

Christi Underwood

DC-15-13005  
NO. \_\_\_\_\_

<b>JOHN DOE, individually, and as</b>	§	<b>IN THE DISTRICT COURT OF</b>
<b>next friend of JOHN DOE, Jr., a</b>	§	
<b>minor</b>	§	
	§	
<b>Petitioners</b>	§	
	§	
v.	§	<b>DALLAS COUNTY, TEXAS</b>
	§	
<b>JEFFREY LABA and</b>	§	
<b>EPISCOPAL SCHOOL OF</b>	§	
<b>DALLAS, INC.,</b>	§	
	§	
<b>Respondents</b>	§	<b>_____ JUDICIAL DISTRICT</b>

**VERIFIED PETITION REQUESTING DEPOSITION BEFORE SUIT**  
**PURSUANT TO TEXAS RULES OF CIVIL PROCEDURE 202**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW John Doe, individually, and as next friend of John Doe, Jr., a minor (Collectively, "**Petitioners**"), and file this their Verified Petition Requesting Deposition Before Suit Pursuant to TEXAS RULES OF CIVIL PROCEDURE 202 (the "**Petition**"), and respectfully request authority to take the depositions of Respondents Jeffrey Laba ("**Laba**") and a corporate representative of the Episcopal School of Texas, Inc., ("**ESD**", collectively, "**Respondents**"), in order to investigate potential claims for a potential suit, as authorized by TEXAS RULES OF CIVIL PROCEDURE 202 and, for cause, would respectfully show this Court the following:

**I.**

**PARTIES**

1. John Doe, Jr., is an individual minor residing in Dallas County, Texas.
2. John Doe is an individual who is next friend of John Doe, Jr., a minor, and who resides in Dallas County, Texas.

3. Jeffrey Laba is an individual residing in Dallas County, Texas, and can be served at his place of business at 4100 Merrell Road, Dallas, Texas 75229, or wherever else he may be found. Mr. Laba's business phone number is 214-353-5818.

4. The Episcopal School of Dallas, Inc., is a Texas corporation doing business in Dallas County and may be served by and through its registered agent, Robert Buchholz, at 4100 Merrell Road, Dallas, Texas 75229, or wherever else he may be found. The phone number for ESD is 214-353-5818.

### **JURISDICTION AND VENUE**

5. This matter meets the jurisdictional requirements of this Court, therefore, this Court has jurisdiction over this matter. Venue is proper in Dallas County, Texas, as Dallas County, Texas, is the county in which all or a substantial part of the events or omissions giving rise to Petitioners' potential claims or suit occurred and the county in which one or more of the Respondents reside or have its principal place of business.

## **II.**

### **SUMMARY OF THE RELIEF REQUESTED**

6. Petitioners seek to investigate potential claims against the Respondents as well as other potential parties involved in what amounted to the expulsion of John Doe, Jr., from the Episcopal School of Dallas ("**ESD**" or the "**School**"). Petitioners believe that Respondents forced John Doe, Jr., from ESD without good cause and without "due process" in breach of ESD's representations to Petitioners and its contract to provide educational services to Petitioners. Petitioners believe that Respondents breached said representations and contract in violation of the TEXAS DECEPTIVE TRADE PRACTICES/ CONSUMER PROTECTION ACT, and in a manner that was negligent, grossly negligent and in reckless disregard to the rights of John Doe, Jr., and John Doe

and the tremendous damage it would cause to them. Petitioners further believe that ESD discriminated in the manner and consistency with which it applied the policies governing student conduct, and that ESD unfairly ignored and/or misapplied its policies to Petitioner in violation of ESD's contract with Petitioner and the law.

