

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

RECEIVED
Oct 26 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 MOTION TO TRANSPORT EXHIBITS

The Appellants, by and through their undersigned counsel, moved for an order of the Court requiring the delivery of original exhibits, pursuant to Rules 240 and 210(f), SCACR, by motion dated September 14, 2020. Appellants hereby incorporate the original motion by reference. By deficiency letter dated October 16, 2020, the Clerk of Court instructed Appellants to provide “a list of the exhibits requested and the names and exhibit numbers as they were presented at trial so that the Court may ascertain whether the exhibits lend themselves to reproduction within the record on appeal.” In accordance with the Clerk’s instructions, the Appellant provides the following list of exhibits presented to the trial court. It should be noted

that this case was heard in the posture of an appeal to the circuit court. Accordingly, the records and documents were filed in advance of the oral arguments rather than introduced at “trial.”

- a. Plaintiffs 8 – “Hearing Office Audio 1, December 12, 2019 (sic)”
- b. Plaintiffs 9 – “Hearing Office Audio 2, December 12, 2019 (sic)”
- c. Plaintiffs 10 – “Board Audio, February 12, 2019.” See, Amended Record on Appeal (ARoA), pp. 172-173; ARoA, pp. 59-60 (Plaintiff’s transmittal of CD with audio files to Clerk of Court dated June 5, 2020, with photocopy of CD stamped by Clerk of Court).
- d. Respondent/Defendant’s Amended Certification of Record Exhibit 34 – “Audio recording of December 12, 2018 hearing -- Part I.
- e. Respondent/Defendant’s Amended Certification of Record Exhibit 35 – “Audio recording of December 12, 2018 hearing -- Part II.”; *See*, ARoA, pp. 176; ARoA p. 61 (Defendant’s direct transmittal letter to the Court dated July 15, 2019).
- f. Respondent/Defendant’s Additional Matter for Record Exhibit 19 – “Audio recording of February 12, 2019 appeal before Board.”

Because the Clerk’s letter suggests that it may refuse to order the transport of the compact discs, Appellants supplement their initial motion to assist the Court in understanding the necessity of these exhibits, and the prejudice that will result to Appellants should the court refuse to order their transportation.

1. The Audio Files were the Most Complete Record of Proceedings Before the Lower Administrative Tribunals, and were the only Record before the Circuit Court.

This is an appeal from an expulsion decision of Richland County School District Two, an administrative agency. Student was recommended for expulsion and attended a hearing before a Hearing Officer on December 12, 2018. That hearing was recorded in two separate recordings (Items a. b. d. and e. in the list above). The Family appealed student’s expulsion to the Board of

Trustees. According to the policies and rules of the Defendant/Respondent, Richland County School District Two, the audio tapes of expulsion hearings constitute the record on appeal to the Board. Policy AR-JKE-R; ARoA, p. 94 (An appeal will normally be limited to the established record, which will consist of the tape of the hearing ...). Appellants counsel recorded the hearing before the Board on February 12, 2020. (Items “c.” and “f.” in the list above). The Board voted to uphold the expulsion.

The Family subsequently appealed the Board’s decision to the Circuit Court pursuant to S.C. Code Ann. § 59-63-240. Both parties designated the audio recordings the December 12, 2018 hearing and February 12, 2019 hearing for inclusion in the record for consideration by the Circuit Court. [ARoA, 172, 176]. The Appellants filed Copies of audio records on a compact disc with the Richland County Clerk of Court on June 5, 2019 (ARoA, p. 59-60). The Respondent submitted audio records on compact discs to the Honorable L. Casey Manning together with Respondent’s Motion to Seal, by letter dated July 15, 2019 (ARoA, p. 61). The audio files (Plaintiff’s 8 and 9; Defendant’s Exhibits 34 and 35, Items “a.,” “b.,” “d.,” and “e.” above) were the only record of significant portions of the hearing that occurred on December 12, 2018. The audio file of the February 12, 2019, hearing (Plaintiff’s 10, Defendant’s Additional Exhibit 19; Items “c.” and “f.” above) was the only record whatsoever of proceedings before the Board on February 12, 2020. Additionally, both parties cited to the audio files as the authoritative record before the Circuit Court.¹

