THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Opinion No. 4504 (S.C. Ct. App. filed February 19, 2009)

JOSEPH STINNEY AND CYNTHIA STINNEY, INDIVIDUALLY AND AS PARENTS AND NATURAL GUARDIANS OF MAURICE STINNEY, A MINOR MINOR OVER THE AGE OF FOURTEEN YEARS, AND MARQUISE STINNEY ....Respondents

v.

SUMTER SCHOOL DISTRICT 17 ....Petitioner.

BRIEF OF PETITIONER

Robert T. King
WILLCOX, BUYCK & WILLIAMS, P.A.
P.O. Box 1909
Florence, SC 29503-1909
(843) 662-3258 - Tel
(843) 662-1342 - Fax

Attorney for Petitioner

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STATEMENT OF ISSUES ON APPEAL

1. Whether the court of appeals erred in applying the general provisions of S.C. Code Ann. § 1-23-380 instead of S.C. Code Ann. § 59-63-240, which specifically governs school expulsions, to reverse the circuit court's finding that the Plaintiffs failed to exhaust their administrative remedies prior to filing suit for alleged erroneous school expulsion decisions?
2. Whether the court of appeals erred in holding that the administrative remedies provided by S.C. Code Ann. § 59-63-240 are inadequate because that statute does not provide for "immediate relief" and the recovery of damages?
3. Since the record conclusively establishes that the Plaintiffs were provided all process that was due prior to expulsion, should the circuit court's order have been affirmed pursuant to Rule 220(c), SCACR?
4. Whether this Court is constrained to affirm the court of appeals's opinion because there is no exhaustion requirement prior to filing most 42 U.S.C. § 1983 claims?

STATEMENT OF THE CASE

By complaint filed September 16, 2005, the Respondents, Maurice Stinney and Marquise Stinney, brothers, and their parents, Joseph and Cynthia Stinney (collectively the "Stinneys"), instituted this action against the Sumter School District 17 (the "District") alleging damages arising out of the brothers' fight with two other students on Sumter High School grounds on September 23, 2003, and the brothers' resulting

expulsion from school. (*See* R. pp. 13-15.[1])

Following the District School Board of Trustees' November 3, 2003 decision affirming the brothers' expulsion (*see* R. p. 47, 56; R. p. 139, line 7 - p. 140, line 17), the Stinneys did not appeal the expulsion decision to the Sumter County Circuit Court, as they had the right to do under S.C. Code Ann. § 59-63-240 (*see* R. p. 48; *see also* R. p. 141, lines 21-23.); instead, they filed the instant complaint asserting that the District failed to adequately protect the brothers from the fight with other students and failed to follow proper procedures prior to expelling the brothers from high school. (*See* R. pp. 15-20.) By answer filed November 2, 2005, the District responded by generally denying any wrongdoing and asserting several specific affirmative defenses (*see generally* R. pp. 21-25), including the Stinneys' failure to exhaust their available administrative remedies (*see* R. p. 24, ¶ 35). Following a period of discovery, the District filed a motion for summary judgment as to all claims. (R. pp. 8-10.) On April 2, 2007, a hearing on the motion was held before the Hon. R. Ferrell Cothran, Jr., Circuit Court Judge, and the matter was taken under advisement. (*See* R. p. 5.)

By letter dated April 17, 2007, the circuit court directed the Stinneys' counsel to prepare an order granting summary judgment as to the "claim of a denial of due process" because the Stinneys failed to exhaust their administrative remedies, and denying summary judgment as to the failure to protect claim. (R. p. 103.) In providing guidance on the preparation of the order, the circuit court expressly stated that "on this point

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[1] References to the Record are using the Bates Stamp numbers located at the

[failure to protect] *alone*, summary judgment is not appropriate and I refuse to grant it." (*Id.* (*emphasis added*).) On May 2, 2007, the circuit court entered an order, prepared by the Stinneys' counsel, expressly finding that the Stinneys failed to fully exhaust their administrative remedies with regard to the expulsion of the brothers, but dismissing the Stinneys' second cause of action only. (R. pp. 6-7.) On May 16, 2007, the Stinneys noticed this appeal.[2] (R. p. 11.)

