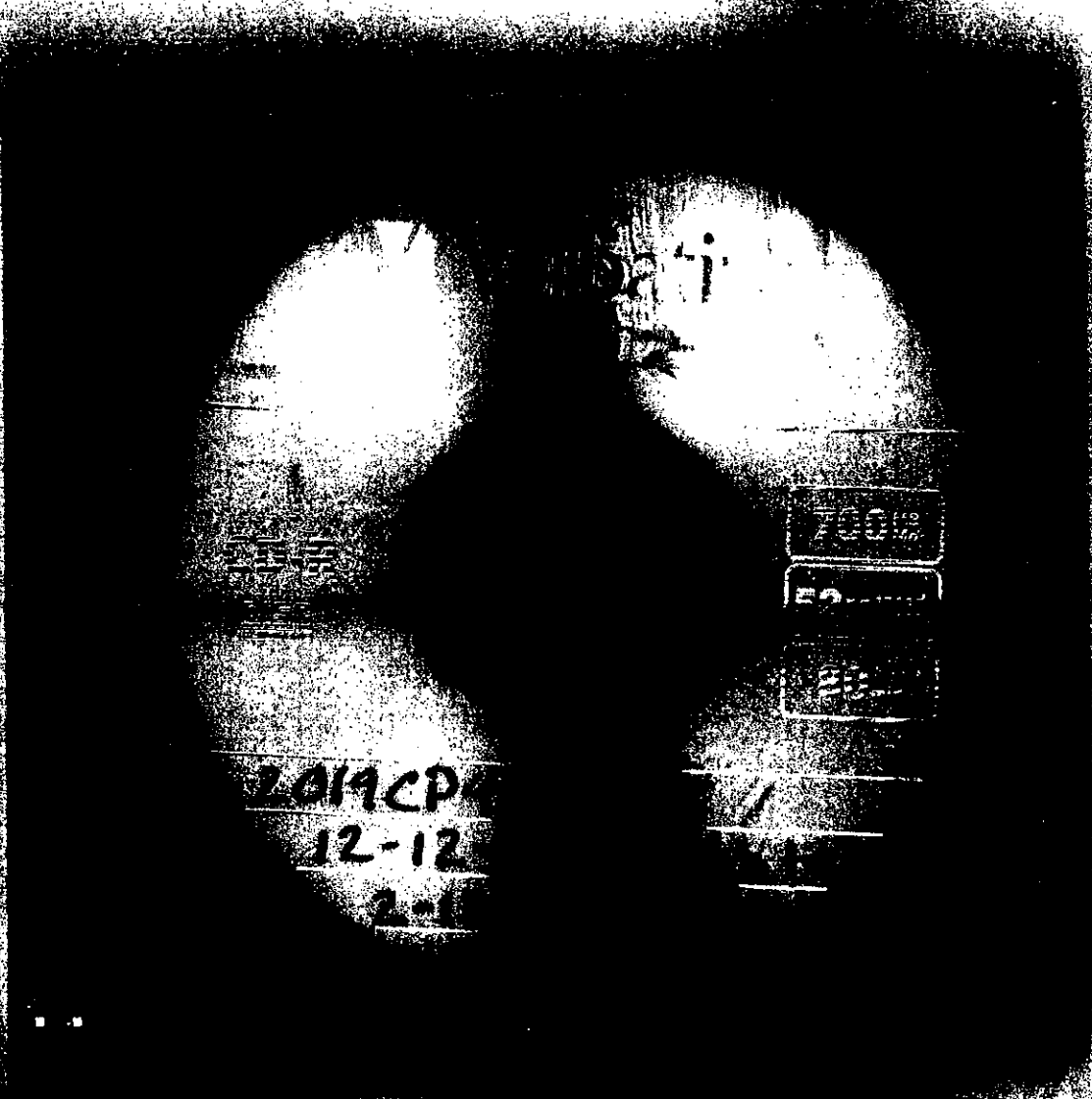

S/D. Michael Mathison

D. Michael Mathison

Email: Mathison.Michael@richlandcountysc.org

cc: Jasmine R. Drain, Esq. (Via Email and Hand Delivery)
Vernie L. Williams, Esq. (Via Email and Hand Delivery)

R060



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KIMBERLY KELLEY BLACKBURN
JASMINE ROGERS DRAIN ♦
DWAYNE T. MAZYCK
SHENKA S. LODENQUAI ♦

2061

July 15, 2019

VIA HAND DELIVERY

The Honorable L. Casey Manning
1701 Main Street, Room 214
Columbia, SC 29202

Re: T.D. by and through his guardians, A.D. and J.D. v. Richland County
School District Two, C.A. No. 2019-CP-40-01615

Dear Judge Manning:

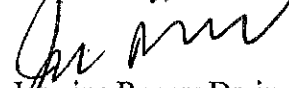
Our firm represents Respondent/ Defendant Richland County School District Two in the above referenced matter which involves an appeal and request for injunctive relief/ declaratory judgment. On May 1, 2019, we filed an Amended Certification of Record, and thereafter, on May 2, 2019, filed Respondent's/ Defendant's Designation of Additional Matter for the Record. We subsequently filed a Motion to Seal certain documents identified in the Amended Certification of Record and within Respondent's/ Defendant's Designation of Additional Matter for Record. Our Motion to Seal is still pending before the Court. However, we have received notice that a hearing on the appeal has been scheduled for July 26, 2019, before Your Honor.

In light of the procedural posture of the case, we are providing all records accompanying the Amended Certification of Record and Defendant's Designation of Additional Matter for the Record to chambers for in-camera review.

By copy of this correspondence, we are notifying opposing counsel of this communication with the Court and providing a copy of the same.

We appreciate the Court's consideration.

Respectfully,


Jasmine Rogers Drain
jdrain@hmwlegal.com

JRD/rdp

Enclosures

c: Michael Mathison, Esquire (Via Hand Delivery)

**ADDITIONAL MATTER DESIGNATED BY
THE PARTIES**

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R063

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From: MICHAEL MATHISON [mailto:MATHISON.MICHAEL@richlandcountysc.gov]

Sent: Thursday, January 10, 2019 4:53 PM

To: Vernie L. Williams; Jasmine Rogers Drain

Subject: Student T.D.

Vernie and Jasmine,

Our office is working with T■■■■■■■■■■, DOB: ■■■■■■■■■■ ("Student"), a student recently expelled from Blythewood Middle School. Like other similarly situated students, neither T■■■■ nor his guardians have received a written notice of the decision to expel him for the remainder of the school year. They were advised of the decision over the phone. T■■■■ was also previously recommended for expulsion earlier in the school year.

This is a request for all records and information related to both disciplinary proceedings against T■■■■ including, without limitation, the recordings of proceedings, all correspondence to or from the hearing office, the expulsion packet, referrals, notices, witness statements, correspondence with law enforcement, disciplinary summaries, grades, documents, evidence, summaries of testimony, and any and all other relevant materials.

This is also a request for all documents and information in this student's cumulative pupil record or elsewhere related response to intervention, behavioral interventions, referrals for family support services, special education services (504 and IDEA) or any other services offered or made available to this student or family. These materials are requested for purpose of appeal, and we would appreciate you making them available as soon as they become available.

Attached in an authorization executed by Mr. and Mrs. D■■■■. Don't hesitate to contact me with any questions or concerns.

D. Michael Mathison
Reentry Attorney
Richland County Public Defender's Office
1420 Henderson Street
Columbia, SC 29201
T: (803) 766-5174
F: (803) 766-5180
C: (843) 384-3761
MATHISON.MICHAEL@richlandcountysc.gov

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R064

Jasmine,

I received the attached records, including a number of incident reports for offenses that are not automatically reportable to the school district. Please forward any requests from the school district to the Richland County Sheriff's Department requesting incident reports for this student.

Please provide the audio for this student's hearing, as well as the expulsion summary sheet and any transcriptions of the proceedings.

Thank you.

D. Michael Mathison
Reentry Attorney
Richland County Public Defender's Office
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From: Rhonda Foxworth [mailto:rfoxworth@hwmwlegal.com] **On Behalf Of** Jasmine Rogers Drain
Sent: Monday, January 14, 2019 4:16 PM
To: MICHAEL MATHISON
Subject: Student T.D.

Mike,

Attached please find records responsive to your request.

It is my understanding that [REDACTED]'s appeal will be considered by the Board during its January 22 meeting.

If you wish to supplement the student's appeal, please send that to us by the close of business on Thursday, January 17.

Thanks,
Jasmine

JASMINE ROGERS DRAIN PARTNER
THE TOWER AT 1301 GERVAIS STREET, SUITE 1400
PO BOX 11367 | COLUMBIA, SC 29211
PH 803.254.4035 HWMWLEGAL.COM
VCARD

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R065

Jasmine Rogers Drain

From: MICHAEL MATHISON <MATHISON.MICHAEL@richlandcountysc.gov>
Sent: Tuesday, January 15, 2019 1:51 PM
To: Jasmine Rogers Drain
Subject: FW: Student T.D.

