**UNITED STATES DISTRICT COURT**
**FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**
**No. 24-CV-380**

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| C.M., *a minor, through his parents*, LEAH MCGHEE AND CHAD MCGHEE,<br><br>Plaintiff,<br><br>v.<br><br>DAVIDSON COUNTY BOARD OF EDUCATION; *and* ERIC R. ANDERSON, *in his individual capacity*,<br><br>Defendants. | **PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**<br><br>**ORAL ARGUMENT REQUESTED PURSUANT TO LR 65.1(b)** |

Plaintiff C.M., a minor, through his parents, Leah McGhee and Chad McGhee, files this motion for a preliminary injunction pursuant to Fed. R. Civ. P. 65(a) and LR 7.1, against Defendant Davidson County Board of Education (the "Board").

In support of this Motion, C.M. relies upon the: (1) Complaint, ECF No. 1, and supporting exhibits; (2) Brief pursuant to LR 7.2 filed contemporaneously with this Motion; (3) Declaration of C.M.; (4) Declaration of Leah McGhee and supporting exhibits; and the entire record in this cause.

As more fully set forth in his Brief, Plaintiff C.M. states as follows:

1. C.M. is a 16-year-old former student at Central Davidson High School (the "School"). The Board has control and authority over the School including setting policy.

2. A few weeks ago in April, C.M. asked his English teacher whether a reference to "aliens" during class discussion referred to "space aliens or illegal aliens who need green cards."

3. C.M.'s question did not substantially disrupt class, nor did his comment interfere with the School's work or collide with other students' rights.

4. But the School equated C.M.'s question with a vile racial slur pursuant to Board policy and suspended him for three days, out of school, without a hearing or the opportunity to appeal.

5. When C.M.'s mother Leah McGhee turned to the Board requesting reversal of his suspension since the School purported to enforce Board policy in suspending her son, the Board ignored her.

6. The Board upheld C.M.'s School suspension pursuant to its policy equating the word "aliens" with "the n word."

7. But the Board's policy has no basis in fact or law. Indeed, the word "aliens" can be traced back over 225 years to laws that Congress passed in 1798 concerning *white European immigrants*, not racial minorities. Gregory

Fehlings, *Storm on the Constitution: The First Deportation Law*, 10 Tulsa J. Comp. & Int'l L. 63, 69 (2002) (emphasis added).

8. And to this day, courts including this Court use the term as a benign legal phrase in judicial opinions. *See e.g.*, *AT by HT v. Univ. of N.C.*, No. 1:16-CV-489, 2016 WL 10586289, at *1 n.1 (M.D.N.C. Jul. 7, 2016) (Eagles, J.).

9. The Board violated C.M.'s rights in at least two ways.

10. *First*, the School's Assistant Principal deprived C.M. of his First Amendment free-speech rights when he enforced Board policy and suspended C.M, who simply asked his teacher a question in class that was factual and nonthreatening. *See Starbuck v. Williamsburg James City County School Bd.,* 28 F.4th 529, 536-37 (4th Cir. 2022).

11. And C.M.'s question did not interfere with the School's work or collide with other students' rights. *See Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 508 (1969).

12. *Second*, the Board denied C.M. his Fourteenth Amendment due process rights when it denied him notice and a hearing related to his suspension. C.M. has a protected liberty interest in his reputation, and a property interest in education under North Carolina law. But the Board failed to give him notice of what words were prohibited in class because its policy on "racially insensitive" speech is unduly vague.

13. The Board's constitutional deprivations injured C.M. and are continuous and ongoing.

14. The suspension documents placed in his School record falsely declare that his comment was "racially" motivated and insensitive.

15. Therefore, a preliminary injunction is warranted to restore the parties to their respective positions before C.M.'s suspension from School. C.M. requests that the Court issue a preliminary injunction.

16. Moreover, C.M. requests that the Court exercise its discretion and waive the bond requirement under Rule 65(c). *See Hoechst Diafoil Co. v. Nan Ya Plastics Corp*., 174 F.3d 411, 421 (4th Cir. 1999).

17. Additionally, pursuant to LR 65.1(b), C.M. requests leave to present oral argument in support of his Motion.

## REQUEST FOR RELIEF

WHEREFORE, C.M. respectfully requests a preliminary injunction on or before **August 1, 2024**, so his family may adequately plan to reenroll him for the new School year beginning on August 26, ordering the Board and all parties acting in concert with it, to (a) reverse his suspension, (b) remove the Suspension Notification from his record, (c) remove unexcused absences from his record related to his suspension, (d) remove all references from his record that he used "racially" motivated, inappropriate, or insensitive language in

class, and (e) enjoin the Board from enforcing its unduly vague speech policy as it and the School have applied it against C.M.

Dated: June 4, 2024

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that the foregoing document was served on all Defendants by sending through the United States mail to the Defendants, addressed as follows:

Alan Beck
Chairman, Davidson County Board of Education
250 County School Road
Lexington, North Carolina 27292

Eric R. Anderson
2747 NC Hwy. 47
Lexington, NC 27292

The 4th day of June, 2024.

/s/ Troy D. Shelton
Troy D. Shelton

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## PRELIMINARY STATEMENT

C.M. is a 16-year-old former student at Central Davidson High School (the "School"). A few weeks ago in April, while catching up on a vocabulary lesson in English class, C.M. asked his teacher whether a reference to "aliens" during class discussion referred to "space aliens or illegal aliens who need green cards." The School equated C.M.'s question with a vile racial slur and suspended him for three days, out of school, without the opportunity to appeal. When C.M.'s mother turned to the Davidson County Board of Education (the "Board")—since the School purported to enforce Board policy in suspending her son—the Board ignored her.

The Board based its decision to uphold C.M.'s School suspension on policy that the word "aliens" is associated with "racially" insensitive speech. But the policy has no basis in fact or law. "Aliens" can be traced back over 225 years to laws that Congress passed in 1798 concerning *white European immigrants*, not racial minorities. And to this day, courts including this Court use the term as a benign legal phrase in judicial opinions.

The Board violated C.M.'s rights in at least two ways.

*First*, the School's Assistant Principal deprived C.M. of his First Amendment free-speech rights when he enforced Board policy and suspended C.M, who simply asked his teacher a question in class that was factual and

nonthreatening. C.M.'s question did not interfere with the School's work or collide with other students' rights.

*Second*, the Board deprived C.M. of his Fourteenth Amendment due process rights when it denied him notice and a hearing related to his suspension. C.M. has a protected liberty interest in his reputation, and a property interest in education under North Carolina law. But the Board failed to give him notice of what words were prohibited in class because its policy on "racially insensitive" speech is unduly vague.

The Board's constitutional deprivations injured C.M. and are continuous and ongoing. The suspension documents placed in his School record falsely declare that his comment was "racially" motivated and insensitive. Therefore, a preliminary injunction is warranted to restore the parties to their positions before C.M.'s suspension from School. C.M. respectfully requests that the Court issue a preliminary injunction on or before **August 1, 2024**.

## STATEMENT OF THE FACTS

### *The Board's Student Handbook*

The Board issues a Student Handbook to all students. *See* Complaint ("Compl."), ECF No. 1 at ¶ 14; Student Handbook, ECF No. 1-1.

None of the illustrative conduct in the Student Handbook sections on "Disruption" and "Civility" could reasonably lead a student to think that using the words "alien," "illegal alien," or "green cards" in class would be "disruptive behavior;" would be considered profane, obscene, fighting, or abusive words; or cause substantial disruption to or interfere with the School's work. *See* ECF No. 1-1 at 18, 24-25.

And the Student Handbook's section on "Student Records (Policy 6.14)" states: "Parents/eligible students have the right to request a correction to records." *Id*. at 34. It further provides: "If the parents/eligible students do not feel the school's response is adequate, a formal hearing may be requested." *Id*. It also notes that student records may be disseminated to various third parties in compliance with federal law, including: "School officials with legitimate educational interest;" "Other schools to which a student is transferring;" and "Appropriate parties offering financial aid to a student." *Id*. at 35.

***C.M.'s Question to His English Teacher***

On April 9, 2024, C.M.'s English teacher, Ms. Haley Hill, gave him permission to go to the restroom during class. *See* Declaration of C.M. ("C.M. Decl."), ¶ 3. While away, C.M. missed part of Hill's vocabulary lesson. *Id*. Upon his return, the word "aliens" was used during class discussion. *Id*. C.M.

raised his hand and asked Hill whether the reference to aliens referred to "space aliens or illegal aliens who need green cards." *Id.* Hill responded and said, "Watch your mouth [C.M.]." *Id.* ¶ 4.

R., a Hispanic student in C.M.'s class, with whom C.M. has a good relationship, joked that he was going to "kick [C.M.]'s ass." *Id.* Class otherwise proceeded as normal until, later in class, another student began discussing *R.'s threatening comment* to C.M., causing Ms. Hill to call administration. *Id.* ¶ 5.

C.M.'s question about "aliens" was not racially motivated or targeted at anyone—including Ms. Hill, R., or any of his classmates. *Id.* ¶¶ 9-11. Nor could C.M.'s question reasonably be viewed as obscene, fighting words, abusive words, or promoting illegal drug use. *Id.* He did not intend—and could not reasonably foresee—that his question would cause substantial disruption to class. *Id.*

Rather, C.M. simply asked his teacher a question about a word—"alien"—which he did not introduce into the class discussion, and which is regularly reported in the news and is found in the dictionary without any reference to race. Compl. ¶ 26. It is C.M.'s understanding that anyone from another country, who is not a U.S. citizen and wishes to be a lawful

permanent U.S. resident, must obtain a green card, regardless of the person's race. *Id.*

***The Assistant Principal Meets with C.M. and R.***

Following English class, C.M. and R. met with Defendant Eric R. Anderson, the School's Assistant Principal, in his office. C.M. Decl. ¶ 6. Both students immediately made clear that neither was offended by the other's comments, and that their interaction in class was not a big deal. *Id.* Anderson met with both students separately, starting with R. *Id.*

When Anderson spoke to C.M., Anderson told C.M. that R. was "upset," "crying," and "offended" due to C.M.'s question. *Id.* ¶ 7. C.M. did not believe this because R. had not appeared upset. *Id.* R. later confided in C.M. that he was not "crying," nor was he "upset" or "offended" by C.M.'s question. *Id.* R. said, "If anyone is racist, it is [Mr. Anderson] since he asked me why my Spanish grade is so low"— apparently referring to R.'s ethnicity. *Id.*

***The School Suspends C.M.***

That day, Anderson issued a written Suspension Notification and suspended C.M. for three days out of school for "making a racially insensitive remark that caused a class disturbance." *Id.* ¶ 8; Suspension Notification, ECF No. 1-2. C.M. later learned that R. received only a brief in-school

suspension when he said he was going to "kick [C.M.]'s ass," despite R.'s comment being the impetus for Hill to call administration. C.M. Decl. ¶ 8.

