South Carolina Bar

2017 South Carolina Bar Convention

Children's Law Committee Seminar

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South Carolina Bar

"Yours, Mine and Ours… Are You Sure About That?": Exploring the Legal and Ethical Concerns of Third Party Reproduction

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YOURS, MINE, AND OURS – ARE YOU SURE ABOUT THAT?

ASSISTED REPRODUCTION & PARENTAGE IN SOUTH CAROLINA

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OBJECTIVES

1. Yours? Mine?
   - Address legal ownership of embryos as viewed by other jurisdictions.
2. Ours?
   - Identify existing South Carolina case law that supports/refutes parental recognition in same sex relationships when assisted reproduction is used for family building.
   - Identify what elements may be important to the Family Court for purposes of analysis.
   - Recognize legal analysis used by other jurisdictions for parental rights/responsibilities assessment.
   - Suggest legal options that may help same sex clients secure parental rights in South Carolina.

LEGGO MY EGG-O!

Who gets the embryos when the relationship cracks?

YOURS? MINE?

- Other jurisdictions have addressed disputes arising over ownership of embryos by first identifying that embryos are property.
- Reported cases from other jurisdictions which have categorized embryos as property include: *York v. Jones*, 717 F.Supp. 421 (E.D.Va 1989); *Davis v. Davis*, 842 S.W.2d 588 (Tenn. 1992); *Hecht v. Superior Court of California*, 16 Cal.App.4th 836(Cal. 1993); *Hall v. Fertility Institute of New Orleans*, 647 So.2d 1348 (La. 1994); *Kass v. Kass*, 696 N.E.2d 174 (N.Y. 1998); and *Jeter v. Mayo Clinic Arizona*, 121 P.3d 1256 (Ariz. 2005).
- The court in *Davis* said it best by stating, "[w]e conclude that preembryos are not, strictly speaking, either "persons" or "property," but occupy an interim category that entitles them to special respect because of their potential for human life.

YOURS? MINE? [CONT.]

Consequently, the end result of ownership disputes between couples has resulted in three different tests:

- 1) Prior written agreement. *Kass v. Kass*, 673 N.Y.S.2d 350 (NY 1998).
- 2) Balancing the Interests. *Davis v. Davis*, 842 S.W.2d 588 (Tenn 1992).
- 3) Contemporaneous Mutual Consent. *In re Marriage of Witten*, 672 N.W.2d 768 (Iowa 2003).

YOURS? MINE?

NOPE, MINE!

- The only "trump" card that could cause one party to prevail against these tests may be a showing of "exigent circumstances." In such circumstances, a right to procreate actually transcends a right of privacy. *Reber v. Reiss*, 2012 PA Super 86 (2012)(holding that exigent circumstances exists where wife, a cancer survivor, has only one chance for a biological child was using the embryos created with her former husband.)
- Because SC has no existing caselaw on ownership of embryos, our courts will likely look to other jurisdictions for guidance. Regardless of which test a SC court uses, it will be imperative to show exigent circumstances, if such exist, for a party to prevail.

NICK LOEB V. SOFIA VERGARA

- Created embryos during previous relationship.
- Two failed transfers to surrogate. Two remaining embryos exist.
- Loeb is suing for right to own embryos and use *without* Vergara's permission.
- Vergara is relying upon the embryo disposition agreement with clinic that states there must be mutual consent for future use of the embryos.
- No exigent circumstances claimed by Loeb.
- Trial will take place in Jan. 2017.

PARENTAGE FOR SAME SEX COUPLES USING ART

OURS?

THE CONSTITUTIONAL RIGHT OF PARENTAGE

- The liberty interest at issue in this case - - the interest of parents in the care, custody, and control of their children -- is perhaps the oldest of the fundamental liberty interests recognized by the Supreme Court. *Troxel v. Granville*, 530 U.S. 57 (2000).
- SC courts have recognized the right of parentage is Constitutionally protected, so long as you seize it. "Opportunity interest is constitutionally protected only to the extent that the biological [mother] who claims protection wants to make the commitments and perform the responsibilities which give rise to a developed relationship, because it is only the combination of biology and custodial responsibility that the Constitution ultimately protects." *Abernathy v. Baby Boy*, 313 S.C. 27, 28, 437 S.E.2d 25, 31 (1993).
- However, a constitutional right can be expressly waived where said wavier was knowingly and intelligently made. *Brady v. United States*, 397 U.S. 742, 748, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970) ("Waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences.") *Id.*

IN SOUTH CAROLINA, THERE IS NO MARRIAGE PRESUMPTION FOR SAME SEX COUPLES

- On June 26, 2015, the Supreme Court in *Obergefell* issued its ruling requiring all states to issue marriage licenses to same-sex couples and to recognize same-sex marriages validly performed in other jurisdictions. The holding effectively legalized same-sex marriage throughout the United States, and its possessions and territories.
- However, same sex marriage has not been extended to the parental presumption in many states, including South Carolina.

LEGAL PRESUMPTIONS IN SOUTH CAROLINA

In South Carolina, when a woman gives birth to a child, she is presumed to be the legal mother and if she is married, her husband is presumed to be the legal father.

Therefore, for heterosexual couples, if using surrogacy, egg donation, sperm donation, etc., they must legally establish parentage and terminate the parental rights of the surrogate, her husband, and/or gamete donors through the courts.

Likewise, same sex couples must also take additional steps to affirm their parental rights to the exclusion of others.

EGG DONOR V. EGG PROVIDER

- For lesbian couples using ART, the "poison apple" is found in medical consent forms which routinely address an egg provider as "egg donor," signing away her rights of parentage.
- "I HEREBY WAIVE AND RELINQUISH ANY CLAIM WHATSOEVER TO THE DONATED EGGS OR TO ANY OFFSPRING THAT MAY RESULT FROM THEM. I UNDERSTAND THAT ONCE THE EGGS ARE REMOVED FROM ME AND HAVE BEEN INSEMINATED BY THE SPERM OF THE HUSBAND OR SPERM DONOR. . . I UNDERSTAND THAT, UPON DONATION, I HAVE NO FURTHER RIGHTS, CLAIMS, RESPONSIBILITIES OR OBLIGATIONS FOR THE EMBRYO(S) OR ANY OFFSPRING RESULTING FROM EGG DONATION OR ANY RIGHTS OR CLAIMS AGAINST THE RECIPIENT . . . I AGREE NOT TO SEEK ANY COURT ORDER OR INSTITUTE ANY ADVERSARY PROCEEDINGS AGAINST THE RECIPIENT COUPLE OR SOUTHEAST FERTILITY SPECIALISTS TO ESTABLISH PARENTAL OR OTHER RIGHTS TO THE RESULTING EMBRYO(S) OR ANY OFFSPRING WHICH MAY HAVE BEEN BORN AS A RESULT OF EGG DONATION"

RIGHTS VS. RESPONSIBILITIES?

- Even for gay couples, a non-genetic spouse must affirm parentage, post birth, to protect his or her rights as martial status alone will not bestow him or her with parental rights.
- Without affirming parentage, a non-genetic spouse has no right of visitation or custody, nor obligation to provide child support.
- Furthermore, without the intended parents solidifying parental rights through the family court, the surrogate, egg donor and/or sperm donor may retain legal rights of parentage, which could result in support obligations in the future.

SOUTH CAROLINA FOLLOWS "INTENT BASED PARENTAGE" FOR COUPLES USING ASSISTED REPRODUCTIVE TECHNOLOGY

In re Baby Doe, 353 S.E.2d 877, 291 S.C. 389 (1986).

"INTENT TO PARENT" TAKES ROOT IN 1986

Intent based parenting evolved in South Carolina under *In re Baby Doe.* The matter involved the first known case of paternity challenged in an assisted reproduction setting. Husband consented to Wife's use of a sperm donor to conceive due to his prior vasectomy. The parties separated a few years after the birth of the child and Husband sought to contest paternity to avoid child support payments. Husband asserted that absent his written consent, he could not be declared the father of a child born through artificial insemination.

However, the supreme court affirmed the family court, holding that, "a husband who consents for his wife to conceive a child through artificial insemination, with the understanding that the child will be treated as their own, is the legal father of the child born as a result of the artificial insemination and will be charged with all the legal responsibilities of paternity, including support." *Id*. at 878.

IN 1993, "BIOLOGY + ACTION" IS AFFIRMED BY OUR STATE SUPREME COURT

- In *Abernathy v. Baby Boy*, 313 S.C. 27, 437 S.E.2d 25 (1993), the Plaintiff Father sought custody rights to his son born out of wedlock. During the pregnancy, he made substantial effort to support the birth mother and his unborn child. His efforts were thwarted by the birth mother. Later, the mother attempted to place the child for adoption. Father contested the adoption action and provided proof of his efforts to support the mother and child during the pregnancy and post birth. Ultimately, the Court held that "opportunity interest is constitutionally protected only to the extent that the biological father who claims protection wants to make the commitments and perform those responsibilities which give rise to a developed relationship, because it is only the combination of biology and custodial responsibility that the Constitution ultimately protects." *Id*. at 28, 31.
- Applying the reasoning of Abernathy under an equal protection standard, the same can also be true for asserting rights of maternity.

COURTS CAN CONSIDER "ALL OF THE CIRCUMSTANCES"

- Let's also not forget, when determining the best interest of a child, all the conflicting rules and presumptions should be weighed together with all of the circumstances of the particular case, and all relevant factors must be taken into consideration. *Ford v. Ford*, 242 S.C. 344, 130 S.E.2d 916 (1963).
- Why is this important?
- How can "intent" be satisfied?

ACROSS THE COUNTRY. . .

- There is an increase in custody litigation among same sex couples.
- While the overarching principle is “best interest of the child," there is no “bright line” test. Each case has been evaluated differently.
- Common factors evaluated by the courts:
  - Was the couple married or in a legally recognized relationship?
  - How long were they together?
  - What kind of forms did they sign with the fertility clinic?
  - What other legal steps did they take?
  - Did they, in fact, co-parent the child for a substantial amount of time?

FLORIDA


Greetings from
FLORIDA
"The Land of Sunshine"
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D.M.T. V. T.M.H., 129 SO.3D 320 (2013)

- In Florida, the supreme court applied the concept of "biology plus action" when evaluating parentage in a lesbian relationship.
- A lesbian couple were in a long term relationship, agreed to jointly conceive and raise a child together as equal parents, and engaged in cross egg fertilization with donor sperm.
- Consequently, the egg provider signed all the standard "Egg Donor Consent" forms which acknowledged a relinquishment of parental rights.
- Conversely, the parties advised the fertility doctor of their joint plans and received psychological counseling to prepare them for parenthood.
- Post birth, the parties jointly introduced "their daughter" and for seven (7) years, each took an active role in the child's upbringing.
- However, when the relationship deteriorated, the birth mother absconded to Australia with the child.

D.M.T. V. T.M.H., 129 SO.3D 320 (2013) CONT'D

- Ultimately, the Florida supreme court recognized T.M.H.'s (egg provider's) parental rights, despite the fact that she signed donor consent forms at the fertility clinic at the time of the egg retrieval. The Florida court premised that "a biological connection gives rise to an inchoate right to be a parent that *may develop* into a protected fundamental constitutional right based on the *actions* of the parent." *Id*. at 338 (citing *Baby E.A.W.*, 658 So.2d at 966-67)(emphasis added). With this foundational reasoning, the court held,

  > In this case, the biological connection between mother and daughter is not in dispute. D.M.T., 79 So. 3d at 789. Additionally, T.M.H. and her former partner, D.M.T. demonstrated an intent to jointly raise the child through their actions before and after the child's birth, and T.M.H. actively participated as a parent for the first several years of the child's life. Importantly for constitutional purposes, T.M.H. also assumed full parental responsibilities until her contact with her child was suddenly cut off.

Id.

CALIFORNIA

K.M. V. E.G., 119 P.3D 673 (2005)

- In California, the supreme court held that "A woman who supplies ova to be used to impregnate her lesbian partner, with the understanding that the resulting child will be raised in their joint home, cannot waive her responsibility to support that child. Nor can such a purported waiver effectively cause that woman to relinquish her parental rights." *Id*. at 72.
- K.M. and E.G. began dating in 1992 and became registered partners in San Francisco in 1994.
- Due to her poor egg quality, E.G. agreed to accept donated eggs from K.M. and use anonymous donor sperm to become pregnant.
- Like the Florida case, K.M. signed the egg donor consent forms at the clinic, relinquishing her parental rights.
- Ultimately, the court recognized the egg provider's rights based on several factors.

K.M. V. E.G., 119 P.3D 673 (2005) CONT'D

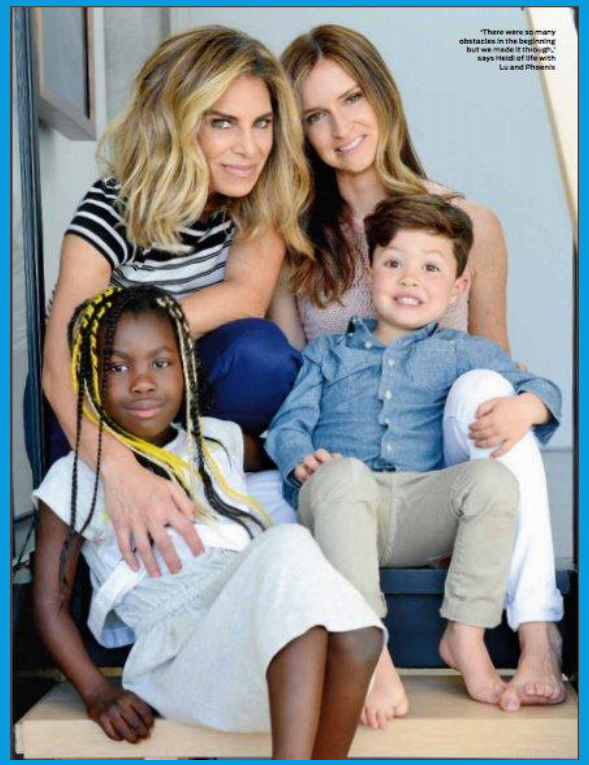
- Key factors in the court's reasoning appear to be evidence of the parties' legal status as registered "domestic partners" and their express joint intent to raise the child in their home at the time of the donation. The court viewed their relationship as akin to marriage and therefore afforded K.M. the status of parent, regardless of the signed donor consent forms and in light of their express joint intent to raise the child in their home.

NEVADA

ST. MARY V. DAMON, 309 P.3D 1027, 129 NEV. ADV. OP 68 (NEV. 2013)

- The *St. Mary* case provides a great example for how same sex couples should navigate parentage when engaging in third party reproduction. The parties in *St. Mary* provide the most evidence of "intent to parent," as opposed to the aforementioned cases.
- The parties were in a committed lesbian relationship and decided to have a child together, using cross egg fertilization and donor sperm.
- Prior to the birth of the child, the parties executed a "Co-Parenting Agreement" which provided evidence of their intent to 1) jointly raise the child, 2) jointly support the child, and 3) provided for responsibilities for the child should their relationship end.
- Once the child was born, the parties filed a post birth action to amend the birth certificate to list both women.
- When their relationship later ended, a custody battle ensued.

ST. MARY V. DAMON, 309 P.3D 1027, 129 NEV. ADV. OP 68 (NEV. 2013) (CONT'D)



- The court determined that both women were the legal mothers of the child based on St. Mary's right as a birth mother and Damon's right created by biology *plus* evidence of their joint intent to raise the child together. Consequently, the court held their coparenting agreement enforceable and consistent with "Nevada's policy of encouraging parents to enter into parenting agreements that resolve matters pertaining to the child's best interests." *Id*. at 1036.

AND RECENTLY IN NEW YORK. . .

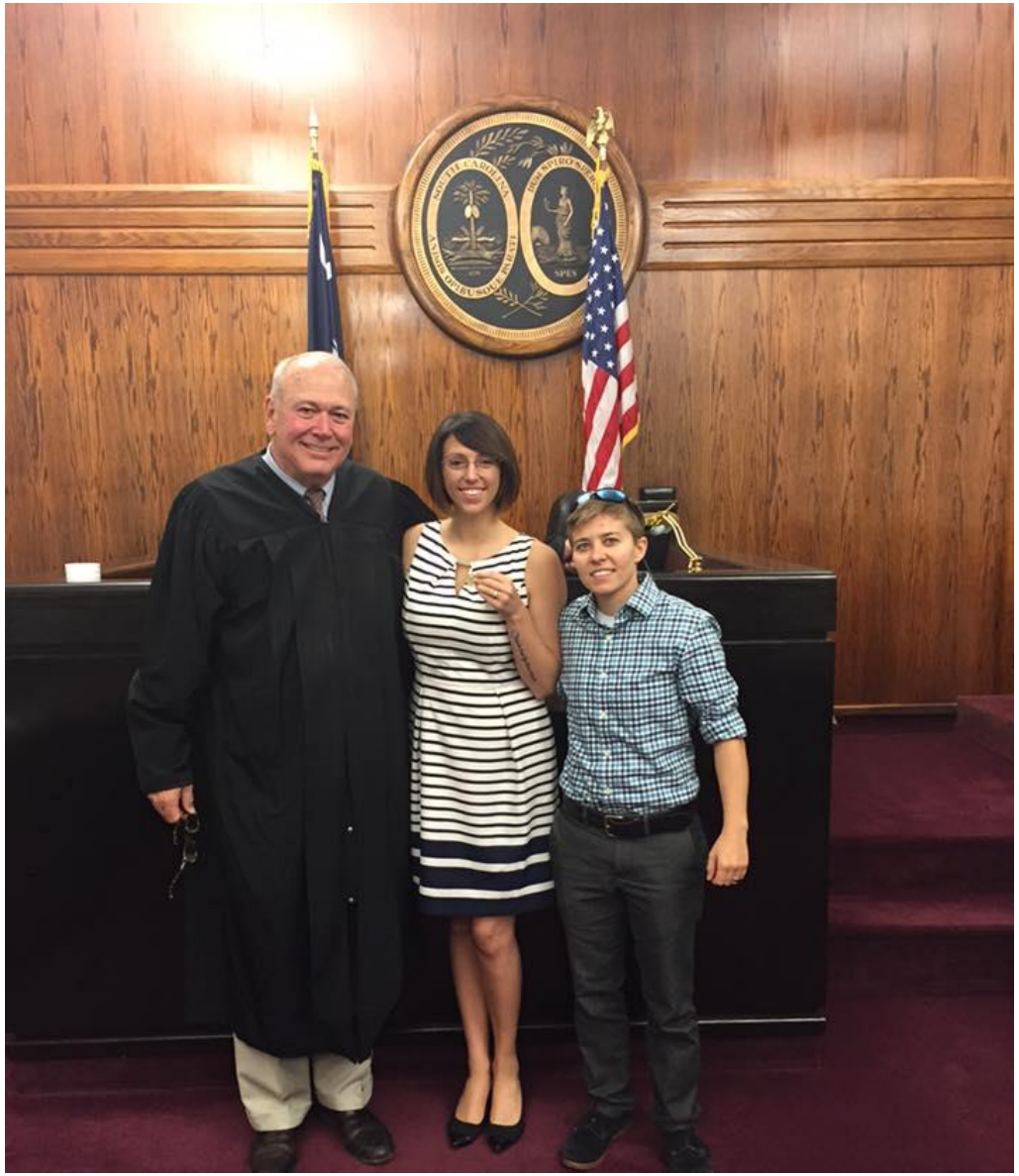
- In *Matter of Brooke S.B. v. Elizabeth A.C.C.* (2016 NY Slip Op 05903)., the state's highest court overturned a 25-year-old precedent, finding the previous test "has become unworkable when applied to increasingly varied familial relationships."
- A prior ruling set forth that in an unmarried couple, the person with no biological or adoptive relationship to a child was not that child's "parent" for purposes of seeking custody or visitation. *Matter of Allison D. v. Virginia M.*, 77 NY2D 651 Allison D. (1991).