To be clear, we absolutely want the audio. As you might expect, denial of an impartial finder of fact will be a part of this appeal.

D. Michael Mathison
Reentry Attorney
Richland County Public Defender's Office
1420 Henderson Street
Columbia, SC 29201
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F: (803) 766-5180
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From: MICHAEL MATHISON
Sent: Tuesday, January 15, 2019 10:11 AM
To: Jasmine Rogers Drain (jdrain@hnmwlegal.com)
Subject: FW: Student T.D.

Jasmine,

I apologize, the records did include the expulsion summary sheet and transcript with the hearing office's rendition of the testimony.

D. Michael Mathison
Reentry Attorney
Richland County Public Defender's Office
1420 Henderson Street
Columbia, SC 29201
T: (803) 766-5174
F: (803) 766-5180
C: (843) 384-3761
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R066

recipient), please do not distribute, disseminate, or copy this communication. If you received this message in error, please delete immediately. Thank you.

From: MICHAEL MATHISON
Sent: Tuesday, January 15, 2019 9:54 AM
To: 'Jasmine Rogers Drain'
Subject: RE: Student T.D.

Jasmine,

I received the attached records, including a number of incident reports for offenses that are not automatically reportable to the school district. Please forward any requests from the school district to the Richland County Sheriff's Department requesting incident reports for this student.

Please provide the audio for this student's hearing, as well as the expulsion summary sheet and any transcriptions of the proceedings.

Thank you.

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From: Rhonda Foxworth [<mailto:rfoxworth@hmvlegal.com>] On Behalf Of Jasmine Rogers Drain
Sent: Monday, January 14, 2019 4:16 PM
To: MICHAEL MATHISON
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Mike,

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It is my understanding that T.D.'s appeal will be considered by the Board during its January 22 meeting.

If you wish to supplement the student's appeal, please send that to us by the close of business on Thursday, January 17.

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R067

Thanks,
Jasmine

JASMINE ROGERS DRAIN PARTNER

THE TOWER AT 1301 GERVAIS STREET, SUITE 1400
PO BOX 11367 | COLUMBIA, SC 29211
PH 803.254.4035 HMWLEGAL.COM
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Sent: Thursday, January 10, 2019 4:53 PM
To: Vernie L. Williams; Jasmine Rogers Drain
Subject: Student T.D.

Vernie and Jasmine,

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R069

Jasmine Rogers Drain

From: Jasmine Rogers Drain
Sent: Tuesday, January 15, 2019 3:03 PM
To: MICHAEL MATHISON
Cc: Vernie L. Williams
Subject: RE: T.D. Recording - Part I

Mike,

Attached are records regarding the October 2018 expulsion recommendation.

We are not sure when we will be able to get the related audio recording to you- I'll send as soon as received.

Thanks,
Jasmine

JASMINE ROGERS DRAIN PARTNER

THE TOWER AT 1301 GERVAIS STREET, SUITE 1400
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From: MICHAEL MATHISON [<mailto:MATHISON.MICHAEL@richlandcountysc.gov>]
Sent: Tuesday, January 15, 2019 2:03 PM
To: Jasmine Rogers Drain
Subject: RE: T.D. Recording - Part I

Thank you. We have requested the records, audio and information from his prior recommendation/expulsion hearing.

Thanks.

D. Michael Mathison
Reentry Attorney
Richland County Public Defender's Office
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Columbia, SC 29201
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R070

recipient), please do not distribute, disseminate, or copy this communication. If you received this message in error, please delete immediately. Thank you.

From: Jasmine Rogers Drain [mailto:jdrain@hmvlegal.com]
Sent: Tuesday, January 15, 2019 2:00 PM
To: MICHAEL MATHISON
Cc: Vernie L. Williams
Subject: T.D. Recording - Part I

Mike,

This is the first part of the recording from the day of T [REDACTED]'s hearing.

Jasmine

JASMINE ROGERS DRAIN PARTNER

THE TOWER AT 1301 GERVAIS STREET, SUITE 1400
PO BOX 11367 | COLUMBIA, SC 29211
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R071

Jasmine Rogers Drain

From: Jasmine Rogers Drain
Sent: Tuesday, January 15, 2019 3:16 PM
To: 'MICHAEL MATHISON'
Cc: Vernie L. Williams
Subject: RE: T.D. Recording - Part I
Attachments: 2018-12-12 Continued T.D. BMS-Minutes-Chishom (2).MP3; Student records_Redacted.pdf.pdf

The records are attached now.

Also, attached please find Part II of the recording from T.D.'s December 2018 discipline hearing.

Thanks,
Jasmine

JASMINE ROGERS DRAIN PARTNER

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Cc: Vernie L. Williams
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Thanks,
Jasmine

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From: Jasmine Rogers Drain [mailto:jdrain@hmrwlegal.com]
Sent: Tuesday, January 15, 2019 2:00 PM
To: MICHAEL MATHISON
Cc: Vernie L. Williams
Subject: T.D. Recording - Part I

Mike,

This is the first part of the recording from the day of [REDACTED]'s hearing.

Jasmine

JASMINE ROGERS DRAIN PARTNER
THE TOWER AT 1301 GERVAIS STREET, SUITE 1400

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R074

Jasmine Rogers Drain

From: MICHAEL MATHISON <MATHISON.MICHAEL@richlandcountysc.gov>
Sent: Tuesday, January 15, 2019 3:12 PM
To: Jasmine Rogers Drain
Subject: RE: T.D. Recording - Part I

Jasmine,

There was no attachment to your last email.

D. Michael Mathison
Reentry Attorney
Richland County Public Defender's Office
1420 Henderson Street
Columbia, SC 29201
T: (803) 766-5174
F: (803) 766-5180
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Thanks,
Jasmine

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Thanks.

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From: Jasmine Rogers Drain [mailto:jdrain@hmrwlegal.com]
Sent: Tuesday, January 15, 2019 2:00 PM
To: MICHAEL MATHISON
Cc: Vernie L. Williams
Subject: T.D. Recording - Part I

Mike,

This is the first part of the recording from the day of T. [REDACTED]'s hearing.

Jasmine

JASMINE ROGERS DRAIN PARTNER

THE TOWER AT 1301 GERVAIS STREET, SUITE 1400

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R076

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PH 803.254.4035 HMWLEGAL.COM

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R077

Jasmine Rogers Drain

From: Jasmine Rogers Drain
Sent: Tuesday, January 15, 2019 3:51 PM
To: MICHAEL MATHISON (MATHISON.MICHAEL@richlandcountysc.gov)
Subject: 2018-12-12 Continued T. D. BMS-Minutes-Chishom (2).MP3
Attachments: Student records_Redacted.pdf.pdf

Mike,
The records are attached now.

Also, attached please find a link below for Part II of the recording from T.D.'s December 2018 discipline hearing.

Let me know if you have any problems assessing the link.

<https://drive.google.com/file/d/1ZjWcpMbBxi2in41Oly5SfES-RbuhQ5P-/view?usp=sharing>

Thanks,
Jasmine

JASMINE ROGERS DRAIN PARTNER

THE TOWER AT 1301 GERVAIS STREET, SUITE 1400
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R078

Jasmine Rogers Drain

From: Jasmine Rogers Drain
Sent: Tuesday, January 15, 2019 3:16 PM
To: 'MICHAEL MATHISON'
Cc: Vernie L. Williams
Subject: RE: T.D. Recording - Part I
Attachments: 2018-12-12 Continued T.D. F, D BMS-Minutes-Chishom (2).MP3; Student records_Redacted.pdf.pdf

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Sent: Tuesday, January 15, 2019 2:00 PM
To: MICHAEL MATHISON
Cc: Vernie L. Williams
Subject: T.D. Recording - Part I

Mike,

This is the first part of the recording from the day of T[REDACTED]'s hearing.

Jasmine

JASMINE ROGERS DRAIN PARTNER
THE TOWER AT 1301 GERVAIS STREET, SUITE 1400

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R081

Jasmine Rogers Drain

From: Jasmine Rogers Drain
Sent: Tuesday, January 15, 2019 3:51 PM
To: MICHAEL MATHISON (MATHISON.MICHAEL@richlandcountysc.gov)
Subject: 2018-12-12 Continued T. D. BMS-Minutes-Chishom (2).MP3
Attachments: Student records_Redacted.pdf.pdf

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Thanks,
Jasmine

JASMINE ROGERS DRAIN PARTNER

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R082

Jasmine Rogers Drain

From: Rhonda Foxworth on behalf of Jasmine Rogers Drain
Sent: Tuesday, January 22, 2019 12:22 PM
To: 'MICHAEL MATHISON'
Cc: Vernie L. Williams
Subject: RE: Student T.D.
Attachments: 201901221219.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Mike,

Attached please find additional documents responsive to your request for "any requests from the school district to Richland County Sheriff's Department requesting incident reports for this student."