The Suspension Notification stated that C.M. violated Board Policy "6.11 Using/Making racially motivated comment which disrupts class." ECF No. 1-2 at 3. It said: "[C.M.] made a racially insensitive comment, in class today, about an alien 'needing a green card.'" *Id*. at 4. And it warned: "There shall be no right to an appeal of the principal's decision to impose a short term suspension (10 days or less) to the Superintendent or Board of Education." *Id*. at 3.

***Recorded Meeting Between C.M.'s Parents and Defendant Anderson***

Later, C.M.'s parents—Leah and Chad McGhee—met with Anderson. *See* Declaration of Leah McGhee ("L. McGhee Decl."), ¶ 8. Ms. McGhee's recording of that meeting, which lasted approximately a half hour, is submitted as Exhibit 2 to her Declaration. *Id*. n. 2.

Anderson told C.M.'s parents that it would have been more "respectful" for C.M. to refer to "those people" who "need a green card" rather than "aliens." L. McGhee Decl. ¶ 9; Exhibit 2 Recording at 0:38. Anderson also seemed to blame Ms. Hill for any purported disruption, saying that she has "struggled" with classroom management as a result of "being so young and being a female." Exhibit 2 Recording at 15:50. Anderson further explained

that it is the School and Board's practice and custom since August of 2023 to mete out "harsh" punishment "[a]nytime there is something said that's racially insensitive" and that reversing C.M.'s suspension would be "unfair to the 15 other kids who have served [suspension] for saying the n word or anything else under the sun that's racially charged that creates a disruption in the classroom." *Id*. at 5:00, 12:30.

Recalling his initial meeting with R., Anderson said that R. first told him that this was not a big deal. L. McGhee Decl. ¶ 11. But Anderson corrected R., saying, "No sir. Those words do make a big deal out of this—the way they were said and their meaning." Exhibit 2 Recording at 3:20. When C.M.'s parents asked Anderson whether he believed their son intentionally said something racist, he said no, but that C.M. "needs to be careful with things that he says." *Id*. at 6:00. He later repeated that he does not think that C.M. is racist. *Id*. at 8:25. He also said that C.M has been a "great kid" who has "done a great job with everything." *Id*. at 13:35.

***The Board Upholds the Suspension***

After meeting with Anderson, C.M.'s parents attempted to appeal the decision through other School and Board officials, seeking to remove from his record the suspension, any unexcused absences resulting from the suspension, and any reference to C.M.'s comment being "racially" motivated

or insensitive in violation of Board Policy 6.11, but they refused to do so. *See* L. McGhee Decl. ¶¶ 22-25.

For example, Ms. McGhee sent emails on April 12, 2024, to Board Chairman Beck and Board member Nick Jarvis attaching a copy of the Suspension Notification and requesting reversal of her son's suspension. *See id*. ¶ 25 & n. 3, Exhibit 3; ECF No. 1-3. Rather than reply to her emails, Beck and another Board member mounted an attack against Ms. McGhee's character by sharing with local community leaders her mugshot from a 2010 arrest, and slandering her and C.M. with additional false accusations. L. McGhee Decl. ¶¶ 26-28, 30.[1]

***The Board's Authority over the School and Board Policy 6.11***

The Board has control and authority over all public schools in Davidson County. Compl. ¶ 45; *see* Board Policy 1.1.[2] The Board has final policymaking authority over the School's short-term suspension of students for less than ten days. Board Policy 6.11.2 ¶ B. Under North Carolina law, the Board is required to provide C.M. with a "sound basic education." *Id.* 1.1 ¶ 1; *Leandro*

[1] As referenced in her Declaration, Ms. McGhee has publicly shared her inspiring redemption story since her arrest 14 years ago. *See id*. ¶ 29.

[2] All cited board policies are found on the School's website, and current as of this filing. *See* ECF No. 1 at ¶ 44; *available* at https://www.davidson.k12.nc.us/apps/pages/index.jsp?uREC_ID=917649&type=d&pREC_ID=1257087. ECF No. 1 at ¶ 44, n. 5.

*v. State*, 488 S.E. 2d 249, 255 (N.C. 1997) (state constitution "guarantee[s] every child of this state an opportunity to receive a sound basic education in [the] public schools").

This control includes authority over all matters pertaining to the School in accordance with state law. Board Policy 1.1. Board Policy 6.11 does not provide notice that students are prohibited from using the words "alien," "illegal alien," or "green cards" in class. ECF No. 1-4. Nor does it state that the use of such words by a student in class is considered racially insensitive or abusive. *See id*. The Board also covenants to not "limit a student's right to express his or her thoughts and opinions at reasonable times and places, consistent with the protections of the First Amendment." Student Handbook, ECF No. 1-1 at 25.

***C.M.'s Words Were Factual and Nonthreatening***

C.M.'s use of the phrases "illegal aliens" and "green cards" was factual and nonthreatening, consistent with their use in both state and federal law. Compl. ¶ 47.

Federal law has used the word "alien" for more than 225 years. Gregory Fehlings, *Storm on the Constitution: The First Deportation Law*, 10 Tulsa J. Comp. & Int'l L. 63 (2002). "An undeclared war with France led Congress to pass the Alien Act of 1798 which for the first time authorized the federal

government to deport aliens." *Id*. A set of laws Congress passed during this time were collectively known as the "Alien and Sedition Acts." *Id*. at 69. "Congress barred the naturalization of aliens of a country at war with the United States, and it commanded all *white immigrants* to register with the government." *Id*. (emphasis added).

The current U.S. Immigration and Naturalization Act defines "alien" to "mean[] any person not a citizen or national of the United States." 8 U.S.C. § 1101(a)(3). And the North Carolina General Assembly enacted an entire chapter devoted exclusively to "aliens," Chapter 64, Article I, entitled, "Various Provisions Related to Aliens." *See* N.C. Gen. Stat. §§ 64-1 to -24.

Prominent jurists with diverse cultural and ethnic backgrounds have used the same words in their written opinions that C.M. used in class. Compl. ¶ 54.

For example, Judge James Ho of the Fifth Circuit Court of Appeals, who immigrated to the United States from Taiwan as a child, has written: "There's no need to be offended by the word 'alien.' It's a centuries-old legal term found in countless judicial decisions." *Khan v. Garland*, 69 F. 4th 265, 271-72 (5th Cir. 2023) (Ho, J., concurring); Compl. ¶ 55.

One of those "countless judicial decisions" that Judge Ho referenced was written by the late Supreme Court Justice Thurgood Marshall. He began

a majority opinion as follows: "In this case, we must determine whether an *alien* who is prosecuted under 8 U.S.C. § 1326 for *illegal* entry following deportation may assert in that criminal proceeding the invalidity of the underlying deportation order." *United States v. Mendoza-Lopez*, 481 U.S. 828, 830 (1987) (emphasis added).

Opinions issued by the U.S. Supreme Court less than a month before C.M.'s suspension used the terms "green card" and "illegal aliens." *See Wilkinson v. Garland*, 144 S. Ct. 780, 785 (2024) (Sotomayor, J.) (using the term "green card" to refer to immigrants with "lawful permanent residence"); *id*. at 794 (Alito., J., dissenting, joined by Roberts, C.J. and Thomas, J.) (using the term "illegal aliens" consistent with the United States Code).

And this Court also uses the phrase "illegal aliens," noting "the absence of a better choice." *AT by HT v. Univ. of N.C.*, No. 1:16-CV-489, 2016 WL 10586289, at *1 n.1 (M.D.N.C. Jul. 7, 2016) (Eagles, J.).

***Consequences of the Suspension***

After C.M. served his suspension, he was not allowed to compete in the Senior night home track meet—the most important meet of the year. C.M. Decl. ¶ 12. The School's track coach said, "I have heard some things about you." *See id*.; Compl. ¶ 60. Upon returning to school, he was met by threats and bullying from students who had heard he was suspended for racism but

did not know the details. C.M. Decl. ¶ 15. On April 29, 2024, in response to threats and bullying from other students, and the hostility of the Board and administration, C.M.'s parents unenrolled him from School and enrolled him in a certified homeschool program away from Davidson County. L. McGhee Decl. ¶ 32.

But for Board Policy 6.11, and the manner in which it was enforced to wrongly label C.M.'s comment as racially motivated and insensitive, C.M. would still be enrolled as a student at the School. C.M. Decl. ¶¶ 21-22; Compl. ¶ 63. C.M.'s family is unable to adequately plan for the new school year, beginning in August, two months from now. L. McGhee Decl. ¶ 33. The family's options are to continue homeschooling C.M. in a program located in another part of the state or reenroll him at the School on or before August 1, 2024—before the first day on August 26, 2024—conditioned upon his name and record being cleared. *Id.* ¶¶ 33-35.

The School's charge that C.M.'s comment in class was racially motivated and insensitive has already damaged his standing with classmates, teachers, and coaches, and it will interfere with his opportunities for higher education, earning a track scholarship, and his future employment. C.M. Decl. ¶¶ 12-13, 15. C.M. hopes to earn a track scholarship one day to attend college. *Id.* ¶ 13. He is planning to take the SAT and ACT exams later

this year so he can apply to colleges as a senior. L. McGhee Decl. ¶ 35.