The court of appeals reversed the circuit court's order by published opinion entered February 19, 2009. (Appendix pp. 199-206; Stinney v. Sumter School Dist. 17, 382 S.C. 352, 675 S.E.2d 760 (Ct. Appl. 2009).) The District petitioned for a rehearing, which was denied by order dated May 4, 2009. (Appendix pp. 207-18.)

The District then sought discretionary review in this Court by Petition for Writ of Certiorari filed June 3, 2009. This Court granted review as to the District's questions I, II, and III, and as to question IV presented in the Stinneys' response in opposition to the District's petition. (*See* April 8, 2010 Order.)

STATEMENT OF THE FACTS

After school but prior to football practice on September 23, 2003, the Stinney

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bottom-middle of the pages as contained in the Appendix.

[2] The District filed a Rule 59(e), SCRCP, motion to alter or amend the circuit court's order. That motion was received by the clerk of court and filed after the Stinneys filed their notice of appeal. Since the circuit court was divested of jurisdiction when the Stinneys noticed this appeal, *see* Rule 205, SCACR, the circuit court has not yet addressed the District's Rule 59(e) motion. (*See* Appendix p. 202, n.4; Stinney v. Sumter

brothers, both Sumter High School students, were in the school parking lot when two other students approached and began an exchange of words. (R. p. 109, line 3 - p. 110, line 23; R. p. 121, lines 9-19; R. p. 122, line 23 - p. 124, line 23.) Prior to any physical altercation occurring, Joe Norris, a Sumter High School teacher and athletic coach, physically intervened. (See R. pp. 41-43; R. p. 111, line 9 - p. 114, line 1.) Despite Coach Norris's intercession, the boys began to fight. (R. pp. 41-43.) Another Sumter High School coach and teacher, Warren Coker, came to assist. (R. pp. 39-40.) As Coach Norris was trying to corral one of the other boys, Coach Coker got in between the Stinney brothers and the fourth boy to break up the fight. (Id.) One of the boys struck Coach Coker in the face. (Id.; R. p. 113, line 25 - p. 116, line 25.) The fight was finally halted, and school officials immediately escorted the Stinney brothers into the school and called their parents. (R. p. 117, line 9 - p. 118, line 17; R. p. 125, lines 8-13.)

The next day school officials sent the Stinneys written notice that the brothers were being recommended for expulsion for their participation in the fight – the charge levied being assault – and that the evidentiary hearings before the District's disciplinary hearing panel would be held on September 30, 2006. (R. pp. 44-50.) That notification informed the Stinneys that the hearings would be their only opportunity to present testimony and evidence to the District, and that they were entitled to representation by legal counsel. (*See id.*)

On the appointed date, the disciplinary hearing panel held the hearings with the Stinneys present. The Stinneys were afforded the opportunity to present their evidence

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School Dist. 17, 382 S.C. 352, 675 S.E.2d 760, 762 n.4 (Ct. App. 2009).)

and arguments, as well as hear and challenge the evidence presented by the school officials. (R. pp. 46-52; *see also* R. p. 127, line 3 - p. 134, line 1.) The disciplinary hearing panel accepted the recommendations of expulsion, and the Stinneys were subsequently notified of the panel's decision in writing. (R. pp. 47, 51-52.) All four boys who participated in the fight were expelled. (R. p. 47.)

The Stinneys obtained legal counsel, and appealed the panel's decision to the District Superintendent, Dr. Zona Jefferson. (R. pp. 47, 53; R. p. 135, line 13 - p. 139, line 11.) On October 15, 2003, Dr. Jefferson held a review hearing with the Stinneys and their counsel in attendance. (R. pp. 47, 53.) Dr. Jefferson found the panel's decision to be well-supported in light of all of the facts and circumstances, and upheld the expulsion decisions. (R. pp. 47, 54.)