Please note that the principal only asked for the incident report and was not aware that the school would be receiving all of the additional information that was provided by Sergeant Truluck.

Also, as you know, T■■■■'s appeal is currently scheduled to be reviewed by the Board during tonight's meeting.

If you want to request that it be continued to the next Board meeting on February 12 to allow you additional time to supplement T■■■■'s appeal, please let me know ASAP so that we can attempt to relay your request to the District in time.

Thank you,
Jasmine



**HALLIGAN MAHONEY
& WILLIAMS**

JASMINE ROGERS DRAIN PARTNER

THE TOWER AT 1301 GERVAIS STREET, SUITE 1400
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From: MICHAEL MATHISON [mailto:MATHISON.MICHAEL@richlandcountysc.gov]
Sent: Tuesday, January 15, 2019 9:54 AM
To: Jasmine Rogers Drain
Subject: RE: Student T.D.

CONFIDENTIAL

2083

Jasmine Rogers Drain

From: Jasmine Rogers Drain
Sent: Tuesday, January 22, 2019 4:12 PM
To: 'MICHAEL MATHISON'
Subject: RE: Student T.D.

Follow Up Flag: Follow up
Flag Status: Completed

Received. The supplement should be submitted by January 31.

Thanks,
Jasmine



**HALLIGAN MAHONEY
& WILLIAMS**

JASMINE ROGERS DRAIN PARTNER

THE TOWER AT 1301 GERVAIS STREET, SUITE 1400
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From: MICHAEL MATHISON [mailto:MATHISON.MICHAEL@richlandcountysc.gov]
Sent: Tuesday, January 22, 2019 3:04 PM
To: Jasmine Rogers Drain
Subject: RE: Student T.D.

Jasmine,

Please consider this email a request for additional time to supplement T. D.'s appeal.

Thank you.

D. Michael Mathison
Reentry Attorney
Richland County Public Defender's Office
1701 Main Street
Columbia, SC 29201
T: (803) 765-2592
M: (843) 384-3761
F: (803) 748-5018

CONFIDENTIAL

R084

Jasmine Rogers Drain

From: Jasmine Rogers Drain
Sent: Wednesday, February 06, 2019 2:26 PM
To: 'MICHAEL MATHISON'
Cc: Vernie L. Williams
Subject: RE: T.D.
Attachments: D:\MINUTES.docx.docx

Mike,

As you will note, the "minutes" provided in connection with the hearings are only a condensed version and not verbatim.

What was previously provided to you is the only copy that exists. However, our office has supplemented portions of the recording from the actual hearing that may inadvertently not have been included. (The updated copy is attached.)

To the extent there are any particular additional portions of the recording/minutes that were not cited in your appeal that you wish to call to the Board's attention in connection with the appeal, could you let us know so that we may notify the District?

Thanks,
Jasmine



**HALLIGAN MAHONEY
& WILLIAMS**

JASMINE ROGERS DRAIN PARTNER

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From: MICHAEL MATHISON [<mailto:MATHISON.MICHAEL@richlandcountysc.gov>]
Sent: Tuesday, February 05, 2019 12:34 PM
To: Jasmine Rogers Drain
Subject: RE: T.D.

Jasmine,

It will be requested separately, but we are also entertaining a class complaint to USDOE. I wanted the board to be aware that that issue is not being waived.

CONFIDENTIAL

R085

Jasmine Rogers Drain

From: MICHAEL MATHISON <MATHISON.MICHAEL@richlandcountysc.gov>
Sent: Tuesday, February 05, 2019 12:34 PM
To: Jasmine Rogers Drain
Subject: RE: T.D.
Attachments: 2019-02-05 D Appeal-Signed.pdf; Young v. Charleston Cnty. Sch. Dist., 397 S.C. 303, 725 S.E.2d 107, 279 Ed. Law Rep. 477 (S.C., 2012) - Bd Appeal Due Process.pdf

Jasmine,

It will be requested separately, but we are also entertaining a class complaint to USDOE. I wanted the board to be aware that that issue is not being waived.

Attached is a signed copy. No substantive changes have been made, but a few typos have been corrected – References to Ms. Mazyck were corrected to show Ms. Carter actually attended the hearing. "Board" for "moard." And the Attachment numbers have been corrected.

You have only provided six pages of transcribed minutes for the hour-long hearing on December 12. If additional transcript exists for the remaining discussions please produce it. The minutes clearly cut out a lot of discussion, including efforts by T.D.'s brother to educate Ms. Chishom about Snapchat and Ms. Chishom's independent investigatory tactics. Does a complete set of minutes exist or does Ms. Chishom just propose to submit her bowdlerized version to the Board? The appeal will require the full audio if that is the case. A Board's designee can't pick and choose what the designee wants the entire board to hear or consider. See, Young v. Charleston County Sch. Dist., 725 S.E.2d 107, 397 S.C. 303, (2012).

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From: Jasmine Rogers Drain [<mailto:jdrain@hmnwlegal.com>]
Sent: Tuesday, February 05, 2019 11:49 AM
To: MICHAEL MATHISON
Subject: RE: T.D.

Mike,

CONFIDENTIAL

R086

Jasmine Rogers Drain

From: MICHAEL MATHISON <MATHISON.MICHAEL@richlandcountysc.gov>
Sent: Friday, February 08, 2019 12:41 PM
To: Jasmine Rogers Drain
Cc: Vernie L. Williams
Subject: RE: T. D. Appeal
Attachments: 2019-02-08 Letter to Bd .pdf

Jasmine and Vernie,

Please see the attached letter.

Thank you.

D. Michael Mathison
Reentry Attorney
Richland County Public Defender's Office
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-----Original Message-----

From: Jasmine Rogers Drain [<mailto:jdrain@hnmwlegal.com>]
Sent: Friday, February 08, 2019 10:01 AM
To: MICHAEL MATHISON; MICHAEL MATHISON
Cc: Vernie L. Williams
Subject: T. D. Appeal

Mike,

The Board has agreed to allow you and your clients to make a personal appearance on February 12 in connection with the appeal. The location is R212.

The appeal will be heard during executive session which will begin at 5:00 p.m. Therefore, you and your clients should plan to arrive between 4:30 and 4:45 p.m. The student will need to attend.

CONFIDENTIAL

R087

Thanks,
Jasmine

Sent from my iPhone

CONFIDENTIAL

R088

Jasmine Rogers Drain

From: MICHAEL MATHISON <MATHISON.MICHAEL@richlandcountysc.gov>
Sent: Tuesday, February 12, 2019 3:11 PM
To: Vernie L. Williams
Subject: RE: Richland School District Two/ D ■ T.
Attachments: Attachments for Inclusion in the Record.docx

Vernie,

The family will be there. I will be recording the hearing as well. Attached is a list of records for Inclusion in the record. The district already has all but two of these documents. Also, I do not have the technical wherewithal to present the following YouTube video in a meaningful way. The following link would be part of our presentation. It would stand in the place of testimony from Student's brother that was excluded from the due process hearing:

<https://www.youtube.com/watch?v=pZAPtoXd-mY>

How to Change your Display Name on Snap chat.
How to Create a Duplicate Account on Snap chat.

Thanks.

D. Michael Mathison
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From: Vernie L. Williams [mailto:vwilliams@hmnwlegal.com]
Sent: Tuesday, February 12, 2019 2:20 PM
To: MICHAEL MATHISON
Subject: Re: Richland School District Two/ D ■ T.

Mike, I have spoken with the administration. We think the safest approach is for family to be there tonight since we do not know what the Board will want to do in light of our inability to reach an agreement regarding a resolution. Vernie

Sent from my iPhone

On Feb 12, 2019, at 1:38 PM, MICHAEL MATHISON <MATHISON.MICHAEL@richlandcountysc.gov> wrote:

CONFIDENTIAL

R089

Vernie,

I called you back. I was out to lunch.

From: Vernie L. Williams [mailto:vwilliams@hmvlegal.com]

Sent: Tuesday, February 12, 2019 1:32 PM

To: MICHAEL MATHISON

Subject: Re: Richland School District Two/ D T.

Mike, left you a message. Call me on my cell when you get a minute. Vernie

Sent from my iPhone

On Feb 12, 2019, at 12:49 PM, MICHAEL MATHISON <MATHISON.MICHAEL@richlandcountysc.gov> wrote:

Vernie,

I am confused by portions of your letter which states that "Items 2 and 3 in your request are matters that would have to be considered by the Board, and voted upon after their consideration and discussion of these items." Items 2 and 3 relate to reopening the record and securing witnesses for confrontation and cross-examination for a hearing scheduled for 4:30 p.m. today. Those items were part of our initial appeal submitted on February 4. Will my client have an opportunity to be heard on the need to reopen the record and cross-examine the witnesses?