Absent an injunction, the Suspension Notification in C.M.'s record will be disseminated to those with a legitimate educational interest, colleges to which he applies, and those providing financial aid, scholarships, and loans for C.M. to access higher education. Student Handbook, ECF No. 1-1 at 35; Suspension Notification, ECF No. 1-2; L. McGhee Decl. ¶ 35. Sharing and disseminating this information will negatively affect C.M.'s standing with teachers and coaches at the School, as well as his chances to gain admission to colleges, earn a scholarship, or access financial aid. C.M. Decl. ¶ 23; L. McGhee Decl. ¶ 36.

## QUESTIONS PRESENTED

1. Should the Court issue a preliminary injunction ordering the Board to reverse C.M.'s suspension for depriving him of his First Amendment free speech rights, given that his comment did not interfere with the School's work or collide with other students' rights?

2. Should the Court issue a preliminary injunction ordering the Board to reverse C.M.'s suspension for depriving him of his Fourteenth Amendment due process rights because no hearing was provided, and the Board's policy on "racially insensitive" speech is unduly vague?

## LEGAL STANDARD

To obtain a preliminary injunction, a plaintiff must "establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor,

and that an injunction is in the public interest." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The third and fourth factors merge when the government is a party. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

Where the alleged irreparable harm is linked to a First Amendment claim, "[d]etermination of irreparable harm thus requires analysis of [a plaintiff]'s success on the merits." *Newsom ex rel. Newsom v. Albemarle Cnty. School Bd.*, 354 F.3d 249, 254-55 (4th Cir. 2003).

## ARGUMENT

### A. This Court should issue a preliminary injunction ordering the Board to reverse C.M.'s suspension and remove the Suspension Notification from his record.

The status quo is the "last uncontested status between the parties which preceded the controversy." *P&L Dev. LLC. v. Bionpharma Inc.*, 2018 U.S. Dist. LEXIS 240231 at *9 (M.D.N.C. Jan. 26, 2018) (Tilley, Jr., J.) (quoting *Pashby v. Delia*, 709 F. 3d 307, 320 (4th Cir. 2013)). "[A] preliminary injunction can [ ] act to restore, rather than merely preserve, the status quo, even when the nonmoving party has disturbed it." *Di Biase v. SPX Corp.*, 872 F.3d 224, 231 (4th Cir. 2017). Sometimes it is necessary "to require a party who has recently disturbed the status quo to reverse its actions." *Aggarao v. MOL Ship Mgmt. Co., Ltd.*, 675 F. 3d 355, 378 (4th Cir. 2012) (cleaned up).

That is precisely what this Court should do: order the Board "to reverse its actions" after it "disturbed the status quo" and wrongly upheld C.M.'s suspension. *See id.* Ordering the Board to reverse C.M.'s suspension and remove the Suspension Notification from his record protects him from future injury. The Suspension Notification that officials placed in his School record is a tainted document, which continues to grow and fester like a cancer threatening to cut off C.M.'s hopes and dreams. A preliminary injunction and reversal of the suspension would allow C.M.'s parents to comfortably reenroll him in School in August, and to ultimately apply to colleges, without the Board's false stench of racism tainting his reputation and record.

**1. C.M. is likely to succeed on the merits of his claims.**

**a. The Board deprived C.M. of his free speech rights under the First Amendment when Assistant Principal Anderson executed and enforced Board Policy 6.11 and suspended C.M. from School.**

C.M. is likely to succeed on the merits of his First Amendment claim because the Board unduly deprived him of his free speech rights. Compl. at 18-22.

The U.S. Supreme Court held 55 years ago that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). For "school officials to justify prohibition of a particular

expression of opinion, [they] must be able to show that [their] action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that aways accompany an unpopular viewpoint." *Id.* at 509.

*Tinker's* well-established "substantial-disruption test" requires officials to show that a student's speech "might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities." *Id.* at 514. This means that, to justify suppression of a student's speech, officials must produce evidence showing that such speech materially interfered "with the schools' work" or collided "with the rights of other students." *Id.* at 508.

Since *Tinker*, the Supreme Court established three narrow exceptions whereby school officials may regulate student speech without satisfying the substantial disruption test: (1) when a student engages in sexually lewd, vulgar, indecent, and plainly offensive speech at a school assembly, *Bethel Sch. Dist. v. Fraser*, 478 U.S. 675 (1986); (2) where student speech appears to be school-sanctioned, as with student speech published in a school newspaper, *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260 (1988); and (3) when student speech may reasonably be viewed as promoting illegal drug use, *Morse v. Frederick*, 551 U.S. 393 (2007).

But unless one of the three exceptions expressly applies, courts "must continue to adhere to the *Tinker* test." *Hardwick v. Heyward*, 711 F.3d 426, 435 n.11 (4th Cir. 2013). Thus, *Tinker's* substantial-disruption test controls the analysis of this case because C.M.'s question did not fall within one of the three narrow exceptions. *See id.*

**i. C.M.'s comment did not interfere with the School's work or collide with the rights of other students.**

The School's punishment of C.M. was not permissible under *Tinker* because C.M.'s comment did not materially interfere "with the [School]'s work" or collide "with the rights of other students." *See Tinker*, 393 U.S. at 508; Suspension Notification, ECF No. 1-2; L. McGhee Decl., Exhibit 2 Recording.

First, C.M.'s comment did not interfere with the School's work. The Suspension Notification does not show that C.M.'s comment materially interfered with Ms. Hill's ability to discharge her duties to deliver a sound basic education to her students. *See* Board Policy 1.1 at ¶ 1; *Leandro*, 488 S.E. 2d at 255. The Suspension Notification does not mention Hill or other School officials. And it refers to C.M.'s comment in the singular ("comment" or "remark"). So the School suspended C.M. based on *one remark* in class—after which Hill told C.M. to watch his mouth, and he followed her instructions and did not say anything further.

Second, C.M.'s question did not collide with the rights of other students. The Suspension Notification does not reflect that C.M.'s question collided with other students' rights—including R.'s right—to receive a sound basic education. *See* Board Policy 1.1 ¶ 1; *Leandro*, 488 S.E. 2d at 255. Indeed, R. told Anderson that he did not consider C.M.'s remark to be a big deal. L. McGhee Decl. ¶ 11; Exhibit 2 Recording at 3:20.

**ii. C.M.'s speech was factual and nonthreatening.**

C.M.'s one question in Ms. Hill's English class—whether reference to a word in class discussion meant "space aliens or illegal aliens who need green cards"—was factual, nonthreatening speech. Compl. ¶¶ 47, 69.

According to the Fourth Circuit, "The First Amendment does not permit schools to prohibit students from engaging in [] factual, nonthreatening speech." *Starbuck v. Williamsburg James City County School Bd.,* 28 F.4th 529, 536-37 (4th Cir. 2022). "Schools cannot silence such student speech on the basis that it communicates controversial or upsetting ideas. To do so would be incompatible with the very purpose of public education." *Id*. at 536.

In *Starbuck*, a Virginia school had suspended a student two days out-of-school—the day after a mass shooting at a school in Parkland, Florida that made national headlines—because it claimed the student disturbed class by

speaking about details of the shooting he heard on the news. "No student within the conversation made any threat," and the conversation was factual; therefore, the First Amendment protected the student's speech. *Id*. at 531-32.

Likewise, C.M. "only engaged in a factual conversation" that was nonthreatening, and the "School[ ] cannot silence [his] speech on the basis that it communicate[d] controversial or upsetting ideas." *See id*. And C.M.'s factual and nonthreatening comment in class—about a word he had seen in the news—is less controversial than the student's protected speech in *Starbuck*. Indeed, even in that highly emotional time immediately after a national tragedy—unlike the normal day when C.M. asked his teacher one question—the Fourth Circuit held that the student's "First Amendment claim against the School Board" was valid because his remarks were factual and nonthreatening. *See Starbuck*, 28 F.4th at 537.

**b. The Board deprived C.M. of his procedural due process rights under the Fourteenth Amendment by failing to provide a hearing and notice.**

C.M. is likely to succeed on the merits of his claim that the Board deprived him of procedural due process by failing to provide him with a hearing and by failing to provide notice with its vague policy on "racially insensitive" speech. The failure to provide due process implicates two of C.M.'s protected interests: (1) a liberty interest in his good name and

reputation, and (2) a property interest in receiving a sound basic education from the Board guaranteed under North Carolina law.

*C.M.'s Liberty Interest in His Reputation*

Due process is required "[w]here a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him." *Goss v. Lopez*, 419 U.S. 565, 574 (1975). A student has a liberty interest in his reputation because a stain on his record "could seriously damage [his] standing with [his] fellow pupils and their teachers as well as interfere with later opportunities for higher education and employment." *Goss*, 419 U.S. at 575. To state a liberty interest claim under the Due Process Clause, a plaintiff must show that the charges against him: (1) placed a stigma on his reputation; (2) were made public; (3) were made in conjunction with the adverse action against him; and (4) were false. *Sciolino v. City of Newport News, Va.*, 480 F.3d 642, 646-47 (4th Cir. 2007).

The Board deprived C.M. of his liberty interest in his good name and reputation when School officials (1) stated in the Suspension Notification that his comment was "racially insensitive" and a "racially motivated comment which disrupts class;" (2) placed the Suspension Notification in his record making it available to be disseminated to third parties; and (3) made the stigmatizing charge of racism in conjunction with his actual suspension from

School, despite Anderson conceding that the charge of racism was false. Exhibit 2 Recording at 6:00, 8:25; *see Sciolino*, 480 F.3d at 646-47.

C.M. was entitled to a hearing "at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). This means he was entitled to a name-clearing hearing before the Suspension Notification was placed in his record and made available to be disseminated to third parties. *See Sciolin*o, 480 F.3d at 653 & n.9; *see Harrell v. City of Gastonia*, 392 F. App'x 197, 205-06 (4th Cir. 2010) (per curiam).

