

IN THE COURT OF COMMON PLEAS
OF LANCASTER COUNTY – CIVIL DIVISION

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PROTHONOTARY'S OFFICE
LANCASTER, PA

J.S., a minor, by his parents, M.S.
and D.S.

Appellant,

v.

MANHEIM TOWNSHIP SCHOOL DISTRICT,

Appellee.

No.

18-04246

NOTICE OF APPEAL
FROM LOCAL AGENCY DETERMINATION

This is an appeal pursuant to 42 Pa.C.S.A. § 933(a)(2) (judicial review of local agency action), challenging the expulsion of J.S. from the Manheim Township High School (MTHS) by the Manheim Township Board of Education ("Board") dated May 9, 2018, but issued on May 11, 2018.¹ For all the reasons that follow, J.S. is seeking reversal of the Board's adjudication and requests that he be reinstated to MTHS by the beginning of the 2018-19 school year.

1. J.S. is a 17-year old minor student who resides with his parents M.S. within the confines of the Manheim Township School District in Lancaster, PA. Until his expulsion, J.S. was an 11th grade student at MTHS.

¹ A redacted copy of the decision and electronic transmission is attached as Exhibit "A" and incorporated by reference herein. Because Appellant is a minor he will be referred to herein as J.S. The statement of facts includes statements about two other students at Manheim Township High School who will be referenced as "Student-1" and "Student-2," respectively.

6/6/18
\$178.250
(1) Attorney
(3) Plaintiff
CL # 4732
Rec. # 85254

2. The Manheim Township School District (“the District”) maintains its administrative offices at 450A Candlewyck Road, P.O. Box 5134, Lancaster PA 17606.

3. On May 3, 2018 the District issued a formal Notice of Charges alleging that J.S. had violated the Board’s policy against Terroristic Threats (Board Policy No. 218.2) and Bullying/Cyber Bullying (Board Policy No. 249).

4. The charges emanated from an incident during the evening of April 10, 2018 when J.S. and a friend, Student-1, privately sent a series of Snapchat messages to one another, some of which contained “memes” that used photographic images of Student-2. J.S. and Student-1 had been joking for a couple of weeks that Student-2 looked like a school shooter because of his appearance, clothes, and his emulation of heavy metal rock and/or highly alternative music stars.

5. Student-2 was not included in the Snapchat exchange between J.S. and Student-1 and had no knowledge of it.

6. A meme is a photo or video image to which attaches a caption or text to create humor. By way of example, the Court can take judicial notice that the famous photos of President Obama and Vice-President Biden taken during the course of their public duties, but which appeared on the internet with funny made-up quotations about their “bro-mance,” are memes. The photos are real, but fake quotations are super-imposed on them to create farcical political humor. The audience understands that the quotes are not real and are intended to be funny.

7. During the evening of April 10, 2018, J.S. sent a meme to Student-1 in a private Snapchat message using a photo of Student-2, who is depicted with long hair under a spotlight of sorts, wearing a “Cannibals” T-shirt and appearing to be singing out

loud to himself. A caption is superimposed on the image that says "I'm shooting up the school this week. I can't take it anymore I'm DONE!" At the bottom of the meme is an artificially doctored photo of J.S. wearing extremely large "Elton John" glasses which appear to be colored with crayons.

8. In a previous message, J.S. sent a photo of Student-2 holding a gun with the same cartoonish figure of himself wearing the large red glasses superimposed on the bottom. Contrary to the Board's Finding of Fact No. 21, this photo contains no text.

9. The memes described in Paragraphs 7 and 8 were sent in the context of J.S. and Student-1's ongoing jokes in which they were pretending in a humorous way that Student-2 was a school shooter. J.S. believed that Student-1 understood the jokes and appreciated the humor. J.S. created and sent the memes to make Student-1 laugh.

10. In a separate private Snapchat message, J.S. sent another video meme to Student-1 depicting Student-2 singing into a microphone "IM READY [Student-1] AND MANY MORE WILL PERISH IN THIS STORM. I WILL TRY TO TAKE [Student-1] ALIVE AND TIE HIM UP AND EAT HIM."

11. J.S. believed that Student-1 knew this meme was a joke, as it was based on a humorous reference to the Cannibals' song about eating boys. He also knew and/or believed that Student-1 would take it as a joke and that it was so silly that no one could possibly believe that it was not a joke.

12. J.S. never expected that anyone other than Student-1 would ever see any of his messages or memes or that any of them would ever be made public. Furthermore, he did not intend any of his messages or memes to be construed by Student-1 or anyone else as a threat of any kind.

13. Without notice to J.S. and without his consent, Student-1 published the meme described in Paragraph 7 to his own public Snapchat Timeline so that it could be viewed by anyone on the internet whom Student-1 had accepted as a Snapchat “friend.”

14. Contrary to the Board’s Finding of Fact No. 10, Student-1 did not post or otherwise publish any of the other messages or memes he sent or received from J.S., nor did he report any of those memes or messages to any school official, law enforcement officer, or any other adult.

15. Finding of Fact No. 25, in which the Board concluded that Student-1 posted the meme described in Paragraph 7 to alert the District of a potential school shooting is entirely without record support. The circumstances strongly suggest that Student-1 posted the meme described in Paragraph 7 to his own Time Line because like J.S., he thought it was funny.

16. As soon as J.S. saw the publication of the meme described in Paragraph 7, he asked Student-1 to take it down. Student-1 did so about five minutes later, stating “Probable false alarm, just something Jaden sent me.”

