



**IN THE DISTRICT COURT OF APPEAL OF FLORIDA  
FIRST DISTRICT**

CYNTHIA MILLER and KEVIN MILLER,  
on behalf of their minor child, TERIK MILLER,

Appellants,

v.

**CASE NO.: 1D14-4380**

LOWER CASE NO.: 2014-CA-001741

ESCAMBIA COUNTY SCHOOL BOARD;  
MALCOM THOMAS, as Superintendent of Schools;  
MICHAEL SHERRILL, as Principal of Escambia High School;  
ESCAMBIA COUNTY SCHOOL DISTRICT; and  
FLORIDA HIGH SCHOOL ATHLETIC ASSOCIATION, INC.

Appellees.

**MOTION FOR EXPEDITED APPEAL, BRIEFING SCHEDULE AND  
REVIEW BY THE COURT**

COMES NOW, the Appellants, CYNTHIA MILLER and KEVIN MILLER,  
on behalf of their minor child, TERIK MILLER (hereinafter the "Appellant" or  
"Terik"), by and through their undersigned counsel and pursuant to Rule 9.300 of  
the Fla. R. App. P., files this Motion for Expedited Appeal, Briefing Schedule and  
Review by the Court, and in support thereof would show:

## **PERTINENT FACTS**

This is an appeal of a non-final order denying the Appellant's request for a temporary injunction. *See Appendix<sup>1</sup> at page 1.* Terik Miller ("Terik") is a 17 year old student athlete (football player) at Escambia High School ("EHS") in Escambia County, Florida. *See Appendix at page 5.* On or about January 7, 2014, Terik transferred from Washington High School, which is also in Escambia County, Florida, to EHS. *See Appendix at page 15.* Terik subsequently signed up to participate in varsity football at EHS. *See Appendix at page 15.*

In March, 2014, the Escambia County School District (the "School District") began an investigation into athletic recruiting violations by EHS head football coach Willie Spears ("Spears"). *See Appendix at page 9.* Terik was included in the investigation because he played football at Washington High School and transferred to EHS, where he also decided to play football. *See Appendix at page 5.*

Terik was held out of the spring football game in May, 2014. *See Appendix at page 39.* The School District's investigation resulted in a report by the School District dated May 28, 2014 (the "Investigative Report"). *See Appendix at page 36.* On July 10, 2014, approximately 43 days later, and more than 110 days after the investigation began, the School District and/or EHS Principal Michael Sherrill

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<sup>1</sup> The Appendix referenced is specific to this Motion for Expedited Appeal, Briefing Schedule and Review by Court. The Appellant will file another Appendix specific to its initial brief.

(“Principal Sherrill”) submitted the Investigative Report to the Florida High School Athletic Association (the “FHSAA”). *See Appendix at page 67.*

Even though the FHSAA had not made a ruling as to Terik’s eligibility, on August 30, 2014, Principal Sherrill instructed Spears not to allow Terik to participate in the season’s first football game<sup>2</sup>. *See Appendix at page 71.* EHS, Principal Sherrill, the School District, the Escambia County School Board and/or Malcom Thomas (collectively, individually and interchangeably the “Administrators”) prevented Terik from playing in the game September 5, 2014. *See Appendix at page 14.* On September 12, 2014, the Appellant filed an Emergency Complaint for Injunction (the “Original Complaint”), because the Administrators were prospectively punishing Terik by not allowing him to participate in football games, but the FHSAA had not ruled as to the eligibility of Terik. *See Appendix at page 13.* The lower tribunal held a hearing that same day to address the request for an injunction.

The FHSAA issued a report as to the athletic recruiting violations (the “FHSAA EHS Report”) shortly after the Appellant filed the Original Complaint on September 12, 2014. *See Appendix at page 67.* Therefore, the hearing on the request for an injunction was continued until September 17, 2014, because the

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<sup>2</sup> Head Coach Willie Spears allowed Terik to participate against the order of Principal Sherrill, and was subsequently fired for gross insubordination.

FHSAA became a required party. Terik, once again, missed the football game on September 12, 2014. *See Appendix at page 73.*

On September 15, 2014, the Appellant filed an Amended and Restated Emergency Complaint for Injunction and Declaratory Relief (the “Amended Complaint”), whereby the FHSAA was added as a defendant. *See Appendix at page 33.* On September 17, 2014, before the hearing on the injunction, Terik received the FHSAA report specific to him (the “FHSAA Terik Report”). *See Appendix at page 76.*

Accordingly, more than 180 days after the investigation began, the FHSAA finally issued a report specific to Terik finding him ineligible. *See Appendix at page 76.* On September 18, 2014, after refusing to hear testimony, the lower tribunal denied the Appellant’s request for a temporary injunction and this appeal followed. *See Appendix at page 5.* Terik has subsequently missed his third football game on September 19, 2014. The EHS varsity football season commenced on August 30, 2014 and continues through November 7, 2014. *See Appendix at page 9.* In connection with the denial of the temporary injunction, the issues on appeal relate to the denial of due process, the futility of administrative remedies, the length of time of the School District investigation, and subsequent rulings by the FHSAA.

## **ARGUMENT**

Terik has been denied due process and has been and continues to be irreparably harmed, as will be set forth in the initial brief of the Appellant. Therefore, the Appellant proposes the following briefing schedule:

- Appellant's initial brief is due no later than Friday, September 26, 2014;
- Appellees' answer briefs are due no later than 10 days after service of the Appellant's initial brief;
- Appellant's reply brief is due no later than 7 days after the service of the Appellees' reply brief.

The briefing schedule, as set forth above, provides the Appellees with half of the time prescribed by Rule 9.210(f) of the Fla. R. App. P. This timing should not be an issue for the Appellees as all Appellees have had the information that will be the subject of the appeal since at least July, 2014. Under this time frame, all briefs by all parties would be completed and submitted no later than October 13, 2014. Therefore, this Court could consider the appeal prior to the end of the EHS varsity football season. The Appellant also requests this Court to expedite the review of this case to provide a review prior to the end of the EHS varsity football season.

## **OPPOSITION TO MOTION**

The undersigned represents he has consulted with counsel for the Appellees as to the relief requested in this Motion, and has received the following responses:

- Through counsel, Appellee, Principal Sherrill stated that he defers to the judgment and discretion of the Court;
- Through counsel, Appellee, Escambia County School Board stated that it neither agrees to nor opposes the Motion and will also defer to the discretion of the Court;
- Appellee, Escambia County School District is unrepresented.
- Through counsel, FHSA A opposes the Motion because its counsel intends to be on vacation when the Appellee's answer brief would be due.
- Through counsel, Malcom Thomas opposes the Motion without explanation.

### **CONCLUSION**

This case involves a unique set of facts and circumstances where the Terik has already been delayed substantially in seeking his rights and remedies. The submissions in this case will demonstrate that Terik has been denied due process, was never afforded the opportunity to defend himself, and the administrative process is too late, is futile, and cannot address the due process issues. Wherefore, the Appellant requests this Court to expedite the appeal, briefing schedule, and review by this Court, as set forth above.

Dated this 24<sup>th</sup> day of September, 2014.

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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing motion has been provided to the following via Email Service and U. S. Mail this 24<sup>th</sup> day of September 2014 to the following:

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