

CARVER, DARDEN,
KORETZKY, TESSIER, FINN,
BLOSSMAN & AREAUX LLC
NEW ORLEANS PENSACOLA

ROBERT S. RUSHING
PENSACOLA OFFICE

(850) 266-2303
rushing@carverdarden.com

September 11, 2014

**VIA ELECTRONIC MAIL
AND HAND DELIVERY**

Linda Moultrie, Chairwoman and
District 3 Representative
Escambia County School Board
Vernon McDaniel Building
75 North Pace Boulevard
Pensacola, Florida 32505

**VIA ELECTRONIC MAIL
AND HAND DELIVERY**

Malcom Thomas, Superintendent of
Schools
Escambia County School District
Vernon McDaniel Building
75 North Pace Boulevard
Pensacola, Florida 32505

RE: Terik Miller

Dear Ms. Moultrie and Mr. Thomas:

Our firm has been engaged to represent Terik Miller ("Terik"), who is a student at Escambia High School ("EHS"). Terik is a senior, and has already received a football scholarship to the University of Louisiana, Lafayette. Additionally, Terik has received letters and interest from multiple major college football programs. Therefore, Terik might receive additional scholarship opportunities, contingent upon his performance and participation in EHS varsity football related activities and games. These scholarships could enable Terik to maximize his academic skills along with his athletic skills, which could result in opportunities that would otherwise not be available.

As you know, Terik is one of the football players at EHS who has recently been suspended from playing on the EHS varsity football team. The decision to suspend Terik from playing football appears to be based upon improper recruiting allegations that have been lodged against the football coach at EHS. The decision to prevent Terik from playing football has been made without any consideration of the effect the decision has on Terik's future college opportunities, and it has been made without providing Terik with the opportunity to explain that his transfer was proper and justified. Terik did not engage in any wrongful conduct, but he is the one being "punished" for alleged violations by the coach. Thus, this firm has been engaged to represent Terik, so he is not irreparably harmed by the arbitrary decision to prevent him from playing football.

In hopes of reaching a fast and equitable resolution of this matter, we want to confirm the facts that pertain to Terik. During 2013, Terik and his father, Mr. Miller, relocated to 5119 West Jackson Street, while the rest of the family remained at another address. Terik and his

801 WEST ROMANA STREET • SUITE A • PENSACOLA, FL 32502
TELEPHONE (850) 266-2300 • FACSIMILE (850) 266-2301

ENERGY CENTRE • 1100 POYDRAS STREET • SUITE 3100 • NEW ORLEANS, LA 70163
TELEPHONE (504) 585-3800 • FACSIMILE (504) 585-3801

father relocated to 5119 West Jackson Street, while their home at 5127 West Jackson Street was being renovated. Once the renovation was completed, Terik and his father relocated to 5127 West Jackson Street. At all times, Terik and his father have resided within the Escambia High School district.

During his junior year at Washington High School, Terik and his family had decided it would be best for him to transfer to EHS – which is where Terik and his father were residing. Therefore, during January, 2014, the proper and necessary documents for Terik to transfer to EHS were completed and submitted to the office of the Escambia County Superintendent, Malcom Thomas (“Mr. Thomas”). Thereafter, Terik’s transfer to EHS was approved.

Subsequently, Terik signed up to participate on the EHS varsity football team. The day of the Spring Game, held in May, 2014, Terik was told that he was not eligible to play in the game. Therefore, college recruiters who attended the game to watch Terik were unable to observe him for future academic and athletic scholarship activities.

Mr. Thomas’ office specifically approved Terik’s transfer to EHS. Yet, after the transfer, and after Terik signed up to participate on the EHS varsity football team, Principal Sherrill, Mr. Thomas, and/or the Escambia County School Board (the “School Board”) decided to “investigate” Terik’s transfer to EHS, along with five other students who transferred to EHS.

Based on currently available information, Principal Sherrill, Mr. Thomas or the School Board (hereinafter the “Administrators”), have taken the following actions to purportedly investigate the basis for Terik transferring to EHS:

- On May 8, 2014, a social worker visited the Miller residence. Mrs. Miller explained to that social worker that Terik and his father previously resided at two locations at different times on West Jackson Street because they resided at 5119 West Jackson Street, while their home at 5127 West Jackson Street was being renovated. Terik and his father subsequently relocated to 5127 West Jackson Street, after the renovation.
- On May 16, 2014, two Escambia County investigators removed Terik from his class at EHS to interrogate him in a secluded room. The Millers were never asked to give their consent to this interrogation, and they never did consent to the interrogation.¹ The investigators never showed Terik any identification, and Terik believed the men were undercover police officers. Based on Terik’s explanation of the interrogation to his mother, she believes that the two white investigators were using coercive tactics on an unsuspecting, vulnerable young, unrepresented African American male student.