17. During the five minutes the meme was posted to Student-1's Snapchat Timeline, a number of students from the District saw it. One of those students showed it to his parent, a teacher at MTHS, who reported it to the MTHS Principal.

18. The MTHS Principal contacted the District’s Superintendent and then called the police, claiming that the meme temporarily posted to Student-1's Snapchat Time Line was a terroristic threat.

19. The police knocked on the door of J.S.'s home during the early hours of the morning of April 11, 2018. During the subsequent interview at the police station, J.S. was advised not to attend school the following day.

20. After conferring with the Police Department and concluding that there was no threat to the health or safety of the school community, school was held as usual on April 11, 2018.

21. On April 11, 2018 and again on April 12, 2018, MTHS administration interviewed J.S. in the presence of his parents. It was at this time that school staff first learned about the video meme described in Paragraph 8 referring to "tying up and eating Student-1," which had not been posted publicly. J.S. explained that he intended his private messages to Student-1 to be funny and to remain private.

22. Based on its investigation, the District understood that J.S. was not "threatening" to shoot up the school. However, it issued a statement to the press and sent an E-mail to MTHS parents stating that there had been a threat, but assuring them that there was no reason for alarm.

23. On April 12, 2018, the District issued a Notice of Out-of School Suspension to J.S.'s Parents, barring J.S. from attending school for three days for making "terroristic threats."

24. Later on April 12, 2018, the District prepared a second Notice of Out-of-School Suspension which removed J.S. for an additional seven days for violating the Board's policies on Terroristic Threats/Acts as well as its policy against Bullying/Cyberbullying. This notice was mailed to J.S.'s parents on April 16, 2018.

25. During the next several days, District administration informed J.S.'s father that he had only two options: 1) sign a waiver of his son's procedural rights and accept expulsion or 2) request a hearing before the school board which would also result in expulsion because the Board always sides with the District's recommendation. District administrators falsely told J.S.'s father that only if he accepted the waiver would the District have any obligation to provide J.S. with educational services after the expulsion.

26. District administrators attempted to coerce J.S.'s parents into waiving their son's procedural rights without providing the waiver or a formal statement of the charges. During a conversation on April 19, 2018, District administrator told J.S.'s father that he would receive the formal statement of charges only after he signed the waiver of his son's procedural rights.

27. MTHS administration repeatedly emphasized to J.S.'s parents that exercising their son's procedural rights would be futile, because the Board would definitely accept the administration's recommendation for expulsion regardless what was presented at the expulsion hearing.

28. The District did not provide a copy of the waiver or the statement of charges until April 19, 2018, after J.S.'s parents notified the District that they had obtained counsel.

29. A hearing was held on May 3, 2018 before a three-member hearing panel.

30. Prior to the hearing, through counsel, J.S.'s parents attempted to secure the presence of Student-1 at the hearing, but the District refused to compel his attendance, stating, incorrectly, that it had no power to do so. Moreover, the District

never turned over the witness statement(s) it took from Student-1 or any other witness although it was legally required to do so.

31. During the hearing the District repeatedly attempted to introduce hearsay evidence, over objection, to prove that Student-1 had been “terrorized” by J.S.’s messages and memes.

32. On May 11, 2018, the Board’s issued its Adjudication upholding the administration’s recommendation for expulsion. Pursuant to that order, J.S. was expelled from school for the duration of 11th Grade as well as his entire senior year.

STATEMENT OF CLAIMS

I. THE BOARD’S CONCLUSION THAT JADEN VIOLATED THE BOARD’S POLICY ON TERRORISTIC THREATS/ACTS IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

33. The allegations set forth in Paragraphs 1-32 are re-alleged and incorporated by reference herein.

34. Board Policy No. 218.2 defines “terroristic threat” as “a threat to commit violence communicated with the intent to terrorize another; to cause evacuation of a building; or to cause serious public inconvenience, in reckless disregard of the risk of causing such terror or inconvenience.”

35. J.S. did not intend that any of the private Snapchat messages sent in jest to Student-1 from the privacy of his own bedroom would ever be made public.

36. J.S. sent his Snapchat memes to Student-1 with no intent to threaten him or any other person, nor could he reasonably have foreseen that anyone would believe that his memes were real, and not a joke, given their cartoonish quality, their ridiculous text drawn from the lyrics of a song, and the overall context of the ongoing multi-week

conversation between J.S. and Student-1 in which they were pretending between themselves and for their own amusement that Student-2 was a school shooter.

37. It was not reasonably foreseeable to J.S. that Student-1 would publicly post any of their private messages without his knowledge and/or consent.

38. When J.S. learned that one of his private messages had been made public, he took immediate action to secure its removal.

39. J.S. did not send the meme described in Paragraph 7 or any other message to Student-1 with the intent to threaten violence of any kind, nor did he intend to terrorize anyone else, and the District knew or should have known from its own investigation that he had no such intent.

40. Because J.S. did not intend and could not foresee that Student-1 would unilaterally post any of his private messages to a public forum, he did not act in reckless disregard of any “terror or inconvenience” which might be plausibly caused by such publication.

41. While it may have been inconvenient for the District to investigate the memes and messages passed back and forth by J.S. and Student-1 once they became aware of them, this did not cause a “serious public inconvenience” under the Board’s Policy and/or as defined by the Pennsylvania Crimes Code, upon which that policy is based, and according to which the Board construes the meaning of its policy.