It seems rather late in the game for Items 2 and 3 to be open questions. Both were posited at the time a personal appearance was requested. If a hearing is set for this afternoon at 4:30, it seems highly unlikely that the Board would be considering those questions in good faith at this late hour. If today's hearing is simply for the purpose of making those preliminary decisions please advise.

Thank you.

D. Michael Mathison
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CONFIDENTIAL

R090

From: Michele Page [mailto:mpage@hmwlegal.com] **On Behalf Of** Vernie L. Williams
Sent: Tuesday, February 12, 2019 12:02 PM
To: MICHAEL MATHISON
Cc: Jasmine Rogers Drain
Subject: Richland School District Two/ D T.

Please see attached correspondence in the above-referenced matter. Thanks, Vernie

<image001.jpg>

VERNIE L. WILLIAMS PARTNER

THE TOWER AT 1301 GERVAIS STREET, SUITE 1400

PO BOX 11367 | COLUMBIA, SC 29211

PH 803.254.4035 HMWLEGAL.COM

VCARD

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Policy JKE Expulsion Of Students

Issued 3/10

Purpose: To establish the basic structure for the expulsion of students.

Expulsion is the removal of a student from a school for the remainder of the school year or until readmitted by the board. The board delegates to the board approved district hearing officers the authority to conduct administrative hearings and take disciplinary action including expelling students from the district. The decision of the hearing officers may be appealed to the board as indicated below.

A student may be expelled for the following reasons listed in the code of conduct, policy JICDA and administrative rule JICDA-R.

- commission of any crime, gross immorality, gross misbehavior or the violation of any other written rules and regulations established by the board, the school or the state board of education
- when the presence of the student is deemed to be detrimental to the best interest of the school community

Expulsion means the student cannot do the following.

- attend school or be on the school grounds
- attend any program at the school in the daytime or at night
- attend any school-sponsored activity
- ride a school bus

If procedures for expulsion are initiated, the parent/guardian of the student will be notified in writing of the time and the place of a hearing before the district hearing officer. At the hearing, the parent/guardian will have the right to legal counsel and to all other regular legal rights, including the right to question all witnesses. The right to appeal the decision to the board is reserved to either party. The board will generally consider appeals based on the written information submitted by the student, the hearing officer and school administration, with neither party personally appearing before the board.

The hearing will take place within 10 days of the written notification at a time and place designated by the hearing officer and a decision will be rendered within 10 days of the hearing. The student may be suspended from school and all activities during the time of the expulsion procedures. Pending the expulsion hearing outcome, students are allowed to complete and submit homework through a parent or designated guardian.

Every expelled student will have the right to petition for readmission for the succeeding school year.

Students recommended for permanent expulsion by the district hearing officers will be referred to the board. The authority to permanently expel a student from the school district rests solely with the board.

Weapons

See policy JICJ for expulsion relating specifically to weapons (firearms).

Adopted 8/27/96; Revised 2/11/97, 7/1/03, 6/23/09, 3/22/10

Legal references:

United States Code:

20 U.S.C. 7151 - Gun-Free Schools.

Education of Individuals with Disabilities, 20 U.S.C. Sec. 1400, *et seq.*

R0237

R092

4/17/2019

Document

29 U.S.C. Section 794, et seq. (Section 504 of the Rehabilitation Act of 1973, as amended).

Code of Federal Regulations, 34 CFR parts 300 and 301.

Code of Federal Regulations, 34 CFR Part 104.

S.C. Code, 1976, as amended:

Section 59-19-90(3) - Gives district trustees authority to prescribe rules of pupil conduct, including provisions for suspension or dismissal of those failing to comply with such rules.

Section 59-63-210 - Grounds for suspension, expulsion or transfer

Section 59-63-235 - District must expel student.

Section 59-63-240 - Expulsion hearings - times, procedures, legal rights appeals.

S.C. Supreme Court:

Davis v. The School District of Greenville County, 374 S.C. 39, 647 S.E.2d 219 (S.C. 2007).

Richland County School District Two

R0238

AR JKE-R Expulsion of Students

Issued 3/10

Investigation and action taken by the principal

If an administrator or his/her designee investigates a report of student misbehavior and decides to recommend expulsion, the administrator should suspend the student and notify the student's parent/legal guardian of his/her right to meet with the administrator within three school days of the date of the suspension. If after meeting with the parent/legal guardian (or if the parent/legal guardian has not come in for a meeting by the third school day), the administrator still intends to recommend expulsion, the matter will be referred directly to the district hearing officer. This procedure will be followed in all cases, regardless of the offense charged.

Notice of expulsion recommendation

By the end of the third school day following receipt of an expulsion recommendation, the hearing officer will notify the student and parent/legal guardian, in writing, of the following.

- rule(s) infraction alleged to have occurred
- summary of the evidence against the student
- right of the student to request copies of witnesses' statements from the administrator
- right of the student to a hearing on the evidence
- time and place of the hearing, which must be held within 10 days of the date of notification (unless the parent/legal guardian or his/her representative agrees otherwise)
- procedure to be followed at the hearing, including the right to be represented by counsel
- right of the student, the parent/legal guardian or the student's representative to examine the student's records

Hearing procedure

The administrator, the administrator's representative, the student, the parent/legal guardian and/or the student's representative may be present at the hearing. If the hearing officer and the parent/legal guardian agree, the student may be dismissed during portions of the hearing. The administrator and the student, or their representatives, will be allowed to present witnesses or witnesses' statements and, within the discretion of the hearing officer, cross-examine the other party's witnesses. The hearing officer may ask the witnesses questions. The parent/legal guardian and/or the student's representative will be given an opportunity to argue their position or express their views on the case. A recording of the testimony and written minutes summarizing the hearing will be kept on file by the hearing officer.

Action following the hearing

Within 10 school days of the hearing, the hearing officer will decide whether the student committed the alleged rule(s) violation or misconduct based upon the evidence presented at the hearing, and the appropriate punishment. If the hearing officer determines that grounds for expulsion exist, he/she may expel the student for the remainder of the current school year, permanently expel, or give punishment other than expulsion including, but not limited to, suspension or probation. Probation means special restrictions have been placed on the student's right to attend school. Violations of these restrictions will result in suspension and a recommendation for expulsion.

The hearing officer will report his/her decision in writing to the parent/legal guardian, the superintendent and the school. If the hearing officer determines that grounds for expulsion do not exist, all absences resulting from the suspension will be excused and the student's record cleared. The student will be permitted to complete all assignments pending the expulsion hearing.

Appeals

The decision of the hearing officer may be appealed by either the student or the administration to the board, if written notice of appeal is made to the superintendent within five school days of notification of the hearing officer's decision. An appeal will normally be limited to the established record which will consist of the tape of the hearing, including any documentary evidence presented by either party. 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. The board may uphold, reverse or alter the decision of the hearing officer. Except in cases where a personal appearance is granted, the board will render a decision within 15 calendar days of the date of appeal. If the recommendation for expulsion is rejected on appeal, all absences resulting from the suspension will be excused and the student's record cleared. The student will be permitted to complete all assignments pending the appeal process.

Permanent expulsion

Students who are incorrigible, including those who commit a single serious offense or who are expelled two successive school years, may be recommended for permanent expulsion.

Petitions for readmission

A student who has been expelled for the remainder of the current school year may make a written request to the superintendent or his/her designee for readmission. The request must specify the reasons why the student should be allowed to return.

If the superintendent or his/her designee denies the student's request, or in all cases of permanent expulsion, the student may make a written request to the board for readmission and may include a request to appear before the board. If the request is denied by the board, the student may submit another request prior to the following school year.

Issued 8/27/96; Revised 2/11/97, 7/1/03, 4/26/05, 3/22/10

Richland County School District Two

Policy JKD Suspension of Students

Issued 7/03

Purpose: To establish the basic structure for the suspension of students.

It is the policy of this board to provide due process of law to students, parents and school personnel through procedures for the suspension or expulsion of students that are consistent with federal law, state law and regulation and local policy.

According to state law, the board may suspend a student from school for commission of any crime, gross immorality, gross misbehavior, persistent disobedience or for violation of written rules and regulations established by the district board of trustees, a county board or the state board of education. The board may also suspend a student when the presence of the student is detrimental to the best interest of the school.

A student may be suspended for any reasons listed in the code of conduct, policy JICDA and administrative rule JICDA-R, for up to ten school days for any one offense. Out-of-school suspension means the student cannot attend school or be on the school grounds, cannot attend any school-sponsored activity, cannot attend any program at the school in the daytime or at night and cannot ride a school bus.

When a student is suspended, the parent/guardian of the pupil will be notified, in writing, of the reasons for such suspension and of a time and place when the administrator who initiated the suspension is available for a conference with the parent/guardian. The conference will be set within three days of the date of the suspension.

Suspensions may be appealed as follows.

To the principal if the decision to suspend was initially made by a school level administrator other than the principal.