¹ Throughout the Answer and Return, Respondent repeatedly instructed the Circuit Court to consider the audio file as the definitive record. [ARoA. pp. 30-46; Answer and Return, ¶ 17 (“[Defendant] would defer to the to the referenced audio recordings, in their entirety, as the best source regarding communications between BMS administration and Plaintiffs prior to and during the hearing on December 12, 2018”); ¶18 (“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.”); ¶ 20 (“[Defendant] would defer to the recording of the hearing as the best source regarding Plaintiffs’ testimony during the hearing.”); ¶ 22 (“[Defendant] admits the audio recording of the hearing is an accurate reflection of

II. The Standard of Review Compels this Court to Consider the Audio Files

By refusing to consider the audio files, this court would be abandoning the standard of review urged by both parties. This court is required to review the record as a whole, which would include the audio files submitted to the Circuit Court and relied upon by the parties and Circuit Court. *See*, Appellants' Brief, p. 11 (Citing Young v. Charleston County Sch. Dist., 393 S.C. 303, 725 S.E.2d 107, 108, for proposition that decisions of school boards are reviewing pursuant to S.C. Code Ann. § 1-23-380.). Under Section 1-23-380(5)(e), the Court is called upon to review "the whole record." Respondent urges this court to apply substantial evidence review to all questions presented. Respondents' Brief, p. 8. Under substantial evidence review, the reviewing court is required to consider "the record as a whole . . ." Brief of Respondent, p. 8, *citing* Kizer v. Dorchester County Vocational Educ. Bd. of Trs., 287 S.C. 545, 548, 340 S.E.2d 144, 146 (1986).

Both parties designated the audio recordings described above for inclusion in the Record on Appeal before the Circuit Court and the Court of Appeals. (R. p. 194; Appellants' Designation of Matter, p. 2, Items 12-15.; Respondent's Designation of Matter, pp. 4-5, Items, 43, 44 & 56). Accordingly, this material is properly included in the Record on Appeal, and necessary for the review requested of this Court.

III. Refusing to Order the Transport of the Audio Records would be Highly Prejudicial to the Appellants, who have relied on evidence contained exclusively in the audio files in support their claims.

communications of those in attendance during the hearing and would defer to the recording as the best source regarding communications made or documents referenced by the Hearing Officer during the hearing."); ¶ 23 ("[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."]

Appellants have relied heavily on the audio files during the proceedings before the Board, Circuit Court and this Court. Appellants have repeatedly argued that the audio files are the most compelling and controlling record of important evidence in this case. *See*, Appellants' Brief, p. 2, and Appellants' Reply Brief, pp. 8-9. Appellants have cited information that appears exclusively in the audio files. Moreover, the audio files constituted the only record of the administrative proceedings available to the Circuit Court.

If the court refuses to hear the audio files, it would be precluding the consideration of the Appellants' evidence, which was supposedly considered at all prior levels of this case. Refusing to order the transport of exhibits would prevent this court from reviewing Appellant's evidence, which appears exclusively in the audio files. For example, Appellants have argued that the proceedings before the agency were affected by bias and prejudice, which is clearly shown on the audio exhibits. Appellants have maintained that the Hearing Officer's tone of voice while interrogating a 13 year old child is relevant for the reviewing court's to consider Appellants' arguments related to the bias and partiality of the Hearing Officer. *See*, e.g. AROA, pp. 152; Appellants' Brief, p. 25, fn. 19; Appellants' Reply Brief, p. 9. Additionally, material evidence of *ex parte* conversations between the Hearing Officer and administrators are audible on the audio files, but not represented in any written versions of the hearing. *See*, Appellants' Brief, p. 19, Appellants' Reply Brief, p. 8-9; *Compare* Hearing Audio of December 12, 2018 hearing, 34:30-35:06 *and* AROA, pp. 311-312 (Creel Court Reporting Transcript). Moreover, statements and testimony that are critical to Appellant's case have been misrepresented in the transcribed versions of these hearing. *See*, e.g. Appellants' Brief, p. 27 and note; Appellants' Reply Brief, p. 8-9. Refusing to issue the order to transport, would eliminate significant portions of the Appellants' record and result in severe prejudice to Appellants.

Although there are now transcripts of these audio files, the audio files on the CDs are still be best evidence of what occurred in the agency level hearings.