The Stinneys, through their counsel, then appealed the decision to the full Board of Trustees (the "Board") for Sumter School District 17. (R. pp. 48, 55-56.) After a hearing on November 3, 2003, the Board upheld the decision to expel the Stinney brothers. (R. pp. 47, 56; R. pp. 139, line 7 - p. 140, line 17.)

The Stinneys did not appeal the expulsion to the Sumter County Circuit Court, as they had the right to do. (R. p. 48; see also R. p. 141, lines 21-23.) The Stinney brothers were, therefore, expelled from Sumter High School for the remainder of the 2003-04 school year. Maurice Stinney requested and was granted reinstatement for the 2004-05 school year. (R. p. 119, lines 18-25.) Marquise Stinney was a senior and was, therefore, not able to apply for reinstatement.

ARGUMENT

I. THE TRIAL COURT CORRECTLY FOUND THAT PLAINTIFFS FAILED TO EXHAUST THEIR ADMINISTRATIVE REMEDIES PROVIDED BY THE SPECIFIC PROVISIONS OF S.C. CODE ANN. § 59-63-240, AND THE COURT OF APPEALS ERRED BY RELYING ON THE GENERAL PROVISIONS OF S.C. CODE ANN. § 1-23-380 TO REVERSE.

Where a plaintiff is afforded an adequate administrative remedy, he "must pursue the administrative remedy or be precluded from seeking relief in the courts." Hyde v. S.C. Dep't of Mental Health, 314 S.C. 207, 442 S.E.2d 582, 583 (1994). Thus, "administrative remedies must be exhausted absent circumstances supporting an exception to application of the general rule." *Id.*; Adamson v. Richland County Sch. Dist. One, 332 S.C. 121, 503 S.E.2d 752, 754 (Ct. App. 1999). The trial courts "must have a sound basis for excusing [a] failure to exhaust administrative relief." Hyde, 442 S.E.2d at 583. "Whether administrative remedies must be exhausted is a matter within the trial judge's sound discretion and his decision will not be disturbed on appeal absent an abuse thereof." *Id.*, 442 S.E.2d at 582-83.

Section 59-63-240 of the South Carolina Code of Laws provides the following procedures governing public school student expulsions:

> 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. 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 hearing shall take place within fifteen days of the written notification at a time and place designated by the board and a decision shall be rendered within ten days of the hearing. The pupil may be suspended from school and all school activities during the time of the expulsion procedures. The action of the board may be appealed to the proper court. The board may permanently expel any incorrigible pupil.

The circuit court found that while the Stinneys appealed the initial expulsion decision to the board as permitted by statute, they failed to appeal the board's expulsion action to the proper court and thereby failed to exhaust their statutorily-provided administrative remedies. (R. pp. 5-7, 103.)

In reversing the circuit court's decision that the Stinneys' claims are barred by their failure to exhaust their administrative remedies under S.C. Code Ann. § 59-63-240, the court of appeals held that S.C. Code Ann. § 1-23-380 allows for the pursuit of damages in a civil action in lieu of appellate review. (*See* Appendix p. 205; Stinney, 675 S.E.2d at 764.) The court of appeals went further in holding that judicial review under

section 1-23-380 is not an administrative remedy, and that by seeking school board review of the expulsion proceedings, the Plaintiffs "exhausted all levels of administrative review." (*Id.*) Respectfully, the court of appeals's holding misapprehends the applicability of section 1-23-380 and the Administrative Procedures Act, and ignores the specific remedies provided by the South Carolina Legislature in section 59-63-240 which expressly governs school expulsion proceedings and decisions.