C.M. was further entitled to notice from the Board as to what words he could say in class without having to guess. *See Connally v. General Constr. Co.*, 269 U.S. 385, 391 (1926); *see Baggett v. Bullitt*, 377 U.S. 360, 366 (1964). In the school context, rules and regulations must be clear and specific enough that a reasonable person would understand what is prohibited or permitted. *See, e.g., Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589 (1967) (holding administrative rules of state university system were unconstitutionally vague).

The Board's policy on "racially insensitive" speech is unduly vague, and reasonable students at the School could not know they are prohibited from saying in class the words, "alien," illegal alien," or "green cards." Anderson's explanation to C.M.'s parents on what constitutes "racially insensitive"

speech at the School demonstrates why the policy is vague. Anderson said the School metes out harsh punishment "[a]nytime there is something said that's racially insensitive." Exhibit 2 Recording at 5:00. In other words, the policy is vague because "anytime" provides absolutely no framework or guidance to students as to language the School views as "racially insensitive."

Such a "policy" is seemingly enforced not by clear guiding principles, but by Anderson's idiosyncratic and, in this case, obviously incorrect perceptions of what might be a racially insensitive term. A Supreme Court dissenting opinion that is generally cited as an example of the unclear and arbitrary misuse of language is apt here because the School's policy is pure nonsense, hocus pocus, and "interpretive jiggery-pokery." *See King v. Burwell*, 576 U.S. 473, 506 (2015) (Scalia, J., dissenting, joined by Thomas, J. and Alito, J.). The School's circular reasoning inherent in its speech policy is unduly vague, completely subjective, and fails to provide students with fair warning and notice on words the School considers "racially insensitive."

*C.M.'s Property Interest in a Sound Basic Education*

The Board deprived C.M. of his property interest in a sound basic education guaranteed under North Carolina law with no opportunity for a meaningful hearing or to appeal the School's harsh decision and punishment.

North Carolina grants students a property interest by "guarantee[ing] every child of this state an opportunity to receive a sound basic education in public schools [overseen by the Board]." *Leandro*, 488 S.E. 2d at 255; Board Policy 1.1 at ¶ 1. And Courts have held that when a state provides a free public education, this creates a property interest that is protected by the Due Process Clause. *See Pegram v. Nelson,* 469 F. Supp. 1134, 1138 (M.D.N.C. Apr. 13, 1979) (citing *Goss,* 419 U.S. at 565). This property interest creates a procedural due process right in the disciplinary suspension setting, entitling a student to notice and some type of hearing before being suspended from school. *See id* at 1140.

The Supreme Court has identified three factors that should be considered in determining the type of due process required: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the state's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Mathews*, 424 U.S. at 335.

Here, the first factor—the private interest at stake—weighs heavily in favor of maximum due process—because C.M.'s interest in receiving an

education is of the highest importance. *See id.*; *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954) (stating that "education is perhaps the most important function of state and local governments").

The second factor—the risk of an erroneous deprivation of C.M.'s property interest in education through the School's procedures—highlights the inadequacy of the School's (nonexistent) procedures to protect against an improper suspension. C.M. received no meaningful hearing before being suspended and no opportunity to appeal his suspension. Anderson served as prosecutor, judge, and jury. And despite later admitting to C.M.'s parents that he did not think C.M. was racist, Anderson *still* meted out harsh punishment for C.M.'s so-called "racially insensitive" comment.

The third factor—administrative burdens—favors increasing the current procedural protections. For example, requiring two officials to approve a suspension out of school or providing for an appeal would impose a *de minimis* burden. *See id.*

**c. The Board is liable under *Monell*.**

*Monell v. Department of Social Services*, 436 U.S. 658 (1978) authorizes C.M.'s lawsuit against the Board and establishes its liability. A government defendant's liability under *Monell* may arise in four ways:

> (1) through an express policy, such as a written ordinance or regulation; (2) through the decisions of a

> person with final policymaking authority; (3) through an omission, such as a failure to properly train officials; or (4) through a practice that is so persistent and widespread as to constitute a custom or usage with the force of law.

*See Starbuck*, 28 F.4th at 537 (citing *Lytle v. Doyle*, 326 F.3d 463, 471 (4th Cir. 2003)) (cleaned up). Here, liability may be shown in at least three ways.

First, the Board is liable to C.M. through its express policy set forth in his Suspension Notification, which declares that the School suspended him for violating Board Policy "6.11 Using/Making racially motivated comment which disrupts class." ECF No. 1-2 at 3.

Second, as the final policymaking authority over the School's short-term suspension of students for less than ten days (Board Policy 6.11.2 ¶ B), the Board upheld and ratified C.M.'s suspension by Board members' silence. Thus, the Board is "liable for *its own decision* to uphold the actions of [the School]." *Starbuck*, 28 F.4th at 534. Indeed, C.M.'s mother emailed Chairman Beck and Board member Jarvis, requesting reversal of her son's suspension and attaching the Suspension Notification. But Beck and Jarvis remained silent and did not respond, even though Board Policy 6.11 caused her son's injury. *See Franklin v. City of Charlotte*, 64 F.4th 519, 536 (4th Cir. 2023).

Third, the Board has implemented a practice that is so persistent and widespread as to constitute a custom or usage with the force of law. Anderson

explained to C.M.'s parents that it is the School and Board's practice and custom since August of 2023 to mete out "harsh" punishment "[a]nytime there is something said that's racially insensitive." He said reversing C.M.'s suspension would be "unfair to the 15 other kids who have served [suspension] for saying the n word or anything else under the sun that's racially charged that creates a disruption in the classroom." In other words, according to Anderson, the Board's widespread and well-settled practice and custom that constitutes standard operating procedure is to equate the words, "alien," "illegal alien," and "green cards" with the n word.

**2. An injunction protects C.M. from irreparable harm.**

A preliminary injunction will protect C.M. from irreparable harm because, as the Supreme Court has explained, the "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

But for Board Policy 6.11, and the manner in which it was enforced and applied against C.M. to wrongly label his comment as racially motivated and insensitive, C.M. would still be enrolled as a student at the School. The Board's unconstitutional policy on "racially insensitive" speech chills C.M.'s speech, restricts his participation in class discussion, obstructs his guaranteed right to receive a sound basic education under North Carolina

law, and permanently alters and limits his opportunities to attend college and earn a scholarship because of the Suspension Notification in his record.

#### 3. The balance of equities tips in C.M.'s favor because an injunction upholding his constitutional rights is in the public interest.

Courts consider the third and fourth factors—the balance of equities and the public interest—together. *See Nken*, 556 U.S. at 435.

The balance of equities favors a preliminary injunction. The Board will suffer no harm if a preliminary injunction orders it to remove the Suspension Notification from C.M.'s record. But, absent an injunction, C.M. would suffer irreparable harm for a violation of his constitutional rights. And "upholding constitutional rights is in the public interest." *Legend Night Club v. Miller*, 637 F.3d 291, 302-03 (4th Cir. 2011).

### B. The Court should waive the bond requirement under Rule 65(c).

Although Fed. R. Civ. P. 65(c) requires that security be posted when a court issues a preliminary injunction, district courts "retain[ ] the discretion to set the bond amount as it sees fit or waive the security requirement." *Pashby*, 709 F.3d at 332. Because the Board would not incur costs and money damages if it were wrongfully enjoined, this Court should exercise its discretion to waive the bond requirement. *See Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411, 421 (4th Cir. 1999).

## CONCLUSION

C.M. requests a preliminary injunction on or before **August 1, 2024**, so his family may adequately plan for the new school year, ordering the Board to (a) reverse his suspension, (b) remove the Suspension Notification from his record, (c) remove unexcused absences from his record related to his suspension, (d) remove all references from his record that he used "racially" motivated, inappropriate, or insensitive language in class, and (e) enjoin the Board from enforcing its unduly vague speech policy as it and the School have applied it against C.M.

Dated: June 4, 2024

Respectfully submitted,

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*Attorneys for Plaintiff C.M.*

## CERTIFICATE OF COMPLIANCE

Pursuant to LR 7.3(d), the undersigned certifies that the Plaintiff's Brief does not exceed 6,250 words and is in compliance with this Rule. The total word count is 6,126. The undersigned relied on the word count feature on the software utilized to draft this Brief, and the word count includes the body of the brief, headings, and footnotes. The word count does not include the caption, signature lines, certificate of service, and any cover page or index.

Respectfully submitted this the 4th day of June 2024.

/s/ Troy D. Shelton
Troy D. Shelton

## CERTIFICATE OF SERVICE

I certify that the foregoing document was served on all Defendants by sending through the United States mail to the Defendants, addressed as follows:

Alan Beck
Chairman, Davidson County Board of Education
250 County School Road
Lexington, North Carolina 27292

Eric R. Anderson
2747 NC Hwy. 47
Lexington, NC 27292

The 4th day of June, 2024.

/s/ Troy D. Shelton
Troy D. Shelton

**UNITED STATES DISTRICT COURT**
**FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

| | |
|---|---|
| C. M., A MINOR, THROUGH HIS PARENTS, LEAH AND CHAD MCGHEE,<br><br>Plaintiff,<br><br>v.<br><br>DAVIDSON COUNTY SCHOOL DISTRICT BOARD OF EDUCATION,<br><br>Defendant. | Case No. 24-CV-380 |

**DECLARATION OF C.M. IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am a 16-year-old resident of Davidson County, North Carolina. I have personal knowledge of the facts herein and if called to give testimony, would testify as follows:

2. I am a former student at Central Davidson High School in Lexington, North Carolina. I attended Central Davidson from around August 2023 until April 29, 2024 as a sophomore.

3. On April 9, 2024, I returned from the bathroom during a vocabulary lesson in Ms. Hill's English class. As I was catching up on the lesson, I heard

students and Ms. Hill use the word "aliens" in class discussion. I raised my hand and asked whether "aliens" referred to "space aliens or illegal aliens who need green cards."