NEW YORK (CONT'D)

- From now on, the New York State Court of Appeals held, "where there is clear and convincing evidence that the parties agreed to conceive a child and to raise the child together, the non-biological, non-adoptive partner has standing to seek visitation and custody under Domestic Relations Law § 70." *Brooke S.B., Id. at 15.*
- The holding was established in response to two cases in which lesbian couples separated and visitation rights for the partner who did not give birth later came into doubt.
- Still, the court acknowledged that "the ultimate determination of whether those rights shall be granted rests in the sound discretion of the court, which will determine the best interests of the child." *Id*.

GIVE ME THE BABY. . .
(PRE AND POST BIRTH OPTIONS)

- What steps can same sex couples take to protect their parental rights?
  - Request corrected/edited medical consent forms that acknowledge both partners as the parents. (Evidence of Intent)
  - Enter into a co-parenting agreement prior to insemination. (Evidence of Intent)
  - File action for parentage immediately proceeding birth of child. (Don't let your client sit on their rights!)
  - Remember: Parenting is a verb, not just a noun. Your client will have the protections of being a parent if he or she actually parents the child.



POST BIRTH ACTION

- Applying recognition of paternity under an equal protection analysis for maternity, lesbian couples should pursue TPR of the sperm donor and amendment of the birth certificate based on genetics in cross-egg fertilization cases.
- For traditional lesbian couples, where one partner uses her own eggs and carries, parties should pursue TPR of the sperm donor and second parent adoption.
- For gay couples, parties should TPR the surrogate and egg donor, while completing a second parent adoption.

THANK YOU

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Strengthening the Schoolhouse Gate: Drawing Meaningful Lines Between School and Discipline and Law Enforcement

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Strengthening the Schoolhouse Gates: Drawing Meaningful Lines Between School Discipline and Law Enforcement

South Carolina Bar, Children's Law Committee
January 21, 2017

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Attached Handouts Include:

1) Brief Outline of case law regarding school searches and school interrogations involving law enforcement
2) S.C. Code § 59-24-60
3) Sample Memorandum of Agreement between a school district and police agency
4) *United States v. City of Ferguson* consent decree excerpts regarding School Resource Officers
5) Clayton County [GA] Cooperative Agreement
6) Proposed South Carolina Regulations § 43-279 and § 43-210

BRIEF outline of cases regarding the role of police in schools

4th Amendment: What is the standard for searches performed at school?

Cases:

New Jersey v. T.L.O., 469 U.S. 325 (1985)

- A warrant and probable cause are not required in a case involving a search by a school official for a school disciplinary purpose. All that the school official needs is reasonable suspicion of a school rule violation.
- Supreme Court explicitly notes it is not deciding what standard to apply to a search by a police officer at school.

Two big post-*T.L.O.* shifts:

1) Increased presence of police officers at school
2) School policies which require disclosing evidence of certain behaviors to law enforcement, and wider use of statutes criminalizing school misbehavior

In re Thomas B.D., 486 S.E.2d 498 (S.C. Ct. App. 1997)

- Applies probable cause to a regular police officer (not a S.R.O.) performing a search at school.

State split regarding the standard to apply to searches by or at the behest of a S.R.O.

- *Compare People v. Dilworth*, 169 Ill.2d 195, 661 N.E.2d 310 (Ill. 1996) (majority view – SRO is more like a school official) and *State v. Meneese*, 174 Wash.2d 937, 282 P.3d 83 (Wash. en banc 2012) (minority view – SRO searches require probable cause).\
- No definitive ruling in South Carolina

5th Amendment: When is an interrogation at school custodial?

J.D.B. v. North Carolina, 564 U.S. 261 (2011)

- A child's age is relevant to determining whether he is in custody, as is the school setting. "[T]he effect of the schoolhouse setting cannot be disentangled from the identity of the person questioned. A student — whose presence at school is compulsory and whose disobedience at school is cause for disciplinary action — is in a far different position than, say, a parent volunteer on school grounds to chaperone an event, or an adult from the community on school grounds to attend a basketball game. Without asking whether the person 'questioned in school' is a 'minor,' the coercive effect of the schoolhouse setting is unknowable."

- When, if ever, is an interrogation by a SRO at school "custodial"?

No South Carolina case law applies *J.D.B.*

Code 1976 § 59-24-60

§ 59-24-60. Requirement of school officials to contact law enforcement authorities when criminal conduct occurs.

Currentness

In addition to other provisions required by law or by regulation of the State Board of Education, school administrators must contact law enforcement authorities immediately upon notice that a person is engaging or has engaged in activities on school property or at a school sanctioned or sponsored activity which may result or results in injury or serious threat of injury to the person or to another person or his property as defined in local board policy.

Credits

HISTORY: 1994 Act No. 299, § 1.

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

AGREEMENT

This agreement is made this 1st day of August, 2015 between Richland County School District One (hereinafter referred to as the District) and the City of Columbia (hereinafter referred to as the City). The District and the City agree that the effective date of this agreement shall be the first day of the 2015-2016 school year.

Upon request of the District, the City has designated certain police officers to be assigned to the duty of a school resource officer to work within certain schools of the District upon the terms set out below. The definition of a school resource officer, which appears in Section 5-7-12 of the S.C. Code of Laws, is incorporated herein by reference.

Each City of Columbia School Resource Officer (SRO) is a sworn law enforcement officer who has completed a basic course of instruction for school resource officers as provided or recognized by the National Association of School Resource Officers or the State of South Carolina Criminal Justice Academy, and who is assigned to one or more school districts within this State to have as a primary duty the responsibility to act as a law enforcement officer, advisor and teacher for that district.

I. Rights and Duties of the City of Columbia

A. The City shall assign a specifically selected and trained police officer to the following schools. The District will reimburse the City (Amount in word form) and 00/100 (**$ 190,565.28**) Dollars upon receipt of quarterly invoice(s). The calendar year will be from August 1, 2015 through July 31, 2016.

Dreher High School	Alcorn Middle School
Eau Claire High School	Gibbes Middle School
CA Johnson High School	Hand Middle School
WA Perry Middle School	H.B. Rhame Elementary
Logan Elementary	

The City will provide services to other District schools based on mutual agreement between the parties and if SRO officers are available.

B. The School Resource Officer (hereinafter referred to as SRO) will be hired and supervised by the City during the school year. The SRO supervisors will make periodic announced and unannounced visits to each school.

C. The City will maintain statistical data on the assigned schools and a report will be available to the District Superintendent or his Designee upon request.

D. Copies of school Incident Reports will be provided to the Director of security and Emergency Services in a timely manner.

E. The City will evaluate the school assignment to determine the effectiveness of the officer(s) assigned as well as the effectiveness of the SRO program.

F. The City of Columbia Police Department and Richland County School District One agree to recognize the City of Columbia Police Department as the District's "Law Enforcement Unit" in all applicable capacities, responsibilities and appropriate representation.

II. Regular Duty Hours of SROs.

A. Each SRO shall be assigned to a school during the regular school year for eight and one- half (8.5) hours per day. When the SRO is responsible for more than one school, the SRO will divide his/her time equitably between each of the assigned schools. The City may temporarily reassign any SRO during school holidays and vacations, or in the event of a law enforcement emergency.

III. Absences of SROs

In the event that an SRO is absent for their assigned facility, under the direction of the SRO leadership, substitute coverage will be provided by another SRO for the duration of the absence, if another SRO is available. The principal will be notified of the absence as soon as possible and the District designee will be notified if the absence is expected to be long term.

IV. Duties of the School Resource Officer

A. Duties of the School Resource Officer

1. Law Enforcement Officer. First and foremost the SROs will perform law enforcement duties in the school such as handling assaults, theft, burglary, bomb threats, weapons, and drug incidents. When requested and available, officers will be present for school activities (i.e., school clubs, parent –teacher organizations, field trips, and community outreach programs) and provide a visible and positive image. They will work to protect the school environment and maintain an atmosphere where teachers feel safe to teach and students feel safe to learn.

2. Law Related Advisor. The SROs may serve as a resource for students on law related subjects. Maintaining an open-door policy with the students enables them to interact freely with the SRO. The SROs will bring an expertise into the schools that will help students make more positive choices in their lives. A SRO will not actively participate in student counseling as a guidance counselor, and will not give legal advice, but will be available to advise students on procedural issues (i.e.: court, traffic citations, arrest warrants, etc.) within the scope of the officer's responsibility.

3. Law Related Education Teacher. The SROs will teach law related topics to students and will be able to give a unique perspective based on the officer's training and experience. There are a variety of topics that the SRO can choose to teach depending on the grade level of the student. The goal of law related education is to teach students to be successful citizens. The SRO will explain the role of law enforcement in society.

4. School Resource Officers will not be authorized to access District cameras/systems for the purpose of reproducing, copying or distributing images or information for investigative purposes.

5. Needed images must be requested, in a timely manner, through the office of Director, Security and Emergency Services or the District's General Counsel by executing documentation as deemed necessary by the District.

B. Additional Duties of School Resource Officers

1. To remain on school grounds of those assigned schools from opening to closing times. (Exceptions: during the time the SRO needs to perform, departmental administrative functions, i.e., training, court, etc.)

2. To help prevent juvenile delinquency through close contract with students, school personnel, and parents.

3. To establish liaison with the school principal, faculty, students and parents.

4. To establish and maintain liaison with school/District Security and Emergency Services and emergency staff.

5. To inform the students of their rights and responsibilities as lawful citizens.

6. To assist school officials (i.e., principal and district safety and emergency staff) by initiating an investigation of violations of criminal laws occurring in the school or on school property. SROs will investigate reported crimes and complete the appropriate documentation, which will include the school incident report that will be forwarded to the S.C. State Attorney General's office. SROs may arrest, detain and transport a person when authorized by state and federal law and / or department policy. However, SROs can only participate or be present during searches initiated by school personnel which are deemed to be of criminal nature and lawful under the search and seizure guidelines set forth by

applicable court rulings and statutory and constitutional provisions.

7. To assist the administration and faculty in formulating criminal justice programs.

8. To formulate crime prevention programs to educate and reduce the opportunity for the commission of crimes against persons and property in the school.

9. To be available for the parent-teacher organization meetings and to assist with PTO problems.

10. To notify the principal or principal's designee, as soon as possible and practicable, of any police action that occurs on the school campus.

11. To assist other law enforcement agencies as well as District Safety and Emergency Service staff regarding law enforcement matters.

12. The SRO shall maintain detailed and accurate records of the SRO program and shall forward them to his/her supervisor.

13. The SRO shall not act as a school disciplinarian, as disciplining students is a school responsibility. However, if the incident is a violation of the law, the principal shall contact the SRO or his/her supervisor in a timely manner and the SRO shall then determine whether law enforcement action is appropriate. If there is a problem, the SRO shall assist the school until the problem is solved.

14. To be visible and present during the arrival and dismissal of students.

15. To provide assistance in directing traffic during drop-off and pick-up when necessary.

16. To conduct a daily drive/walk around the perimeter of school and inspect/check parking lots.

17. To be present when possible at lunchtime with students. School Resource Officers will not leave the campus for lunch during student lunch periods.

18. To make and effort to be visible during recess and class changes.

19. Teach safety, drug awareness, gang awareness and law-related education classes. Principal or designee to assist in obtaining classroom time for these classes.

20. Officers are encouraged to be present as available, to assist with Breakfast Buddy, student mentor and/or programs applicable at his/her school.

21. When requested and available, officers will participate in PTO and SIC presentations/meetings.

22. When requested by Principal or designee, officers will participate in school administrative team meetings.

23. Officers will assist school safety/emergency committees and submit professional concerns and recommendations in writing to the principal.

24. SRO will take holidays corresponding to school holidays.

25. SRO will not leave school campus without prior approval of SRO Sergeant or Captain of Region. After approval, the Principal or designee will be advised and estimated time of absence and return. SRO will attempt to minimize scheduled court appearances, training, administrative duty or any activity that will take the SRO from the campus during school hours. SRO will make all efforts to be on campus when school is in session.

26. A weekly crime incident summary will be submitted to the principal or designee.

27. Following the establish chain of command, any issues, problems, complaints, etc., for the SRO will be directed to the Chief, Major or Captain identified to the District as responsible for oversight of the SRO program.

28. Any reported crime (i.e., Larceny, Assault, Disturbing School, etc.) or knowledge of suspected crime is to be reported to the School Resource Officer immediately.

29. The SRO will determine if criminal chargers will be made on all crimes. The SRO will consult with his/her supervisors and/or the Solicitor's Office if necessary.

30. The SRO will immediately notify the principal or designee, if the principal is not available, of an arrest.

31. The principal, SRO and SRO supervisor will meet at the beginning of the school year to discuss the responsibilities and procedures of the SRO and District employees.

32. The SRO will perform a school safety assessment audits (format to be approved by the Columbia Police Department and the District) and submit report to principal and Director of Security and Emergency Services every ninety (90) days (November 1, February 1 and May 1)

C. The duties set out in this section are contractual between the parties and do not create rights in favor of any person not a party to the agreement.

D. In the event that either party breaches this agreement, the sole remedy available to the other party is to terminate this agreement.

V. School Functions and Extracurricular Activities

A. Upon the request of the principal, or his/her designee, a SRO may accompany his/her school to events outside of the City of Columbia for the purpose of security. The payment for the SRO will be based on an hourly rate determined by City policy, and in effect upon execution of this agreement, and the payment will be provided by the school requesting the SRO's services. In the event that the SRO does accompany his/her school to an event outside of the corporate city limits of Columbia, South Carolina, the SRO will have jurisdiction to arrest persons committing crimes in connection with a school activity or a school-sponsored event, pursuant to Section 5-7-12 of the South Carolina Code of Laws.

All payments for SROs will be paid through the City.

B. Any events that are of a school related nature (including but not limited to carnivals, proms, overnight trips, dances, drama, sporting events, etc.),where an SRO is requested for the purpose of security, the SRO shall be paid on an hourly rate, by the school or the sponsoring group, based on current City guidelines.

All payments for SROs will be paid through the City.

VI. Program Goals and Evaluation

The City in conjunction with the District will develop program goals and objectives for the SRO programs. These programs and goals shall be in line with the District's plan for a safe school climate. This means that the SRO will be an active law enforcement official on campus, a classroom instructor, and a resource for teachers, students and parents. The SRO will also be active in conferences and faculty meetings. Indicators of success will be developed independently and objectively to measure how well goals were obtained.

The City shall evaluate the effectiveness of the SRO program and report to the District no later than July 30th.

VII. Rights and Duties of the District

The District will provide to full time SRO of each designated high school, middle and elementary school the following materials and facilities which are deemed necessary to the performance of the SROs duties:

A. Designated private office. This office will contain a telephone, which may be used for general business functions.
B. A location for files and records which can be properly locked and secured within the office.
C. A desk with drawers, and office chair, work table, filling cabinet, office supplies, and a computer.

The Director of Security and Emergency Services will be assigned as the Superintendent's designee/liaison administrator under this Agreement.

VIII. Employment Status of the School Resource Officers

SROs will remain employees of the City and shall not be employees of the District. The District and the City acknowledge that the SROs are the City's officers who shall uphold the law under the direct supervision and control of the City. SROs shall remain responsible to the chain of command of the City.

IX. Appointment of School Resource Officers

The City shall be responsible for recruiting, interviewing, and evaluating SROs. The City will assign selected and trained police officers from within the police department to work as SROs.

X. Reassignment/Resignation/Dismissal of School Resource Officers

In the event the principal or his/her designee deems that the particular SRO is ineffective in performing his/her duties, the principal will state these reasons to the superintendent or the superintendent's designee who will notify the police chief or his/her designee. The District and the City may meet to mediate or resolve any problems. If the problems cannot be resolved, the SRO shall be reassigned and a replacement SRO named, if one is available.

XI. Good Faith

The District, the City, their agents and employees agree to cooperate in good faith in fulfilling the terms of this Agreement. Negotiations between the district superintendent or his/her designee and the police chief or his/her designee will resolve unforeseen difficulties or questions and the resolutions will be reduced to writing and acknowledged by both parties.

XII. Mutual Agreements

This document constitutes the full understanding of the parties, and no terms, conditions, understanding or agreement purporting to modify or vary the terms of

this document shall be binding unless hereafter made in writing and signed by all parties involved.

Services will commence on the first day of teacher in-service of the new school year and will continue through the last day of school. This agreement shall start during the 2015-2016 school year and continue through the end of that year.

To the extent permitted by law, the City agrees that it will indemnify and hold harmless the District, its servants, agents and employees, from any and all liability, damage, expense, cause of action, suits, claims or judgments arising from injury to person(s) or personal property or otherwise which arise out of the act, failure to act, or negligence of the City, its agents and employees, in connection with or arising out of the activity of its employees which is the subject of this Agreement.

To the extent permitted by law, the District agrees that it will indemnify and hold harmless the City, its servants, agents and employees, from any and all liability, damage, expense, cause of action, suits, claims or judgments arising from injury to person(s) or personal property or otherwise which arise out of the act, failure to act, or negligence of the District, its agents and employees, in connection with or arising out of the activity of its employees which is the subject of this Agreement.

XIII. Merger

This agreement constitutes the finial written expression of all the terms of this agreement to be signed by their duly authorized officers.