42. Much of the District’s claimed inconvenience was self-created by exaggerating the import of the messages and memes and then overreacting to them even after it knew or should have known from the circumstances that there was no threat, and publishing to the community that a threat had been made.

43. Not only was it clear from the District's investigation that J.S. never intended to make a threat, but it also knew that he had no intention of carrying out a threat or the means to do so. Among other things, the District was aware that J.S. is a good student with no serious disciplinary history, that he comes from a loving and supportive family, has no history of mental health issues, and had no access to a gun. J.S. plans to go into the military and then to college. He hopes to pursue a career in federal law enforcement.

44. The Board's conclusion in Findings of Fact No. 29 that J.S. violated the Board's policy on terroristic threats is not supported by substantial evidence. None of his messages or memes constitutes a terroristic threat as a matter of law and those findings must be reversed.

45. The expulsion has had a devastating impact on J.S. In addition to his exclusion from the public high school, no other public or private school will accept him because of the expulsion. The only alternative offered to him so far by the District is an alternative school for children with serious behavior problems and drug and alcohol abuse. This type of environment is entirely inappropriate for J.S.

II. THE BOARD'S CONCLUSION THAT JADEN VIOLATED THE BOARD'S POLICY ON BULLYING/CYBERBULLYING IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE AND VIOLATES HIS CONSTITUTIONAL RIGHTS

46. The allegations set forth in Paragraphs 1- 45 are re-alleged and incorporated by reference herein.

47. Board Policy No. 249 defines “bullying” as “an intentional electronic, written, verbal or physical act or series of acts 1) directed at another student or students; 2) which occurs in a school setting; 3) that is severe, persistent or pervasive; and 4) that has the effect of doing any of the following: a) substantially interfering with a student’s education; b) creating a threatening or intimidating environment; or c) substantially disrupting or creating the reasonable apprehension of the orderly operation of the school.

48. The Board’s policy defines “school setting” as “in the school, on school grounds, in school vehicles, at a designated bus stop or at any activity sponsored, supervised or sanctioned by the school (regardless of location) or conduct that is engaged in through the use of school-owned communication devices, networks or equipment.

49. The events described herein and upon which the Board premised its expulsion decision did not occur in the “school setting” and therefore do not satisfy the definition of “bullying or cyber-bullying” under the specific terms of the Board’s own policy.

50. J.S.’s private Snapchat messages to Student-1 were not intended to bully him or any other student, nor did J.S. intend to interfere with Student-1’s education or the education of any other student.

51. The District provided no admissible, competent, or relevant evidence that J.S. directed any conduct toward Student-1 to substantially interfere with his education or to intimidate or threaten him or that anything J.S. did had any such effect.

52. While the meme posted to Student-1’s public Snapchat Time Line was unkind to Student-2, J.S. had no intent to bully or intimidate him. The only reason Student-2 eventually learned about the meme at all is because Student-1, not J.S., posted

it to a public internet forum. This was something J.S. could not reasonably have foreseen, and which he took steps to rectify as soon as he became aware of it.

53. The Board's Finding of Fact No. 30, in which it concludes that J.S. engaged in cyberbullying because his statements "created a threatening environment which the High School administration was compelled to investigate" is erroneous as a matter of law and must be reversed.

54. The Board specifically states that its policy shall not be interpreted as infringing upon a student's right to engage in free speech.

55. While at home during non-school hours and using personal devices not owned or controlled by the District, J.S. has the same First Amendment free speech rights as any adult.

56. J.S.'s private Snapchat messages to Student-1 were not threatening and constitute protected free speech under the United States Constitution. As such, they cannot be used as a basis for his expulsion.

57. The Board's conclusion in Finding of Fact No. 28 that J.S.'s messages and memes constitute on campus speech is erroneous as a matter of law and must be reversed.

58. The Board's conclusion that it was inevitable that J.S.'s memes would be published publicly and spread to the school community is not supported by logic or the law and must be reversed.

59. The evidence is undisputed that J.S. intended for his messages and memes to be private communications, and that he did not publish them. They were not threats and he did not perceive them as such and therefore did not reasonably understand or foresee their publication.

60. The Board's conclusion that J.S. violated Policy No. 249 constitutes an error of law and is not supported by substantial evidence and must be reversed.

Additionally it violates J.S.'s Constitutional rights.

**III. THE DISTRICT'S AND BOARD'S PRE-DETERMINATION OF
EXPULSION AND REFUSAL TO COMPEL THE ATTENDANCE
OF A CRITICAL WITNESS VIOLATES J.S.'S RIGHT TO
PROCEDURAL DUE PROCESS**

61. The allegations set forth in Paragraphs 1- 60 are re-alleged and incorporated by reference herein.

62. J.S. has a property interest in his public education which is protected by the due process clause of the Fourteenth Amendment.

63. Beginning on April 11, 2018, the District determined that J.S. would be expelled and initiated a process designed to effect that result using coercion and false pretenses.

64. The record contains multiple admissions by District employees indicating that the Board always expels students at the recommendation of administration.

65. J.S. had a right to be heard under the Fourteenth Amendment due process clause in a proceeding in which the decision maker would and could evaluate the evidence and take reasonable steps to ensure that a mistaken deprivation of J.S.'s right to public education would not be infringed.

66. The District's and Board's pre-determination of the outcome of these proceedings and reduces the expulsion hearing to mere window dressing rather than a meaningful opportunity to be heard.