7. Accordingly, the Petitioners seek to depose Respondents and obtain documents related thereto. The substance of the testimony and documents the Petitioners expect to elicit involve:

- (a) The determination of what rules, policies or procedures apply to govern students' conduct at ESD, how those rules are applied, who applies them and whether and how such rules, policies and procedures are communicated to parents and students.
- (b) How the rules, policies and procedures governing student conduct at ESD are interpreted, who interprets them, how they are enforced, who enforces them and whether and how such information is communicated to parents and students.
- (c) What procedures are used by ESD to document and investigate students' conduct, whether ESD follows those procedures consistently, whether they followed those procedures in this instance and, if not, the reasons therefore.
- (d) Whether ESD applies its rules, policies and procedures governing students' conduct and associated punishment strictly and consistently, whether they followed those rules, policies and procedures in this instance and, if not, the reasons therefore.
- (e) The purpose and role of the ESD Honor Council and whether ESD's policy or procedure requires alleged honor code or academic pledge violations to be presented to the Honor Council, whether such procedure is consistently followed, whether or not it was followed in this instance and, if not, the reasons therefore.

- (f) ESD’s policies and procedures relating to and the factors, standards, policies and procedures that ESD relies upon in investigating an alleged academic pledge or honor code violation, determining whether a violation has occurred, and determining the manner or level of discipline to employ as a result thereof, whether such standards and policies are strictly and consistently adhered to, whether they were followed in this instance and, if not, the reasons therefore.
- (g) The facts leading up to and surrounding the accusations leveled against John Doe, Jr. by ESD, including Mr. Laba's involvement with the investigation, determination and punishment, the discussions and meetings with Petitioners regarding same, the basis for ESD’s determination that expulsion was the appropriate punishment and any prior disciplinary issues Mr. Laba or ESD had with or expressed about John Doe, Jr.

8. Petitioners' reasons for desiring to obtain such testimony and documents related thereto are to determine whether claims should be pursued or if litigation should be instituted. Clearly, the benefit of allowing the depositions and subpoena duces tecum outweighs the burden or expense of the procedure, because Petitioners do not know if claims should be pursued or against whom a claim should be made. Each deposition can be completed in less than six (6) hours.

### **III.**

#### **FACTUAL BACKGROUND**

9. Jeffrey Laba is the Assistant Head of Upper School for ESD. On September 22, 2015, Mr. Laba called John Doe, Jr. to his office and asked if John Doe, Jr. had anything he wanted to tell him. John Doe, Jr. responded “no” and was then asked if he was good friends with another student. The following day, John Doe, Jr. was once again summoned to Mr. Laba’s office. This time Mr. Laba asked if John Doe, Jr. spoke with anyone when he went to the bathroom during a

history test. John Doe, Jr. truthfully responded, “yes,” and told Mr. Laba with whom he spoke. John Doe, Jr. could not recall the details of the brief conversation, but told Mr. Laba that it did not pertain to questions on the history test. At the conclusion of this meeting, John Doe, Jr. was dismissed back to class. At no time during the questioning was John Doe, Jr. informed that charges were being brought against him for a violation of the School’s Honor Code or the consequences he would face as a result of any statements he made to Mr. Laba.

10. On September 24, 2014, ESD contacted John Doe and asked him to meet with the Head of School, Meredyth Cole, on the following day to discuss an incident involving John Doe, Jr. On the following morning, September 25, 2014, a meeting took place between John Doe, Ms. John Doe, John Doe, Jr., Mr. Laba, Donna Hull, Head of Upper School, and Meredyth Cole. During the meeting, John Doe was told that John Doe, Jr., had engaged in behavior classified by the School as “cheating,” and that John Doe, Jr., had committed an Honor Code violation. This meeting was John Doe's first notice of the alleged incident and he was told during the meeting that John Doe, Jr., would be immediately expelled if he did not voluntarily withdraw. At the conclusion of the meeting, John Doe, Jr., was instructed to empty out his locker and go home.

11. Blindsided by the accusations and the harshness of the penalty, the Does were speechless. Later that afternoon, they called the school and requested a follow-up meeting with Ms. Cole to further discuss the evidence, their procedural rights and the severity of the penalty. They were told that Ms. Cole would not be available and a meeting was scheduled for the following day with Mr. Laba and Ms. Hull. During this meeting the Does were again told that if they did not voluntarily withdraw John Doe, Jr. from the School, he would be expelled. The Does were not presented with any written or recorded evidence relating to the alleged incident but were instead told that the School did not think that the accusing student would lie and that it “did not want to bring

other people into this,” leaving the Does to rely solely upon the opinions and conclusions of Ms. Hull and Mr. Laba.