To the district hearing officer if the decision to suspend was initially made by the building principal. In those cases where the appeal was held by the principal, the student may, if he/she chooses, petition the hearing officer for a second appeal conference. Any such petition must be in writing and served on the hearing officer within two school days of the student's receipt of the decision of the principal. The petition must state the specific basis upon which the student is requesting a second appeal. Whenever the hearing officer receives such a petition, he/she will review the suspension and the appeal, and determine whether to conduct a second appeal conference. Within two days of receipt of the petition, the hearing officer will respond, in writing, noting whether or not a second appeal will be conducted. If there is a second appeal hearing, the student and his/her parent/guardian will inform the hearing officer of their position regarding what has occurred. Following the hearing, if deemed necessary, the hearing officer may collect additional information from staff members, students or others. The hearing officer will provide a written decision on the appeal within two school days following the hearing. The decision of the hearing officer ends the appeals process for suspensions.

Students who are suspended for the third time and each time thereafter in any one school year must be recommended by the school administration to the district hearing officer for review and possible expulsion. Identified disabled students who are suspended for the third time in any one school year must be referred to the director of special services to determine the appropriateness of the student's placement.

A periodic report of all suspensions will be submitted to the superintendent or his/her designee.

Adopted 8/27/96; Revised 7/1/03

Legal references:

S.C. Code, 1976, as amended:

4/17/2019

Document

Section 59-19-90(3) - Gives district trustees authority to prescribe rules of pupil conduct, including provisions for suspension or dismissal of those failing to comply with such rules.

Section 59-63-210, et seq. - Grounds for suspension, expulsion or transfer.

Section 59-63-240 - Expulsion hearings - times, procedures, legal rights appeals.

Richland County School District Two

AR JKD-R Suspension of Students

Issued 7/03

Investigation of misbehavior

When it appears that a student has engaged in misbehavior that may warrant suspension, an administrator will investigate the matter. The student will be advised, verbally or in writing, of the accusations against him/her. The administrator also will advise the student of the evidence against him/her and provide him/her the opportunity to tell his/her side of the story. If the student asks the administrator to talk to other witnesses, the administrator will do so, if possible.

After completing the investigation, the administrator will determine if suspension is in order and the number of school days, from one to ten, that the suspension will run.

Summary suspension

If the administrator sees or is advised of any student misbehavior and concludes that the student should be removed from school immediately in order to restore order or to protect others at the school, he/she may summarily suspend the student for up to two school days. In these cases, the administrator does not have to investigate the matter first. By the end of the next school day following the summary suspension, however, the administrator should investigate the matter, as outlined in Section I above, and determine what, if any, additional suspension days, not to exceed a total of 10, are appropriate.

If the administrator determines that the student should not have been suspended, arrangements will be made for the student to make up any work she/he missed while on summary suspension. The administrator also will remove any reference to suspension from the student's record.

Sending a suspended student home during the school day

When a student is suspended, the administrator will attempt to contact the parent/guardian to request that they pick up the student from school. If a parent/guardian cannot come for the student, the school may take the student home as long as a parent/guardian is at home to take charge of the student. If the administrator cannot reach the parent/guardian, the student must stay at school until the end of the school day.

If the student is summarily suspended, he/she may be removed from the school grounds immediately. Depending upon his/her age, however, it may be necessary to keep him/her at school until his/her parent/guardian can be reached.

Notification to parent/guardian

By the end of the next school day following any suspension, the administrator will notify the parent/guardian in writing of the following.

- acts committed by the student
- rule(s) violated
- length of the suspension
- time and place when he/she will be available to meet with the parent/guardian for a conference

The conference is to be held not more than three school days after the date of the suspension and, if possible, before the date that the student is scheduled to return to school.

Suspension appeals

If, after the conference with the administrator, the parent/guardian believes the student's suspension was unjustified, an appeal of the suspension may be taken.

Suspensions may be appealed as follows.

To the principal if the decision to suspend was initially made by a school level administrator other than the principal.

To the district hearing officer if the decision to suspend was initially made by the building principal. In those cases where the appeal was held by the principal, the student may, if he/she chooses, petition the hearing officer for a second appeal conference. Any such petition must be in writing and served on the hearing officer within two school days of the student's receipt of the decision of the principal. The petition must state the specific basis upon which the student is requesting a second appeal. Whenever the hearing officer receives such a petition, he/she will review the suspension and the appeal, and determine whether to conduct a second appeal conference. Within two days of receipt of the petition, the hearing officer will respond, in writing, noting whether or not a second appeal will be conducted. If there is a second appeal hearing, the student and his/her parent/guardian will inform the hearing officer of their position regarding what has occurred. Following the hearing, if deemed necessary, the hearing officer may collect additional information from staff members, students or others. The hearing officer will provide a written decision on the appeal within two school days following the hearing. The decision of the hearing officer ends the appeals process for suspensions.

The appeal will be conducted as an informal hearing. The administrator, parent/guardian and student may be present. If the hearing officer and the parent/guardian agree, the student may be dismissed during portions of the hearing. The parent/guardian, student and administrator will be allowed to address the hearing officer.

Within five days of the hearing, the principal/hearing officer will render a decision as to whether the suspension was proper. During the pendency of an appeal, the student will remain on suspension. If the principal/hearing officer decides that the suspension was not proper, all absences resulting from the suspension will be excused and the record cleared. The student will be allowed to make up all missed work.

Limits on suspension

A student may not be suspended for more than a total of 30 school days in one school year. An administrator may not suspend a student from school during the last 10 school days of the school year if the suspension would result in the loss of the course credit unless the school board approves, or if the student is an actual threat to the class or the school, or a hearing is granted by the end of the next school day following the suspension.

Missed school work

Students who have been suspended will be allowed to make up school work missed. In such cases, it will be the responsibility of the student to make up the missed work within a reasonable time as specified by the teacher.

Issued 8/27/96; Revised 7/1/03

Richland County School District Two

Policy JIC Student Conduct

Issued 7/03

Purpose: To define the board's policy guidelines for student conduct.

The board expects students to conduct themselves in an orderly, courteous, dignified and respectful manner. This requirement refers to their actions toward other students and teachers, their language, their dress and their manners. The board believes self-discipline is an interpersonal goal of public education.

Students have a responsibility to know and respect the policies, rules and regulations of the school and district. Violations of such policies, rules and regulations will result in disciplinary actions.

The board directs the administration to establish rules and regulations necessary to create and preserve conditions essential to orderly operation of the schools. The board authorizes its school authorities to employ probation and suspension and to recommend expulsion, if necessary, to enforce this policy (see policies JKD and JKE).

For more specific information on student conduct, the board directs students to policy JICDA and the student handbook for their individual school.

Adopted 11/28/72; Revised 7/1/03

Legal references:

S.C. Code, 1976, as amended:

Section 59-5-65 - Minimum standards for student conduct, attendance and scholastic achievement; enforcement.

Section 59-19-90(3) - General powers and duties of school trustees - regulation of student conduct.

Section 59-63-210 - Grounds for which trustees may expel, suspend or transfer pupils; petition for readmission.

Section 59-63-220 - Suspension of pupils by administrators.

Section 59-63-230 - Notices of suspensions, conferences with parents or guardian.

Section 59-63-240 - Expulsion for remainder of years; hearings.

Section 59-63-250 - Transfer of pupils.

Section 59-63-260 - Corporal punishment.

Section 59-63-270 - Regulation or prohibition of clubs or like activities.

Section 59-67-240 - Other duties of driver; discipline of pupils for misconduct.

Richland County School District Two

Policy JICDA Code of Conduct

Issued 7/03

Purpose: To establish the basic structure for a code of conduct and discipline for students.

The board of trustees recognizes that rules of student conduct and consequences for violations are necessary for the orderly operation of the district's schools. It will be the philosophy of the district, however, to handle all student disciplinary matters at the lowest supervisory level possible and in the most reasonable manner possible. No disciplinary action will be taken without all procedural rights being afforded to students and their parents/guardians as provided by state law, state board of education regulation, or the policies of this district.

The administration is directed to develop appropriate rules of student conduct that will include a general listing of offenses, required or recommended disciplinary action for violations, and the times and places when such rules will be in effect.

Adopted 8/27/96; Revised 7/1/03

Legal references:

S.C. Code of Laws, 1976, as amended:

Section 59-19-90 - General powers and duties of school trustees.

Sections 59-63-210 through 270 - Grounds for which trustees may expel, suspend or transfer pupils; petition for readmission; notices and parent conferences; expulsion for remainder of year and hearings; transfer of pupils; corporal punishment; regulation or prohibition of clubs or like activities.

Section 59-67-240 - Other duties of bus driver; discipline of students for misconduct.

State Board of Education Regulations:

R-43-279 - Minimum standards of student conduct and disciplinary enforcement procedures to be implemented by local school districts.

Richland County School District Two

AR JICDA-R Code of Conduct

Issued 12/17

The following listing of offenses and the required or recommended dispositions are submitted for the information of students, parents/legal guardians, and school personnel. Disciplinary actions will include appropriate hearings, and review, and the removal of a student from the learning environment will occur only for just cause and in accordance with due process of law.