It is an established principal of statutory construction that a specific statutory provision controls over a more general one. Mims v. Alston, 312 S.C. 311, 440 S.E.2d 357, 359 (1994). With S.C. Code Ann. § 59-63-240, the Legislature enacted specific statutory procedures governing school expulsion proceedings and decisions. That statute establishes the exact mechanisms by which students may be expelled, specifying the notice and hearings required prior to expulsion, the rights of students (through their parents or guardians) throughout the process, and other details of the expulsion process. Importantly, section 59-63-240 also establishes the procedures for review of expulsion decisions. It first provides that if the expulsion hearing is held by an authority other than the school board of trustees, the student has the right to appeal the expulsion order to the board of trustees. *Id.* ("the right to appeal the decision to the board is reserved to either party"). It goes on to provide that "[t]he action of the board *may be appealed to the proper court*." *Id.* (*emphasis added*); *see also* Byrd v. Irmo High School, 321 S.C. 426, 468 S.E.2d 861, 865 (1996) (noting one difference between suspension and expulsion procedures is the statutory right to appeal expulsion order to proper court).

On the other hand, section 1-23-380, relied upon by the court of appeals, is a part

of the general Administrative Procedures Act which establishes the procedures to be followed in contested cases before agencies, as defined. *See* S.C. Code Ann. §§ 1-23-310 *et seq.* Section 1-23-380 provides for judicial review of final agency decisions, and states, in pertinent part, that "[a] party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review" but that "[t]his section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law." The Administrative Procedures Act is a general statute which, unlike S.C. Code Ann. § 59-63-240, does not address school expulsion proceedings or the judicial review thereof in any manner. *See* S.C. Code Ann. §§ 1-23-310 *et seq.*

It is clear that the Legislature intended for the specific provisions of section 59-63-240, not section 1-23-380 or any other provision of the Administrative Procedures Act, to govern school expulsion proceedings. In fact, the specific provisions of section 59-63-240 establish the mechanism for review, including judicial appellate review, of expulsion decisions. Therefore, section 59-63-240, not section 1-23-380, controls this action.

Generally, "judicial review in accordance with an administrative procedure statute may be regarded as an administrative remedy for purposes of the exhaustion doctrine." 73 C.J.S. *Public Admin. Law and Procedure* § 86 (2007). In other words, where administrative procedure statutes provide for judicial review of administrative decisions, judicial review should be deemed a part of the administrative remedy with the reviewing court simply sitting in an appellate capacity over the agency decision. *Cf.* <u>Al-Shabazz v.</u>

State, 338 S.C. 354, 527 S.E.2d 742, 754-57 (2000) (providing for judicial appellate review of administrative agency decisions); Brown v. S.C. DHEC, 348 S.C. 507, 560 S.E.2d 410, 417 (2002) (court reviewing a final agency decision sits in appellate review).

Here, by expressly allowing appeals of school districts' expulsion orders to the proper courts under S.C. Code Ann. § 59-63-240, a right not afforded to students facing other forms of discipline, *see* Byrd, 468 S.E.2d at 865 (no review of school district suspensions), the Legislature clearly contemplated judicial, appellate review to be an additional layer of protection as part of the available administrative process for students facing expulsion. And, at least inferentially, by expressly allowing "judicial review available under other means" in proceedings governed by section 1-23-380, but not allowing any such alternatives in proceedings governed by section 56-63-240, the Legislature intended for appeal "to the proper court" to be the exclusive mechanism for review of expulsion orders under section 56-63-240. *See generally* Riverwoods, LLC v. County of Charleston, 349 S.C. 378, 563 S.E.2d 651, 655 (2002) ("The canon of construction '*expressio unius est exclusio alterius*' or '*inclusio unius est exclusio alterius*' holds that to express or include one thing implies the exclusion of another"). The Legislature, therefore, seems to have foreclosed the possible alternative of a civil suit for damages in lieu of a direct appellate review of expulsion decisions under section 59-63-240.[3]