INITIAL HERE 8/13/15

Richland County School District One

By: _____ Date: 8/13/15
Dr. Craig Witherspoon

City of Columbia

By: _____ Date: 7/22/2015
Teresa Wilson, City Manager

(7/2014)

APPROVED AS TO FORM
Legal Department City of Columbia, SC

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	**NO. 4:16-cv-000180-CDP**
	)	
Plaintiff,	)	**JUDGE CATHERINE D. PERRY**
	)	
v.	)	
	)	
THE CITY OF FERGUSON,	)	
	)	
Defendant.	)	
	)	
	)	

CONSENT DECREE

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204. FPD will encourage specialized CIT officers to redirect individuals with mental health and substance abuse issues to the health care system, where appropriate.

205. FPD policy will provide that a crisis intervention response may be necessary even in situations where there has been an apparent violation of law. This policy shall not prevent responding FPD officers from conducting law enforcement action necessary to address an urgent public safety situation.

D. Ongoing Assessment and Improvement

206. Within 180 days of the Effective Date, the City and FPD will develop protocols for at least annually conducting cost-feasible data-driven and qualitative assessments of FPD's CIT first responder model of police-based crisis intervention. These assessments will be designed to ensure FPD's crisis intervention practices allow FPD to provide an appropriate response to an incident involving an individual in crisis, including reducing injuries to officers, persons in mental health crisis, and the public. Assessments will include review and analysis of whether CIT officers were properly dispatched to calls for service involving an individual in crisis, as well as targeted and systematic review of CIT conduct where CIT officers did respond. As part of this internal assessment process, the City and FPD will identify deficiencies and opportunities for improvement; implement appropriate corrective action and improvement measures; and document measures taken.

XI. SCHOOL RESOURCE OFFICER PROGRAM

207. Ferguson's existing school resource officer (SRO) program offers a unique opportunity to build trust and cooperation between Ferguson's youth and law enforcement on a daily basis. This program, through education and the promotion of mutual respect, also provides Ferguson the opportunity to reduce students' unnecessary involvement in the juvenile and criminal justice systems, which can have profound negative effects on students' engagement and success in school and the broader community. In light of these dynamics, FPD agrees that its SRO program will build positive relationships between officers and youth, avoid unnecessary negative police actions such as arrests, and develop alternatives that promote keeping students in school and out of the criminal justice system.

A. Revision of SRO Program and Training and Qualifications of SROs

208. FPD agrees to use SROs who: (a) have the ability to work effectively with students, parents/guardians, teachers, and school administrators; (b) possess strong interpersonal communication skills; (c) have the ability to competently engage in public speaking; (d) have effective teaching skills; (e) have effective counseling skills; (f) understand the importance of diversion programs and alternatives to arrest for youth; (g) are respectful to the youth and families of all backgrounds and cultures; and (h) have an interest in promoting and enriching the lives of young people. In selecting an SRO, the recommendation of the School District and the principal of the school to which the officer will be assigned shall be considered.

209. FPD agrees to ensure that, after an officer is selected for the position of SRO and prior to assuming SRO responsibilities, the officer receives sufficient training that is consistent with FPD's Training Plan and the terms of this Agreement.

210. Within 120 days of the Effective Date, in consultation with the Ferguson-Florissant School District (FFSD) and consistent with the agreements with the FFSD, the Monitor, and subject to approval by DOJ, FPD will develop an SRO program and operations manual that clearly defines the role of each SRO and promotes the role of SRO as one of educator, counselor, mentor, and law enforcement problem-solver, consistent with best practices. The manual will address youth-appropriate law enforcement techniques; use of restorative approaches to address student behaviors; arrests of students; notification to parents/guardians when students are arrested; searches of students; special considerations regarding use of force within and around schools; procedures to receive and respond to complaints regarding SROs; selection of SROs and SRO assignments; training requirements; weapons qualifications; required equipment and supplies; opportunities for community-stakeholder meetings; SROs' role in identifying candidates for FPD's Explorer program and the City's Police Academy Assistance program; and the collection, analysis, and use of data regarding law enforcement activities in the FFSD schools.

211. Within 90 days of the Effective Date, FPD agrees to review and make a good-faith effort to amend its Memorandum of Understanding (MOU) with FFSD, to delineate authority and specify procedures for law enforcement interactions with students while on school grounds, consistent with this Agreement. Before providing SRO services at any school in which FPD is not currently engaged, the City will enter into an MOU with the appropriate school

district consistent with this Agreement. Further, any subsequent MOU with FFSD shall be consistent with this Agreement.

B. SRO Non-Involvement in School Discipline

212. FPD agrees to ensure that SROs and other FPD officers participate only in situations where police involvement is necessary to protect physical safety and do not participate in any situation that can safely and appropriately be handled by a school's internal disciplinary procedures. Incidents involving minor offenses committed by students, including, but not limited to, disorderly conduct, peace disturbance, loitering, trespass, profanity, dress code violations, and fighting not involving a weapon and not resulting in physical injury, will be considered school discipline issues to be handled by school officials rather than criminal or municipal code violations warranting FPD involvement, unless necessary to protect the physical safety of any person. Nothing herein is intended to prevent victims from reporting crimes or seeking assistance from SROs or other FPD officers.

213. FPD agrees to ensure that SROs and other FPD officers who intervene in an incident in order to ensure physical safety employ age-appropriate conflict resolution techniques to de-escalate the situation whenever possible and refer the matter to school personnel at the earliest opportunity.

214. FPD agrees to ensure that SROs continue to contribute positively to their school communities by serving as educators in addition to their responsibilities to protect the safety of students and school personnel. Nothing in this Agreement limits or is intended to limit FPD's role in providing mentoring, counseling, education, and support to students, faculty and school officials.

C. Minimizing School Arrests and Force

215. FPD agrees to develop and implement policies that discourage the arrest of students on school grounds except as necessary to ensure the physical safety of students, school personnel, and the public. The City agrees not to execute arrest warrants for municipal ordinance violations against students during school hours or school-sanctioned events on school grounds.

216. FPD agrees to ensure that officers document in sufficient detail the basis for any arrest on school grounds, including any factors that justify arresting the youth at school and factors that support a determination of probable cause.

217. FPD agrees to ensure that, upon arresting a student, officers notify the student's parent/guardian of the arrest as soon as practicable. The officer must notify the student's parent/guardian of the nature of the incident leading to arrest, the arrest charges, and if the student was removed from school grounds, the location of the student and relevant contact information. If a parent/guardian is not notified within two hours of the arrest, the arresting officer must document, in writing, the reason for the delay.

218. FPD agrees to ensure that officers do not use restraints—including, but not limited to, handcuffs—on a student on school grounds, unless the objective circumstances indicate that the restraints are necessary to ensure the immediate physical safety of any person.

219. An FPD officer may not remove a student from school grounds with the intent of circumventing the requirements of this Agreement.

220. Within one year of the Effective Date, FPD agrees to assist FFSD to develop a conflict resolution program in the schools; a system for referrals to school discipline personnel; alternatives to arrest; and diversion programs for students who are charged with offenses to minimize the involvement of students and youth in the juvenile and criminal justice systems. These programs will be structured to assess the underlying causes of the student's misbehavior and to develop and implement steps to address those underlying causes, and, if authorized by FFSD, will be developed in consultation with the Monitor and be approved by DOJ.

221. FPD will require that SROs exercise their discretion to refer youth to alternatives, rather than arrest them, whenever possible.

222. FPD agrees to ensure that SROs and other FPD officers do not use force on a student on school grounds unless necessary to address an immediate threat to the physical safety of the officer or any other person. In those situations where an officer must use force, the officer must act in accordance with all applicable use-of-force policies and the terms of this Agreement.

223. FPD will ensure that FPD officers de-escalate school-based incidents whenever possible. SROs should work with the FFSD to emphasize the use of restorative approaches to address behaviors and to minimize the use of law enforcement intervention.

D. SRO Supervision and Evaluation

224. FPD agrees to ensure that supervisors visit SROs to observe SRO activity in schools at least once every two weeks.

225. FPD agrees to ensure that supervisors solicit formal feedback on SRO performance from teachers, school administrators, parents/guardians, and students at least once a semester.

226. FPD agrees to ensure that, at least once per semester, SRO supervisors meet with SROs and school administrators to review incidents in which SROs and/or other FPD officers were involved in the discipline, arrest, or restraint of a student. The review will evaluate the effective use of skills learned through professional development and identify areas for continuous improvement.

E. Ongoing Assessment and Improvement

227. Within 180 days of the Effective Date, the City and FPD will develop protocols for at least annually conducting cost-feasible data-driven and qualitative assessments of FPD's SRO program. These assessments will be designed to ensure that FPD's SRO program is accomplishing the objectives of reducing students' unnecessary involvement in the criminal justice system, building trust between students and Ferguson law enforcement, and ensuring the protection and safety of students. Assessments will include review and analysis of calls for service in schools, as well as officer uses of force, arrests, or charges brought on school grounds; decisions not to arrest when arrest was permitted by FPD policy; complaints regarding FPD officers on school grounds; and student and staff perceptions of school safety and officer fairness, including breakdowns by protected characteristics for all assessments. As part of this internal assessment process, the City and FPD will identify deficiencies and opportunities for improvement; implement appropriate corrective action and improvement measures; and document measures taken.

XII. BODY-WORN AND IN-CAR CAMERAS

228. In an effort to bring continued transparency regarding police activities; improve the effectiveness and reliability of use-of-force and misconduct investigations; enhance supervision of FPD stops, searches, and arrests; and provide material for officer training, the City will equip FPD officers with body-worn and in-car cameras, and will ensure that such devices are used consistent with law and policy. All aspects of FPD's use of body-worn and in-car cameras will be designed and implemented to promote transparency, provide learning

COOPERATIVE AGREEMENT

BETWEEN

THE JUVENILE COURT OF CLAYTON COUNTY

THE CLAYTON COUNTY PUBLIC SCHOOL SYSTEM

THE CLAYTON COUNTY POLICE DEPARTMENT

THE RIVERDALE POLICE DEPARTMENT

THE JONESBORO POLICE DEPARTMENT

THE FOREST PARK POLICE DEPARTMENT

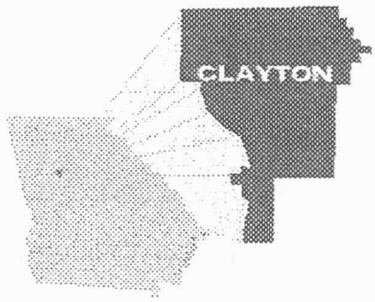
THE CLAYTON COUNTY DEPARTMENT OF FAMILY & CHILDREN SERVICES

THE CLAYTON CENTER FOR BEHAVIORAL HEALTH SERVICES

ROBERT E. KELLER, DISTRICT ATTORNEY

AND

THE GEORGIA DEPARTMENT OF JUVENILE JUSTICE



1. PURPOSE OF AGREEMENT

This agreement is entered into between the Juvenile Court of Clayton County (hereinafter referred to as the Court), Clayton County Public School System (hereinafter referred to as the School System), Clayton County Police Department (hereinafter referred to as the Police), Forest Park Police Department (hereinafter referred to as the Police), Riverdale Police Department (hereinafter referred to as the Police), Jonesboro Police Department (hereinafter referred to as the Police), the Clayton County Department of Family and Children Services (hereinafter referred to as DFCS), Robert E. Keller (hereinafter referred to as the District Attorney), The Clayton Center for Behavioral Health Services (hereinafter referred to as The Clayton Center), and the Georgia Department of Juvenile Justice (hereinafter referred to as DJJ) for the purpose of establishing a cooperative relationship between community agencies (hereinafter referred to as the Parties) involved in the handling of juveniles who are alleged to have committed a delinquent act on school premises. The Parties acknowledge that certain misdemeanor delinquent acts defined herein as the focused acts can be handled by the School System in conjunction with other Parties without the filing of a complaint in the Court. The Parties acknowledge that the commission of these focused acts does not require the finding that a student is a delinquent child and therefore not in need of treatment or supervision (OCGA 15-11-65). The parties acknowledge that the law requires the Court to make a preliminary determination that a petition be certified in the best interest of the child and the community before it can be filed with the Court (OCGA 15-11-37) The parties acknowledge that the Court has the authority to give counsel and advice to a juvenile without the filing of a petition and to delegate such authority to public or private agencies (OCGA 15-11-68 & 15-11-69).

The Parties acknowledge that the law expressly prohibits the detention of a student for punishment, treatment, satisfy the demands of the victim, police or the community, allow parents to avoid their legal responsibility, provide more convenient administrative access to the child, and to facilitate further

interrogation or investigation (OCGA 15-11-46.1 (c)). The law allows for the detention of a student who is a flight risk, presents a risk of serious bodily injury, or requests detention for protection from imminent harm (OCGA 15-11-46.1 (b)).

The parties acknowledge and agree that decisions affecting the filing of a complaint against a student and whether to place restraints on a student and place a student in secure detention should not be taken lightly, and that a cooperative agreement delineating the responsibilities of each party when involved in making a decision to place restraints on a student and to file a complaint alleging the child is a delinquent child would promote the best interest of the student and the community.

The parties acknowledge and agree that this Agreement is a cooperative effort among the public agencies named herein to establish guidelines for the handling of school related delinquent acts against public order which are defined herein as the focused acts. The parties further acknowledge and agree that the guidelines contained herein are intended to establish uniformity in the handling of student who has committed one of the focused acts as defined herein while simultaneously ensuring that each case is addressed on a case by case basis to promote a response proportional to the various and differing factors affecting each student's case. The parties acknowledge and agree that the manner in which each case or incident is handled by SROs, school administrator, and/or the Juvenile Court is dependent upon the many factors unique to each child that includes, but is not limited to, the child's background, present circumstances, disciplinary record, academic record, general demeanor and disposition toward others, mental health status, and other factors. Therefore, the parties acknowledge that students involved in the same incident or similar incidents may receive different and varying responses depending on the factors and needs of each student.

Finally, the parties acknowledge that a Cooperative Agreement has previously been entered into by the Juvenile Court of Clayton County, Georgia Department of Juvenile Justice, Clayton County Department of Family and Children Services, and The Clayton Center for Behavioral Health Services to coordinate intake services to ensure that children who do not present a high risk to re-offend are not detained using a Detention Screening Instrument (DSI) and that children presenting a low to medium risk are returned home

or appropriately placed in a non-secured or staff-secured setting. The parties acknowledge that the prior Agreement remains in full force and effect and is interrelated to this Agreement as part of the Juvenile Detention Alternative Initiative and Collaborative of Clayton County, Georgia.

II. DEFINITIONS

As used in this Agreement, the term:

A. "Student" means a child under the age of 17 years.

B. "Juvenile" means a child under the age of 17 years, which term is used interchangeably with "Student."

C. "Regional Youth Detention Center" or also known as RYDC means a secure detention facility for the housing of juveniles detained by authorization of Intake and awaiting adjudication and/or disposition of their case.

D. "Intake" means the division of the Juvenile Court responsible for making reviewing complaints to determine which complaints may be handled informally and by diversion, which complaints may be forwarded to the District Attorney's Office for a petition to be drawn, and which juveniles should be detained in the RYDC, or placed at another location, or returned home.

E. "Detention Screening Instrument" or known also as "DSI" means a risk assessment instrument used by Intake to determine if the juvenile should be detained or release. The DSI measures risk according to the juvenile's present offense, prior offenses, prior runaways or escapes, and the juvenile's current legal status such as probation, commitment, etc.

F. "Detention Assessment Questionnaire" or known also as "DAQ" means a document used to determine if the juvenile presents any mental health disorders, aggravating circumstances, or mitigating circumstances. The DAQ assists Intake in making a final decision regarding detention or release.

G. "Warning Notice" means a document or form used by the SRO to place a student on notice that he or she may be referred to the Court upon the commission of another similar delinquent act involving a misdemeanor against public order or to refer a child and parent to a Court Diversion Program in lieu the filing of a formal complaint.

H. "Diversion" means an educational program developed by the Court for those juveniles who have been charged with less serious delinquent acts, and Intake believes is not a delinquent child and most likely does not require probation or commitment to DJJ.

I. "Informal Adjustment" means informal supervision in which the juvenile is required to comply with conditions established by Intake of the judge for up to 90 days and is dismissed upon successful completion.

J. "Bully" is a student who has three (3) times in a school year willfully attempted or threatened to inflict injury on another person, when accompanied by an apparent present ability to do so or has intentionally displayed force such as would give the victim reason to fear or expect immediate bodily harm.

K. "Focused Acts" are misdemeanor type delinquent acts involving offenses against public order including affray, disrupting public school, disorderly conduct, obstruction of police (limited to acts of

truancy where a student fails to obey an officer's command to stop or not leave campus), and criminal trespass (not involving damage to property)

III. TERMS OF AGREEMENT

A. Warning Notice and Referral Prerequisites to Complaint in Cases Where a Student has Committed a Focused Act.

Misdemeanor type delinquent acts involving offenses against public order including affray, disrupting public school, disorderly conduct, obstruction of police (limited to acts of truancy where a student fails to obey an officer's command to stop or not leave campus), and criminal trespass (not involving damage to property) shall not result in the filing of a complaint alleging delinquency unless the student has committed his or her third or subsequent similar offense during the school year and the Principal or designee has reviewed the behavior plan with the appropriate school and/or system personnel to determine appropriate action. In accordance with O.C.G.A. §20-2-735, the school system's Student Codes of Conduct will be the reference documents of record. The parties agree that the response to the commission of a focused act by a student should be determined using a system of graduated sanctions, disciplinary methods, and/or educational programming before a complaint is filed with the Juvenile Court. The parties agree that a student who commits one of the focused acts must receive a Warning Notice and a subsequent referral to the School Conflict Diversion Program before a complaint may be filed in the Juvenile Court. An SRO shall not serve a Warning Notice or make a referral to the School Conflict Diversion Program without first consulting with his or her supervisor if the standard operating procedures of the SRO Program of which the SRO belongs requires consultation.

1. **First Offense.** A student who commits one of the focused acts may receive a Warning Notice that his or her behavior is a violation of the criminal code and school policy, and

that further similar conduct will result in a referral to the Juvenile Court to attend a diversion program. The SRO shall have the discretion not to issue a Warning Notice and in the alternative may admonish and counsel or take no action.

2. **Referral to School Conflict Diversion Program**. Upon the commission of a second or subsequent focused act in that or a subsequent school year, the student maybe referred to Intake to require the student and parent to attend the School Conflict Diversion Program, Mediation Program, or other program sponsored by the Court. However, a student who has committed a second "bullying" act shall be referred to the School Conflict Diversion Program to receive law related education and conflict resolution programming, and may also be required to participate in the mediation program sponsored by the Court for the purpose of resolving the issues giving rise to the acts of aggression and to hold the student accountable to the victim(s). Intake shall make contact with the parent of the child within ten (10) business days of receipt of the notice from the School Resource Officer or the school to schedule the parent and child to attend the School Conflict Diversion Program, or other program of the Court appropriate to address the student's conduct. Intake shall forward to the school where the child attends a confirmation of the child's successful participation in the diversion program. A child's failure to attend shall be reported to the School Resource Officer to determine if a complaint should be filed or other disciplinary action taken against the child.