¹ Upon information and belief, none of the parents of the other five students were asked to give their consent prior to the students being interrogated.

- Immediately after the interrogation, Terik sent a text to his mother, and she immediately went to EHS to determine why she had not been notified of the interrogation. After waiting for 4 hours for Principal Sherrill, she was told she would have to return at another time. On the morning of May 17, 2014, Mrs. Miller telephoned Principal Sherrill, and he stated "he was not aware of the investigators coming to the school until after they arrived, and he was not sure what this interrogation was about" and he referred Mrs. Miller to the Investigator's Office.
- The week of May 23, 2014, Mrs. Miller met with Investigator Marshall of the Escambia County School District. Mr. Marshall was very hostile to Mrs. Miller and when she asked him for explanations, he instructed her to "read your handbook". Investigator Marshall also advised Mrs. Miller that he had the right to remove any child from class because he was an employee of the Escambia County School District.
- On or about June 1, 2014, Mrs. Miller spoke with Mr. Thomas for additional information on the investigation of her son. Mr. Thomas acknowledged that the investigators had acted improperly.
- During August, 2014, Terik was accused of falsely providing information regarding his address, to obtain the transfer, and was told that he could not play any additional games until the FSHAA was notified. The false information apparently pertains to the fact that at one point in time, Terik and his father were living in one house on West Jackson Street, and then another house on West Jackson Street after its renovation. This information is not false, but Terik has never had the opportunity to demonstrate that his relocation from one house to another on West Jackson Street was simply due to renovation. Regardless, both addresses are in the EHS District.
- Administrators submitted an inquiry to Gulf Power to obtain specific information regarding utility services pertaining to the residence being occupied by Terik and Mr. Miller. Gulf Power's records would have shown that the utilities were in the name of Mr. Miller.
- The Administrators subsequently advised the Millers that they had "violated" the rules because they failed to update their records when Mr. Miller and Terik moved from 5119 West Jackson Street to 5127 West Jackson Street. Therefore, Mr. Miller took leave from work and went to change his address with the Administrators. However, when he attempted to change his address, he was told that he did not have to change their address, since they remained in the EHS

district. He was instructed to take his Gulf Power bill to the administration office, which he did.

- During August, 2014, after “pushing” from Principal Sherrill, Mrs. Miller did sign a document that was presented to her as to the different addresses when Terik and Mr. Miller moved from 5119 West Jackson Street to 5127 West Jackson Street, but she disputed all of Principal Sherrill’s “findings” of alleged violations. Principal Sherrill refused to provide her with a copy of that document.

As demonstrated above, the Administrators did not provide Terik, or his parents, with due process prior to reaching the decision to prevent him from participating in EHS football. It seems that the Administrators’ investigation has focused on the transfer of Terik (and the five other students) to EHS. We suspect that the facts will show that the Administrators have not conducted similar investigations for other students transferring within the school district. Upon information and belief, approximately 24 student athletes transferred within the Escambia County School District. Yet, the investigations appear to be limited to Terik and his five team mates. Moreover, even if such an investigation is proper, why wasn’t it conducted prior to the approval of Terik’s transfer?

The Administrators have apparently concluded that the coach of EHS wrongfully recruited students, and due to the coach’s actions, the students are now being penalized and prevented from maximizing their potential talent. The Administrators investigation and decisions did not follow principles of equity or due process. Moreover, the Administrators actions specifically ignore the mandate set forth by Florida Statutes § 1006.20, the legislative intent behind Florida Statutes § 1006.20, the bylaws of the Florida High School Activities Association (“FHSAA”), and the Rules and Procedures of the School Board.

We are not aware of any reasons as to why the Administrators would ignore the procedures and requirements of the FHSAA and the Rules and Procedures of the School Board. Yet, it cannot be disputed that Terik (as well as the other five students) is being penalized and irreparably harmed due to the Administrators arbitrary decision that the students should be held responsible for the alleged wrongdoing of the coach.