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[3]Even section 1-23-380 does not exclude "judicial review" from within the ambit of administrative remedies; rather, it merely provides that a party who has exhausted the

By resorting to the more general provisions of section 1-23-380, while almost completely ignoring the specific provisions of section 59-63-240, the court of appeals committed a fundamental error of statutory construction. The circuit court's proper application of section 59-63-240 was not an abuse of discretion and should not have been disturbed on appeal. *See* Hyde, 442 S.E.2d at 582-83 ("whether administrative remedies must be exhausted is a matter within the trial judge's sound discretion and his decision will not be disturbed on appeal absent an abuse thereof"). The court of appeals's opinion, therefore, should be reversed.

II. THE COURT OF APPEALS ERRED IN HOLDING THAT THE ADMINISTRATIVE REMEDIES PROVIDED BY S.C. CODE ANN. § 59-63-240 ARE INADEQUATE BECAUSE THAT STATUTE DOES NOT PROVIDE FOR "IMMEDIATE RELIEF" AND PERMIT THE RECOVERY OF DAMAGES.

In reversing the circuit court's decision that the Stinneys failed to exhaust their administrative remedies, the court of appeals held that since direct appeal of the expulsion orders as contemplated by section 59-63-240 would not have provided "any immediate relief" and that "the Stinneys would be unable to seek damages in a direct

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available administrative remedies "within the agency" is entitled to judicial review. Section 1-23-380 recognizes a distinction between direct appellate judicial review of an agency decision and "judicial review available under other means of review, redress, relief, or trial de novo provided by law," thereby implicitly acknowledging that the former is a part of the administrative process while the latter is not. Contrary to the court of appeals's holding, section 1-23-380 is, therefore, most reasonably construed to mean that direct, appellate judicial review of an agency decision is a part of the overall

appeal to circuit court," the administrative remedies were inadequate and the pursuit thereof would have been futile. (Appendix pp. 204-205; Stinney, 675 S.E.2d at 763.) Respectfully, the court of appeals's holding misapprehends and misapplies both the law and the record evidence.

Where a plaintiff is afforded an adequate administrative remedy, that remedy "must be exhausted absent circumstances supporting an exception to application of the general rule," and there must be a "sound basis for excusing [a] failure to exhaust administrative relief." Hyde, 442 S.E.2d at 583. Exceptions to the exhaustion doctrine, such as inadequacy or futility, are "narrowly construed" and should not be applied based on mere allegations. Balf Co. v. Planning & Zoning Comm'n, 830 A.2d 836, 842 (Conn. App. 2003). It is incumbent upon the party seeking relief to demonstrate that such a narrow exception justifies relief from the exhaustion requirement. *See, e.g.,* Law v. S.C. Dep't of Corrections, 368 S.C. 424, 629 S.E.2d 642, 650 (2006) (party must exhaust administrative remedies unless he demonstrates applicability of exception to the rule).

Under South Carolina law, a particular administrative remedy is "adequate," and thus must be exhausted, if it allows for the resolution of factual issues in dispute: "Where an adequate administrative remedy is *available to determine a question of fact*, one must pursue the administrative remedy or be precluded from seeking relief in the courts." Hyde, 442 S.E.2d at 583 (*emphasis added*). A party, therefore, is not excused from the exhaustion requirement merely because a particular administrative remedy may not afford him the opportunity to seek a full measure of damages ultimately sought in a civil

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administrative remedy, just not one of the remedies "within the agency."

suit. *See* Allen v. S.C. Alcoholic Beverage Contr. Comm'n, 321 S.C. 188, 467 S.E.2d 450, 454 (Ct. App. 1996) ("[t]he difference in remedies under the State Employee Grievance Act and the Whistleblower Act does not eliminate the exhaustion requirement under the exhaustion doctrine"). Hence, the adequacy of any particular remedy does not hinge on the completeness of the relief provided. *See id.*