IV. THE DISTRICT'S REFUSAL TO PRODUCE STUDENT-1 AS A WITNESS VIOLATED J.S.'S RIGHTS UNDER PENNSYLVANIA LAW AND THE DUE PROCESS CLAUSE

67. The allegations set forth in Paragraphs 1- 66 are re-alleged and incorporated by reference herein.

68. The District's refusal to compel the attendance of Student-1 at J.S.'s hearing and its failure to provide him with the witness statements it obtained from him violated the requirements of Section 12.8 of the Pennsylvania Code, which guarantees that students in expulsion hearings receive due process of law.

69. The impact of the District's failure to comply with its procedural responsibilities was compounded by its repeated attempts to introduce uncorroborated hearsay testimony regarding Student-1's statements and state of mind during J.S.'s hearing.

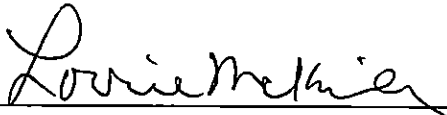
70. The District's and the Board's conduct denied J.S. a hearing that complied with state law and/or his Constitutional right to due process.

PRAYER FOR RELIEF

WHEREFORE, J.S. and his parents respectfully pray for the following relief:

1. That the Court hold additional hearings to complete the record, reverse the District's expulsion order, and allow J.S. to return to school in time for the start of the 2018-19 school year;

2. That the Court reimburse J.S.'s parents for any expenses they have incurred or will incur to provide J.S. with replacement educational services from April 11, 2018 through the conclusion of the 2018-19 school year, including summer services, if needed to enable J.S. to complete 11th Grade.
3. All other relief the Court may conclude is reasonable and proper, including but not limited to attorneys fees and costs J.S. and his parents have incurred or will incur in the prosecution of this Appeal.


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Attorney No. 49670
Counsel for Appellant

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238 West Miner Street
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DATE: June 5, 2018

EXHIBIT "A"



Manheim Township School District

P.O. Box 5134, Lancaster, PA 17606-5134
Phone: 717-569-8231
Fax: 717-569-3729
www.mtwp.net

May 11, 2018

via Certified Mail

Mr. & Mrs. M. S. [REDACTED]

RE: J. S. [REDACTED]

Dear Mr. & Mrs. S. [REDACTED]

A formal hearing before the Judiciary Committee of the Board of School Directors was held on Thursday, May 3, 2018, to address charges brought against J. S. [REDACTED].

Based on its careful review of all of the testimony and evidence admitted into the record during the hearing, the Committee concluded that J. S. [REDACTED] violated Board Policy #218.2, Terroristic Threats/Acts and #249, Bullying/Cyberbullying.

It is, therefore, the decision of the Committee that J. S. [REDACTED] be permanently expelled from Manheim Township School District. J. S. [REDACTED] would be permanently placed on the no trespass list and would not be allowed to attend any school sponsored events, unless otherwise directed. Violation of this order may result in prosecution for criminal trespass. The contents of this report shall become part of the school records and will be placed in J. S. [REDACTED] student record.

The Judiciary Committee's recommendation was ratified by the Board of School Directors at its regularly scheduled meeting on Thursday, May 10, 2018. A copy of the Board's adjudication, which contains findings of fact, conclusions of law, discussion and its decision, is attached. Pursuant to the Local Agency Law, you may appeal this decision to the Court of Common Pleas of Lancaster County within thirty (30) days of the date of this notice if you disagree with the decision of the Board.

As you are aware, and as established in the Board's adjudication, your son J. S. [REDACTED] is eligible to receive an alternative education program at River Rock Academy (Lancaster Campus) at School District expense for the balance of the current school year and the 2018-19 school year. I am also aware that you contacted Dr. Dale Reimann and inquired as to whether the School District would consider altering the assignment to a charter cyber school. If you wish to have the School District consider your request, please put the entirety of your request in writing, and provide it to Dr. Reimann. Dr. Reimann, Mr. Frankhouser and I will consider your request and response as soon as possible.

Sincerely,

Robin L. Felty, Ed.D.
Superintendent

Cc: Ms. Nancy Ryan, Esq. (via electronic mail)
Mr. Robert M. Frankhouser, Jr., Esq. (via electronic mail)
Dr. Dale Reimann - Assistant Superintendent
Mr. David Rilatt - High School Principal
Child Accounting

**MANHEIM TOWNSHIP SCHOOL DISTRICT
BOARD OF SCHOOL DIRECTORS**

In re: Student Discipline Hearing
J. M. S.

ADJUDICATION

On May 3, 2018, a student expulsion hearing was held before a duly authorized committee of the Manheim Township School District Board of School Directors beginning at approximately 5:35 p.m. at the Manheim Township School District Administrative Offices located in 450A Candlewyck Road, Lancaster, PA 17606. The hearing was conducted pursuant to the authority of Section 1318 of the Public School Code of 1949, as amended, 24 P.S. § 13-1318, the Local Agency Law, 2 Pa. C.S.A. § 552 et seq., Chapter 12 of the State Board of Education regulations, 22 Pa. Code § 12.1 et seq., and the applicable policies of the Manheim Township School District.

The student, J. S., attended the hearing with his parents, D. S. and M. S. The student was represented by Nancy Ryan, Esquire of McKinley & Ryan, LLC. Manheim Township High School ("High School") teacher and track coach, James Ertzgard, testified on the student's behalf.

The following members of the School Board were present at the hearing: Mark Anderson, Stephen Grosh, Esquire and William Murry. The School Board was represented by Jeffrey D. Litts, Esquire of the Kegel Kelin Almy & Lord LLP, who conducted the hearing.