4. Ms. Hill said I should "watch my mouth," and a student in class (whom I will refer to as "R") said he would "kick [my] ass." I am friendly with that student, who I believe is of Latino descent. It seemed clear that he was joking around.

5. After that, class continued normally and without disruption until another student later brought up R's comment indicating he would fight me. Ms. Hill then called the administration, apparently because she viewed R's comment as a potentially genuine threat.

6. When Assistant Principal Anderson first spoke with me and R we both made clear that neither of us were offended by anything the other said, and that the incident in class was not a big deal. Assistant Principal Anderson insisted that my comment was a big deal and decided to meet with both of us separately, starting with R.

7. After meeting with R, Mr. Anderson told me that R was upset and crying because of the question I asked in class. This did not seem believable to me in part because I was able to observe R both after my question and after his meeting. R also directly told me that he was not actually upset by

my question and was not crying. R later remarked to me that if anyone is racist, it is Mr. Anderson because he asked R how his Spanish grade was so low—an apparent reference to R's ethnic heritage.

8. Mr. Anderson met with me and reprimanded me for my question, ultimately suspending me for three days out of school. Out-of-school suspension is considered a substantial punishment, far worse than in-school suspension. I later learned that R received only a brief in-school suspension for his in-class comment threatening to fight me.

9. My suspension papers say I was suspended for "making a racially insensitive remark that caused a class disturbance." None of this is true.

10. I would never have intentionally made a racist remark in class, and I still do not understand the term "illegal alien" to be racially insensitive or to have anything to do with race.

11. Aside from R's brief response to my question my remark did not cause any notable class disturbance. To the extent there was a disturbance, it was caused by R's joking threat to "kick [my] ass."

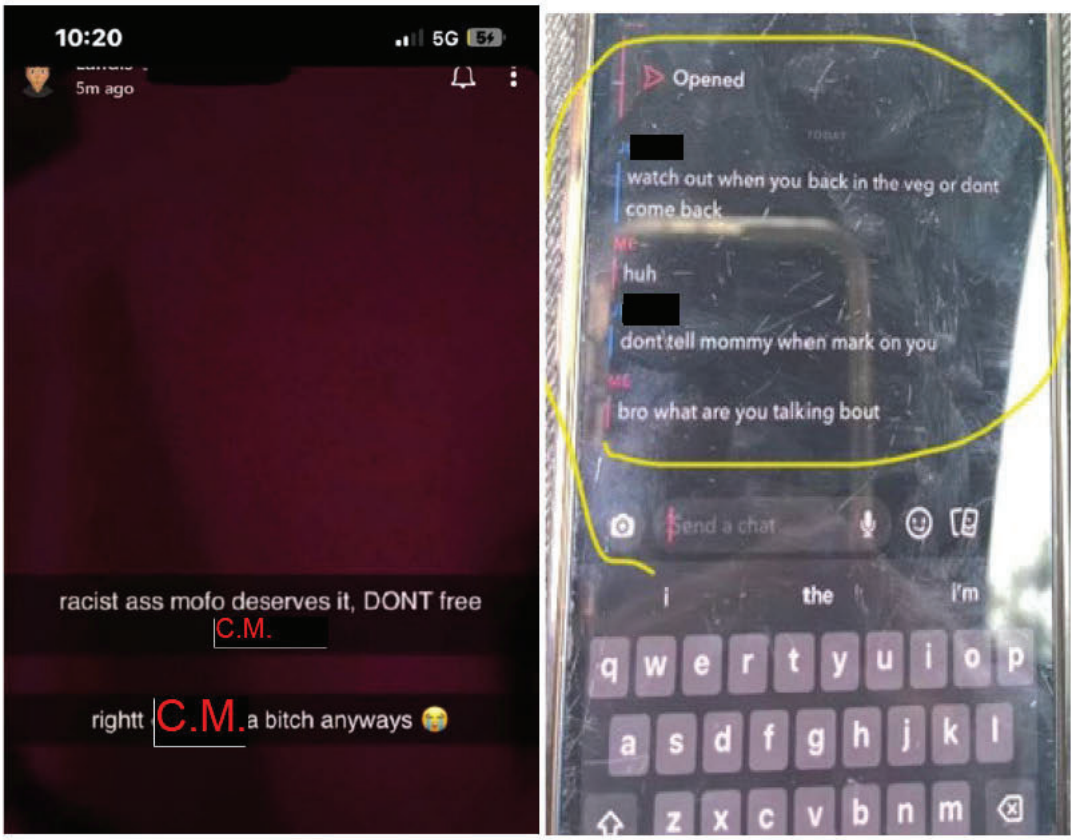
12. In addition to serving my out-of-school suspension, I was suspended from participation in track meets, including the Senior Night track meet, which is the most important of the year. My coach said he was not permitting

me to participate because he heard about the reason for my suspension, although he did allow me to volunteer at the event.

13. Losing the ability to participate in track, even temporarily, was devastating. Track is an important part of my life, and I am hoping to someday qualify for a track scholarship.

14. When I returned from my suspension, R greeted me and again said that he thought it was ridiculous that I had been suspended for my question.

15. After my suspension, and even before my case received widespread media attention, I was mocked, threatened and harassed by schoolmates who wrongly assumed I had made racially targeted remarks in class. These were classmates who heard that I was suspended for racism without knowing what occurred. Some examples from social media, including direct messages to me, are included here:




16. I am also told, but do not know, that people purporting to support me have threatened or harassed R and/or his family over this incident. If this is true, I want people to know that this is unacceptable, and only contributes to the false narrative that my comment in class was a racial incident.

17. I was then harassed and mocked after my mother's mugshot was circulated on social media and in school by my classmates. It is now my understanding that members of my own school's board first circulated that mugshot, along with lies about me and my mother, to retaliate against us for trying to appeal this suspension. The circulation of my mother's mugshot was

traumatizing, as it reopened memories of my mother's incarceration and separation from me when I was a young child.

18. The stress and mental anguish I have undergone since being branded as a racist by my school has been personally devastating, and has caused my parents to enroll me in therapy.

19. The threats and mockery resulting from the suspension and racial branding has caused many absences from school, ultimately leading my parents to unenroll me and place me in a homeschooling program run by a family member.

20. I am planning to apply to colleges. I know that if my school does not remove the mark of racism from my records, it will threaten my chances of successfully enrolling in a program after graduation.

21. I would like to return to Central Davidson next year, but am scared of retaliation from students and staff. Removing the suspension would permit me to safely return to school next year without the stigma of racism hanging over me.

22. If the school is allowed to continue to enforce its vague speech code policy over me, I am concerned that they will use it to retaliate against me, as I know that certain board members have already attempted to retaliate against me and my mother for attempting to appeal my suspension. In light

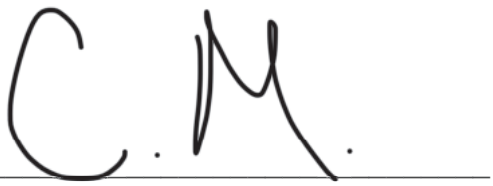
of the harsh punishment I received for what was an innocent question, it is now entirely unclear to me what conduct and speech is permitted at the school.

23. My mother has attempted to get the school to correct the record voluntarily, but the school has declined to do so. Accordingly, I am asking the Court to please order preliminarily clear my record of the suspension during the pendency of this lawsuit to ensure that this mark does not impede my college application process or my ability to safely complete my schooling at Central Davidson, and to prohibit the school from enforcing its vague speech code against me.

Under penalty of perjury, I certify that the foregoing is true and correct, to the best of my knowledge.

Executed on June 4, 2024

Rowan County, North Carolina



C.M.

**UNITED STATES DISTRICT COURT**
**FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

| | |
|---|---|
| C. M., A MINOR, THROUGH HIS PARENTS, LEAH AND CHAD MCGHEE,<br><br>Plaintiff,<br><br>v.<br><br>DAVIDSON COUNTY SCHOOL DISTRICT BOARD OF EDUCATION,<br><br>Defendant. | Case No. 24-CV-380 |

**DECLARATION OF LEAH MCGHEE IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to 28 U.S.C. § 1746, I, Leah McGhee hereby declare as follows:

1. I am a resident of Davidson, North Carolina. I have personal knowledge of the facts herein and, if called to give testimony, would testify as follows:

2. I am the mother of the Plaintiff, "C.M." a 16-year-old former student at Central Davidson High School in Lexington, North Carolina.

3. My son started attending Central Davidson around August of 2023, right after we moved to the Lexington area from Brunswick County. We

moved so that my husband could be closer to work, and so that I could be closer to my mother, who was recently diagnosed with cancer.

4. On April 9, 2024, my husband received a call from our son's school saying that he was being suspended for three days, out of school, because he made a racist comment to a classmate. It was suggested to my husband that our son serve his suspension at an offsite "Alternative Suspension Center" to ensure that the suspension did not result in additional absences on his record.

5. Hearing that our son had made a racist remark in class was shocking and distressing. My husband and I consider it a central tenant of our faith to treat all people with love and respect, and we have done our best to instill those values in our son.

6. Our inclination was to punish our son severely. But after picking him up he explained that he was being punished for asking a question that included the phrase "illegal aliens" without any reference to race and not targeted at anyone in his class. My husband and I became concerned that the school's characterization of this as a racial remark was unjustified, and we scheduled a meeting with Assistant Principal Anderson that day.

7. The suspension documents said that our son was suspended for "making a racially insensitive remark that caused a class disturbance" and

for "using/making [a] racially motivated comment which disrupts class." In the portion requiring a "detailed description" of the incident, it said that our son "made a racially insensitive comment in class today about an alien 'needing a green card.'"[1] The suspension documents made clear that this decision was not appealable.

8. Our meeting with Assistant Principal Anderson lasted for approximately a half hour. Recognizing the severity of the allegations against my son, I decided to turn on my cell phone's recording feature.[2] Both my husband, Chad McGhee, and I were aware that I was recording our meeting with Assistant Principal Anderson.