The following rules, regulations, and due process procedures are designed to protect all members of the educational community in the exercise of their rights and responsibilities. These rules apply to any student:

- who is on school property;
- who is in attendance at school or any school sponsored activity; or
- whose conduct at any time or in any place has a direct and immediate effect on maintaining order and discipline in the schools

Level I - Behavioral Misconduct

Behavioral misconduct is defined as those activities engaged in by a student(s) which tend to impede orderly classroom procedures or instructional activities, orderly operation of the school, or the frequency or seriousness of which may disturb the classroom or school. The provisions of this document apply not only to within school activities, but also to student conduct on school bus transportation vehicles and other school sponsored activities.

Acts of behavioral misconduct may include, but are not limited to, the following:

- classroom tardiness
- cheating on examinations or classroom assignments
- lying
- abusive language between or among students
- failure to comply with directives from school/district personnel or agents (to include volunteer aides or chaperones)
- cutting class
- school tardiness
- truancy (three consecutive unlawful absences from school or a total of five unlawful absences)
- possession of an electronic communications device as defined by and in conflict with district policy
- other acts of behavioral misconduct as determined and communicated by the administration

When a staff member observes, or is notified of and has verified acts of behavioral misconduct, the staff member will take immediate action to rectify the misconduct. Verification is defined as self admittance by the student, witnessed involvement of the student by staff, parental admission of student involvement, or evidence obtained through an investigation. The staff member will impose an appropriate consequence and/or intervention and maintain a record of the misconduct and the action taken.

If, either in the opinion of the staff member or according to policy, a certain misconduct is not immediately rectifiable, the staff member should refer the problem to the appropriate administrator for action specified by policy.

The administrator should meet with the reporting staff member, and, if necessary, the student and the parent/legal guardian, and impose the appropriate consequence and/or establish an intervention plan and/or behavioral contract.

Consequences that may be applied in cases of behavioral misconduct may include, but are not limited to, the following:

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- verbal reprimand
- withdrawal of privileges
- detention (silent lunch, after school, weekends, or another time that does not interfere with the instructional day, work detail)
- other consequences as approved and communicated by the administration

Level II - Disruptive Conduct

Disruptive conduct includes those activities in which students engage that are directed against persons or property and the consequences of which tend to endanger the health or safety of themselves or others in the school. Some instances of disruptive conduct may overlap certain criminal offenses, justifying both administrative consequences and court proceedings.

The administration may reclassify behavioral misconduct (Level I) as disruptive conduct (Level II) if the student engages in the activity more than three documented incidents.

Acts of disruptive conduct may include, but are not limited to, the following:

- violation of a Level I intervention plan and/or behavioral contract
- use of an intoxicant
- fighting
- harassment
- vandalism (minor)
- stealing
- threats against others
- trespassing
- abusive language to staff
- repeated refusal to comply with directives from school personnel or agents (such as volunteer aides or chaperones)
- simple assault
- possession or use of unauthorized substances, as defined by law and/or local school board policy
- illegally occupying or blocking school property in any way with the intent to deprive others of its use
- unlawful assembly
- disrupting lawful assembly
- hazing
- inappropriate use of technology (see also LND-R)
- use of forged notes or excuses
- other acts as determined and communicated by the administration

When an administrator observes, or is notified of and has verified an offense, the administrator will investigate the circumstances of the misconduct.

The administrator will notify the parent/legal guardian of the student's misconduct and related proceedings. The administrator will meet with the student and, if necessary, the parent/legal guardian, confer with them about the student's misconduct, and impose the appropriate disciplinary action and/or intervention. The administrator will maintain a record of the misconduct and action taken.

The administrator may refer the student to the appropriate intervention team to establish behavioral management strategies (e.g., restorative justice, counseling, service learning projects) and propose the appropriate disciplinary action.

The administrator or school official may refer Level II misconduct to the school resource officer or other law enforcement authorities only when the conduct rises to the level of criminality or the conduct presents an immediate safety risk.

The administration may apply consequences in cases of disruptive conduct which may include, but are not limited to, the following:

- temporary removal from class
- assignment to an alternative education program
- in-school suspension
- out-of-school suspension
- referral to outside agency
- expulsion
- restitution of property and damages, where appropriate
- other consequences as approved and communicated by the administration

Level III - Criminal Conduct

Criminal conduct includes those activities in which students engage that result in violence to themselves or to another's person or property or which pose a direct and serious threat to the safety of the students themselves or others in the school. These activities usually require administrative actions which result in the immediate removal of the student from the school, the intervention of the school resource officer or other law enforcement authorities, and/or action by the board. Interventions may be used when a student returns to school after a suspension or on strict probation.

Acts of criminal conduct may include, but are not limited to, the following:

- aggravated assault
- extortion
- threat of the use of a destructive device (bomb, grenade, pipe bomb, or similar device)
- possession, use, or transfer of weapons
- sexual offenses
- vandalism (major)
- theft, possession, or sale of stolen property
- arson
- furnishing or selling unauthorized substances, as defined by law and/or board policy
- furnishing, selling, or possession of controlled substances (drugs, narcotics, or poisons)
- illegal use of technology (e.g., communicating a threat of a destructive device, weapon, or event with the intent of intimidating, threatening, or interfering with school activities; maliciously transmitting sexual images of minors, other than images of the student or images transmitted with the uncoerced consent of the individual in the images)
- threatening to take the life of or inflict bodily harm upon a teacher, principal, or members of their immediate family
- intimidation or bullying

When an administrator observes, or is notified of a criminal offense, the administrator must contact the school resource officer or local law enforcement authorities immediately.

An administrator will notify the student's parent/legal guardian as soon as possible.

An administrator will impose the appropriate disciplinary action and maintain a record of the conduct and consequence. If warranted, the administrator should immediately remove the student from the school environment.

Staff will follow established due process procedures when applicable.

The administration may apply consequences in cases of criminal conduct which may include, but are not limited to, the following:

- out-of-school suspension
- assignment to an alternative education program
- expulsion
- restitution of property and damages, where appropriate (should be sought by school authorities)
- other consequences as approved and communicated by the administration

Extenuating, Mitigating, or Aggravating Circumstances

The board confers upon the superintendent and his/her designee the authority to consider extenuating, mitigating, or aggravating circumstances that may exist in a particular case of misconduct. Such circumstances should be considered in determining the most appropriate sanction.

Student Conduct Away From School Grounds

The board expects principals to investigate student conduct away from school grounds that may have a direct and detrimental effect on the discipline or general welfare of district schools. When assessing the impact of out-of-school behavior on his/her school, the principal should take into consideration the seriousness of the alleged out-of-school offense and the protection of teachers and students from the effects of violence, drugs, and/or disruptions.

Principals are directed to evaluate each situation on a case-by-case basis. At a minimum, principals or their designees should meet with the student upon his/her arrival at school, give the student notice of the concerns based on the reported out-of-school behavior, and allow the student an opportunity to present his/her side of the story. Based upon all of the circumstances, including a finding that the alleged conduct will have a direct and immediate effect on the school, the administration may either permit the student to attend classes as usual or may take appropriate disciplinary action including, but not limited to, in-school suspension or out-of-school suspension in order to conduct an investigation into the matter. The parents/legal guardians of students will be notified of any action taken by the administration and offered the opportunity for a conference with the administration.

In the event that the student is incarcerated based on his/her out-of-school conduct, the principal or his/her designee will notify the student that he/she is to meet with the administration prior to returning to school.

At the conclusion of the investigation, the principal should take appropriate action that may include, but is not limited to, the following:

- returning the student to his/her normal class schedule and removing all evidence of suspension
- placing the student on probation and allowing the student to resume his/her normal class schedule
- placing the student on probation, allowing the student to continue classwork, but restricting the student's participation in extracurricular activities and/or designated school activities, for example, clubs, study halls, pep rallies, student government activities, and so forth
- recommending suspension
- recommending expulsion from regular school and placement in the district's alternative school
- recommending expulsion for either the remainder of the semester or year

The disciplinary action taken must be supported by the evidence and take into full consideration the impact of the student's presence at school on the discipline, educational environment, and safety of others students and the school's faculty and staff.

If procedures for expulsion are initiated, the parents/legal guardians of the student will be notified in writing of the time and the place of a hearing before the district hearing officer. At the hearing, the parents/legal guardians will have the right to legal counsel and to all other regular legal rights, including the right to question all witnesses. The right to appeal the decision to the board of trustees is reserved to either party. The board will generally consider appeals based on the written information submitted by the student, the hearing officer, and school administration, with neither party personally appearing before the board.

The hearing will take place within 10 days of the written notification at a time and place designated by the hearing officer, and a decision will be rendered within 10 days of the hearing. The student may be suspended from school and all activities during the time of the expulsion procedures.