The Administration was represented by Robert M. Frankhouser, Esquire of the Solicitor's Office. The Assistant Superintendent of Schools, Dr. Dale Reimann; High School Principal, David Rilatt; High School Assistant Principal, John Loose; High School Dean of Students, Matt Johns; and High School teacher, William Sassaman, were also present at the hearing for the High School administration.

Due and proper notice of the charges and the hearing was provided to student's parents via letter, dated April 20, 2018. *See School Exhibit 10*. A true and correct copy of the aforementioned notice was entered into evidence as compiled by the hearing examiner without objection. The proceedings were transcribed by court reporter, Allen S. Blank, to comply with the State Board of Education regulations.

FINDINGS OF FACT

1. J. S. (hereinafter "Jaden"), is a 17-year-old eleventh grade student currently attending Manheim Township High School (hereinafter "High School") in the Manheim Township School District. *See School Exhibit 12*.
2. J. resides with his parents at 1282 Winchester Drive, Lancaster, PA 17601. *Id.*

3. The School Board's Policy 218.2, entitled "Terroristic Threats/Act," prohibits students from communicating terroristic threats to any student, employee, School Board member, community member or school building. The term "terroristic threat" is defined as "a threat to commit violence communicated with the intent to terrorize another; to cause evacuation of a building; or to cause serious public inconvenience, in reckless disregard of the risk of causing such terror or inconvenience." *See School Exhibit 4.*
4. School Policy 218.2 expressly authorizes that a student may be recommended for expulsion from school for committing a terroristic threat or act. *Id.*
5. The School Board's Policy 249 entitled "Bullying/Cyberbullying," prohibits, in part, students from directing electronic communications at another student within the school setting that creates a "threatening environment" or substantially disrupts or creates reasonable apprehension of disruption of the orderly operation of a school. *See School Exhibit 5.*
6. School Policy 249 likewise authorizes that a student may be recommended for expulsion from school for engaging in cyberbullying. *Id.*
7. J[REDACTED] was charged with violating school rules on April 10, 2018 for making terroristic threats and engaging in cyberbullying against another High School student through social media.
8. On or about the evening of April 10, 2018, J[REDACTED] privately sent three Snapchat images to another High School student:
 - a. The first Snapchat image that J[REDACTED] sent pictured another High School student holding a rifle over his shoulder and immediately below that an image of J[REDACTED] wearing large red sunglasses. *See School Exhibit 2.*
 - b. The second Snapchat image that J[REDACTED] sent contained a different picture of the same High School student and similar image of himself with the overlaid caption, "I'm shooting up the school this week. I can't take it anymore I'm DONE!" *See School Exhibit 1.*
 - c. The final Snapchat that J[REDACTED] sent was a video depicting the same High School student with the overlaid caption, "I'M READY, [REDACTED] AND MANY MORE WILL PERISH IN THIS STORM. I WILL TRY TO TAKE [REDACTED] ALIVE AND TIE HIM UP AND EAT HIM." *See School Exhibit 3.*
9. J[REDACTED] used photographs of another High School student in these Snapchat posts to make it appear that person was threatening the school shooting. This High School student was not aware that his image was being used by J[REDACTED] in his Snapchat postings.

10. The High School student who received the aforementioned Snapchat images from J■■■■ reposted them that same evening as a Snapchat story, which was accessible to other High School students.
11. The High School administration's investigation of this incident determined between twenty (20) and forty (40) High School students viewed J■■■■'s Snapchat posts while they were publicly accessible.
12. The High School student who reposted J■■■■'s Snapchat images later posted the image, *"Probable false alarm, Just something J■■■■ sent me."* See School Exhibit 6.
13. A High School student who viewed J■■■■'s Snapchat posting through the Snapchat story showed them to his father, Mr. S■■■■■, who teaches at the High School.
14. Mr. S■■■■■ viewed J■■■■'s Snapchat statements on his son's phone between 9:30 and 10:00 p.m. on April 10, 2018.
15. Mr. S■■■■■ found J■■■■'s Snapchat statements to be "alarming," he got as much information as he could from his son about these Snapchat posts and texted the High School Principal, Mr. Rilatt, around 10:00 to 10:30 p.m. that evening about the situation.
16. After Mr. Rilatt was contacted by Mr. S■■■■■ regarding J■■■■'s Snapchat statements, he notified the Assistant Superintendent and called the Manheim Township Police Department dispatcher at 11:19 p.m. on April 10, 2018.
17. A Manheim Township police officer went to J■■■■'s house that evening, Mr. S■■■■■ woke J■■■■ and, when shown the Snapchat messages by the officer, he admitted to creating and sending them.
18. At approximately 2:00 a.m. on April 11, 2018, Mr. Rilatt spoke to a Manheim Township police officer who advised that the matter was investigated and classes could take place at the High School.
19. On April 11, 2018, J■■■■ stayed home from school at the request of the High School administration.
20. On April 11, 2018, the High School administration reported that students and staff members were "abuzz" about the Snapchat postings.
21. On April 12, 2018, the High School Dean of Students, Mr. Johns, interviewed J■■■■ about his Snapchat posts with his parents present. J■■■■ admitted to Mr. Johns that he created the Snapchat images which depicted another High School student with a gun and the image captioned, *"I'm shooting up the school this week. I can't take it anymore I'm DONE!"* See School Exhibit 7.