9. During that meeting, Mr. Anderson expressed that he did not believe my son intentionally said anything racist, but he said that it would have been more "respectful" for my son to phrase his question by referring to "those people" who "need a green card." I do not understand how referring to immigrants as "those people" is somehow an improvement over using the formal term "alien." Ex. 2.a.

10. Because Mr. Anderson said that "R" was offended by my son's comment, I suggested that we all meet together—me and my son, Ms. Hill,

[1] The true and correct copy of the suspension documents are attached hereto as Exhibit 1.
[2] True and correct copies of excerpts of that recording are submitted herewith as Exhibit 2.a-j. The names of minors have been censored to protect their privacy.

Mr. Anderson, and R and his family—to discuss the incident and ensure that everyone's feelings were understood. I understand this to be referred to as a "restorative" disciplinary approach, meant to promote empathy and dialogue. Mr. Anderson declined. Ex. 2.b.

11. Mr. Anderson explained that, at first, R told him that this was not a big deal. Mr. Anderson told me that he responded to R by saying "No sir. Those words do make a big deal out of this—the way they were said and their meaning." Ex. 2.c.

12. I asked how the situation escalated from a minor interaction in which Ms. Hill, R and my son agreed this was not a big deal. Mr. Anderson responded by saying that "Anytime there is something said that's racially insensitive" the school needs to issue harsh punishment. Ex. 2.d.

13. When asked whether he believed my son intentionally said something racist, Mr. Anderson said no, but that my son "needs to be careful with things that he says." He later repeated that he does not think my son is racist. Ex. 2.e.

14. When I expressed concern about permanent adverse effects that the label of "racist" can have, Mr. Anderson said "I want [C.M.] to understand the weight of him saying the phrase that he said today." Ex. 2.f. at 10:39.

15. I again asked whether there was an alternative to a suspension labeled as racism, such as a community outreach program or other options to turn this into a learning opportunity rather than a severe punishment. Mr. Anderson declined, saying that my son "learned a lot today" already because of the meetings with administration and harsh punishment. Ex. 2.g.

16. Mr. Anderson explained that to not punish my son harshly would be "unfair to the 15 other kids who have served that, until now, for saying the N word or anything else under the sun that's racially charged that creates a disruption in the classroom." Ex. 2.h.

17. I am still shocked and disgusted by Mr. Anderson equating my son's question about the phrase "illegal aliens" with a racial slur that has its roots in the era of chattel slavery of African Americans.

18. Paradoxically, when I expressed that perhaps my son should be punished at home if he actually caused a disruption in class, Mr. Anderson told me not to go "overboard" with "extreme" punishment because my son has been such a "great kid" who has "done a great job with everything." But it is hard for me to think of a punishment more "overboard" than out-of-school suspension with a permanent mark of racism on my son's records. Ex. 2.i.

19. Mr. Anderson later seemed to blame Ms. Hill, not my son, for any disruption in the classroom, saying that she has "struggled" with classroom

management as a result of "being so young and being a female." Ex. 2.j. I found it ironic that in a conversation resulting from the school accusing my son of being prejudiced, Mr. Anderson would say something so shockingly misogynistic and prejudiced against Ms. Hill, whom my son and I have always admired.

20. That meeting took place with the door to Mr. Anderson's office open. Toward the end of the meeting, Principal Heather Horton walked in the room and said we should let her know if there's anything she could do. Ex. 2 at 23:20. It is my understanding that she was able to overhear the entire exchange.

21. Throughout the meeting I attempted to remain diplomatic because of the leverage these administrators hold over my son, but I was stunned by Mr. Anderson's insistence on harsh punishment and lack of empathy for the children involved in this exchange.

22. Since that meeting, I made additional efforts to appeal the decision.

23. For example, I spoke with Principal Horton on April 10, asking her to reverse the suspension and remove the label of racism from my son's record. She declined, and told me that she did not believe colleges would have access to the suspension record, and that if my son is asked about any suspensions "he doesn't have to mention it if he doesn't want to." I do not

consider the suggestion that my son lie to colleges to be an appropriate resolution of this issue.

24. I also contacted the Superintendent of the district, Dr. Slate, but was informed that the suspension was not appealable.

25. On April 12, I emailed the Chair of the School Board, Alan Beck, asking if there was a way to remove the label of racism on my son's record. Mr. Beck did not respond. That same day I sent a similar email to Board Member Jarvis. He likewise did not respond. [3]

26. I have subsequently learned from that, rather than respond, Alan Beck and Board Member Ashley Carroll chose to attack my character by sharing copies of a mugshot photo taken of me more than 14 years ago and creating false allegations against me and my son.

27. For example, according to my state senator, Steve Jarvis, both Ashley Carroll and Alan Beck texted him about my arrest. In his text to Senator Jarvis, Chairman Beck falsely stated that my son has been "thrown off several schools" and stated that I have a history of "harassment." Neither of those are true.

[3] True and correct copies of my emails to Chairman Beck and Board Member Jarvis are attached hereto as Exhibit 3.

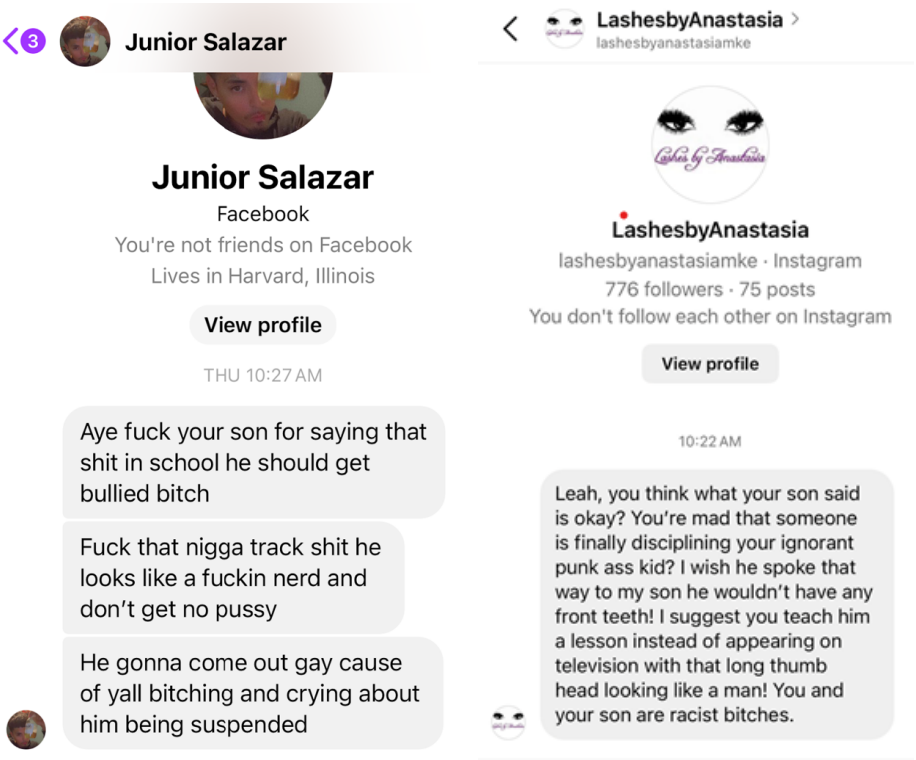
28. Ashley Carroll then messaged with another community leader, who is Jewish, equating my son's question about "illegal aliens" with "antisemitism" and implying that my son deserved physical violence. She then shared my mugshot and described me as "[t]he mother of said child who was kicked out of multiple schools for being a racist"—a brazenly false claim.[4] Similarly, she texted a former law enforcement officer my mugshot, stating "didn't you work hard to get drug dealers off the street?"[5]

29. The mugshot that the board members attempted to slander me with was taken when, during the opioid crisis, I was suffering from addiction and arrested for possessing marijuana and painkillers. Since my release, I have dedicated much of my time to public service, including volunteering with the Kairos Prison Ministry, leading meetings with Celebrate Recovery, and serving on the Brunswick County Substance Use and Addiction Commission as the appointee of Chief Superior Court Judge Jason Disbrow.

30. After this story got media attention, Ashley Carroll also made a post on Facebook indicating that the story about my son was not true. A copy of that post is below.

[4] A copy of those messages is attached hereto as Exhibit 4.
[5] A copy of that message is attached hereto as Exhibit 5.


31. As a result of the actions of the school and the Board, and even before the story got widespread media attention, my son and I became targets of threats and harassment online. Two examples of messages I received are below:



32. The threats against my son were concerning enough that on April 29, we decided to unenroll our son from the school entirely, placing him in a homeschooling program with a family member away from our home.

33. Our son would like to reenroll at the school next year to rejoin his friends and his teammates, but we believe that the risks to him will persist absent his record being cleared. We are therefore unable to adequately plan for the new school year beginning in three months in August so long as the suspension is pending.

34. We have started the process of researching options for our son's educational future. After our story went public, we were contacted by a conservative-leaning college offering to help our son if this suspension jeopardizes other educational opportunities. While we are grateful for those offers, we do not want this stain on our son's record to limit his educational options by perceived political ideology.

35. We plan to follow the normal college admissions process, meaning our son will take his SAT or ACT tests next year, and apply to colleges the fall of his senior year. Absent an injunction, the Suspension Notification could be disseminated to colleges to which our son applies, and any other organizations providing financial aid, scholarships, and loans for our son to access higher education.

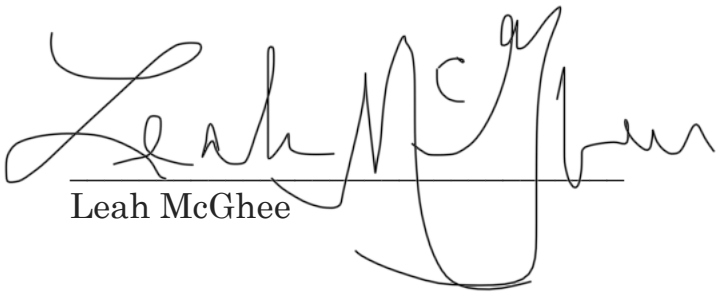
36. As we prepare to help our son navigate the college application process, it is clear that a recorded 3-day suspension for racism will inhibit his ability to safely and comfortably return to Central Davidson and to successfully apply to colleges. We are asking the Court to preliminarily order the school to remove that suspension from his record to ensure that he is not adversely impacted.