3. **Complaint.** A student receiving his or her third or subsequent delinquent offense against the public order may be referred to the Court by the filing of a complaint. If the student has attended a diversion program sponsored by the Court in that year or any previous school year and the student has committed a similar focused act, the student may receive a Warning Notice warning that the next similar act against the public order may result in a complaint filed with the juvenile court. A student having committed his or her third "bullying" act shall be referred to the Juvenile Court on a juvenile complaint and the

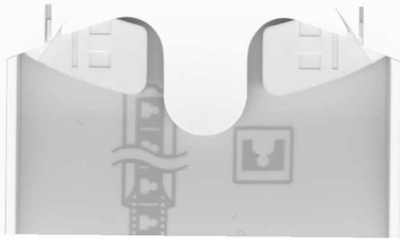
Court shall certify said petition provided probable cause exists and if adjudicated shall proceed to determine if said student is delinquent and in need of supervision. The school system shall proceed to bring the student before a tribunal hearing and if found to have committed acts of bullying shall in the least, with consideration given to special education laws, expel said child from the school and place in an alternative educational setting, unless expulsion from the school system is warranted. All acts of bullying shall be reported by school personnel and addressed immediately to protect the victims of said acts of bullying.

B. Emergency Shelter Care In Event Parent Cannot Be Located.

The Clayton County Juvenile Court, Georgia Department of Juvenile Justice, and The Clayton County Department of Family and Children Services previously entered into an agreement that establishes a protocol for the handling of youth who are charged on a delinquent offense and present a high risk using the Detention Assessment Instrument and a parent, guardian or custodian cannot be located or refuses to take custody of the youth. The protocol set forth in said agreement is incorporated herein and made a part hereof and shall continue in full force and effect. Nothing in this agreement shall be construed to alter or modify the prior agreement. Reference is made to said agreement reflect the relationship and continuity between the agreements as it relates to the handling of school related offenses described herein.

C. Treatment of Elementary Age Students.

Any situation involving violence to the extent that others are placed at risk of serious bodily injury shall constitute an emergency and warrant immediate action by police to protect others and maintain school safety. O.C.G.A. §15-11-150 et seq. sets forth procedures for determining if a juvenile is incompetent also provides for a mechanism for the development and implementation of a competency plan for treatment, habilitation, support, supervision for any juvenile who is determined not to be mentally competent to participate in an adjudication or disposition hearing. Generally, juveniles of elementary age do not possess the requisite knowledge of the nature of



court proceedings and the role of the various players in the courtroom to assist his or her defense attorney and/or grasp the seriousness of juvenile proceedings, including what may happen to them at the disposition of the case. The parties acknowledge that the Court will make diligent efforts to avoid the detention of juveniles who may be mentally incompetent upon reasonable suspicion, unless they pose a high risk of serious bodily injury to others. Furthermore, it is a fundamental best practice of detention decision-making to prohibit the intermingling of elementary age juveniles from adolescent youth and to treat elementary age students according to their age and level of development. Furthermore, the parties acknowledge that the commission of a delinquent act does not necessitate the treatment of the child as a delinquent, especially elementary age juveniles in whom other interventions may be made available within the school and/or other agencies to adequately respond to and address the delinquent act allegedly committed by the juvenile. The Court shall make its diversion, intervention, and prevention programs available to the juvenile without the filing of a complaint upon a referral from the school social worker. Intake shall respond to any and all referrals made by elementary school staff within 24 hours of receipt of the referral. Any delay shall be communicated to the official making the referral within 24 hours with an explanation for the delay. Intake shall respond no later than 72 hours or the matter shall be referred to the Intake Supervisor or the Chief Probation Officer. In the event an elementary age student is taken into custody and removed from the school environment for the safety of others, the decision to detain said child shall be made by the Intake Officer pursuant to law. The parties acknowledge that taking a child into protective custody is not a detention decision, which is a decision solely reserved for a juvenile judge or his or her intake officer and therefore requiring law enforcement to immediately contact the Court to determine if the child should be detained or released and under what conditions, if any, if so released.

III. DURATION AND MODIFICATION OF AGREEMENT

This Agreement shall become effective immediately upon its execution by signature and shall remain in full force and effect until such time as terminated by any party to the Agreement. The Agreement may be modified at any time by amendment to the Agreement. The parties

acknowledge and agree to meet quarterly to provide oversight of the Agreement and make recommendations to the heads of each agency on any modifications to the Agreement.

IN WITNESS WHEREOF, the parties hereto, intending to cooperate with one another, have hereunder set their hands on the date set forth below.

R. Van Banke, Chief Judge
Juvenile Court of Clayton County

Chuck Fischer, Deputy Director
for Cathy Ratti, Director
Clayton County Department of Family and Children Services
(with expressed permission)

Luvenia Jackson, Assistant Superintendent
for Dr. Barbara Pulliam, Superintendent
Clayton County Public School System
(with expressed permission)

Dr. Thomas Coleman, Deputy Commissioner
for Albert Murray, Commissioner
Georgia Department of Juvenile Justice
(with expressed permission)

Darrell Partain, Chief
Clayton County Police Department

Robert E. Keller, District Attorney
Clayton Judicial Circuit

Dwayne Hobbs, Chief
Forest Park Police Department

Jimmy Wiggins, Director
The Clayton Center for Behavioral Health Services

Robert Thomas, Chief
Jonesboro Police Department

Greg Barney, Chief
Riverdale Police Department

Agency Name: Board of Education
Statutory Authority: 59-5-60, 59-5-65, and 59-59-10 et seq.
Document Number: 4657
Proposed in State Register Volume and Issue: 40/8
120 Day Review Expiration Date for Automatic Approval: 05/10/2017
Status: Pending
Subject: Minimum Standards of Student Conduct and Disciplinary Enforcement Procedures to be Implemented by Local School Districts

History: 4657

By	Date	Action Description	Jt. Res. No.	Expiration Date
-	08/26/2016	Proposed Reg Published in SR		
-	01/10/2017	Received by Lt. Gov & Speaker		05/10/2017

Document No. 4657
STATE BOARD OF EDUCATION
CHAPTER 43
Statutory Authority: 1976 Code Sections 59-5-60, 59-5-65, and 59-59-10 et seq.

43-279. Minimum Standards of Student Conduct and Disciplinary Enforcement Procedures to be Implemented by Local School Districts.

Synopsis:

The State Board of Education (SBE) proposes to amend R.43-279, Minimum Standards of Student Conduct and Disciplinary Enforcement Procedures to be Implemented by Local School Districts to include the changes recommended by the Safe Schools Taskforce, which was established by State Superintendent of Education, Molly M. Spearman, in November 2015. The amendments will include changes in the levels of misconduct, acts of misconduct, disciplinary enforcement procedures, and possible consequences.

Notice of Drafting for the proposed amendments to the regulation was published in the *State Register* on June 24, 2016.

Instructions:

Replace Regulation 43-279 as printed below.

~~Indicates Matter Stricken~~
Indicates New Matter

Text:

43-279. Minimum Standards of Student Conduct and Disciplinary Enforcement Procedures to be Implemented by Local School Districts.

I. Expectations for Student Conduct in South Carolina Public Schools

The mission of the SCDE is to provide leadership and support so that all public education students graduate prepared for success in citizenship, college, and careers as envisioned by the Profile of the South Carolina Graduate. Students in the public schools of South Carolina enjoy the same basic rights of United States citizenship as do other United States citizens. The rights of students are supported by the responsibility to insure that the rights of others are respected. This regulation is adopted with the intent to better assure that the opportunity to enjoy the benefits of public education is available to all those attending the public schools of the state of South Carolina.

II. Previously Adopted School District Discipline Policies

This regulation is established as a uniform system of minimum disciplinary enforcement for the school districts of South Carolina. School districts that previously have adopted discipline policies that are consistent with and contain the elements included in this regulation may retain their local policies as adopted.

III. Levels of Student Misconduct

A. The levels of student misconduct considered in this regulation are arranged by degrees of seriousness. The levels are arranged from the least serious to the most serious.

B. Three levels of student misconduct are identified: ~~disorderly conduct~~ behavioral misconduct, disruptive conduct, and criminal conduct. The levels are defined in this regulation.

C. This regulation includes a listing of possible consequences and/or sanctions for the three levels of student misconduct. As the levels increase in seriousness, the severity of possible disciplinary consequences and/or sanctions increases.

D. Suggested ~~sanctions~~ consequences within the Level I misconduct category range from verbal reprimand to ~~in-school suspension~~ detention. Level II misconduct includes sanctions ranging from temporary removal from class to expulsion~~, while~~. Level III misconduct includes sanctions ranging from out-of-school suspension to appropriate action within the criminal justice system.

E. A local school board, in its discretion, may authorize more stringent standards and consequences than those contained in this regulation.

IV. Minimum Standards

A. ~~Disorderly Conduct~~ Behavioral Misconduct-Level I

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

2. Acts of ~~disorderly conduct~~ behavioral misconduct may include, but are not limited to:

a. Classroom tardiness;

b. Cheating on examinations or classroom assignments;

c. Lying;

~~d. Acting in a manner so as to interfere with the instructional process;~~

~~e~~d. Abusive language between or among students;

~~f~~e. Failure to ~~complete assignments or carry out directions;~~ comply with directives from school/district personnel or agents (to include volunteer aides or chaperones);

~~g~~f. Use of forged notes or excuses;

~~h~~g. Cutting class;

~~i~~h. School tardiness;

~~i~~i. Truancy (three consecutive unlawful absences from school or a total of five unlawful absences);

~~k~~j. Possession of an electronic communication device (including, but not limited to, cell phones, tablets, computers, and iPods) inconsistent with school board policy. An electronic communication device is a device that emits an audible signal, vibrates, displays a message, image or otherwise summons or delivers a communication to the possessor;

~~l~~k. Other ~~disorderly~~ acts of behavioral misconduct as determined and communicated by local school authorities.

3. The basic enforcement procedures to be followed in instances of ~~disorderly conduct~~ behavioral misconduct are:

a. Upon observation or notification and verification of ~~offense~~ acts of behavioral misconduct, the staff member should take immediate action to rectify the misconduct. The staff member should ~~apply~~ impose an appropriate consequence ~~sanction~~, and ~~should~~ maintain a record of the misconduct and the ~~sanction~~ consequence.

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

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

d. A complete record of the procedures should be maintained.

4. Possible ~~sanctions~~ consequences to be applied in cases of behavioral misconduct may include, but are not limited to:

a. Verbal reprimand;

b. Withdrawal of privileges;

c. Demerits;

d. Detention (silent lunch, after school, weekends, or another time that does not interfere with the instructional day);

~~e. Corporal punishment;~~

~~f. In-school suspension;~~

~~g~~e. Other ~~sanctions~~ consequences as approved and communicated by local school authorities.

B. Disruptive Conduct-Level II

1. Disruptive conduct is defined as those activities engaged in by student(s) which are directed against persons or property, and the consequences of which tend to endanger the health or safety of oneself or others in the school. Some instances of disruptive conduct may overlap certain criminal

offenses, justifying both administrative sanctions and court proceedings. ~~Disorderly conduct~~ Behavioral misconduct (Level I) may be reclassified as disruptive conduct (Level II) if it occurs three or more times. The provisions of this regulation apply not only to within school activities, but also to student conduct on school bus transportation vehicles, and other school-sponsored activities.

2. Acts of disruptive conduct may include, but are not limited to:

a. Violation of a Level I intervention plan and/or behavioral contract;

~~a~~b. Use of an intoxicant;

~~b~~c. Fighting;

~~c~~d. Vandalism (minor);

~~d~~e. Stealing;

~~e~~f. Threats against others;

~~f~~g. Trespass;

~~g~~h. Abusive language to staff;

~~h~~i. Repeated refusal to comply with directives from ~~Refusal to obey~~ school personnel or agents (such as volunteer aides or chaperones) ~~whose responsibilities include supervision of students~~;

~~i~~j. Possession or use of unauthorized substances, as defined by law and/or local school board policy;

~~j~~k. Illegally occupying or blocking in any way school property with the intent to deprive others of its use;

~~k~~l. Unlawful assembly;

~~l~~m. Disrupting lawful assembly;

n. Inappropriate use of technology (e.g., bullying, harassing, or intimidating other students or district employees, plagiarizing copyrighted materials, and accessing inappropriate websites);

~~m~~o. Other acts as determined and communicated by local school authorities.

3. The basic enforcement procedures to be followed in instances of disruptive conduct are:

a. Upon observation or notification and verification of an offense, the administrator should investigate the circumstances of the misconduct and should confer with staff on the extent of the consequences.

b. The administrator should notify the parent or guardian of the student's misconduct and related proceedings. The administrator should meet with the student and, if necessary, the parent or guardian, confer with them about the student's misconduct and ~~effect~~ impose the appropriate disciplinary action.

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

d. If the misconduct appears to rise to a level of criminality, the administrator must refer the matter to the School Resource Officer or other local law enforcement authorities.

~~c.~~e. A complete record of the procedures should be maintained.

4. Possible sanctions to be applied in cases of disruptive conduct may include, but are not limited to:

a. Temporary removal from class;

b. Alternative education program;

c. In-school suspension;

d. Out-of-school suspension;

e. Transfer;

f. Referral to outside agency;

g. Expulsion;

h. Restitution of property and damages, where appropriate, should be sought by local school authorities;

i. Other sanctions as approved and communicated by local school authorities.

C. Criminal Conduct-Level III

1. Criminal conduct is defined as those activities engaged in by student(s) which result in violence to oneself or another's person or property or which pose a direct and serious threat to the safety of oneself or others in the school. These activities usually require administrative actions which result in the immediate removal of the student from the school, the intervention of the School Resource Officer or other law enforcement authorities, and/or action by the local school board. The provisions of this regulation apply not only to within-school activities, but also to student conduct on school bus transportation vehicles, and during other school-sponsored activities.

2. Acts of criminal conduct may include, but are not limited to:

a. Assault and battery;

b. Extortion;

c. Bomb threat;

d. Possession, use, or transfer of dangerous weapons;

e. Sexual offenses;

f. Vandalism (major);

g. Theft, possession, or sale of stolen property;

h. Arson;

i. Furnishing or selling unauthorized substances, as defined by law and/or local school board policy;

j. Furnishing, selling, or possession of controlled substances (drugs, narcotics, or poisons)~~.~~;

k. Illegal use of technology (e.g., communicating a threat of a destructive device, weapon, or event with the intent of intimidating, threatening, or interfering with school activities and transmitting sexual images of minors).

3. The basic enforcement procedures to be followed in instances of criminal conduct are:

a. Upon observation or notification and verification of ~~an~~ a criminal offense, the administrator must contact the School Resource Officer or local law enforcement authorities immediately. ~~should confer with the staff involved, should effect the appropriate disciplinary action, and, if appropriate, should meet with the student.~~

b. An administrator should notify the student's parent or guardian as soon as possible.

~~b~~c. An administrator should impose the appropriate disciplinary action. If warranted, the student should be removed immediately from the school environment. ~~A parent or guardian should be notified as soon as possible.~~

~~c. If appropriate, school officials should contact law enforcement authorities.~~

d. Established due process procedures shall be followed when applicable.

e. A complete record of the ~~procedures~~ incident should be maintained in accordance with district policy.

4. Possible sanctions to be applied in cases of criminal conduct may include, but are not limited to:

a. Out-of-school suspension;

b. Assignment to alternative schools;

c. Expulsion;

d. Restitution of property and damages, where appropriate, should be sought by local school authorities;

e. Other sanctions as approved by local school authorities.

D. Extenuating, Mitigating or Aggravating Circumstances

1. A local school board may confer upon the appropriate administrator the authority to consider extenuating or mitigating ~~or aggravating~~ circumstances which may exist in a particular case of misconduct, excluding criminal conduct. Such circumstances should be considered in determining the most appropriate sanction to be used.

2. A local school board may confer upon the appropriate administrator the authority to consider aggravating circumstances which may exist in a particular case of misconduct or criminal conduct. Such circumstances should be considered in determining the most appropriate sanction to be used.

V. Discipline of Students with Disabilities

For additional information regarding Disciplinary Procedures for students with disabilities, see Reg.43-243.

VI. Other Areas of Student Conduct Which May Be Regulated by Local School Board Policy

A. Other areas of student conduct which are subject to regulation by local school boards include, but are not limited to:

1. School attendance;

2. Use of and access to public school property;

3. Student dress and personal appearance;

~~4. Use of tobacco in the public schools;~~

~~5~~4. Speech and assembly within the public schools;

~~6~~5. Publications produced and/or distributed in the public schools;

~~7~~6. The existence, scope and conditions of availability of student privileges, including extracurricular activities and rules governing participation;

~~8~~7. Other activities not in conflict with existing state statutes or regulations as approved and communicated by the local school authorities.

B. Rules of student conduct are required by state and federal law to be reasonable exercises of the local school board's authority in pursuance of legitimate educational and related functions and must not infringe upon students' constitutional rights. ~~Other areas of student conduct may be regulated within legal limits by local school boards as they deem appropriate to local conditions. The term "legal limits" signifies the requirements of the federal and state constitutions and governing statutes, standards and regulations, the fundamental common law requirement that rules of student conduct be reasonable exercises of the school's authority in pursuance of legitimate educational and related functions, and special limitations arising from constitutional guarantees.~~

Fiscal Impact Statement:

No additional state funding is requested. The South Carolina Department of Education estimates that no additional costs will be incurred in complying with the proposed revisions to R.43-279.

Statement of Rationale:

The proposed changes are designed to promote more consistent discipline practices statewide by reducing the amount of subjectivity involved in discipline decisions.

Agency Name: Board of Education
Statutory Authority: 5-7-12, 16-17-420, 59-5-60, and 59-5-65
Document Number: 4659
Proposed in State Register Volume and Issue: 40/8
120 Day Review Expiration Date for Automatic Approval: 05/10/2017
Status: Pending
Subject: School Resource Officers

History: 4659

By	Date	Action Description	Jt. Res. No.	Expiration Date
-	08/26/2016	Proposed Reg Published in SR		
-	01/10/2017	Received by Lt. Gov & Speaker		05/10/2017

Document No. 4659
STATE BOARD OF EDUCATION
CHAPTER 43
Statutory Authority: 1976 Code Sections 5-7-12, 16-17-420, 59-5-60, and 59-5-65

Synopsis:

The State Board of Education proposes to create R.43-210, to establish a definition of "school resource officers," along with expectations, roles, and procedures associated with these individuals.

Notice of Drafting for the proposed new regulation was published in the *State Register* on June 24, 2016.