It is undisputed that the Stinneys did not appeal the expulsion proceedings "to the proper court" as permitted under section 59-63-240. The record amply demonstrates that section 59-63-240 provides definite and adequate mechanisms – e.g., presentation of evidence, testimony and arguments, right to legal counsel, etc. – by which factual issues can be resolved prior to expulsion decisions, and further provides ample opportunities for expulsion decisions to be reviewed at every stage of the administrative process. As such, the remedies provided under section 59-63-240, including permitting appellate review by a proper court, are clearly "adequate" as defined by Hyde, *supra*. And like the plaintiff in Allen, *supra*, the Stinneys should have been "required to exhaust [their] administrative remedies...*prior to seeking additional remedies*" in a civil action for damages. Allen, 467 S.E.2d at 454 (*emphasis added*). Simply because the statutory administrative remedy afforded by section 59-63-240 does not provide for the full panoply of relief which the Stinneys desired does not render it inadequate. *See id.*

Likewise, the Stinneys' contention that direct appeal to the proper court under section 59-63-240 would have been futile is supported by nothing more than mere allegations, and should have been rejected. There simply is no evidence in the record to demonstrate, as apparently accepted by the court of appeals, that had the Stinneys

appealed the District's expulsion order to the circuit court, the court would have been unable to act promptly, or why such an appeal could not have been heard in a timely manner. *See* Rule 40(h), SCRCP (prioritization of non-jury matters).[4] The Stinneys' contention that they could have been afforded no level of relief acceptable to them is both unsupported by any record evidence and inapposite.

By imposing an adequacy standard requiring immediate and complete relief, the court of appeals has crafted an exception to the exhaustion doctrine that swallows the rule entirely – every administrative procedure is, in one sense or another, lacking in either immediacy or completeness of remedy or both. Thus, there was no sound basis, in law or fact, for excusing the Stinneys' failure to exhaust. *See* Hyde, 442 S.E.2d at 583 (requiring "sound basis for excusing [a] failure to exhaust administrative relief"). The trial court's decision that the Stinneys were required but failed to exhaust the available remedies provided by S.C. Code Ann. § 59-63-240 was supported by the law and the evidence, was well within the court's discretion, and should not have been disturbed. *Id.*, 442 S.E.2d at 582-83 (abuse of discretion standard). The court of appeals's opinion, therefore, should be reversed.

III. THE RECORD ESTABLISHES THAT THE PLAINTIFFS WERE PROVIDED ALL PROCESS THAT WAS DUE PRIOR TO EXPULSION; THEREFORE, THE CIRCUIT COURT'S ORDER SHOULD HAVE BEEN

[4]Immediacy, as the court of appeals would seemingly have it (see Appendix p. 204; Stinney, 675 S.E.2d at 763 ("direct appeal would not have provided...any immediate relief")), is a standard both virtually unobtainable and no where imposed by law.

AFFIRMED PURSUANT TO RULE 220(c), SCACR.

The court of appeals failed to even examine other grounds for affirmance appearing in the record pursuant to Rule 220(c), SCACR. (*See* Appendix pp. 199-206; Stinney, *supra*.) The record, however, establishes conclusively that the Stinneys were provided all process that was due under the Fourteenth Amendment prior to expulsion as a matter of law, and that the circuit court's order should be affirmed as a result.