Every expelled student will have the right to petition for readmission for the succeeding school year.

Note regarding special education students: Administrators must also ensure that all procedural safeguards afforded to special education students are also implemented in such circumstances.

Discipline of Students with Disabilities

Students with disabilities are not exempt from school disciplinary processes, nor are they entitled to remain in a particular educational program when their conduct substantially impairs the education of other students in the program. However, federal and state laws and regulations require schools to meet the individual educational needs of such students to the extent possible.

The process of disciplining a student who receives special education services involves both administrative authorities who are responsible for discipline and the special education department, including teachers and administrators who have been assigned specific responsibilities in the implementation of the student's Individualized Education Program (IEP).

Program prescriptions

An IEP team may prescribe or prohibit specified disciplinary measures for an individual student by including appropriate provisions in the student's IEP. The IEP team must take into consideration the student's disabling condition when deciding whether or not staff may use a particular form of discipline. Administrative authorities will observe any such provisions contained in a student's IEP.

Suspensions

A student identified as disabled pursuant to Section 504 of the Rehabilitation Act of 1973 (hereinafter "Section 504-disabled"), or as disabled pursuant to the Individuals with Disabilities Education Act (hereinafter IDEA-disabled) may be suspended from school for not more than 10 consecutive school days, and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a "change in placement" under federal standards.

Whether a "change in placement" would occur depends upon a number of factors, including, but not limited to, the following:

- length of each suspension
- proximity of the suspensions to one another
- total amount of time the student is excluded from the classroom

The determination whether a change in placement would occur must be made on a case-by-case basis, based on the circumstances of each case.

However, students who bring weapons to school or a school function, knowingly possess or use illegal drugs, or solicit the sale of controlled substances, or inflict serious bodily injury upon another person while at school or a school function may be removed for up to 45 school days at a time. If school officials believe that a student with a disability is substantially likely to injure him/herself or others in the student's regular placement, they may ask an impartial hearing officer to order that the student be removed to an interim alternative educational setting for a period up to 45 school days.

Expulsions

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Before considering whether a Section 504-disabled or IDEA-disabled student may be expelled, a multidisciplinary team must determine whether or not the student's conduct was caused by or had a direct and substantial relationship to the student's disability.

If the multidisciplinary team determines that the student's misconduct was a manifestation of his/her disability, the student may not be expelled. However, changes in the student's program may be considered by the Section 504 or Individual Education Plan (IEP) team.

If the multidisciplinary team determines that an IDEA-disabled student's misconduct was not a manifestation of his/her disability, the student may be expelled from school, subject to procedural safeguards; however, educational services, as determined by the IEP team, must be continued for the student. Such services may be provided in the home, in an alternative school or in another setting.

If the multidisciplinary team determines that a Section 504-disabled student's misconduct was not a manifestation of his/her disability, the student may be expelled in the usual sense. In such cases, the district is not obligated to continue educational services.

Court injunctions

In appropriate circumstances, the district may seek a court injunction to allow disciplinary removals or other actions regarding students with disabilities beyond any time or other limitations set forth above.

Issued 8/27/96; Revised 5/26/98, 6/26/01, 7/1/03, 6/23/09, 8/28/12, 12/5/17

Richland County School District Two

Policy JK Student Discipline

Issued 7/03

Purpose: To establish the basic structure for student discipline.

The school is a community. It is responsible for educating those children who attend and, therefore, it must establish and enforce guidelines and procedures that provide for reasonable order and an atmosphere where learning can take place.

In keeping with the philosophy that discipline is a means of teaching and that most effective teaching is done in a positive manner, disciplinary efforts are to be as positive as possible. Positive means of working with students include individual discussion and counseling, involvement of students in defining acceptable behavioral standards and involvement of parents.

Under the direction of the superintendent, school personnel will establish, periodically review and, if necessary, revise procedures for disciplining students.

All procedures and guidelines will be fair, just, flexible and in the best interest of the individual students and the school community. In addition, all procedures and guidelines will comply with the appropriate statutes and constitutional provisions.

Adopted 11/28/74; Revised 7/1/03

Legal references:

S.C. Code, 1976, as amended:

Section 59-19-90(3) - Gives district trustees authority to prescribe rules of pupil conduct including provisions for suspension or dismissal of those failing to comply with such rules.

Section 59-63-210 - Grounds for suspension, expulsion or transfer.

Section 59-63-220 - Suspension of administrators.

Section 59-63-230 - Notice of suspension, conferences with parents.

Section 59-63-240 - Expulsion hearings.

Richland County School District Two

Policy JRA Student Records

Issued 7/03

The principal of each school is the legal custodian of all student records for that school. Students and parents/legal guardians will have access to the students' school records. Schools will notify parents and adult students on an annual basis of their rights concerning student records.

School records include all materials directly related to a student which a school maintains. Records and notes maintained by a teacher, administrator, school physician, guidance counselor or school psychologist for his/her own use, and which are not made available to others, are exempted from the definition of school records.

The school district will maintain student records in a confidential manner and will comply with all state and federal laws, including the Family Educational Rights and Privacy Act., concerning the publication and dissemination of student records.

Adopted 5/26/98; Revised 7/1/03

Legal references:

United States Code, Annotated:

Section 438 of the General Education Provisions Act, as amended - The Family Educational Rights and Privacy Act [20 U.S.C.1232g].

South Carolina Code of Laws, 1973, as amended:

Section 20-7-3300 - Juvenile records and information provided to a public or private school.

Section 59-63-50 - Provides for students to be fingerprinted.

Section 20-7-780 - Pertains to confidentiality of student records.

Court order:

Alexander S. by through Bowers v Flora Brooks Boyd 876 F.Supp 773 (1995).

Richland County School District Two

AR JRA-R Student Records

Issued 8/16

Student Records

In order to provide students with appropriate educational services, the district must maintain accurate records. In recognition of the confidential nature of student records, the district will only grant access to a student's school records in accordance with the provisions of the Family Educational Rights and Privacy Act and other applicable state and federal laws and regulations.

General Provisions

A student's "education records" are those records directly related to a student and which the district or a party acting for the district maintains.

"Parent" means a parent of a student and includes a natural parent, a legal guardian, or an individual acting as a parent in the absence of a parent or a legal guardian. A parent has an absolute right to review records unless a court of competent jurisdiction precludes that right. Custody alone does not affect one's parental rights.

Section 20-7-100 of the Code of Laws of South Carolina states that each parent, whether the custodial or non-custodial parent of the child, has equal access and the same right to obtain all educational records ... of their minor children and the right to participate in their children's school activities unless prohibited by order of the court.

Whenever a student is 18 years of age or is attending an institution of post-secondary education, the rights accorded to and the consent required of the parent/legal guardian of the student will thereafter only be accorded to, and required of, the eligible student unless the district has received notice that a court has awarded legal guardianship beyond the age of the majority. The school will document such notice.

"Directory information" includes the student's name, address, photographs including electronic images (as related to school or district-sponsored events, activities, and special recognitions), participation in officially recognized activities and sports, weights and heights of members of athletic teams, diploma or certificate and awards received, and other similar information. With the exception of electronic images related to school-sponsored or district-sponsored events, activities, and special recognitions, the district will treat all video recorded of students through surveillance videos on district property or school buses as student records entitled to confidentiality pursuant to the Family Educational Rights and Privacy Act and other applicable federal and state laws. Accordingly, the district will release or allow viewing of video only in certain defined situations consistent with federal and state law.

A district employee's personal records on a student are not part of the student's education record as long as that person keeps the notes solely for his/her own use and maintains them separately from the school files. A substitute who performs the employee's duties on a temporary basis may use these personal records; however, the employee may not pass the records on to a successor.

Annual Notification of Rights

Schools will notify the parent/legal guardian of students and/or eligible students annually of the following:

- the type of records kept
- the procedure for inspecting and copying student records
- the right for interpretation of data contained in student records
- their right to challenge data thought to be erroneous and the procedures for expunging such data or inserting a rebuttal statement
- the type of information the district deems to be directory information

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- the process for refusing to permit the release of all or some information as directory information
- the right to lodge a complaint with the U.S. Department of Education

Location of Student Records

The school or the district records office (if a student is no longer enrolled) will maintain a cumulative record folder which contains directory information, scholastic information, standardized test data, health records, and other similar information. This cumulative record may include, but is not limited to, the following:

- name (last, first, and middle) as well as the preferred name (nickname)
- date of birth (verified), along with sex and ethnic background
- address and telephone number
- name of parent/legal guardian
- health record, including surveys for vision, speech, and hearing
- standardized test scores
- test scores as required by the state or district
- attendance and scholarship record card
- academic plan and related conference documentation
- appropriate correspondence with parent/legal guardian
- disciplinary action information for conduct that posed a significant risk to the student or others

Except as provided in the last paragraph of this section, if the district has performed or received a psychological evaluation of a student, the district will maintain copies of psychological reports and related records under the following conditions:

- in the district office
- in the student's school and/or
- in a special education records room designated by the director of special education

The appropriate personnel in the district office and/or at the appropriate school will keep records concerning students who have been involved in administrative hearings.