22. Mr. Johns subsequently learned after his April 12th interview of J. [REDACTED] that he also posted the Snapchat video with the caption, "I'M READY, [REDACTED] AND MANY MORE WILL PERISH IN THIS STORM. I WILL TRY TO TAKE [REDACTED] ALIVE AND TIE HIM UP AND EAT HIM."
23. The High School administration ultimately decided to suspend J. [REDACTED] from school for ten (10) days for all three of the Snapchat postings and recommended J. [REDACTED]'s expulsion from school. *See School Exhibits 8 and 9.*
24. J. [REDACTED]'s Snapchat postings occurred less than two (2) months after the school shooting in Parkland, Florida, which resulted in seventeen fatalities.
25. In the aftermath of the fatal Parkland shooting, the High School administration advised students if you "see something, hear something, say something" to encourage the timely reporting of threats. The School Board finds the posting of J. [REDACTED]'s threats by another High School student was consistent with the High School's request to let people know of threatening behavior.
26. The School Board finds testimony of Mr. [REDACTED], Mr. Johns, Mr. Loose and Mr. Rilatt to be credible.
27. The School Board likewise finds credible Mr. [REDACTED]'s testimony regarding J. [REDACTED]'s admissions to the police that he created the Snapchat images about shooting up the High School.
28. The School Board finds J. [REDACTED]'s Snapchat postings to constitute on-campus speech, since he used an photograph of another High School student (other than J. [REDACTED]) to convey his message; he referenced the High School as the target of the shooting; he identified a High School student by name as the specific target of the threat; and he directly sent these postings to a High School student.
29. The School Board finds J. [REDACTED]'s Snapchat statements about "shooting up the school this week" and that he was "READY, [REDACTED] AND MANY MORE WILL PERISH IN THIS STORM." to constitute terroristic threats.
30. The School Board finds J. [REDACTED]'s Snapchat statements to constitute cyberbullying since they created a threatening environment which the High School administration was compelled to investigate to ensure the safety of High School students and staff.
31. J. [REDACTED] is an average academic student, participates on the High School track team, and has had only two (2) minor disciplinary infractions this school year. *See School Exhibit 12.*
32. J. [REDACTED]'s mother and father both shared with the School Board Committee that their son is not a trouble maker and requested that he be permitted to return to school after serving a suspension.

33. The High School administration recommended J■■■■'s permanent expulsion from school, and offered the opportunity of alternative education services through the end of the 2018-2019 school year and the possibility of receiving a high diploma from the School District. *See School Exhibit 11.*
34. The School Board Committee and the full School Board believes that an expulsion is warranted here, and accepts the High School Administration's discipline recommendation as set forth below.
35. The School Board Committee and the full School Board find the disciplinary sanction imposed herein would be warranted if J■■■■ would have been charged with one offense, either terroristic threats or cyberbullying.

DISCUSSION

A. SUBPOENA OF WITNESSES

J■■■■'s attorney argued that her client was denied due process because the School Board Committee did not issue a subpoena to require the attendance of a High School student to testify at the expulsion hearing. As explained at the hearing, the hearing officer was not aware of any statutory or regulatory authority that expressly grants the School Board the power to issue subpoenas to compel people to testify at a student expulsion hearing. J■■■■, his parents and attorney had the opportunity to contact individuals and request that they testify at the expulsion hearing. In the absence of any legal authority that grants School Board's subpoena power in student expulsion hearings, the request for the issuance of a subpoena was an improper one.

B. JURISDICTION TO IMPOSE DISCIPLINE

J■■■■'s attorney argued the School Board was without jurisdiction to impose discipline in this matter because the underlying conduct occurred outside of school. That argument is misplaced for three reasons. First, School Board Policy 218, entitled "Student Discipline," provides that school officials may apply school disciplinary rules to off-campus conduct when a student's behavior "materially and substantially disrupts the operations of the school...[or] is likely to materially and substantially disrupt the operations of the school." As explained herein, the School Board finds that J■■■■ conduct directly caused apprehension of a school shooting, and resulted in an investigation by High School administrators and the local police to determine if that threat was a real one. Thus, the J■■■■'s conduct was disruptive to the school setting. Second, in *J.S. v. Bethlehem Area School District*, 807 A.2d 847, 864-866 (Pa. 2001), the Pennsylvania Supreme Court held that a student's off-campus social media posting may be considered as occurring on-campus where there is a sufficient nexus between the posting and the school campus. In this particular case, the subject matter, images and recipient of J■■■■'s Snapchat messages were all directly related to the High School. As in *J.S.*, it was "inevitable" that the contents of these Snapchat messages targeting the High School and its students would spread to others and, thus, qualify as on-campus speech. *J.S.*, 807 A.2d at 866. Third, to accept the argument of J■■■■'s attorney would immunize students from school disciplinary

consequences for making out-of-school threatening messages simply by virtue when and where those threats are made. For all of these reasons, the School Board finds that it has jurisdiction to impose disciplinary consequences in this particular case.

C. DISCIPLINARY CHARGES

Pursuant to Section 510 of the Public School Code of 1949, as amended, 24 P.S. § 5-510, the School Board has the authority to adopt and enforce reasonable rules and regulations regarding the conduct and deportment of the School District's students. In that regard, the Manheim Township School District has adopted School Board Policies 218.2 and 249, which prohibit students from making terroristic threats and cyberbullying.