The fundamental touchstone of procedural due process is "the opportunity to be heard." Goss v. Lopez, 419 U.S. 565, 579 (1975). Students facing long-term suspensions and expulsions are entitled to a more formal opportunity to be heard than the "informal give-and-take" acceptable for short-term suspensions. *Id.* at 584; Byrd, 468 S.E.2d at 867-68 (informal opportunity to be heard satisfies suspensions for 10-days or less). Thus, students should be afforded advance notice of the charges and an opportunity to be heard before an impartial decision-maker. Goss, 419 U.S. at 579. In the expulsion context, this means that the student is not necessarily entitled to a "full-dress judicial hearing," but that the student must be given a fair and formal opportunity to "respond, explain, and defend." Gorman v. University of Rhode Island, 837 F.2d 7, 13-16 (1st Cir. 1988); *see also* Nash v. Auburn Univ., 812 F.2d 655, 660 (11th Cir. 1987) ("in cases of student expulsion from college: an opportunity to hear both sides in considerable detail is best suited to protect the rights of all involved. This is not to imply that a full-dress judicial hearing, with the right to cross-examine witnesses, is required." (*internal quotes omitted*).)

The record amply demonstrates that the pre-expulsion procedures afforded to the Stinneys by the District under section 59-63-240 far exceeded due process requirements.

First, the Stinneys were provided written notice "of the time and the place of a hearing either before the board or a person or committee designated by the board" as required by section 59-63-240: the written notice explained that expulsion procedures were being initiated, stated what the charges were, provided a synopsis of the hearing procedures and requirements (including their right to present testimony and evidence), advised them of their rights to legal counsel, and informed them of the date, time and place for the hearing. (*See* R. pp. 49-50.) The notice far exceeded what was required under the Due Process Clause. *See* Goss, 419 U.S. at 579 (student must be provided advance notice of charges).

Second, in accordance with section 59-63-240, the Stinneys were advised of their right to proceed with legal counsel, although they opted to proceed with counsel at the initial expulsion hearing. (*See* R. pp. 49-50.)

Next, at the hearing the Stinneys were afforded the opportunity to present evidence, question witnesses, challenge the charges, explain their position, and defend against the charges. (R. pp. 46-52; *see also* R. p. 127, line 3 - p. 134, line 1.)

After the disciplinary hearing panel rendered its decision, the Stinneys were then advised of the decision and of their right to appeal the decision to the superintendent. And they, in fact, appeared with counsel and presented arguments to the superintendent. (R. pp. 47, 53-54.)

Finally, as provided by section 59-63-240, the Stinneys appealed the expulsion

decision to the full board, and were provided a hearing with counsel present. The Stinneys were thereafter given timely written notification of the Board's decision to affirm the expulsion order. (R. pp. 48, 55-56.) (They then failed to pursue a direct appeal of the Board's action to the proper court as allowed under section 59-63-240.)

Simply because the Stinneys may now believe that they did not fully exercise all of their rights or that the hearing panel did not rule correctly is completely beside the point: they were given adequate and meaningful opportunity to present their evidence, make arguments, and defend against the charges. As such, the Due Process Clause was more than satisfied. *See* Gorman, F.2d at 13-16 (requiring only a fair and formal opportunity to "respond, explain, and defend"); Nash, 812 F.2d at 660 (requiring only "an opportunity to hear both sides in considerable detail"). The record, therefore, establishes that there was no due process violation as a matter of law, and the circuit court's order granting partial summary judgment should have been affirmed on this ground pursuant to Rule 220(c), SCACR.

IV. AFFIRMANCE OF THE COURT OF APPEALS'S OPINION IS NOT MANDATED SIMPLY BECAUSE THERE IS NO EXHAUSTION REQUIREMENT UNDER 42 U.S.C. § 1983.

The Stinneys argue that since there is the exhaustion of administrative remedies is not a prerequisite to filing most actions under 42 U.S.C. § 1983, this Court is constrained to affirm the court of appeals's opinion.[5] (*See* Respondents' Return to Petition for Writ

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[5] In advancing this argument, the Stinneys are attempting to rely on an

of Certiorari pp. 10-11.) Though the Stinneys' premise (that there is not an exhaustion requirement for most section 1983 actions) to this argument is correct, the conclusion (that this Court must therefore necessarily affirm the court of appeals) is not.