Appellants filed a notice of appeal to this court on September 20, 2020. Appellants' Initial Brief, referring to the audio files as "the most important and overlooked piece of evidence in this case" was filed in January 27, 2020. [Appellant's Initial Brief, p. 2]. Only after Appellants insistence that this court rely on the audio files, did Respondent obtain transcripts of the administrative hearings² and file a motion with this court to "supplement" the record with the transcripts. [Respondent's Motion to Supplement Record, March 17, 2020]. According to the Court Reporter's Certificates, the transcripts were produced on March 11, 2020, [ARoA, pp. 322, 369], nearly six months after the notice of appeal was filed in this Court. Appellants did not object to the new transcripts, because nothing in the Respondent's Motion to Supplement the Record suggested the audio files would be excluded from the record. In fact, after filing the motion, the Respondent *designated the audio files for inclusion in the Record on Appeal*. Respondent's Designation of Matter to Include in the Record on Appeal, dated March 30, 2020, pp. 4-5 (Items 43, 44 and 56). The Court granted Respondent's Motion by Order dated April 23, 2020. Nothing in the Court's Order dated April 23, 2020, suggested that the audio files would be excluded from the record. They audio files remain the most complete and accurate record of what was presented to the Circuit Court.

Appellants' counsel is submitting a copy of the Respondent's/Defendant's Exhibit 34 Exhibit 35 and Defendant's Additional Exhibit 19 for the Court's consideration. Appellants also request that these copies of the audio files remain in the Court's record of this matter. Appellants

² No correspondence regarding these transcripts, including their requests, errata sheets or other communications with the court reporter have been shared with Appellants. *Cf.* Rule 209, SCACR.

want to ensure a copy of these indispensable records are on file at this court should this case or any decision regarding these audio files require subsequent review.

NOW, THEREFORE, the Appellants request an Order of the Court:

(1) Directing the Richland County Clerk of Court to deliver to the Court of Appeals, the CD containing Plaintiffs' exhibits 8, 9 and 10, filed by Appellants on June 5, 2019; and

(2) Directing the Honorable L. Casey Manning to deliver to the Court of Appeals, the CDs containing Respondent/Defendants Exhibits 34, 35 and Additional Exhibit 19, submitted to L. Casey Manning by Respondents on July 15, 2019.

Respectfully Submitted,

s/D. Michael Mathison

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Attorney for Appellants

October 26, 2020



EXHIBIT 19 to Respondent's/
Defendant's Designation of Additional
Matter for the Record
February 12, 2019 Board Appeal

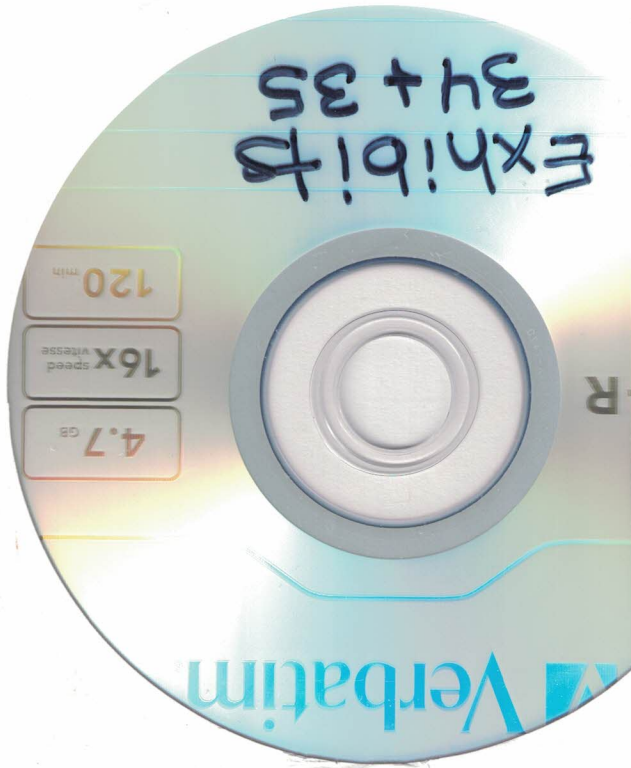


EXHIBIT 34
December 12, 2018 Hearing - Part I
EXHIBIT 35
December 12, 2019 Hearing - Part II
to Amended Certification of Record

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PROOF OF SERVICE

I certify that I have served the Amended Motion to Transport Exhibits on Richland County School District Two on October 26, 2020, by emailing a copy of same to its attorneys of record, Jasmine R. Drain and Vernie L. Williams, of Halligan, Mahoney & Williams, to their addresses listed in the Attorney Information System, in accordance with the Order of the Supreme Court dated March 20, 2020, and revised May 29, 2020, addressed as follows:

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s/ D. Michael Mathison
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October 26, 2020