The evidence clearly demonstrates that [REDACTED] made two statements against a High School student that constitute terroristic threats. Sending a High School student separate Snapchat messages stating, in part, "shooting up the school this week" and saying "[REDACTED] AND MANY MORE WILL PERISH IN THIS STORM." is totally unacceptable behavior relative to the school setting. The School Board finds that these statements constituted terroristic threats in violation of School Board Policy 218.2.

This conclusion is supported by two Pennsylvania Superior Court decisions, *In the Interest of B.R.*, 732 A.2d 633 (1999), and *In the Interest of J.H.*, 797 A.2d 260 (2002), which both held student statements threatening violence against teachers and students constitute terroristic threats. In *B.R.*, a student was found delinquent of terroristic threats for telling a teacher that he would bring a gun to school and shoot the building principal and several teachers. *B.R.*, 732 A.2d at 635. In reaching the conclusion that statement constitute a terroristic threat, the court explained "[n]either the ability to carry out the threat nor a belief by the persons threatened that it will be carried out is an essential element of the crime." *Id.* Instead, in light of tragic gun violence plaguing our country's schools, the court observed "a threat by a student to bring a gun to school can in no way be treated as a joking statement which can be casually disregarded." *Id.* at 639.

Similarly, in *J.H.*, a student was found delinquent of terroristic threats for telling a teacher if she spoke to his probation officer, "it would be that last thing [she] ever did." *J.H.*, 797 A.2d at 261. The Superior Court explained in *J.H.*, "as a result of the numerous incidents of violence which have occurred in the school setting over the past several years, this Court recognizes the seriousness of *any threat made by a student against a teacher or another student.*" *J.H.*, 797 A.2d at 261 (emphasis added). [REDACTED]'s Snapchat statements are no different from a legal perspective than the statements held to be terroristic threats in *B.R.* and *J.H.*

[REDACTED]'s conduct occurred less than two months after the deadly school shooting in Parkland, Florida. The High School administration and local police were required to engage in all-night investigation to determine if a school shooting was planned. [REDACTED]'s statements cannot be brushed aside as a joke. His statements were both threatening and disruptive. Thus, the School Board finds that [REDACTED] violated School Board Policy 218.2.

The School Board likewise finds that J■■■■'s Snapchat messages constitute cyberbullying in violation School Board Policy 249. As explained above, J■■■■'s Snapchat messages had a sufficient nexus to the school setting to constitute on-campus speech, and those messages threatened the school environment by creating apprehension of a potential school shooting.

While the School Board finds that this conduct warrants J■■■■'s exclusion from school, it wants to ensure J■■■■ is given the opportunity to receive meaningful educational services during his expulsion and earn a Manheim Township School District diploma; accordingly, the Board adopts the following Order:

CONCLUSIONS OF LAW

1. The student and his parents received due and proper notice of the time, date and place of the hearing and the charges against the student, and were provided a meaningful opportunity to contest the charges and recommended discipline sanction sought by the Administration.
2. The charges against J■■■■ S■■■■ are sustained and supported by sufficient evidence of record.
3. J■■■■ S■■■■ engaged in conduct that constitutes misconduct within the meaning of Section 1318 of the Public School Code, School Board Policies 218.2 and 249, and warrants his exclusion from school.

ORDER

The student is expelled from the Manheim Township School District as outlined below:

1. The student shall be permanently expelled for the balance of the 2017-2018 school year, and the entire 2018-2019 school year.
2. The student shall be made eligible to receive alternative education services at River Rock Academy, Lancaster Campus at School District expense for the balance of the 2017-2018 school year and the entirety 2018-2019 school year, subject to the student's compliance with rules to attend that program.
3. The student is prohibited from entry upon any School District property, or from attending or participating in any School District sponsored events or activities regardless of their location including, but not limited to, the Senior Prom and High Graduation ceremonies in 2019. However, the Superintendent of Schools may authorize the student to come onto school property in order to receive educational services as he may deem necessary and appropriate. Any such authorization to come onto school property must be made in writing by the Superintendent in advance of the scheduled date of entry.

4. If the student participates in the alternative education program offered by the School District, academic courses successfully completed by the student will count towards the requirements to earn a Manheim Township High School diploma.
5. If the student elects to participate in the above referenced alternative education program offered by the School District, he is required to abide by all the disciplinary rules and regulations that apply to that program. The failure to abide by those rules and regulations may result in the student's removal from the alternative education program.
6. If the student successfully earns the requisite number of academic credits to receive a Manheim Township High School diploma by the date that is determined for other High School seniors graduating at the end of the 2018-2019 school year, and the student complies with all of the above conditions outlined above, the student will be issued a High School diploma.

Board of School Directors of the
Manheim Township School District

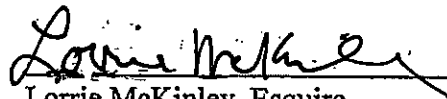
Date: 5.10.18

By: Micki Rivera
President

By: Janice L. Davidson
Secretary

CERTIFICATION THAT APPELLANT HAS ORDERED TRANSCRIPT

I, Lorrie McKinley, Esquire, hereby certify that appellant has ordered a transcript of the proceedings and has made arrangements with the court reporter for payment.


Lorrie McKinley, Esquire

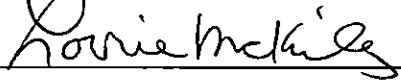
DATE: June 5, 2018

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Notice of Appeal was sent by electronic delivery and First Class United States Mail, this 5th day of June, 2018, to counsel for appellee, Manheim Township School District:

Robert Frankhauser, Esquire
Barley Snyder
126 East King Street
Lancaster, PA 17602
rfrankhouser@barley.com

LORRIE MCKINLEY, ESQUIRE



IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
PROTHONOTARY
CIVIL COVER SHEET

PLEASE LIST NAMES AND ADDRESSES OF ADDITIONAL PARTIES ON A SEPARATE SHEET.