While it is correct that, with some exceptions, the exhaustion of administrative remedies is not a prerequisite to an action under 42 U.S.C. § 1983, state law remedies play a special and somewhat unique role in procedural due process claims under the Fourteenth Amendment. Zinermon v. Burch, 494 U.S. 113, 125 (1990). If not a precise corollary to an exhaustion of administrative remedies requirement, the state law remedies available, regardless of exhaustion, to a plaintiff are determinative of whether there has been a procedural due process violation. *See id.* at 125-26. As the Court noted:

> In procedural due process claims, the deprivation by state action of a constitutionally protected interest in "life, liberty, or property" is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest without due process of law. ... The constitutional violation actionable under § 1983 is not complete when the deprivation occurs; it is

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apparent
mistake, or at least an ambiguity, in the circuit court's Order. The confusion arises from the circuit court's directive to the Stinney's counsel to prepare an order dismissing the "the claim of denial of due process" for failure to exhaust, but denying summary judgment on the failure to protect claim (i.e., for the schoolyard fight). (*See* R. p. 103.) In explaining its decision, the circuit court stated that "on this point [failure to protect] alone, summary judgment is not proper and I refuse to grant it." (*Id.*) Based on the above, it is clear that the circuit court was attempting to draw a distinction between the subjects of the Stinneys' claims (i.e., expulsion proceedings versus failure to protect) rather than referring to the specific causes of action, and directing that the order dismiss the expulsion proceedings claims but deny summary judgment as to the failure to protect claim. (*See id.*) Nonetheless, the order ultimately signed by the circuit court dismisses

> not complete unless and until the State fails to provide due process. Therefore, to determine whether a constitutional violation has occurred, *it is necessary to ask what process the State provided, and whether it was constitutionally adequate. This inquiry would examine the procedural safeguards built into the statutory or administrative procedure of effecting the deprivation, and any remedies for erroneous deprivations provided by statute or tort law*.

Id. (*emphasis added*).

As discussed in section III of this brief, *supra*, the pre-expulsion procedures afforded to the Stinneys under S.C. Code Ann. § 59-63-240 far exceeded, and thus easily satisfied, due process requirements. Since the procedural due process analysis and exhaustion of remedies doctrine analysis are so closely related in that both require a review of the remedies available to claimants, it would be especially appropriate for this Court to – just as it was especially erroneous for the court of appeals to fail to – affirm the circuit court's order under Rule 220(c), SCACR. Thus, even if this Court is to determine that the Stinneys in fact exhausted their administrative remedies or that the exhaustion doctrine is inapplicable, there was no due process violation as a matter of law and the circuit court's order should have been affirmed.

CONCLUSION

For the reasons stated, the Petitioner respectfully requests that the opinion of the

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the second cause of action (i.e., Due Process Clause) only. (*See* R. pp. 1-3.)

court of appeals be reversed, and that this matter be remanded to the circuit court with appropriate instructions.

Respectfully Submitted,

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Robert T. King
WILLCOX, BUYCK & WILLIAMS
P.O. Box 1909
Florence, SC 29503-1909
(843) 662-3258 - Tel
(843) 662-1342 - Fax
Attorney for Petitioner

June 9, 2010

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Opinion No. 4504 (S.C. Ct. App. filed February 19, 2009)

JOSEPH STINNEY AND CYNTHIA STINNEY, INDIVIDUALLY AND AS PARENTS AND NATURAL GUARDIANS OF MAURICE STINNEY, A MINOR MINOR OVER THE AGE OF FOURTEEN YEARS, AND MARQUISE STINNEY ....Respondents

v.

SUMTER SCHOOL DISTRICT 17 ....Petitioner.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Brief of Petitioner complies with Rule 211(b), SCACR. The undersigned further certifies that this Brief of Petitioner is in compliance with the August 13, 2007 Order of the South Carolina Supreme Court concerning personal data identifiers and other sensitive information.

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Robert T. King
Attorney for Petitioner

June 9, 2010