Instructions:

New regulation. Print as shown below.

~~Indicates Matter Stricken~~
Indicates New Matter

Text:

43-210. School Resource Officers.

I. Expectations for School Resource Officers in South Carolina Public Schools

School campuses are learning environments where public education students are prepared for success in college, careers, and citizenship. School resource officers are necessary to provide law enforcement and police services to assist in providing a safe learning environment. School resource officers should act in accordance with policies and procedures of police departments, sheriff's offices, and other law enforcement agencies to enforce federal and state laws, county and municipal ordinances, and district policies.

II. Resource Officers Defined

A school resource officer is a sworn law enforcement official, pursuant to the requirements of any jurisdiction of South Carolina, who has completed the basic course of instruction, as provided or recognized by the National Association of School Resource Officers or the South Carolina Criminal Justice Academy, and who is assigned to one or more school districts within this state to have as a primary duty the responsibility to act as a law enforcement officer, who advises and/or instructs district representatives on law-related matters, if appropriate.

A school resource officer has statewide jurisdiction to arrest any persons committing crimes in connection with a school activity or school-sponsored event.

III. Role of the School Resource Officer

A. Law Enforcement Officer

As sworn law enforcement officials, school resource officers have a major role in campus security. School resource officers should not only be called to respond to criminal incidents, but also to assist in emergency crisis planning, building security, and training school personnel on handling crisis situations. It is important for school administrators to establish and maintain close partnerships with school resource officers, as they are valuable resources for providing a safe school environment.

B. Law-Related Educator

Teachers and staff should utilize school resource officers within the classroom to help design and present law-related topics regarding the role of law enforcement in our society.

C. Community Liaison

School administrators should encourage school resource officers' visibility within the school community, as well as attendance and participation at school functions, to build working relationships with school personnel, students, and parents.

D. Positive Role Model

School resource officers should be positive role models and may be used to promote the profession of law enforcement as a career choice for students. School administrators should support positive interactions between school resource officers and students on school campuses.

IV. Procedures

A. Student Behavior

As sworn law enforcement officials, the school resource officers should only be called when a student's behavior has exceeded the level of disruptive conduct, as determined by school administration, based on district policy, or the student is engaging or has engaged in criminal conduct (see Regulation 43-279 for levels of disruptive and criminal conduct). A school resource officer should be the first line of contact for local law enforcement to ensure that the matter is resolved expeditiously to decrease significant interruption to the learning process.

B. General provision for visitors, employees, and unauthorized persons.

Students deserve school environments that are safe and conducive to learning. Visitors and employees will not disrupt the learning environment or school activity inappropriately or unlawfully.

State law mandates that it is unlawful to willfully or unnecessarily interfere with or disturb school, loiter about a school, or act in an obnoxious manner while at a school. The school resource officer should be called immediately to handle a disturbance or emergency regarding a visitor or employee who disrupts the learning environment or school activity.

V. Memorandum of Understanding

Prior to placing a school resource officer at a school or in a school district, a memorandum of understanding must be executed between the school district, individual schools, local law enforcement agency, and school administration. The role of the school resource officer as a law enforcement official must clearly be defined pursuant to state law in the memorandum.

The school district will provide the school administration with a copy of the memorandum of understanding, and review it with the school administration and with the school resource officer prior to the start of every school year.

Fiscal Impact Statement:

No additional state funding is requested. The South Carolina Department of Education estimates that no additional costs will be incurred in complying with the proposed revisions to R.43-210.

Statement of Rationale:

This regulation is designed to improve the uniformity of the roles and expectations of school resource officers among schools statewide.

South Carolina Bar

Same-Sex Marriage: Equal Protection Under the Law

M. Malissa Burnette
Columbia, SC

CALLISON TIGHE

Callison Tighe & Robinson, LLC

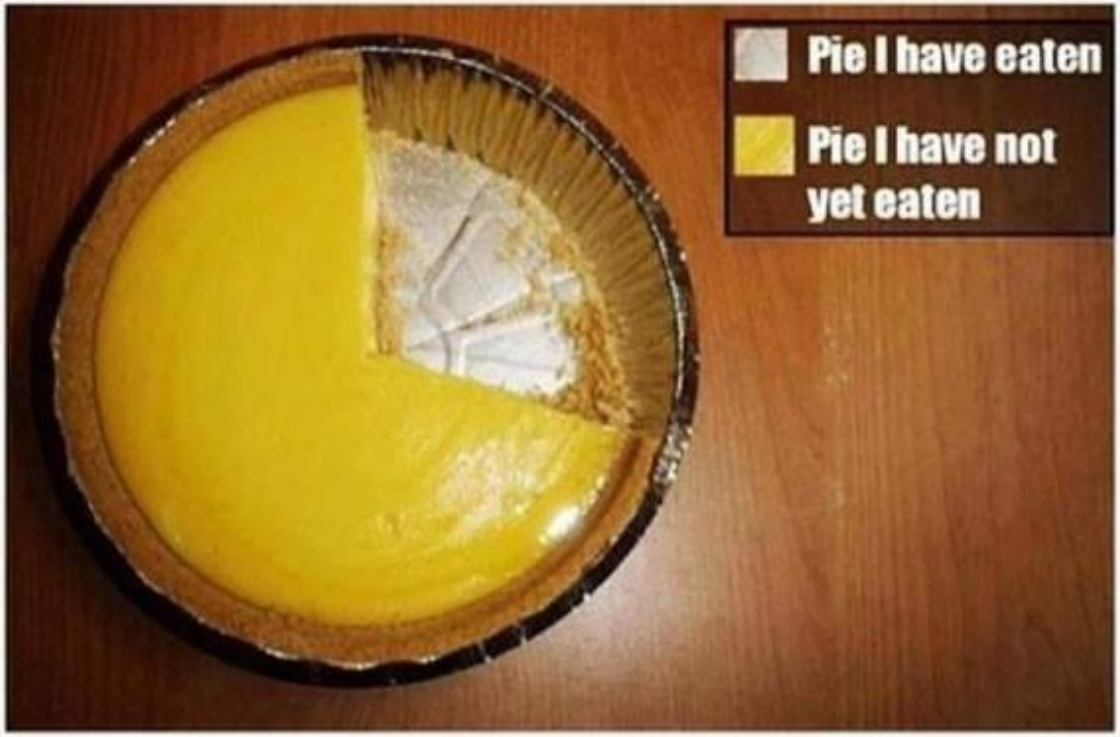
CALLISON TIGHE

SC Bar Children's Law Committee | 1.21.17
SAME-SEX MARRIAGE
Equal Protection Under the Law

M. Malissa Burnette – Certified Specialist in Employment & Labor Law

CALLISON TIGHE

World's Most Accurate Pie Chart



Gallup Poll - Historical Trends:
Do you think gays and lesbians should have equal rights in terms of job opportunities?

- 1977: 56-33
- 1989: 71-18
- 1999: 83-13
- 2005: 87-11
- 2008: 89-8

2016 Gallup Poll:
Over 10 million American adults self-identify as LGBT / 4.6% of the US population

- Increase of 1.75 million since 2012
- 1980-1998 twice as likely to identify
- 1980-1998 = only 32% of adults
- Millennials comprised 58% of id'd
- Decline in stigma

2016 Gallup Poll:

- 4.4% of women; 3.7% of men
- 3.6% of whites; 4.6% of blacks
- 5.4% of Hispanics; 4.9% of Asians
- 56% of LGBT adults: non-religious
- 32% of straights: non-religious

IF SO MANY MORE ADULTS SELF-IDENTIFY AS LGBT

IT MUST BE SAFE TO "COME OUT OF THE CLOSET"

NOT SO FAST!

REMEMBER THIS?

CALLISON TIGHE

I can see gay people from my house

AND THEY'RE BAAACK!

SC HAS IT'S OWN SPECIAL STORIES, BOTH SAD

AND INSPIRING

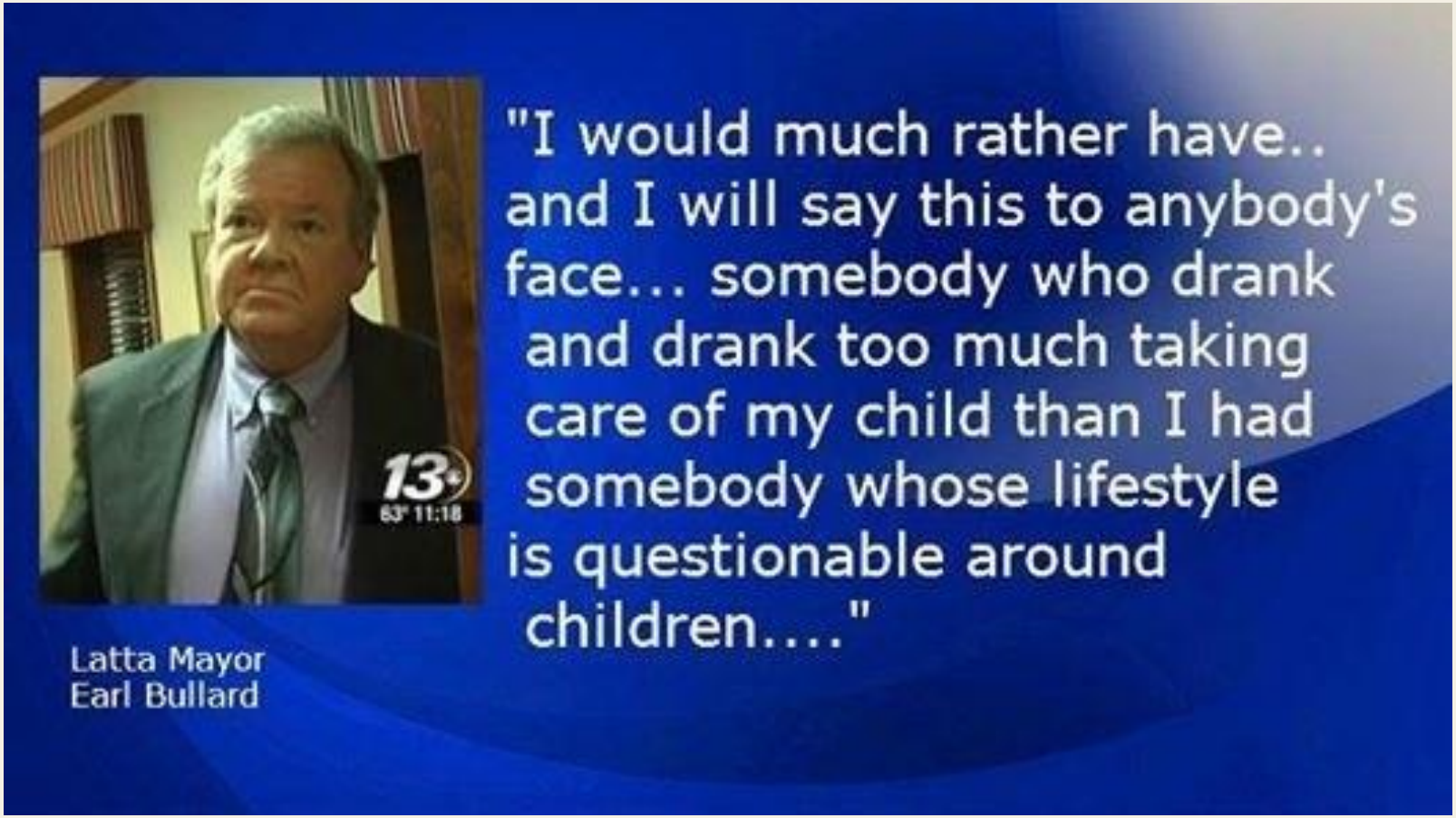
Meet the accidental poster child for LGBT rights:

CHIEF CRYSTAL MOORE
LATTA, SOUTH CAROLINA


POLICE

"I'm not going to let 2 women stand up there and hold hands and let my child be aware of it. And I'm not going to see them do it with 2 men neither.

I'm not going to do it. Because that ain't the way the world works." Latta Mayor Earl Bullard


"I would much rather have.. and I will say this to anybody's face... somebody who drank and drank too much taking care of my child than I had somebody whose lifestyle is questionable around children...."
Latta Mayor
Earl Bullard
13
83° 11:18


TOWN COUNCIL
LATTA, S.C.


POLICE


ACADEMY STREET
DEDICATED TO
TOWN OF LATTA & LATTA
THIS
21ST DAY OF MAY 1981
1978

CALLISON TIGHE

2014

SOUTH CAROLINA'S FIGHT FOR MARRIAGE EQUALITY

Marriage Equality

• Oct. 6, 2014 US Supreme Court declined to take up appeals from 3 circuits where same-sex marriage bans were declared unconstitutional.

• The 4th Circuit's *Bostic* case from Virginia applied heightened scrutiny and found a fundamental right to marriage, guaranteed by the equal protection and due process clauses of the 14th Amendment.

• Only one state in the 4th Circuit, South Carolina, continued to resist


HARRIET HANCOCK
LGBT Center
Serving South Carolina with Pride
SC EQUALITY
Advancing LGBT Equality
Republicans For
Marriage Equality!

THE SC CASES

- Condon and Bleckey v. Wilson and Haley
- *Denied marriage licenses in SC*
- *Represented by Burnette, Shutt, Eslinger and Lambda Legal*

- Bradacs v. Wilson and Haley
- *Married outside of SC*
- *Represented by Warner and Nichols*

It all makes sense now.
Gay marriage and marijuana being legalized on the same day.
Leviticus 20:13 - "if a man lays with another man he should be stoned." We've just been interpreting it wrong all these years.

The Challenged Statutes

§ 20-1-10 lists relatives who cannot marry, and says no man shall marry a man and no woman shall marry a woman.

§ 20-1-15 “A marriage between persons of the same sex is void ab initio and against the public policy of this State.” (1996)

Obergefell v. Hodges
135 S.Ct. 2584 (U.S. 2015)

- " . . . The right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, couples of the same sex may not be deprived of that right and that liberty. . . "
- Holding: The 14th Amendment requires a state 1) to license a marriage between two people of the same sex, and 2) to recognize a marriage between two people of the same sex when a marriage was lawfully licensed and performed out of state.

Condon v. Haley, 21 F.Supp.3d 572 (2014)

CALLISON TIGHE


ST. MARY MAGDALENE
EPISCOPAL CHURCH
WE TRULY REGRET THAT GAY
MARRIAGE ATTACKS THE SANCTITY
OF YOUR FOURTH MARRIAGE

Unintended Consequences?

COMMON LAW MARRIAGE

Alabama, Colorado, Iowa, Kansas, Montana, Rhode Island, South Carolina, Texas and District of Columbia expressly permit common law marriage.

§ SC Code 20-1-360

Common Law Marriage

All states recognize common law marriages validly created in other states

Full Faith and Credit Clause

Article IV, Section 1,US Constitution

Common Law Marriage

Adult couple - no legal impediments to marry

Agreement / Intent to Marry

Live together for an indeterminate time

Hold themselves out to others as married

Common Law Marriage

CONSEQUENCES?

Inheritance

Custody, Visitation, Child Support

Alimony

Property Rights

Entitlement to Retirement, Social Security

Medical Decisions

Texas Probate Case

In 2015, Texas probate Judge Guy Herman approved an agreement between the family of Stella Powell and her long-time female partner, recognizing the couple's common law marriage. They had "married" in a ceremony in Texas in 2008, and Stella died of cancer in 2014. The Texas Attorney General fought the case.

Another Hurdle: SC Presumption of Parentage Does Not Apply to Married Same-Sex Couples

- Non-genetic spouse must affirm parentage through Family Court
- Must ensure rights and obligations of egg donors, surrogates and sperms donors are terminated
- Obtain FC Order that 2nd spouse is for all purposes the legal parent and direct DHEC to add name to birth certificate
- Or obtain adoption Decree to get birth certificate changed

Marriage Equality – **News flash: Just like heterosexual relationships, "it's complicated"**

- People cheat on each other.
- People are sorry and try to make up.
- People make mistakes
- People have meddling family members and friends
- People procrastinate and don't take steps to protect their rights until it's too late
- People think they can save money by taking advice of friends who "had a case just like yours"

Marriage Equality – **When facing custody, support, alimony battles, the same rules apply to same-sex couples**

- Best interests of the children
- Prove standing to seek custody/visitation if not biological parent
- Third party must prove psychological parent (common law) or de facto custodian status (SC Code 63-15-60)
- Alimony and support factors
- Equitable division factors

Marriage Equality –

- No known harm has come to any heterosexual marriages as a result of these same-sex marriages as of yet . . • “It’s very simple. If you don’t believe in same-sex marriage, don’t marry somebody of the same sex.”

--- Wanda Sykes

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CALLISON TIGHE

SC BAR CONVENTION
January 21, 2017

CHILDREN'S LAW COMMITTEE

SAME-SEX MARRIAGE: EQUAL PROTECTION UNDER THE LAW

Exhibit A	Plaintiff's Memorandum in Support of Standing to Petition Court for Visitation and Custody
Exhibit B	Complaint to find Standing, and award Custody, Visitation, Support, Discovery, Attorney's Fees and Costs
Exhibit C	Defendant's Answer and Counterclaim
Exhibit D	Plaintiff's Reply to Counterclaim

EXHIBIT A

Memorandum of Law in Support of Standing to Petition Court for Visitation and Custody[1]

[1] I wish to thank our new Associate, Alden Terry, Esq., for her research on this important issue.

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY Plaintiff, v. Defendant.	IN THE FAMILY COURT FOR THE EIGHTH JUDICIAL CIRCUIT Docket No. 2015-DR- PLAINTIFF'S MEMORANDUM IN SUPPORT OF STANDING TO PETITION COURT FOR VISITATION AND CUSTODY

The Plaintiff submits this memorandum in support of standing to bring an action for visitation, custody, and an order requiring Plaintiff to pay child support.

INTRODUCTION

Plaintiff, a same-sex former partner of Defendant, seeks visitation, custody, and an order requiring Plaintiff to provide, and the Defendant to accept, child support for the Defendant's biological twin boys. Plaintiff has standing to bring this action because she is a psychological parent of the twins; she is entitled to consideration of her claim on such basis and should not be treated as a mere third party.

FACTS

The Plaintiff seeks visitation and custody of the minor twin boys, an order requiring Plaintiff to pay child support, discovery and attorneys' fees and costs. The action arises from the following facts. The parties to this action are two women who were once in a long-term, committed relationship, prior to the legalization of same-sex marriage. Compl. ¶ 6. During their relationship, Plaintiff and Defendant determined they were financially and emotionally ready to begin the process of becoming parents. *Id.* Plaintiff and

Defendant jointly decided that they would begin intrauterine insemination ("IUI") and Defendant would serve as the biological mother of any children they would conceive, using an anonymous sperm donor. Compl. ¶ 7. After several months of unsuccessful IUI treatments, the parties had not yet conceived a child, so they decided to begin the physical process of in vitro fertilization ("IVF"). Compl. ¶ 8. Plaintiff and Defendant jointly shared in the costs of paying for the IUI and the IVF treatments. Compl. ¶¶ 9-10. Through IVF, Defendant became pregnant, and on July 5, 2012, she gave birth to twin boys. Compl. ¶¶ 11-13.

