

No. 480A09

SECOND DISTRICT

SUPREME COURT OF NORTH CAROLINA

VIKTORIA KING, a minor, by and)
through her parent, REVONDIA)
HARVEY-BARROW,)
Plaintiff-Appellant,)

v.)

BEAUFORT COUNTY BOARD OF)
EDUCATION; JEFFREY MOSS,)
Superintendent, Beaufort County)
Schools, in his official)
capacity,)
Defendants-Appellees.)

FROM BEAUFORT COUNTY

No. 08CVS240

No. COA08-1038

MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF

PLAINTIFF-APPELLANT

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Pursuant to Rule 28(i) of the North Carolina Rules of
 Appellate Procedure, Advancement Project, Charles Hamilton
 Houston Institute, University of North Carolina Center for Civil
 Rights, et al. (collectively herein as "Amici") respectfully
 move the Court for leave to file an *amicus curiae* brief in

support of the Plaintiff-Appellant Viktoria King in the above-captioned matter.

I. Identity of the Amici and the Nature of Their Interest in This Appeal

Amici are: advocates with a wealth of experience working with, and on behalf of, youth whose educational opportunities are jeopardized by the use of exclusionary disciplinary practices; and researchers who have conducted extensive empirical research on the impact of such practices. *Amici* share a common concern that the widespread use of exclusionary practices has resulted in significant infringement of the educational rights of students around the country, and in North Carolina. *Amici* are listed in the Appendix to the *amicus curiae* brief, with individual statements of interest.

II. Need for an Amicus Curiae Brief

The *amici* respectfully submit that the Court would benefit from an *amicus curiae* brief supporting appellant in this case. *Amici* propose to address two principal issues in the brief. First, as national advocates and experts in the field, *amici* will address the ways in which exclusionary discipline, such as the long-term suspension in this case, constitutes a burden on the fundamental right to an education as established by the North Carolina Constitution and interpreted by this Court in *Leandro v. State*, 346 N.C. 336 (1997). *Amici* will present

research and argument showing that the burden imposed by exclusionary discipline goes beyond the term of the suspension or expulsion and impacts the entire educational career of the student.

Second, *amici* will discuss the dissonance between the lower court's decision and this Court's precedent regarding the right to an education. *Amici* will offer their national expertise to explain how the lower court's suggestion that the qualitative holding in *Leandro* can be separated from the question of access in this case is both inconsistent with our understanding of how education works and unnecessarily muddles this Court's jurisprudence.

III. Questions Of Law To Be Addressed And Amici's Position On The Issues

Amici seek leave to address the following issues: 1) whether the appellate court's decision should be overturned for failure to apply strict scrutiny review to the deprivation of appellant's fundamental right to an education; and 2) whether the appellate court's decision should be overturned because it creates an unjustified dichotomy between the right to a quality education and the right to access that education.

Amici's position on the first issue is that the exclusionary discipline at issue in this case (a long-term suspension without educational services) constitutes a burden on

the fundamental right to an education. Moreover, the exclusion at issue is more than a burden on the right during the suspension. In fact, this sort of exclusionary discipline is a continuing burden on a student's right to an education by impacting her future educational achievement and opportunities. Because education is a fundamental right, the burden imposed by exclusionary discipline must be reviewed under strict scrutiny. Thus, this case should be remanded to the district court to determine whether the burden on the fundamental right was narrowly tailored to promote a compelling government interest.

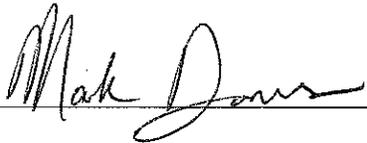
Amici's position on the second issue is that the appellate court's decision, if upheld, would create an unjustified split between a student's right to a quality education and her right to access that education. This split not only muddles this court's doctrine; it flies in the face of our understanding of how education works. Because discipline is an integral part of a student's education, it cannot be separated out from other aspects that make up a "quality" education. Moreover, upholding the appellate court's decision would allow the fundamental right to an education in this state to become entirely contingent on disciplinary discretion.

IV. Conclusion

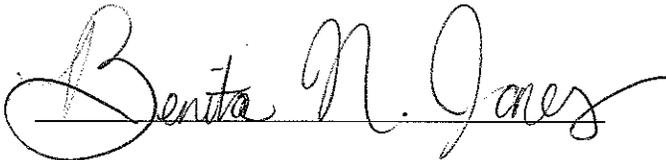
For the foregoing reasons, the Amici respectfully request the Court grant them leave to file a brief in support of the Appellant in this matter.

Respectfully submitted this 23 day of December, 2009.

UNIVERSITY OF NORTH CAROLINA SCHOOL OF LAW
CENTER FOR CIVIL RIGHTS



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AMICI:

Advancement Project

Advocates for Basic Legal Equality, Inc. and Legal Aid of
Western Ohio, Inc. (ABLE-LAWO)

Advocates for Children of New York (AFC)

The Alabama Disabilities Advocacy Program (ADAP)

The American Civil Liberties Union (ACLU)

The Barton Child Law & Policy Clinic

The Center for Civil Rights at UNC School of Law

The Charles Hamilton Houston Institute for Race and Justice at
Harvard Law School (CHHIRJ)

The Children and Family Justice Center (CFJC)

The Children's Law Center of Massachusetts (CLCM)

Connecticut Legal Services, Inc. (CLS)

The Council of Parent Attorneys and Advocates (COPAA)

Education Law Center (ELC)

Juvenile Justice Project of Louisiana

The Legal Aid Society of Birmingham

The Legal Assistance Foundation of Metropolitan Chicago (LAF)

The NAACP Legal Defense & Educational Fund, Inc. (LDF)

The National Association of Counsel for Children (NACC)

The National Association of Social Workers ("NASW")

The National Children's Law Network

The National Economic and Social Rights Initiative (NESRI)

The New York Law School Racial Justice Project

Public Counsel

The Southern Poverty Law Center (SPLC)

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CERTIFICATE OF SERVICE

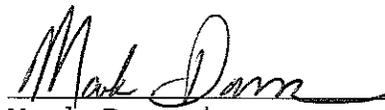
On behalf of *Amici* I have, this day, filed a copy of this Motion for Leave to File a Brief as *Amici* in Support of the Plaintiff-Appellant upon all parties' counsel in accordance with said rules by depositing the same in the U.S. Mail, with adequate postage affixed thereto and properly addressed to:

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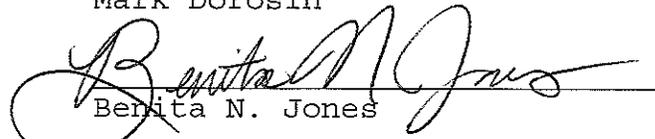
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This the 23rd day of December, 2009.



Mark Dorosin



Benita N. Jones