37. I reviewed the Complaint and verify that it is true and accurate to the best of my knowledge.

Under penalty of perjury, I certify that the foregoing is true and correct to the best of my knowledge.

Executed on June 4, 2024

Davidson, North Carolina



Leah McGhee

# Exhibit 1

Your future. Our focus.

DAVIDSON COUNTY SCHOOLS

# Alternative to Suspension Center

## 2061 East Holly Grove Road, Pod B

## Parent/Student Contract

Student's Name: C[redacted] M[redacted] Student ID #: [redacted]

Birthdate: [redacted] Age: 16 Grade 10th

School Administrator: E. Henderson School: CDHS

Date: 4-9-24

This student has been suspended from school for 3 day(s).

The date(s) of suspension are from 4-10-24 to 4-12-24.

The student may return to school on 4-15-24.

Reason for suspension: Making a racially insensitive remark that caused a class disturbance

The Student has the opportunity to:

i) Remain at home during days of suspension, (Each day of which will count as a school absence and be coded as an "Out of School Suspension".

Or

2) Make up the days of suspension and stay up-to-date with class assignments by attending the Davidson County Schools Alternative Suspension Center (ASC).

This is a privilege for the students to participate in the ASC program. During this time, the student may not attend any school functions or be on school grounds.

- Transportation will not be provided. Students attending the 8:30-11:30 session must not arrive prior to 8:20, and should leave campus no later than 11:30. Students attending the 12:00-3:00 session must not arrive prior to 11:55 AM, and should leave campus no later than 3:00 PM.
- Students must bring all books and materials needed to complete any given assignments on the first day of class.
- Attendance is expected every day and will be coded as "In School Suspension". Absences from the ASC will a result in a suspension absence for that particular day. Excessive absences may result in dismissal from the ASC program.
- Students will follow all Rules of DCS Code of Conduct and any additional rules ~~that may be~~ induced.

4/10/24 ASC is Full

Parent(s)/Guardians, Initial the option(s) you have chosen for your child:

_____I decline the opportunity to send my child to the ASC.

__✓__I choose to send my child to the ASC for the 8:30-11:30AM session. 4/11 + 4/12 only

_____I choose to send my child to the ASC for the 12:00-3:00 PM session.

I understand that failure to follow the rules and regulations may result in my dismissal from the ASC program.

C[redacted] M[redacted]

Student Signature

4.9.24

Date

I understand that my student's failure to follow the rules and regulations may result in dismissal from the ASC program.

father gave permission over the phone.

Parent Signature Telephone # Date

Your future. Our focus.
DAVIDSON COUNTY SCHOOLS

**SUSPENSION NOTIFICATION**

**Central Davidson High**

Alt. Susp. Ctr. offered

AM Slot Accepted 8:30 - 11:30 am

**Date: April 9, 2024**

**Student Name: C[redacted] M[redacted] Date of Birth: [redacted] Age: 16 years [redacted] Grade: 10**

**Incident ID: _____ EC: Yes____ No✓ 504: Yes____ No✓**

**Student is suspended from school for 1 2 3 4 5 6 7 8 9 10 days (circle one).**

**From:** 4/10/24 **To:** 4/12/24 **Student returns to school on** 4/15/24 (Mon.)

**The student IS or IS NOT (circle one) being recommended to the Superintendent / Board of Education for approval of the following (*circle one if applicable*):**

- **Long Term Suspension until the End of the Current Semester**
- **Long Term Suspension until the End of the Current School Year**
- **Long Term Suspension through 1st Semester of the Next School Year**
- **365 Days**
- **Expulsion**

* Will attend Alt. Susp. Ctr. from 8:30 - 11:30 am on Thursday 4/11 and Friday 4/12

**School Handbook and/or Board of Education policy violated:**

6.11 Using/Making Racially Motivated Comment which disrupts class

**Parents/Guardians:**

**There shall be no right to an appeal of the principal's decision to impose a short term suspension (10 days or less) to the Superintendent or Board of Education.** ***If the recommended suspension is for a 365-day suspension or expulsion and the Davidson County Board of Education schedules a hearing to consider the recommendation, you will be notified in writing of the time and date of the hearing.***

**In the event the principal recommends to the superintendent or Board of Education a long-term suspension, 365-day suspension or expulsion, a student or his/her parent(s)/guardian(s) shall have the rignt to request an appeal hearing before the superintendent's hearing officer on suspensions and expulsions. All initial appeal requests shall be to the supenntendent's hearing officer on suspensions and expulsions. The student or parent/guardian may request a hearing to challenge the proposed consequences within three (3) school days of the principal's recommendation by notifying the superintendent's office of such request either orally or in writing. Failure to request a hearing within three (3) school days shall waive the opportunity for a hearing to challenge the proposed consequences. Upon request and prior to the hearing, the parent/guardian will have the opportunity to review the student's educational records. Should a hearing be requested, the hearing officer shall schedule a hearing date as soon as possible after the request is received. The suspension will be stayed pending the outcome of the appeal; however, if in the opinion of the principal and the superintendent or the superintendent's designee, continued attendance by the student pending the hearing would be disruptive to the school process, the student may be denied the privilege of attending school until the appeal hearing is conducted.**

**The suspension will be stayed pending the outcome of the appeal; however, if in the opinion of the principal and the superintendent of schools or the superintendent's designee, continued attendance by the student pending the hearing would be disruptive to the school process, the student may be denied the privilege of attending school until the hearing is conducted.**

**If you desire to appeal a suspension of more than 10 days and request a hearing, you may do so by calling Tabitha Broadway, Hearing Officer, at 336-249-8182. Hearings follow the hearing procedures in School Board Policy 6.11 4.**

Hearings will be conducted by the Hearing Officer who will make a recommendation to the Superintendent. Hearings will include the opportunity to examine evidence, present evidence, call witnesses to verify the student's version of the incident and question witnesses presented at the hearing.

The student has the right to be present at the hearing and the parent/guardian should also be present, but if the parents cannot be present or if the student or the parents think that the student's interests can be protected better by the presence of another adult, the student may bring another adult to the hearing, including an attorney to represent the student.

In the event a student representative, including an attorney, is to represent the student's interests at the hearing, the parents or legal guardian shall notify the Superintendent's office so that the principal may have the option of also being represented by legal counsel.

Prior to any hearing, you have the right to review any audio or video recordings of the incident, and consistent with federal and state student records laws and regulations, the information supporting the suspension that may be presented as evidence at the hearing, including statements made by witnesses related to the charges, consistent with NCGS 115C-390.8 (h).

Following the hearing, a written decision based on substantial evidence presented at the hearing will be rendered, and the student and parent will be notified of that decision. The Hearing Officer or designee will record the hearing, including any findings or conclusions reached. Parents have the right to have a record made of the hearing and to make their own audio recording of the hearing.

Expungement of disciplinary records shall be in accordance with School Board Policy 6.11.5.C. Removal of Records

Detailed description of incident (including School Handbook rule or Board of Education policy violated).

C[redacted] made a racially insensitive comment, in class today, about an alien "Needing a green card."

_____ (Principal/Assistant Principal)

336-357-2920 (Telephone Number)

Method and the date on which this form was communicated to parents/guardians:

✓ Given to ~~parent~~ student in person Date 4-9-24
✓ Via US mail Date 4-9-24
___ Via certified mail Date
✓ Via efax Date 4-9-24 email - Dad
___ Via fax Date
✓ Other Date 4-9-24 Phone call - Dad - Chad McGhee 704-956-6515

The reasons for my suspension have been explained to me, and I have been given the opportunity to present my views and evidence regarding the incident for which this suspension is being imposed. I understand that during my suspension I am not permitted to be on school grounds and cannot attend or participate in any extra-curricular activities. I also understand that if I fail to abide by this directive, further disciplinary action will result.

C[redacted] M[redacted] 4/9/24
Signature of Student Date

Spoke w father on phone.
Signature of Parent/Guardian Date

# Exhibit 2

(audio file mailed to Court)

# Exhibit 3

From: **Leah McGhee** <[redacted]com>
Date: Fri, Apr 12, 2024 at 3:16 PM
Subject: Suspension from Central High School
To: <alanbeck@davidson.k12.nc.us>

Hello, Mr. Beck, my name is Leah McGhee. I am writing in hopes that you can direct me on how to appeal a disciplinary marking on my son's high school record.

My son C[redacted] is 16 years old. He is a great student, a wonderful son, and most importantly a kind human. C[redacted] has served in leadership for FCA (fellowship of Christian athletes), he is currently involved in school clubs, a member of Central Davidson track and cross country team, and his goal is to receive a college scholarship for pole vaulting.

C[redacted] attends Central Davidson High School in Davidson County.

On Tuesday morning (8/9/2024) during English class, his teacher (Ms. Hill) was teaching ethics, and assigned vocabulary words to the class. As she was reading, she said that one of the words was "Alien" to which C[redacted] responded; "like, space aliens, or illegal aliens without green cards?" A young man in class responded to C[redacted]s questions by saying he was going to fight him. Ms. Hill called the Assistant Principal (Eric Anderson) and he said that he considered C[redacted]s question offensive and disrespectful to his classmates who were Hispanic. C[redacted] said "I didn't make a statement directed towards anyone; I asked a question. I wasn't speaking of Hispanics because everyone from other countries need green cards and the term "illegal alien" is an ACTUAL term that I hear on the news and can find in the dictionary."

Because of his question; our son was disciplined and given three days out of school suspension for "racism".

C[redacted] is devastated and concerned that the racism label on his school record will harm his future goal of receiving a scholarship in the future. We are concerned that he will fall behind in his classes due to being absent for three consecutive days.