After the birth of the twins, Plaintiff and Defendant jointly parented the twins and the four of them resided together as a family in the same household. Compl ¶ 15. Defendant suffered from severe post-partum issues, and Plaintiff, in addition to fulfilling her responsibilities as a parent to the twins, provided emotional and financial support to Defendant as she was dealing with these emotional issues. Compl ¶ 14. Plaintiff formed a deep, loving, and dependent parental relationship with the twins, just as a biological or adoptive parent would form with his or her children. Compl. ¶ 16. From the time the twins were conceived, Defendant consented to and fostered Plaintiff's formation of deep and loving familial relationships with the twins. Compl. ¶ 19. Even before the twins were born, Plaintiff assumed the obligation of parenthood by taking significant responsibility for the twins' care, education, socialization, and development, and she has always done so without any expectation of financial compensation. Compl. ¶ 20. Plaintiff lived in the same house with the twins until March 2014, when Defendant ended her relationship with Plaintiff and, accordingly, moved out of the family home, taking the twins with her over Plaintiff's objection. Compl. ¶ 21. Plaintiff and Defendant had desired to become married

since before Plaintiff and Defendant decided to become parents; however, as a same-sex couple, this State did not recognize or permit them to marry. Compl. ¶ 24. It was not until November 2014, over seven months after Plaintiff and Defendant's long-term relationship ended, that this State began permitting and recognizing the marriages of same-sex couples. *Id.* It has always been Plaintiff's desire to adopt the twins; regrettably, Plaintiff was unable to do so before Defendant terminated her relationship with Plaintiff. Compl. ¶ 25.

After the relationship ended, Defendant allowed Plaintiff to have liberal visitation with the twins, and Plaintiff often kept the twins over weekends. Compl. ¶ 28. It was not until later that the Defendant began imposing restrictions on Plaintiff's visitation with the twins. *Id.* After Plaintiff's relationship with Defendant ended, Plaintiff continued to provide financial support for the twins, which Defendant accepted until September 2014. Compl. ¶ 27. In September 2014, the Defendant informed Plaintiff that she would not allow Plaintiff to see the twins anymore. Compl. ¶ 29. Defendant then changed her phone number. *Id.* In November 2014, Plaintiff provided clothes and diapers for the twins because Defendant would no longer accept monetary support for the twins. Compl. ¶ 30. Plaintiff has since made numerous attempts to visit with the twins in person and communicate with them over the telephone, but Defendant, without justification, continues to refuse to allow Plaintiff visitation. Compl. ¶ 36.

ARGUMENT

Plaintiff seeks custody, visitation, and an order requiring Plaintiff to provide the Defendant mother with child support for the twins. Because the Plaintiff is the

psychological parent of the twins, she is entitled to consideration of her claim on such basis and should not be treated as a mere third party.

Under the penumbra of custody, is the lesser included right to visitation. *Middleton v. Johnson*, 369 S.C. 585, 594, 633 S.E.2d 162, 167 (Ct. App. 2006). When a third party has standing to bring an action for custody, it follows that he also has standing to seek visitation. *Id.*

In all child custody cases, the welfare of the child and the child's best interest is the primary, paramount and controlling consideration of the court. S.C. Code Ann. § 63-3-510; *see also Harris v. Harris*, 415 S.E.2d 391 (1992). To further promote the goal of safeguarding the best interests of children, the South Carolina General Assembly has recognized that in certain circumstances, persons who are not a child's biological parent or legal guardian may still be proper parties to a custody proceeding. *Middleton v. Johnson*, 369 S.C. 585, 594, 633 S.E.2d 162, 167 (Ct. App. 2006). Section 20-7-420(20) of the South Carolina Code grants the family court jurisdiction to award custody of a child to the child's parent ***or any other proper person*** or institution. S.C. Code Ann. § 20-7-420(20) (emphasis added). Pursuant to that statute, third parties are permitted to bring an action for custody of a child. *Middleton v. Johnson*, 369 S.C. 585, 594, 633 S.E.2d 162, 167 (Ct. App. 2006) (citing *Kramer v. Kramer*, 323 S.C. 212, 473 S.E.2d 846 (Ct. App. 1996) (awarding custody to child's aunt and uncle over biological mother); *Donahue v. Lawrence*, 280 S.C. 382, 312 S.E.2d 594 (Ct. App. 1984) (finding stepmother had standing to initiate termination of parental rights action)).

To give third parties standing to bring custody and visitation actions, South Carolina recognizes the doctrines of "psychological parents" and "de facto custodians". The

psychological parent doctrine was created by common law (*see Middleton*, 369 S.C. at 597, 633 S.E.2d at 168), while de facto custodians were created by statute (S.C. Code Ann. § 63-15-60).

I. Plaintiff is a psychological parent, and as such, has standing to petition for visitation and custody.

A psychological parent is defined as someone who on a day-to-day basis, fulfills a child's psychological and physical needs for a parent and supports the child emotionally and physically. *Middleton*, 369 S.C. at 598, 633 S.E.2d at 169. The psychological parent relationship was first recognized in South Carolina in *Moore v. Moore.* 300 S.C. 75, 386 S.E.2d 456 (1989). There, the South Carolina Supreme Court recognized the concept of a psychological parent but found the doctrine inadequate to support an award of permanent custody to foster parents over a fit, biological parent who only relinquished custody with the understanding that he would resume custody when he was able to do so. *Id.* at 81, 386 S.E.2d at 459. Likewise, in *Dodge v. Dodge,* the South Carolina Court of Appeals recognized that the psychological parent doctrine, but held the bond between the child and the party claiming psychological parenthood did not rise to the level of a psychological parent relationship. *Dodge v. Dodge*, 332 S.C. 401, 405, 505 S.E.2d 344 (Ct. App. 1998).

In 2006, the South Carolina Court of Appeals in *Middleton v. Johnson*, for the first time by any South Carolina court, awarded a psychological parent visitation. *Middleton,* 369 S.C. 585, 633 S.E.2d 162. Therein, the South Carolina Court adopted a four-prong test for determining psychological parenthood. *Id.* at 597, 633 S.E.2d at 168. The court found that Middleton, a third party, non-biological father satisfied the psychological parent

test and the court awarded him visitation rights over the mother's objections. *Id.* At 603, 633 S.E.2d at 172-73. Middleton was involved in a long-term relationship with the child's mother, and after the relationship ended, the mother gave birth to a son. *Id.* at 592, 633 S.E.2d at 166 n.2. Initially, Middleton assumed he was the biological father, however testing later confirmed otherwise. *Id.* At 589, 633 S.E.2d at 164. The biological father was not involved in the son's life, and for nine years Middleton assumed a parental role by holding himself out as the son's father, taking the son to preschool, signing report cards, attending PTA meetings, and taking the son to Boy Scout meetings. *Id.* at 589-90, 633 S.E.2d at 165. Middleton and the mother had what was essentially a joint custody agreement, with the son splitting his time between Middleton's house and his mother's house. *Id.* However, this relationship came to an abrupt end when the mother terminated Middleton's relationship with her son. *Id.* at 591, 633 S.E.2d at 166. In response, Middleton filed an action for custody and visitation. *Id.* The family court held that because the son knew he had a biological father, the non-biological father could not be a psychological parent, and therefore the non-biological father has no legal rights to petition for visitation. *Id.* The Court of Appeals reversed the family court, granting the non-biological father visitation based on his status as a psychological parent and the significant harm that denying visitation would cause the son. *Id.* At 603, 633 S.E.2d at 172-73.

The *Middleton* court adopted a four prong test for establishing a psychological parent-child relationship. The four prong test requires that the petitioner show:

> (1) that the biological or adoptive parent[s] consented to, and fostered, the petitioner's formation and establishment of a parent-like relationship with the child; (2) that the petitioner and the child lived together in the same

> household; (3) that the petitioner assumed obligations of parenthood by taking significant responsibility for the child's care, education and development, including contributing towards the child's support, without expectation of financial compensation; [and] (4) that the petitioner has been in a parental role for a length of time sufficient to have established with the child a bonded, dependent relationship parental in nature.

Id. at 597, 633 S.E.2d at 168. Explaining the four prong test, the Court of Appeals stated that the first prong is critical because it "makes the biological or adoptive parent a participant in the creation of the psychological parent's relationship with the child." *Id.* at 597, 633 S.E.2d at 169. The court stated the rationale behind the first prong recognizes that:

> when a legal parent invites a third party into a child's life, and that invitation alters a child's life by essentially providing him with another parent, the legal parent's rights to unilaterally sever that relationship are necessarily reduced. The legal parent's active fostering of the psychological parent-child relationship is significant because the legal parent has control over whether or not to invite anyone into the private sphere between parent and child. Where a legal parent encourages a parent-like relationship between a child and a third party, the right of the legal parent does not extend to erasing a relationship between the third party and her child which the legal parent voluntarily created and actively fostered.

Id. (internal quotation marks omitted). The court noted that while a parent has the absolute control and ability to maintain an "absolute zone of privacy" around his or her child, the parent cannot maintain this privacy if he or she voluntarily invites a third party to function as parent to the child. *Id.* This prong is supported by the rationale that when a parent's relationship with a third party ends, the bond that the legal parent fostered and created between the third party and the child does not necessarily end. *Id.*

The second prong, which requires that the psychological parent and the child have lived together in the same household, acts as a safeguard to protect the legal parent by

restricting the class of third parties who can seek legal rights under this test. *Id.* at 598, 633 S.E.2d at 169. As shown in *Middleton*, this prong does not require that the child live exclusively with the third party; an agreement similar to joint custody is sufficient where the child stays with the third party only part of the time. *Id.*

The court noted that the final two prongs are the most important in the analysis because they both ensure that the psychological parent assumed the responsibilities of a parent and created a parent-child bond between the psychological parent and the child. *Id.* The third prong requires that the third party undertook the duties of parenthood without the expectation of compensation. *Id.* This prong is a safeguard to ensure that babysitters and caretakers cannot maintain a claim for psychological parenthood. *Id.* The fourth and final prong requires that the psychological parent have been "in a parental role for a length of time sufficient to have established with the child a bonded, dependent relationship parental in nature." *Id.* at 597, 633 S.E.2d at 168 (citing *In re H.S.H.-K.,* 533 N.W.2d 419, 435-36 (Wis. 1995). These final prongs work together to require that the parent be involved in the child's life and provide emotional support for the child. *Id.* at 598, 633 S.E.2d at 169).

The *Middleton* court recognized that establishing psychological parenthood is not a simple task. However, once established "the bond between the psychological parent and child should not be unilaterally severed by the biological parent who fostered the relationship in the first place. *Id.* at 604-05, 633 S.E.2d at 172-73.

Two years after *Middleton,* the South Carolina Supreme Court in *Marquez v. Caudill,* 376 S.C. 229, 243, 656 S.E.2d 737, 744-45 (2008) applied the *Middleton* four prong test finding the psychological parent test was the appropriate test to use to

determine whether a third party has a right to custody or visitation. In *Marquez,* a mother gave birth to a son and soon after married another man who was the stepfather. *Id.* at 234, 656 S.E.2d 739. The stepfather was not the biological or adoptive father of the son, yet he lived with the son while he was married to the mother, and after he and the mother divorced they shared joint custody of the son. *Id.* A few years later, the mother committed suicide and the maternal grandmother of the son and the stepfather both sought custody. *Id.* The court found that the stepfather had established a psychological parent relationship with the son and allowed the stepfather to adopt the son and have full custody. *Id.* at 249, 656 S.E.2d at 747. The court awarded the maternal grandmother visitation. *Id.* Applying the four prong test, the Supreme Court found that the stepfather was a psychological parent because the mother consented to and fostered the formation of a parent-like relationship between the stepfather and the son. *Id.* at 242-44, 656 S.E.2d at 734-44. *Middleton* and *Marquez* establish the four prong test as the appropriate measure to determine whether a third party has a right to bring an action for custody or visitation.

Applying the four prong test to the facts at hand in this case, this Court should find that the Plaintiff has standing to petition the court for visitation and custody of the twins. The first prong –whether the defendant consented to, and fostered, the plaintiff's formation and establishment of a parent-like relationship with the child –is met. Plaintiff and Defendant had a committed relationship and the Defendant considered the Plaintiff to be part of her family. The parties planned the Defendant's pregnancy together and the Defendant intended for the Plaintiff to be the second parent to the twins. The Defendant chose to live with her sons in the same house as the Plaintiff, and the Defendant allowed

and encouraged the Plaintiff to establish a parent-like bond with the twins. The second prong, that the petitioner and the child lived together in the same household, is also met. Plaintiff lived in the same house with the twins until from their birth in July 2012 until March 2014, when Defendant ended her relationship with Plaintiff and, accordingly, moved out of the family home, taking the twins with her. Even after the Defendant moved out, the Plaintiff still continued to keep the boys during some weekends until the Defendant terminated all contact. Third, the petitioner assumed obligations of parenthood by taking significant responsibility for the child's care, education and development, including contributing towards the twins' support, without expectation of financial compensation. Plaintiff supported the twins financially, and significantly assisted in raising the children. Even after Plaintiff's relationship with Defendant ended, Plaintiff continued to provide financial support for the twins, which Defendant accepted until September 2014, and when Defendant would no longer accept monetary support, Plaintiff gave the Defendant diapers and clothes for the twins. Lastly, the Plaintiff meets the fourth and final prong because she has been in a parental role for a length of time sufficient to have established with the child a bonded, dependent relationship parental in nature. She has been in the twin's lives since birth, and most importantly, the twins recognized the Plaintiff as a parent. Because the Plaintiff clearly meets the four requirements, court should find that the Plaintiff has standing to petition the court for visitation and custody of the twins.

A. The *Middleton* four-prong test expands the rights of individuals formerly in a same-sex relationship and allows a psychological parent who otherwise would have no legal connection to her ex-partner's child to have standing to bring a visitation action.

The South Carolina test for Psychological Parenthood does not consider the sexual orientation of the parties when deciding whether a petitioner should have standing.

Failure of the court to apply the psychological parenthood test to same sex individuals would interfere substantially with parent-like relationships, ignoring the welfare of children reared by adults in nontraditional relationships when those relationships terminate. Failure to expand the definition of parent would fall hardest on the children raised in nontraditional families –including families headed by same-sex couples, unmarried opposite-sex couples, and stepparents. In all child custody cases, the welfare of the child and the child's best interest is the primary, paramount and controlling consideration of the court. S.C. Code Ann. § 63-3-510; *see also Harris*, 415 S.E.2d 391. The South Carolina Children's Code does not define "parent" –and because the chapter makes an express reference to the "best interest of the child" –we argue that this Court is free to craft a definition that accommodates the best interests of the child. *See* S.C. Code Ann. 63-3-10 *et seq.*

The *Middleton* court borrowed its four prong test for psychological parenthood from the Wisconsin Supreme Court case, *In re H.S.H-K*, 533 N.W.2d 419, 193 Wis. 2d 649 (Wis. 1995). *Id.* at 596, 633 S.E.2d at 369 ("The Wisconsin Supreme Court has developed a four-prong test for determining whether a person has become a psychological parent . . . [and w]e believe this test provides a good framework for determining whether a psychological parent-child relationship exists"). Notably, the Wisconsin court first applied the test to determine whether a woman seeking custody and visitation of her former same-sex partner's biological child had standing. *In re H.S.K.-K.,* at 435-36, 193 Wis. 2d at 694-95. The facts of *In re H.S.K.-K.* are almost identical to the facts at hand in our case. The plaintiff and defendant in *In re H.S.K.-K.* were two women who shared a close committed relationship, solemnized their commitment to each other with a ring ceremony,

but ended their relationship before they could legally marry in their state. *Id.* at 421, 193 Wis. 2d 660. During their relationship, the parties decided to have a child and agreed that the defendant would be artificially inseminated with sperm from an anonymous donor. *Id.* The women attended obstetrical visits and childbirth classes together. *Id.* The plaintiff provided the primary financial support for the defendant, herself and the child and both women shared child-care responsibilities. *Id.* at 422, 193 Wis. 2d at 660. Together, the three attended church, went on outings and celebrated holidays. *Id.* The plaintiff devoted herself to the child and spent individual time with him. *Id.* However, when the child was five, the relationship between the parties ended, and the defendant moved out of the family home, taking the child with her and terminating the plaintiff's relationship with the child. *Id.* at 422, 193 Wis. 2d at 661. The plaintiff filed an action for visitation and custody, and the lower court reluctantly granted summary judgment for the defendant because the "current visitation law, while seeking to protect the best interest of children in traditional families torn asunder, ignores the welfare of children reared by adults in nontraditional relationships when those relationships terminate." *Id.* at 422, 193 Wis. 2d at 662. The circuit court continued this thought as follows:

> There are an increasing number of children in this society for whom the mother is the only known biological parent. Frequently that mother forms a lengthy relationship living with another person, be they man or woman, who assumes a parental role in the child's life for many years. Why should such children be denied the love, guidance and nurturing of the parental bond which developed simply because the adults cannot maintain their relationship? Lack of love and guidance in the lives of children is a major problem in our society. Does it make sense for the law to worsen this sad fact by denying a child contact with one they have come to accept as their parent, especially when it clearly appears to be in the best interest of the child?

Id. at 423, 193 Wis. 2d at 663. On appeal, the Wisconsin Supreme Court created the four prong psychological parent test to determine whether to allow a psychological parent to maintain an action for visitation. *Id.* at 435-36, 193 Wis. 2d at 694-95. The court held that the case should be remanded to the circuit to determine whether the plaintiff can fulfill the test. *Id.* at 436, 193 Wis. 2d at 695.

Although *Middleton* fails to discuss the implications of the test for same-sex couples, it is apparent that the South Carolina Court of Appeals, when adopting the test, was aware that the test was applied in Wisconsin within the context of a failed same-sex relationship. Notably, when the court was deciding which test to adopt to provide third parties with standing to seek visitation it chose to borrow a test that was originally created for use in the context of a dissolved same sex relationship. *Middleton* and *Marquez* expand the rights of a party in a same-sex relationship and allow a psychological parent who otherwise would have no legal connection to her ex partner's child to have standing to bring a visitation action.

II. A court may constitutionally grant visitation to a third party over fit parent's objection when child would face "significant harm" caused by the loss of a psychological parent.