ALL PARTY INFORMATION IS REQUIRED INCLUDING ZIP CODES. ALL PARTY INFORMATION MUST MATCH THE PLEADING. PLEASE DO NOT STAPLE THE COVER SHEET TO THE PLEADING. IF AN EVENT NEEDS TO BE SCHEDULED, A CAO SCHEDULING COVER SHEET MUST ALSO BE ATTACHED.

TYPE OF ACTION: NOTICE OF APPEAL FROM LOCAL AGENCY DETERMINATION

For Prothonotary Use Only:

DOCKET No: CI-

PARTY INFORMATION

PLAINTIFF'S NAME: J.S., a minor, by his parents, M.S. and D.S.

DEFENDANT'S NAME: MANHEIM TOWNSHIP SCHOOL DISTRICT

ADDRESS:
*If confidential,
use 2nd sheet*

ADDRESS: 450A CANDLEWYCK ROAD
LANCASTER, PA 17606

MUNICIPALITY: LANCASTER

MUNICIPALITY: LANCASTER

TWP/BOROUGH: MANHEIM TOWNSHIP

TWP/BOROUGH: MANHEIM TOWNSHIP

DOB: _____
(mm/dd/yyyy)

TELEPHONE #: _____
(#####)

DOB: _____
(mm/dd/yyyy)

TELEPHONE #: (717) 569-8231
(#####)

FILING ATTORNEY / FILING PARTY INFORMATION

FIRM/OFFICE: MCKINLEY & RYAN, LLC

FILING ATTORNEY/PARTY: LORRIE MCKINLEY, ESQ

AOPC: (Attorney ID) #: 41211

ADDRESS: 238 WEST MINER STREET

CITY: WEST CHESTER

STATE: PA

ZIP CODE: 19382

TELEPHONE #: (610) 436-6060
(#####)

EMAIL: LMCKINLEY@MCKINLEYRYAN.COM

TAX LIEN INFORMATION

MUNICIPALITY: _____

MAP REFERENCE: _____

DEED BOOK: _____

DEED PAGE: _____

DEED DATE: _____

SALE PRICE: _____

TAX YEAR: _____

TAX LIEN AMOUNT: _____

PROPERTY DESCRIPTION: _____

PFA/SVPO/PFI INFORMATION

HEARING DATE: _____

SOCIAL SECURITY #: (Defendant – Last 4 digits) _____

POLICE DEPARTMENT: _____

PREVIOUS PETITIONS: YES ☐

NO ☐

If 'YES', File Date: _____

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

County _____

For Prothonotary Use Only:

Docket No: **18-04246**

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:

- ☐ Complaint ☐ Writ of Summons
☐ Transfer from Another Jurisdiction

- ☐ Petition ☐ Declaration of Taking

Appeal from Local Agency Determination

Lead Plaintiff's Name:

J.S., a minor, by his parents, M.S. and D.S.

Lead Defendant's Name:

MANHEIM TOWNSHIP SCHOOL DISTRICT

Are money damages requested? ☐ Yes ☒ No

Dollar Amount Requested: ☐ within arbitration limits ☐ outside arbitration limits
(check one)

Is this a Class Action Suit? ☐ Yes ☒ No

Is this an MDJ Appeal? ☐ Yes ☒ No

Name of Plaintiff/Appellant's Attorney: LORRIE MCKINLEY, ESQ.

☐ Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

NOTED FOR FILING
2018 JUN 19 PM 2:27
ENTERED AND FILED

SECTION B

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- ☐ Intentional
☐ Malicious Prosecution
☐ Motor Vehicle
☐ Nuisance
☐ Premises Liability
☐ Product Liability (does not include mass tort)
☐ Slander/Libel/Defamation
☐ Other: _____

CONTRACT (do not include Judgments)

- ☐ Buyer Plaintiff
☐ Debt Collection: Credit Card
☐ Debt Collection: Other

☐ Employment Dispute: Discrimination
☐ Employment Dispute: Other

☐ Other: _____

CIVIL APPEALS

- Administrative Agencies
☐ Board of Assessment
☐ Board of Elections
☐ Dept. of Transportation
☐ Statutory Appeal: Other

☐ Zoning Board
☒ Other:
Appeal from Local Agency Determination

MASS TORT

- ☐ Asbestos
☐ Tobacco
☐ Toxic Tort - DES
☐ Toxic Tort - Implant
☐ Toxic Waste
☐ Other: _____

REAL PROPERTY

- ☐ Ejectment
☐ Eminent Domain/Condemnation
☐ Ground Rent
☐ Landlord/Tenant Dispute
☐ Mortgage Foreclosure: Residential
☐ Mortgage Foreclosure: Commercial
☐ Partition
☐ Quiet Title
☐ Other: _____

MISCELLANEOUS

- ☐ Common Law/Statutory Arbitration
☐ Declaratory Judgment
☐ Mandamus
☐ Non-Domestic Relations Restraining Order
☐ Quo Warranto
☐ Replevin
☐ Other: _____

PROFESSIONAL LIABILITY

- ☐ Dental
☐ Legal
☐ Medical
☐ Other Professional: _____