No information about student discipline will be kept in the cumulative/permanent student record. Information in a student discipline record will be cumulative and will be maintained separately from the student's cumulative/permanent student record. Discipline records from past school years may be maintained on back-up diskettes. Information regarding all student discipline, including suspension and expulsion, and all correspondence related to suspension and expulsion, will be included in the student discipline record (except when authorized by state law).

Once a student graduates, the district will file the student's records at his/her high school. If a student drops out of school before graduation, his/her school files the records for five years and then transfers the records to the district's central office for record storage.

Directory Information

Within 15 days after the distribution of notification of privacy rights, the parent/legal guardian of the student or the eligible student has the right to refuse to permit the release of any or all of the categories of directory information and/or any or all of the additional information referenced above. The parent/legal guardian's or eligible student's refusal must be in writing. The written refusal will become part of the student's education record. The principal of the school the student is attending is responsible for notifying appropriate personnel of the refusal, filing the refusal in the student's cumulative folder and marking the folder as specified by the superintendent or his/her designee.

The district will not release directory information to any person or agency for commercial use.

The district expects its employees to use good judgment in releasing directory information so that any release of information serves the students' best interests.

Release of Personally Identifiable Information

The Family Education and Privacy Act of 1974 requires procedures to be followed when releasing personally identifiable information.

In addition to the information referenced in this administrative rule, personally identifiable information may include other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

The parent/legal guardian or eligible student will provide a signed and dated written consent before the district will disclose personally identifiable information from the student's education records, except as provided below:

- The information constitutes "directory information" and is released as provided above.
- The disclosure is to other district employees, including teachers and school psychologists under contract with the district, who have legitimate educational interests in the information.
- The disclosure is to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll. (Generally, when a student transfers from a school in the district to a school outside the district, the school will send a copy of a transcript of the student's record to the receiving school.)
- The disclosure is to state and federal officials requesting the information as authorized by statute or regulation(s) implementing statute(s).
- The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to determine eligibility for aid; determine the amount of aid; determine the conditions for the aid or enforce the terms and conditions of the aid.
- The disclosure is to organizations conducting studies for, or on behalf of, the district for the purpose of developing, validating, or administering predictive tests; administering student aid programs and/or improving instruction, as long as students and/or their parents/legal guardians are not personally identified and the records are destroyed when no longer needed for the prescribed purpose.
- The disclosure is to accrediting organizations to carry out their accrediting functions.
- The disclosure is to comply with a judicial order or lawfully issued subpoena, as long as the district makes a reasonable effort to notify the parent/legal guardian or eligible student of the order or subpoena in advance of compliance.
- The disclosure is in connection with a health or safety emergency, if knowledge of the information is immediately necessary to protect the health or safety of the student or other individuals.

The district will keep a record of each request for access to and each disclosure of personally identifiable information from the education records of each student unless the request or disclosure is made pursuant to court orders or lawfully issued subpoenas or the disclosure is of directory information or is to a parent/legal guardian or eligible student. The record, filed in the student's cumulative folder, will provide the following:

- the name of the party requesting or receiving the information
- the legitimate purpose for which the data was requested

Request for Inspection

Anyone who wishes to inspect a student's educational records must make the request for inspection to the principal of the school in which the student is enrolled or where the record is housed. A person may also request an explanation or interpretation of records from the principal.

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Principals or designated district office administrators will set a time and place for the inspection of such records within a reasonable period of time, but in no case more than 45 days after the request has been made. If a hearing concerning the student is pending, the employee will honor the request for inspection of the student's record prior to the hearing.

At the inspection, the principal will have appropriate personnel available to interpret information in the records.

The district is responsible for the maintenance of each student's record. Therefore, school personnel are not to turn the original record or microfilmed copy of a record over to any person or organization unless they have a written and specific judicial order for such action.

If the parent/legal guardian or eligible student should believe that the information in the education record is inaccurate, misleading, or violates the privacy or other rights of the student, he/she can request an amendment to the record. The school official receiving the request will either amend the record, if appropriate, or notify the parent/legal guardian or eligible student within 15 working days in writing that the request is denied and that he/she has the right to request a hearing as provided below.

Each parent/legal guardian of a student has the right to inspect and review the student's record unless the district has written evidence that there is a legally binding instrument or court order governing such matters as divorce, separation, or custody which provides to the contrary. (The same applies to parental requests for disclosure to other individuals and organizations.)

A parent/legal guardian or eligible student has the right to give written authorization for a representative to inspect and review the student's education records.

Hearings to Challenge Information in Students' Records

The parent/legal guardian or the eligible student will make requests for hearings to the principal of the school where the record is housed. The principal or his/her designee may conduct the hearing.

Principals or administrators will set a date, time, and place for the hearing and notify the requesting party in writing of the date, time, and place. The principal or administrator will establish the hearing date within 15 working days of receipt of the request. The principal or administrator must mail written notice of the hearing to the parent/legal guardian or eligible student within a reasonable time prior to the hearing.

A district official, including the principal or his/her designee, who does not have a direct interest in the outcome, will conduct the hearing.

At the hearing, the principal or administrator will try to have present the person(s) who entered the information in question should the person(s) be known and reasonably available. The parent/legal guardian or eligible student who requested the hearing will have the right to question that/those person(s), if present, and will be able to show evidence that would correct inaccurate, misleading, or otherwise inappropriate information. Such evidence will become a permanent part of the student's record.

The parent/legal guardian of the student or eligible student will have a full and fair opportunity to present relevant evidence and may be assisted or represented, at their expense, by legal counsel.

If, as a result of the hearing, the district decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it will amend the record accordingly and inform the parent/legal guardian or eligible student of the amendment in writing.

If, as a result of the hearing, the district decides that the information in the education record is not inaccurate, misleading or otherwise in violation of the privacy rights of the student, it will inform the parent/legal guardian or eligible student in writing that he/she has the right to place in the education record a statement commenting upon the information in the record and/or setting forth any reasons for disagreeing with the decision. Any such

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statement must remain with the record as long as the contested portion remains in the record. Disclosure of the contested portion must include the statement of the parent/legal guardian or eligible student.

The district will send its decision, including a summary of the evidence and the reason(s) for the decision, in writing to the parent/legal guardian of the eligible student within five working days after the conclusion of the hearing. The district will base its decision solely on evidence.

Management and Destruction of Education Records

The district will protect the confidentiality of personally identifiable information on students during collection, storage, disclosure, and destruction of applicable records.

The district may destroy data which are no longer needed for providing direct educational services in accordance with the guidelines established by the South Carolina Department of Archives and History, as long as the following conditions are met:

- There is no outstanding request to inspect and review the education record.
- The district keeps the record of disclosures as long as it maintains the education record to which it relates.
- The data do not concern the referral, evaluation, staffing, or placement of a disabled student or a student suspected at one time of having had a disability. Such data will be sent to the office of programs for the disabled when no longer needed for providing direct educational services to a student.

No one may remove the following items from a student's cumulative record at any time:

- name (last, first, and middle) and/or the preferred name (nickname)
- date of birth (verified), along with sex and ethnic background
- address and telephone number
- name of parent/legal guardian
- health record, including surveys for vision, speech, and hearing
- standardized test scores
- test scores as required by the state or district policy
- attendance and scholarship records

The Family Policy Compliance Office

Parents/Legal guardians and eligible students have the right to file written complaints concerning alleged violations of the Family Educational Rights and Privacy Act. The Family Policy Compliance Office has the responsibility for investigating, processing and reviewing alleged violations. The office will refer appropriate cases to a review board for adjudication. Written complaints should be sent to the following address:

Family Policy Compliance Office

U.S. Department of Education

400 Maryland Avenue SW

Washington, DC 20202-4605

Appropriate Access to Student Test Scores and Use of Test Data

The Family Education Rights and Privacy Act allows the release of students' education records without the consent of their parents/legal guardians to "school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate education interest, including the educational interests of the child for whom consent would otherwise be required."

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Document

4/17/2019

Richland School District Two recognizes the legitimate educational interest of teachers and administrators in test scores for individual students as well as groups of students. With stringent accountability requirements at the state and federal level, more than ever, teachers and administrators share responsibility for ensuring the success of every student and securing favorable ratings for the entire school and district. Given the need for improving scores generally, planning for future students, investigating the short and long-term impact of interventions, or comparing and monitoring scores of subgroups, educators need access to information for students they serve directly and those that they are not currently teaching.

Technology has made access to student information more accessible than ever. While recognizing the legitimate interest of teachers and administrators in student data, the district expects that such access will be used for legitimate educational purposes only and that the confidentiality of student data will be maintained.

Adopted 8/26/80; Revised 5/26/98, 7/1/03, 2/22/05, 8/23/16

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