It is well-settled that the Due Process Clause of the Fourteenth Amendment provides parents with the "fundamental right to make decisions concerning the care, custody, and control of their children."24; *Camburn v. Smith*, 355 S.C. 574, 579, 586 S.E.2d 565, 5674 (2003). However, this right is not absolute and while great deference is accorded to the visitation decisions made by a fit parent, the family court can in fact constitutionally grant visitation to a third-party over a fit parent's objection when faced with compelling circumstances. *Middleton*, at 601, 633 S.E.2d at 171. The South Carolina Supreme Court

has held that while non-parent individuals are "not on an equal footing in a contest with a parent over visitation", in certain circumstances visitation for third parties is appropriate. *Camburn*, at 579-80, 586 S.E.2d 568. Before a court will award visitation to a third party, "one of two evidentiary hurdles must be met: the parent must be shown to be unfit by clear and convincing evidence, or there must be evidence of compelling circumstances to overcome the presumption that the parental decision is in the child's best interest." *Id.* at 579-580, 586 S.E.2d 565, 568.

As an example of a "compelling circumstances" the *Camburn* court specifically mentioned a situation in which denying visitation would cause "significant harm to the child." *Id.* at 579, 586 S.E.2d 565, 568. In *Camburn*, maternal grandparents successfully petitioned the family court for visitation of their daughter's three children over the objection of the daughter and her husband. *Id.* at 577, 586 S.E.2d 565, 567. Despite uncontested evidence that the children were well-cared for by their mother and her husband, the family court found visitation would be in the children's best interest because their grandparents were a stabilizing factor in their lives. *Id.* The mother and her husband appealed, and our Supreme Court reversed. *Id.* Ultimately, the Supreme Court found that the circumstances in *Camburn* were not compelling enough to justify awarding grandparents visitation of the three children in the face of their mother and her husband's decision to the contrary. *Id.* at 580, 586 S.E.2d 568.

However in *Middleton*, the Court of Appeals found that compelling circumstances existed where a third party believed he was the father of a child. The court found that there were compelling circumstances and significant harm was being caused to the child because the child expressed grief over missing the third party and "wasn't himself and

seemed really sad". *Middleton*, 369 S.C. 585, 603, 633 S.E.2d 162, 172, 2006 S.C. App. LEXIS 187, *30 (S.C. Ct. App. 2006).

In *Marquez*, the Court also found the existence of compelling circumstances where after the mother's death, the maternal grandmother sought custody of her grandchild, who the court had permitted the child's stepfather to adopt. *Marquez*, 376 S.C. 229, 249, 656 S.E.2d 737, 747, 2008 S.C. LEXIS 16, *30 (S.C. 2008). The adoptive father objected to allowing the grandmother visitation, but the court held that a biological parent's death and an attempt to maintain ties with that deceased parent's family may be compelling circumstances justifying an order of visitation over a fit parent's objection. *Marquez*, at 249, 656 S.E.2d at 747.

These cases make it clear that South Carolina recognizes the rights of third parties to seek custody or visitation over the objection of a biological or adoptive parent. Accordingly, courts allow claims for custody and visitation under the psychological parent doctrine if they believe that the child would face "significant harm" caused by the loss of a psychological parent due to the dissolution of the adults' relationship.

III. A person who is a *de facto custodian* has standing to seek visitation under S.C. Code Ann. § 63-15-60.

In addition to the common law doctrines discussed above, South Carolina also has enacted a statute that grants a third party standing to seek visitation. A person who is a de facto custodian has standing to seek visitation under the South Carolina Code Section 63-15-60. The South Carolina code provides:

> "de facto custodian" means, unless the context requires otherwise, a person who has been shown by clear and convincing evidence to have been the primary caregiver for and financial supporter of a child who:

> has resided with the person for a period of six months or more if the child is under three years of age; or
>
> has resided with the person for a period of one year or more if the child is three years of age or older.

S.C. Code Ann. § 63-15-60. Unlike a psychological parent, a person seeking to establish herself as a *de facto custodian* must prove that she was the primary caregiver, as opposed to a co-parent. *See e.g.* S.C. Code Ann. § 63-15-60. South Carolina case law fails to define the meaning of "primary" as used in the statute, or even to interpret the statute at all. However, Plaintiff recognizes that Kentucky, a state with an identical *de facto custody* statue, has defined it as meaning solely, or to the exclusion of the other parent. *Mullins v. Picklesimer*, 317 S.W.3d 569 (Ky. 2010). To qualify as a *de facto custodian* in Kentucky, one must be the primary caregiver for, and financial supporter of, a child who has resided with the person for a period of six months or more if the child is under three years of age. Ky. Rev. Stat. Ann. § 403.270(1)(a). Interpreting the statute, where two women agreed to conceive a child through artificial insemination and parent the child together as a family, the Kentucky Supreme Court held that parenting a child alongside the natural parent does not meet the de *facto custodian* standard in § 403.270(1)(a). Mullins, 317 S.W.3d at 571. Rather, "the nonparent must literally stand in the place of the natural parent." *Id.*

Even if South Carolina were to adopt this interpretation, Plaintiff believes her parenting will likely rise to the level required by the statute. Plaintiff provided substantial daily care and financial support for the twins, especially during Defendant's disabling post-partum depression. She always attended to the boys' daily needs, took them to medical check-ups, and she was the primary parental contact at their day care. Plaintiff did not parent to the complete exclusion of the Defendant, but if this Court determines that Plaintiff is not

a de facto custodian, Plaintiff still has standing to pursue custody and visitation on the other grounds discussed herein.

IV. The case law of other states provides further support for our position that the Plaintiff has standing to petition the court for custody and visitation of the twins.

The New York Court of Appeals recently held that where a partner shows by clear and convincing evidence that the parties agreed to conceive a child and raise the child, the non-biological, non-adoptive partner has standing to seek visitation and custody. *Matter of Brooke S.B. v Elizabeth A.C.C.*, 2016 NY Slip Op 05903, 1, 28 N.Y.3d 1 (N.Y. 2016). The court explained that the definition of parent had become unworkable in light of increasingly varied family relationships. *Id.* at 2. The facts of the case are strikingly similar to those in our case. Two females entered into a romantic and committed relationship in 2006, and then later became engaged, although at the time their engagement was purely symbolic because same-sex couples could not marry in New York. *Id.* at 3. The two women soon decided to have a child together, and agreed that the defendant would be inseminated with donor sperm. *Id.* The plaintiff participated fully in the pregnancy and was present at the birth of the child. *Id.* However, the parties ended their intimate relationship approximately a year after the child's birth, but the plaintiff maintained an ongoing relationship with the child for another three years until the defendant terminated the relationship. *Id.* The court concluded, "where a petitioner proves by clear and convincing evidence that he or she has agreed with the biological parent of the child to conceive and raise the child as co-parents, the petitioner has presented sufficient evidence to achieve standing to seek custody and visitation of the child. *Id* at 25.

Emerging case law provides further support for our position that the Plaintiff should have standing to petition the court for custody and visitation of the twins. Other courts have recognized the importance of the establishment of a person's parent-like relationship with a child based on the consent and conduct of the child's biological or adoptive parents. In a number of cases, where a former partner of a child's biological mother has sought at least partial custody or shared parenting of the child, courts have held that if the partner establishes that she is the psychological parent of the child, or that her relationship with the child is parent-like, the partner is entitled to consideration of her claim on such basis and should not be treated as a mere third party. *See Ramey v. Sutton,* 2015 OK 79, 362 P.3d 217 (Okla. 2015) (biological mother's former same-sex partner had standing to seek custody and visitation under Uniform Custody Jurisdiction and Enforcement Act); *A.C. v. N.J.*, 1 N.E.3d 685 (Ind. Ct. App. 2013) (Same-sex former domestic partner of biological mother had standing to seek visitation with child, where parties originally intended for partner to fulfill role of child's second parent); *Mullins v. Picklesimer*, 317 S.W.3d 569 (Ky. 2010), as modified on denial of reh'g, (Aug. 26, 2010) (mother's former same-sex partner was a "person acting as a parent of child," and thus had standing, pursuant to Uniform Child Custody Jurisdiction and Enforcement Act)); *Debra H. v. Janice R.*, 2010 WL 1752168 (N.Y. 2010) (equitable estoppel doctrine could be invoked to bar child's biological mother from denying parental relationship of mother's former same-sex domestic partner for purposes of determining child custody and visitation rights) *V.C. v. M.J.B.*, 163 N.J. 200, 748 A.2d 539, 80 A.L.R.5th 663 (2000) (biological mother's same–sex former domestic partner qualified as a statutory "parent," and thus, the court had jurisdiction over the former partner's complaint seeking joint legal

custody of the mother's biological children, even though the mother was both fit and involved with her children); *In re Guardianship of Olivia J.*, 84 Cal. App. 4th 1146, 101 Cal. Rptr. 2d 364 (1st Dist. 2000) (status of former same sex domestic partner of biological mother as a nonparent did not preclude her from filing a petition for guardianship of mother's child); *Gestl v. Frederick*, 133 Md. App. 216, 754 A.2d 1087 (2000) (allegations by biological mother's same-sex former partner, who sought custody of child, were sufficient to show that former partner was "person acting as parent" who would have standing to bring custody suit under Uniform Child Custody Jurisdiction Act (UCCJA)).

Case law from across the nation provides support for the position that the Plaintiff has standing to petition the court for custody and visitation of the twins. Plaintiff can establish that she is the psychological parent of the children, she was the primary care-giver during their infancy, and should not be treated as a mere third party.

CONCLUSION

For the foregoing reasons, Plaintiff has standing to petition this court for custody and visitation because she is a psychological parent of the twins; she is entitled to consideration of her claim on such basis and should not be treated as a mere third party.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

CALLISON TIGHE & ROBINSON, LLC

s/M. Malissa Burnette

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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

November 23, 2016

EXHIBIT B

Complaint

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY Plaintiff, v. Defendant.	IN THE FAMILY COURT FOR THE EIGHTH JUDICIAL CIRCUIT Docket No. 2015DR **COMPLAINT**

The Plaintiff, complaining of the Defendant, , would respectfully show unto this Court the following:

BACKGROUND

1. Plaintiff is a citizen and resident of Aiken County, South Carolina.

2. Defendant is a citizen and resident of Newberry County, South Carolina.

3. Plaintiff and Defendant were in a long-term, committed relationship from June 2006 until February 2014.

4. In 2008, Plaintiff and Defendant purchased a home located in Aiken County ("the Aiken home"). The Aiken home was in Defendant's name; however, until September 2014, Plaintiff made substantial payments towards the monthly mortgage payments on the Aiken home.

5. Plaintiff and Defendant resided in the Aiken home together as a couple in a long-term, committed relationship.

6. In October 2010, Plaintiff and Defendant, as a couple in a long-term, committed relationship determined they were emotionally and financially ready to begin the process of becoming parents. Accordingly, Plaintiff and Defendant began the

process of exploring intrauterine insemination ("IUI") so that they may realize their dream of becoming parents.

7. In October 2010, Plaintiff and Defendant jointly decided that Defendant would serve as the biological mother of any children they would conceive via the physical process of IUI, using an anonymous sperm donor.

8. In May 2011, after several long and emotional months of undergoing unsuccessful IUI treatments, Plaintiff and Defendant jointly decided to begin the physical process of in vitro fertilization ("IVF").

9. Plaintiff and Defendant jointly shared in paying for the costs of undergoing IUI treatments, and the ultimate cost for the IUI treatments was over $10,000.00, with Plaintiff contributing a substantial sum of money to pay for said treatments.

10. Although Defendant's insurance covered some of the IVF-related expenses, Plaintiff and Defendant jointly shared in paying for the out-of-pocket costs for the IVF treatments, which exceeded $7,000.00, and Plaintiff contributed a substantial sum of money to pay for said treatments.

11. In October 2011, after several long and emotional months of undergoing the IUI and IVF treatments, Plaintiff and Defendant joyfully learned Defendant had successfully become pregnant as a result of the IVF treatments, and in November 2011, Plaintiff and Defendant's joy was doubled when they learned Defendant had conceived twins.

12. Plaintiff was emotionally and financially supportive during Defendant's pregnancy with the twins.

13. On July 5, 2012, Defendant gave birth to healthy twin boys, C.H. and M.H.

14. After Defendant gave birth to the twins, she suffered from severe post-partum issues, and Plaintiff, in addition to fulfilling her responsibilities as a parent to the twins, provided emotional and financial support to Defendant as she was suffering from the post-partum issues.

15. Plaintiff and Defendant jointly parented the twins, and they all resided together as a family in the Aiken house, sharing the joys and responsibilities of parenting twin boys.

16. Plaintiff has formed a deep, loving, and dependent parental relationship with the twins, just as a biological or adoptive parent would form with their children.

17. Plaintiff's extended family, including her parents, siblings, and grandparents, have formed deep and loving familial relationships with the twins, just as biological or adoptive family members would form.

18. From the time the twins were conceived, Defendant, the biological mother of the twins, consented to and fostered Plaintiff's formation and establishment of a parent-like relationship with the twins.

19. From the time the twins were conceived, Defendant consented to and fostered Plaintiff's extended family members' formation of deep and loving familial relationships with the twins.

20. From the time the twins were conceived, Plaintiff has assumed the obligations of parenthood by taking significant responsibility for the twins' care, education, socialization, and development, and she has always done so without any expectation of financial compensation.

21. In March 2014, Defendant decided to terminate her relationship with Plaintiff; accordingly, on or about March 4, 2014, Defendant left Plaintiff and moved out of the Aiken home into her mother's home, which is located in Newberry County, South Carolina. Defendant took the twins with her, and Plaintiff remained residing in the Aiken home for approximately six months after her relationship with Defendant ended.

22. Plaintiff now resides in her own home in Aiken County.

23. Soon after Defendant decided to terminate her relationship with Plaintiff, Defendant began dating another woman.

24. Plaintiff and Defendant desired to become married since before Plaintiff and Defendant decided to become parents; however, as a same-sex couple, this State did not recognize or permit them to become married. It was not until November 2014, over seven months after Plaintiff and Defendant's long-term relationship ended, that this State began permitting and recognizing the marriages of same-sex couples.

25. It had always been Plaintiff's desire to adopt the twins; regrettably, Plaintiff was unable to do so before Defendant terminated her relationship with Plaintiff.

26. The twins are healthy and well-loved by Plaintiff, Defendant, and their respective extended families.

27. After Defendant terminated her relationship with Plaintiff, Plaintiff continued to provide financial support for the twins, which Defendant accepted until September 2014.

28. After Defendant terminated her relationship with Plaintiff, Plaintiff had liberal visitation with the twins, often keeping the twins over the weekend. Defendant later began imposing restrictions on Plaintiffs' visitation with the twins.

29. The last time Plaintiff had a meaningful visitation with the twins was in September 2014. On or about September 22, 2014, Defendant informed Plaintiff that she would not be allowed to see the twins anymore. Defendant subsequently changed her telephone number.

30. In November 2014, Plaintiff provided clothes and diapers for the twins because Defendant would no longer accept monetary support for the twins.

31. Around Thanksgiving of 2014, Plaintiff, distraught at not being permitted to visit with the twins, traveled to Newberry County with her sister, and Defendant allowed Plaintiff and her sister to visit with the twins for approximately two hours.

32. In December 2014, Plaintiff gave Defendant's mother various gifts for the twins, including toys and clothing.

33. In July 2015, Plaintiff provided the twins with clothing and toys for their birthday.

34. Plaintiff has continued attempting to provide meaningful financial support for the twins; however, Defendant has refused such.

35. Defendant has permitted Plaintiff's extended family to visit with the twins; however, she has refused to allow Plaintiff to visit with the twins.

36. Plaintiff has made numerous attempts to visit with the twins in person and over the telephone, but Defendant has refused to allow Plaintiff visitation. Plaintiff continues to e-mail Defendant about the twins; however, Defendant has refused to respond to Plaintiff's numerous attempts to visit with the twins.

37. The twins have developed a substantial and meaningful parent-like relationship with Plaintiff.

38. Since Defendant has refused Plaintiff's several meaningful attempts to continue her parent-like relationship with the twins, the twins' behavior has worsened.

39. Since Defendant has refused Plaintiff's several meaningful attempts to continue her parent-like relationship with the twins, the twins have been deprived of the love and emotional stability that Plaintiff's relationship with them has offered since their birth.

40. Since Defendant has refused Plaintiff's several meaningful attempts to continue her parent-like relationship with the twins, the twins have been deprived of the financial stability that Plaintiff has offered since their birth and Defendant's financial situation has worsened.

FOR A FIRST CAUSE OF ACTION
(De Facto Custodian—Standing to Pursue Visitation and/or Custody)

41. Plaintiff realleges the foregoing statements as if repeated verbatim herein.

42. The twins are older than three years' old.

43. Plaintiff resided with the twins for a period of over one year.

44. Plaintiff was the primary caregiver and financial supporter of the twins, and Plaintiff desires to continue her relationship with the twins as such;

45. As set forth herein above, compelling reasons exist for the Court to find that Plaintiff has standing to pursue visitation and/or custody of the twins.

FOR A SECOND CAUSE OF ACTION
(Custody)

46. Plaintiff realleges the foregoing statements as if repeated verbatim herein.

47. Plaintiff seeks joint custody of the twins.

48. Plaintiff possesses the requisite character, fitness, attitude, and inclinations necessary to provide for the best interests of the twins.

49. The psychological, physical, environmental, spiritual, educational, medical, family, emotional, and recreational aspects of the twins' lives will be greatly enhanced by Plaintiff and Defendant sharing joint custody of the twins, with Plaintiff having secondary custody of the twins.

50. It is in the best interest of the twins for Plaintiff and Defendant to have joint custody of the twins, with Defendant having primary custody and Plaintiff having secondary custody.

FOR A THIRD CAUSE OF ACTION
(Visitation)

51. Plaintiff realleges the foregoing statements as if repeated verbatim herein.

52. Plaintiff seeks liberal, reasonable visitation with the twins.

53. Defendant has deprived Plaintiff of the opportunity to have reasonable visitation with the twins.

54. Plaintiff seeks additional visitation to compensate for time that Defendant has deprived Plaintiff of, in a manner not to interfere with the best interest of the twins.

55. It is in the best interest of the twins for Plaintiff to have liberal, reasonable visitation with the twins.

56. Plaintiff possesses the requisite character, fitness, attitude, and inclinations necessary to provide for the best interests of the twins.

57. The psychological, physical, environmental, spiritual, educational, medical, family, emotional, and recreational aspects of the twins' lives will be greatly enhanced by Plaintiff having liberal, reasonable visitation with the twins.

FOR A FOURTH CAUSE OF ACTION
(Child Support)

58. Plaintiff realleges the foregoing statements as if repeated verbatim herein.

59. Plaintiff is ready, willing, and able to provide financial support for the twins in accordance with South Carolina's child support guidelines.