Florida Statutes § 1006.20(1) provides that the FHSAA is designated the governing organization of athletics in Florida public schools. EHS is a member school. According to Chapter 3 of the Rules and Procedures of the District School Board of Escambia County, Florida § 3.04(1), all high school athletic programs shall be operated according to the rules and regulations of the FHSAA. Florida Statutes § 1006.20(2) provides that FHSAA shall adopt bylaws that establish eligibility requirements for all students who participate in high school athletic competition in its member schools and eligibility shall be enforced through FHSAA’s bylaws. As a member school, EHS is required to comply with all bylaws, policies, and procedures of the FHSAA. Florida Statutes § 1006.20(2)(g) states:

The FHSAA shall adopt bylaws establishing the process and standards by which FHSAA determinations of eligibility are made. Such bylaws shall provide that:

- 1. Ineligibility must be established by clear and convincing evidence;*
- 2. Student athletes, parents, and schools must have notice of the initiation of any investigation or other inquiry into eligibility and may present, to the investigator and to the individual making the eligibility determination, any information or evidence that is credible, persuasive, and of a kind reasonably prudent persons rely upon in the conduct of serious affairs;*
- 3. An investigator may not determine matters of eligibility but must submit information and evidence to the executive director or a person designated by the executive director or by the board of directors for an unbiased and objective determination of eligibility; and*
- 4. A determination of ineligibility must be made in writing, setting forth the findings of fact and specific violation upon which the decision is based.*

In Terik's case, the FHSAA has made no such ruling of ineligibility. Instead the Administrators unilaterally decided to prospectively punish Terik (and his 5 teammates) for alleged rule violations by their coach. The Administrators' actions specifically violate the legislative intent behind the 2012 revisions to Florida Statutes § 1006.20(2)(i) - which is to prevent unfair punishment of students for the violations of adults. Florida Statutes § 1006.20(2)(i) specifically provides:

The FHSAA bylaws may not limit the competition of student athletes prospectively for rule violations of their school or its coaches or their adult representatives. The FHSAA bylaws may not unfairly punish student athletes for eligibility or recruiting violations perpetrated by a teammate, coach, or administrator.

Florida Statutes § 1006.20 was amended in 2012 by House Bill 1403. The legislative intent behind House Bill 1403 was specifically aimed to prevent the situation in this case - i.e. to prevent unfair punishment of students for violations of adults and to prevent student ineligibility for violation of recruiting rules. House Bill 1403 shifted the focus of sanctions for recruiting and eligibility violations away from students to coaches and responsible adults by requiring the FHSAA to adopt bylaws establishing sanctions for coaches. Additionally, House Bill 1403 now codified by Florida Statutes § 1006.20, strengthened the due process protections of students involved in initial eligibility determinations as set forth above in Florida Statutes § 1006.20(2)(g). Finally, House Bill 1403 as codified by Florida Statutes § 1006.20(2)(i) prohibits prospective punishment, which is exactly the circumstances surrounding Terik.

On June 28, 2012, the FHSAA sent a memorandum outlining the impact of House Bill 1403 to its member schools including EHS. Specifically, the FHSAA memorandum stated:

The FHSAA will investigate allegations of violations of its Policy on Recruiting. HB1403 requires that no student be ruled "ineligible" as a result of being recruited; instead, sanctions may be assessed directly against the school's coach involved in the recruiting violation AND sanctions may be placed upon the school, including but not limited to requiring the school to play in a different classification.

Surely, the Administrators are aware of these requirements of Florida Statutes § 1006.20 and received the memorandum dated June 28, 2012, from the FHSAA. The FHSAA affords Terik (and his five teammates) the due process required under Florida Statutes § 1006.20, and unless the FHSAA makes a ruling of ineligibility supported by clear and convincing evidence, Terik (and his five teammates) is eligible to play football. The Administrators have no legal basis to prevent Terik (or his teammates) from playing as he remains eligible until the FHSAA rules otherwise by clear and convincing evidence, after the students are afforded basic due process.

As is, the Administrators are violating Florida Statutes § 1006.20 and the due process rights of these students by punishing Terik and his teammates for the alleged violations of adults. Simply put, contrary to applicable governing law, Terik and his teammates are being irreparably harmed by the arbitrary and capricious decision to prevent his participation in EHS varsity football related activities and games.

Please accept this letter as a formal demand for the immediate reinstatement of Terik to be allowed to fully participate in EHS varsity football related activities and games. If Terik is not fully reinstated to full participation in EHS varsity football related activities and games by 9:00 am tomorrow, then Terik and his family intend to fully explore and implement all of their legal rights and remedies, to prevent irreparable harm to Terik and his family.

We know that the Administrators want the best for their students. In this case, we believe that the Administrators have focused on the alleged wrongdoing of the coach, and have not focused on the impact that their decisions have on Terik (or his five team members). Therefore, we look forward to hearing from you immediately that Terik can play football tomorrow night.

Sincerely,



Robert S. Rushing

cc: M. Denarvise Thornton, Jr., FHSAA
Michael Sherrill, Principal, Escambia High School
Norm Ross, Deputy Superintendent
Jeff Bergosh, District 1, Escambia County School Board
Gerald Boone, District 2, Escambia County School Board
Patty Hightower, District 4, Escambia County School Board
Bill Slayton, District 5, Escambia County School Board