We were told that C[redacted] will be counted "absent" on attendance records if he didn't attend an Alternative School in Davidson County during his suspension. We were able to take him on Thursday, but unable to do so Wednesday and today because we could not

provide transportation due to our work schedules, as the alternative school hours are 8:30-11:30 each day.

School policy says that I can not appeal the decision because the punishment is less than 10 days. I am desperately hoping that there is a way to appeal this decision, as I feel that this is unfair treatment of a child asking a question in school classroom.

I am praying that with your help we can find a way to remove this label of "racism" that was unfairly placed on our son's High School record, and excuse his absences as a result of the suspension.

Attached is a copy of the suspension write up from Mr Anderson stating that C[redacted]s question was considered "racially insensitive."

Please know that Dr. Horton has been so kind and helpful to our family as we navigate through this process. We love Central Davidson High School and we are thankful that our child has such a wonderful school to attend; however we feel that this label of racism is extremely excessive.

Thank you for taking the time to read this, please let me know if this is something that I can bring before the school board.

Leah McGhee
[redacted].com
[redacted]

From: **Leah McGhee** <[redacted]com>
Date: Fri, Apr 12, 2024 at 3:14 PM
Subject: Suspension from Central High School
To: <nickjarvis@davidson.k12.nc.us>

Hello, Mr. Jarvis, my name is Leah McGhee. I am writing in hopes that you can direct me on how to appeal a disciplinary marking on my son's high school record.

My son C[redacted] is 16 years old. He is a great student, a wonderful son, and most importantly a kind human. C[redacted] has served in leadership for FCA (fellowship of Christian athletes), he is currently involved in school clubs, a member of Central Davidson track and cross country team, and his goal is to receive a college scholarship for pole vaulting.

C[redacted] attends Central Davidson High School in Davidson County.

On Tuesday morning (8/9/2024) during English class, his teacher (Ms. Hill) was teaching ethics, and assigned vocabulary words to the class. As she was reading, she said that one of the words was "Alien" to which C[redacted] responded; "like, space aliens, or illegal aliens without green cards?" A young man in class responded to C[redacted]s questions by saying he was going to fight him. Ms. Hill called the Assistant Principal (Eric Anderson) and he said that he considered C[redacted]s question offensive and disrespectful to his classmates who were Hispanic. C[redacted] said "I didn't make a statement directed towards anyone; I asked a question. I wasn't speaking of Hispanics because everyone from other countries need green cards and the term "illegal alien" is an ACTUAL term that I hear on the news and can find in the dictionary."

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Thank you for taking the time to read this, please let me know if this is something that I can bring before the school board.

Leah McGhee
[redacted]com
[redacted]

# Exhibit 4

AH

Ashley >

Is this her record??

But the situation at hand does not indicate he was being racist. That's the problem.

Again- we know the details now

And he is

The piece of paper doesn't indicate the entire situation

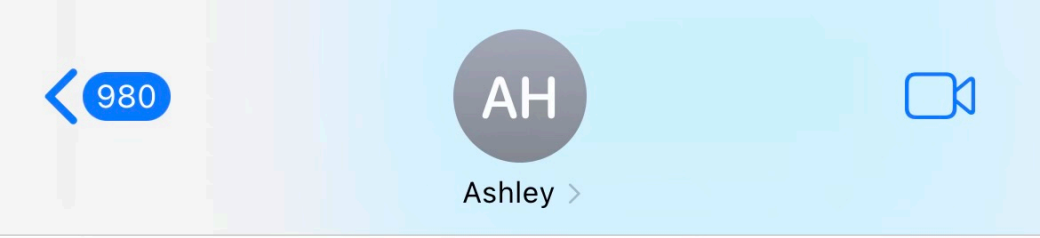
I asked you to trust me on this one

Are you telling me that this is Leah McGee?? Her record?

What about the Hispanic kid threatening to beat his ass??

Would you beat a kids ass who was making antisemitism comments

It wasn't one statement. It went on and on and on




Would you beat a kids ass who was making antisemitism comments

It wasn't one statement. It went on and on and on

I'm not following here.

The kids are mad

What I think you're saying is that the kid is a problem

The mom is not credible is what I'm reading into here

He is a big problem.

I just pulled her mug shot

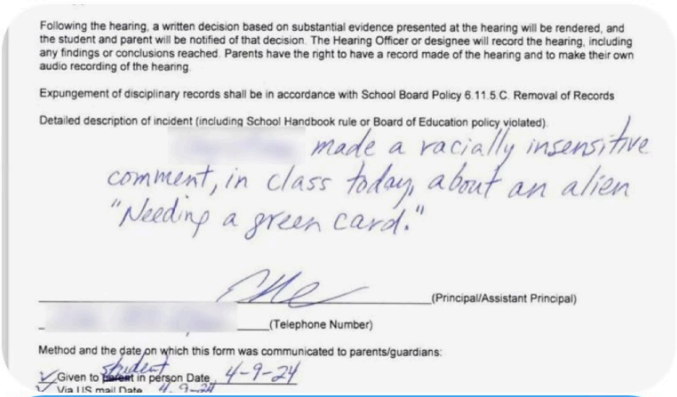
It's a 3 day suspension

It's not the end of the world

AH

Ashley >

Thu, Apr 18, 12:41 PM



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Detailed description of incident (including School Handbook rule or Board of Education policy violated).

[redacted] made a racially insensitive comment, in class today, about an alien "Needing a green card."

(Principal/Assistant Principal)

[redacted] (Telephone Number)

Method and the date on which this form was communicated to parents/guardians:

Given to student in person Date 4-9-24

Via US mail Date 4-9-24

Looks like the family backs up the claim.

There's more beyond that. That is the tip of the iceberg

Furthermore, there is not one kid in that class defending him. Not one.

Fri, Apr 19, 6:33 PM

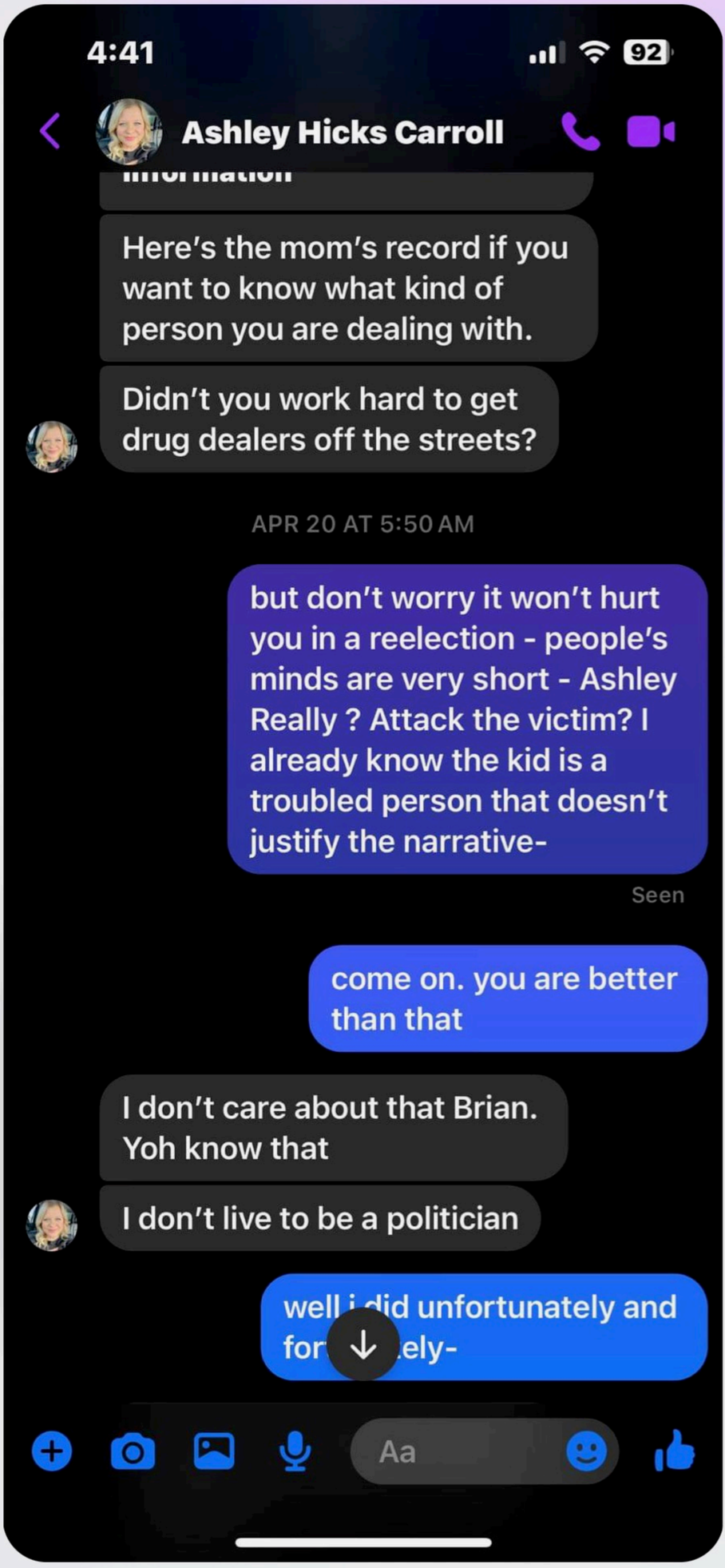
**NC DAC Offender Public Information**

doc.state.nc.us

The mother of said child who was kicked out of multiple schools for being a racist

Is this her record??

# Exhibit 5


4:41
92
Ashley Hicks Carroll
Here's the mom's record if you want to know what kind of person you are dealing with.
Didn't you work hard to get drug dealers off the streets?
APR 20 AT 5:50 AM
but don't worry it won't hurt you in a reelection - people's minds are very short - Ashley Really ? Attack the victim? I already know the kid is a troubled person that doesn't justify the narrative-
Seen
come on. you are better than that
I don't care about that Brian. Yoh know that
I don't live to be a politician
Aa