60. Plaintiff, as an interested person desiring to be legally chargeable to provide support for the twins, respectfully requests that this Court enter an order requiring her to provide and for Defendant to accept child support payments for the twins.

FOR A FIFTH CAUSE OF ACTION
(Discovery)

61. Plaintiff realleges the foregoing statements as if repeated verbatim herein.

62. Plaintiff requests that the Court grant full discovery pursuant to the South Carolina Rules of Family Court and Rules of Civil Procedure so that Plaintiff may properly prepare her case for trial.

FOR A SIXTH CAUSE OF ACTION
(Attorney's Fees and Costs)

63. Plaintiff realleges the foregoing statements as if repeated verbatim herein.

64. Plaintiff would show that Defendant is primarily responsible for the necessity of this lawsuit.

65. Plaintiff is without sufficient funds to pay her reasonable attorney's fees, expert witness fees, expenses, and other costs of litigation. She is informed and believes that the Court should require Defendant to pay all such fees and expenses.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court inquire into the matters alleged and grant Plaintiff the following relief, both *pendente lite* and permanently:

A. For an Order finding Plaintiff has standing to pursue custody and/or visitation pursuant to section 63-15-60 of the South Carolina Code;

B. For an Order granting Plaintiff and Defendant joint custody of the twins, with Defendant having primary custody and Plaintiff having secondary custody;

C. For an Order granting Plaintiff liberal and reasonable visitation with the twins;

D. For an Order requiring Plaintiff to provide Defendant with child support for the twins;

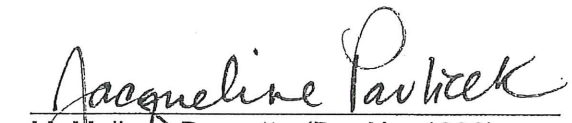
E. For an Order granting the parties pre-trial discovery, as provided under the South Carolina Rules of Family Court and Rules of Civil Procedure;

F. For an Order requiring Defendant to pay all of Plaintiff's reasonable attorney's fees, suit money, expert fees, and costs incurred by Plaintiff in bringing this action; and

G. For and Order granting such other and further relief as this Court may deem just and proper.

[Signature on following page.]

CALLISON TIGHE & ROBINSON, LLC



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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

September 16, 2015

EXHIBIT C

Answer and Counterclaim

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
	)	FOR THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF NEWBERRY	)	CASE NO. 2015-DR-36
	)	
Plaintiff,	)	
	)	
vs.	)	**ANSWER AND COUNTERCLAIM**
	)	
	)	
Defendant.	)	

FOR A FIRST DEFENSE

Defendant, answering the allegations of the Complaint, would hereby respectfully show unto the Court as follows:

1. Each and every allegation of the Complaint not hereinafter specifically admitted, is denied.

2. The defendant admits as much of the allegations of Paragraphs 1 and 2 of the Complaint.

3. The defendant denies the allegations of Paragraph 3 of the Complaint.

4. The defendant denies the allegations of Paragraph 4 of the Complaint. The defendant would further state that the home was solely in her name and Defendant was solely responsible for the home.

5. The defendant admits the allegations of Paragraph 5 of the Complaint.

6. The defendant admits as much of the allegations of Paragraph 6 of the Complaint as alleges that the parties were in a long term relationship and that they began the process of intrauterine insemination (IUI).

7. The defendant denies the allegations of Paragraph 7 of the Complaint as alleges that the plaintiff "jointly decided" that the defendant would serve as the biological mother of any

children which would be conceived. The defendant had decided that she was going to become a mother regardless of her relationship with the Plaintiff and regardless of any decisions to be made by the Plaintiff.

8. The defendant admits as much of the allegations of Paragraph 8 of the Complaint as alleges that in May in 2011, she began the process of in vitro fertilization (IVF). The remaining allegations of Paragraph 8 of the Complaint are denied. The defendant would specifically state that the plaintiff wanted to the defendant to stop all attempts to become pregnant and opposed further IUI and IVF treatments.

9. Defendant admits as much of the allegations of Paragraph 9 of the Complaint as alleges that the plaintiff contributed some cost of undergoing IUI treatments and that the ultimate cost of those treatments was over $10,000. The remaining allegations of Paragraph 9 of the Complaint are denied, specifically that plaintiff helped fund the cost of all of the IUI treatments. As stated above, plaintiff wished for defendant to stop her attempts at becoming pregnant and eventually quit sharing in the cost for same.

10. Defendant admits as much of the allegations of Paragraph 10 of the Complaint as alleges that defendant's insurance covered some of the IVF related expenses. The remaining allegation of Paragraph 10 of the Complaint are denied.

11. Defendant admits as much of the allegations of Paragraph 11 of the Complaint as alleges that after a long period of undergoing IUI and IVF treatments, the parties learned that the defendant was pregnant with twins and that both parties were initially happy with said results. The remaining allegations of Paragraph 11 of the Complaint are denied.

12. Defendant denies that the plaintiff was financially supportive as alleged in Paragraph 12 of the Complaint and further asserts that the Plaintiff encouraged the defendant to

stop paying the medical bills. The remaining allegations of Paragraph 12 of the Complaint are admitted.

13. Defendant admits the allegations of Paragraph 13 of the Complaint.

14. Defendant denies as much of the allegations of Paragraph 14 of the Complaint as alleges that she suffered from severe post-partum issues and that the plaintiff provided all of the support for the defendant. Defendant admits that she had mild depression for approximately two weeks for which she took Zoloft and suffered from mastitis. Defendant would further assert that her mother was the main care giver for her during this time period and not the plaintiff. Defendant would admit that the plaintiff was generally "supportive" during this time period.

15. Defendant denies the allegations of Paragraph 15 of the Complaint. Defendant would admit that the plaintiff would occasionally join in parenting the children and that they all resided together in the Aiken home. Defendant would further assert that at this time, the plaintiff was drinking heavily and did little to actually help with the raising of the children, serving as more of the "playmate" for the children than a parent.

16. Defendant denies the allegations of Paragraph 16 of the Complaint as alleges that the plaintiff formed a parental relationship with the twins as she acted as more of a playmate for the children and not as a parent. Defendant is unaware of the other allegations of Paragraph 16 of the Complaint and therefore denies same.

17. Defendant is unaware of the plaintiff's extended family's feelings and therefore denies the allegations of Paragraph 17 of the Complaint. Defendant would assert that the plaintiff's family did form a relationship with the twins and did assist with care for them at times. Defendant denies that said relationships need to continue or that the aforementioned family members act appropriately when the children are in their care.

18. Defendant admits as much of the allegations of Paragraph 18 of the Complaint as alleges that she encouraged and fostered the formation of a parent-like relationship between the plaintiff and the children. Defendant denies that the plaintiff actually formed said relationship and therefore denies the remaining allegations of Paragraph 18 of the Complaint.

19. Defendant admits as much of the allegations of Paragraph 19 of the Complaint as alleges that she encouraged and consented to the plaintiff's extended family members forming a familiar relationship with her children but denies that many of the family members did so. Defendant would further assert that the plaintiff's family members abuse of alcohol and other issues kept them from forming a familiar relationship due to the fact that the children were not allowed to stay with some of the family members without supervision. Any remaining allegations of Paragraph 19 of the Complaint are denied.

20. Defendant admits as much of the allegations of Paragraph 20 of the Complaint as alleges that the plaintiff occasionally attempted to assist in the raising of the twins and that she did so without the expectation of any financial compensation. The remaining allegations of Paragraph 20 of the Complaint are denied and the defendant would specifically assert that the plaintiff assumed very little obligations and very little responsibility for the twins' care, educations, socialization and development. Defendant would further assert that the Plaintiff neglected the minor children, especially since the parties ended their relationship.

21. Defendant admits as much of the allegations of Paragraph 21 of the Complaint as alleges that she terminated the parties' relationship and that on or about March 4, 2014, she left the Aiken home and relocated to Newberry County, South Carolina with her children. Defendant would further admit that the plaintiff remained residing in the Aiken home and would further

assert that she lived there with a married woman, namely Lauren Burkhart, with whom she had formed a relationship prior to the parties' relationship ending.

22. Defendant admits the allegations of Paragraph 22 of the Complaint but would further allege that she assisted the plaintiff in paying for said home throughout their relationship.

23. Defendant admits that approximately one month after she left the Aiken home, she began a relationship with another woman. She would further assert that the plaintiff had been involved in a relationship prior to the parties' relationship ending and that plaintiff's actions were the cause of the demise of their relationship.

24. Defendant admits the allegations of Paragraph 24 of the Complaint.

25. Defendant denies the allegations of Paragraph 25 of the Complaint.

26. Defendant admits as much of the allegations of Paragraph 26 of the Complaint as alleges that the twins are healthy and well loved by the defendant and the defendant's extended family. The remaining allegations of Paragraph 26 of the Complaint are denied.

27. Defendant admits as much of the allegations of Paragraph 27 of the Complaint as asserts the Plaintiff provided some financial support until September 2014. Defendant denied the remaining allegations of Paragraph 27 and asserts the Plaintiff unilaterally stopped providing any type of monetary assistance.

28. Defendant admits as much of the allegations of Paragraph 28 of the Complaint as alleges that the plaintiff was allowed visitation with the twins, sometimes keeping the twins over the weekend after the parties' relationship ended. The defendant further admits that she started imposing reasonable restrictions and rules on the visitation as the twins were unruly and unkempt when they returned from periods of visitation. Furthermore, the defendant had learned that the plaintiff was still drinking heavily and that she had numerous roommates and otherwise failed to

properly care for the children while they were with her. The plaintiff refused these reasonable restrictions and rules.

29. Defendant admits the allegations of Paragraph 29 of the Complaint.

30. Defendant denies the allegations of Paragraph 30 of the Complaint and further alleges that the Plaintiff had stopped paying any form of child support or assistance to the defendant for the care of the children. Defendant would admit that the plaintiff brought by some clothes and diapers at an impromptu meeting in November 2014.

31. Defendant admits the allegations of Paragraph 31 of the Complaint as alleges that the plaintiff traveled to Newberry with her sister unannounced and uninvited and that the defendant, in an effort to not cause a scene in front of the children, allowed her to visit with the twins for approximately two hours. The remaining allegations of Paragraph 31 of the Complaint are denied.

32. Defendant admits the allegations of Paragraphs 32 and 33 of the Complaint.

33. Defendant denies the allegations of Paragraph 34 of the Complaint.

34. Defendant admits as much of the allegations of Paragraph 35 of the Complaint as alleges that the plaintiff's extended family was allowed a visit with the twins at one point. Defendant would specifically state that plaintiff's grandmother was allowed to visit for a few hours because the defendant was informed that the grandmother was dying and wanted to see the twins before she did so.

35. Defendant admits as much of the allegations of Paragraph 36 of the Complaint as alleges that the plaintiff has made attempts to visit with the twins in person and over the telephone and that defendant has refused to allow said visitation. Defendant is unaware of any

attempts of contact via email and therefore the remaining allegations of Paragraph 36 of the Complaint are denied.

36. The allegations of Paragraphs 37, 38, 39, and 40 of the Complaint

37. The allegations of Paragraph 41 of the Complaint are admitted and denied as stated above.

38. The allegations of Paragraphs 42 and 43 of the Complaint

39. The allegations of Paragraphs 44 and 45 of the Complaint are denied.

40. The defendant admits and denies the allegations of Paragraph 46 of the Complaint as stated above.

41. Defendant admits the allegation of Paragraph 47 of the Complaint but denies that the plaintiff is entitled to any joint custody of the twins.

42. The allegations of Paragraphs 48, 49, and 50 of the Complaint are denied.

43. The defendant admits and denies the allegations of Paragraph 51 of the Complaint as stated above.

44. Defendant admits the allegations of Paragraph 52 of the Complaint but denies that the plaintiff is entitled to any visitation with the twins.

45. Defendant denies that any visitation with the twins by the Plaintiff would be reasonable and therefore denies the allegations of Paragraph 53 of the Complaint.

46. Defendant admits that the Plaintiff seeks additional visitation as alleged in Paragraph 54 of the Complaint but denies that Plaintiff is entitled to same or that same would be in the best interest of the twins.

47. The allegations of Paragraphs 55, 56 and 57 of the Complaint are denied.

48. Each and every allegation of Paragraph 58 of the Complaint is admitted and denied as stated above.

49. Defendant denies the allegations of Paragraph 59 of the Complaint and would assert that Plaintiff's previous denials of any type of support for the twins would indicate that the Plaintiff is not ready, willing or able to provide.

50. Defendant admits as much of the allegations of Paragraph 60 of the Complaint as alleges that Plaintiff should be ordered to pay child support if in fact she is granted any type of custody or visitation pursuant to the S.C. Child Support Guidelines. The remaining allegations of Paragraph 60 of the Complaint are denied.

51. Defendant admits and denies the allegations of Paragraph 61 of the Complaint as stated above.

52. Defendant admits the allegations of Paragraph 62 of the Complaint and joins the Plaintiff in her prayer for relief in seeking full discovery.

53. The allegations of Paragraph 63 of the Complaint are admitted and denied as stated above.

54. The allegations of Paragraph 64 and 65 of the Complaint are denied.

55. Any remaining allegations contained in the Complaint of the Plaintiff are hereby denied.

FOR A SECOND DEFENSE
BY WAY OF COUNTERCLAIM

56. Defendant repeats and re-alleges each and every denial and admission as stated above in Paragraphs 1-55 as if stated verbatim herein.

57. Defendant denies that Plaintiff is entitled to any legal rights or obligations in regards to the twins.

58. Plaintiff is not the biological nor adoptive parent of twins and therefore has no legal rights or obligations pursuant to South Carolina law.

59. The Plaintiff has no standing and is not, and has never been, the primary care giver or primary financial supporter pursuant to S.C. Code Ann. §63-15-60 and therefore, the Court would be unable to grant visitation or custody to the Plaintiff.

60. If this Court's entertains Plaintiff's Complaint and does not dismiss same summarily, the Defendant is informed and believes that a Guardian ad Litem should be appointed to represent the best interest of the minor children.

61. If, this Court is inclined to consider the Plaintiff's Complaint or any of the allegations or requests therein, Defendant would assert and show that the Plaintiff is unfit to exercise custody or visitation of the minor children and therefore should have no visitation or other rights in regards to the minor children.

62. In the alternative, if this Court considers the Plaintiff as a fit and proper person to have any type of visitation whatsoever with the minor children, Plaintiff's visitation should be supervised by a person of the Defendant's choosing given the Plaintiff's substance abuse problems and other lifestyle conditions which make her home unsafe for a child.

63. Plaintiff has shown unstable and erratic behavior towards the Defendant and Defendant's family. Upon information and belief, the Plaintiff should be enjoined and restrained from coming around or about the Defendant, Defendant's residence, Defendant's place of employment or the Defendant's family and from harassing or interfering with the Defendant or her family in any manner whatsoever.

64. As stated above, upon information and belief, the Plaintiff is not entitled to any rights nor suffer from any obligations regarding the minor children. However, if the Plaintiff is

granted any form of custody or visitation, child support should be ordered in an amount pursuant to the South Carolina Child Support Guidelines.

65. Defendant was forced to answer and defend against the Plaintiff's Complaint and is without the funds sufficient to provide for her legal representation. Upon information and belief, Plaintiff should be ordered to pay Defendant's reasonable and necessary attorney's fees and costs associated with this action.

66. Defendant prays that this Court authorize discovery related to the care of the minor children and the parties' abilities to care for the minor children, both temporarily and permanently.

WHEREFORE, the Defendant prays for an Order of this Court:

a. Dismissing the Complaint of the Plaintiff herein with prejudice; and,

b. Granting Defendant the relief sought in her Counterclaim; and,

c. Ordering Plaintiff to pay Defendant's reasonable and necessary attorney's fees and costs; both temporarily and permanently; and,

d. For other such relief as this Court deems just and proper and in the best interest of the minor children.

POPE AND HUDGENS, P.A.
Post Office Box 190
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(803)276-2532

By: _____
W. Chad Jenkins
Attorneys for Defendant

Newberry, SC
October 21, 2015

EXHIBIT D

Reply to Counterclaim

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY Plaintiff, v. Defendant.	IN THE FAMILY COURT FOR THE EIGHTH JUDICIAL CIRCUIT Docket No. 2015-DR- **PLAINTIFF'S REPLY TO COUNTERCLAIM**

Plaintiff responds to Defendant's Second Defense and Counterclaim as follows:

1. Plaintiff denies each and every response and allegation contained in Defendant's Answer and Counterclaim unless specifically admitted, qualified or explained herein.

2. To the extent Paragraph 57 of the Counterclaim asserts Plaintiff is not entitled to any legal rights or obligations in regards to the twins, Plaintiff DENIES the same.

3. Plaintiff ADMITS she is not a biological or adoptive parent of the twins, but DENIES the remaining allegations of Paragraph 58 of the Counterclaim.

4. Plaintiff DENIES the allegations contained in Paragraph 59 of the Counterclaim.

5. Plaintiff ADMITS that this Court should appoint a Guardian ad Litem to ensure the best interests of the twins are represented. To the extent Defendant raises any additional allegations in Paragraph 60 of the Counterclaim, Plaintiff DENIES those allegations.

6. Plaintiff DENIES the allegations contained in Paragraph 61 of the Counterclaim.

7. Plaintiff ADMITS that it is proper for the Court to allow her to have visitation with the twins because it is in the best interests of the twins. Plaintiff DENIES the remaining allegations contained in Paragraph 62 of the Counterclaim.

8. Plaintiff DENIES the allegations contained in Paragraph 63 of the Counterclaim.

9. Plaintiff ADMITS that the Court should allow her to support the twins in accordance with the South Carolina Child Support Guidelines; however, to the extent Paragraph 64 of the Counterclaim asserts Plaintiff is not entitled to any legal rights or obligations in regards to the twins, Plaintiff DENIES the same.

10. Plaintiff DENIES the allegations contained in Paragraph 65 of the Counterclaim.

11. Plaintiff ADMITS that this Court should authorize full discovery, as alleged in Paragraph 66 of the Counterclaim, and as to Plaintiff's standing to seek custody and visitation and the best interests of the twins.

WHEREFORE, Plaintiff prays for an Order of this Court:

A. Dismissing the Counterclaims of the Defendant;

B. Granting the relief requested in Plaintiff's Complaint; and

C. For such other and further relief as this Court deems just, proper, and in the best interests of the twins.

[Signature on following page.]

CALLISON TIGHE & ROBINSON, LLC

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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

November 25, 2015

South Carolina Bar

South Carolina Legislative Update: Children's Issues

Amanda G. Adler
Columbia, SC