12. As John Doe, Jr., denied the accusation, the Does asked why John Doe, Jr., was not allowed to defend himself before the Honor Council. The Does were told that this was John Doe, Jr.’s third violation and that, in the instance of a third violation, the Honor Council is not asked to make the determination. Instead, the School determines the validity of the violation and imposes the penalty. Mr. Laba and Ms. Hull told the Does that once a student reaches a third honor code violation, the School will either expel the student or offer voluntary withdrawal, that the School was going to have to expel John Doe, Jr. and that “nobody stays with three violations.” Ms. Hull and Mr. Laba reiterated that while the School would expel John Doe, Jr., they did not want an expulsion on his record and were giving him the opportunity to withdraw first as colleges would have no reason to contact them or ask questions if he voluntarily withdrew. Ironically, despite the high ethical and moral standards ESD expects its students to abide by, Ms. Hull stressed to the Does that if they chose to voluntarily withdraw John Doe, Jr., they could determine what to tell his new school, as it was “their story” and they could just say, “family choices.” Backed into a corner and with no other viable option, the Does withdrew John Doe, Jr. under threat of expulsion.

13. Petitioners believe that Respondents and others are responsible for breaching their representations to and contract with Petitioners, committing fraud, violating the TEXAS DECEPTIVE TRADE PRACTICES/CONSUMER PROTECTION ACT and engaging in negligent and grossly negligent conduct in what amounted to be a forced withdrawal of John Doe, Jr. With the limited facts available to Petitioners at this time, Petitioners believe that Respondents engaged in discriminatory behavior and committed misrepresentations and breaches by: (1) failing and refusing to follow the rules, policies and procedures set forth in the Student and Parent Handbook; and (2) not applying

such policies and procedures fairly, consistently and in a nondiscriminatory manner to all students. As a result of Respondents' wrongful and tortious actions, John Doe, Jr.'s, future is now at stake.

#### IV.

#### **APPLICABLE LEGAL STANDARD**

14. Petitioners have met the requirements pursuant to Rule 202 of the TEXAS RULES OF CIVIL PROCEDURE ("**TRCP**"). In fact, TRCP 202 outlines the requirements of taking a deposition before suit or to investigate potential claims. Under the Rules, a person may petition the Court for an order authorizing the taking of a deposition, either orally or on written questions, to either (a) perpetuate or obtain the person's own testimony or that of any other person for use in an anticipated suit; or (b) to investigate a potential claim or suit, TRCP 202.1. The Petitioners have met all of these requirements. Specifically, the Petitioners believe that the Respondents unfairly and inappropriately treated John Doe, Jr., and committed various breaches and acts of negligence, discrimination and fraud that have caused them to suffer damages. In light of this, Petitioners desire to investigate their claims to determine what procedures Respondents followed in relation to John Doe, Jr., and whether similar alleged infractions have met with the same penalty and, if not, why.

15. A Court order is required to take any deposition under TRCP 202. Therefore, the party wanting to take the deposition must file a verified petition. TRCP 202.2(a). The Petitioners have met this requirement. Further, the Petition will be filed in Dallas County, Texas, because it is where any anticipated suit may lie and where most of the witnesses reside. TRCP 202.2(b).

16. The Petition should state upon which grounds Petitioners are requesting the pre-filing depositions. TRCP 202.2(d). As stated above, the Petitioners need to investigate the facts related to the expulsion of John Doe, Jr., and the policies and procedures relied upon in connection therewith.

17. If the deposition is being taken in anticipation of another suit, the Petition must identify the subject matter of the anticipated suit and the Petitioner's interest in it, and either identify the names, addresses, and telephone number of the potential adverse parties or state that such information cannot be obtained after diligent inquiry. TRCP 202.2(e-f). The Petitioners respectfully request that this Honorable Court order the depositions of Respondents to help determine whether Respondents, in fact, breached their contract and engaged in fraudulent and tortious conduct.

18. If the deposition is being taken to merely investigate a potential claim by or against the Petitioners, notification of those persons who may have an adverse interest is not required. The Petition must also include the name, address and telephone number of the deponent, as well as a statement regarding the expected testimony, any documents that the deponent will be requested to provide at the deposition, and the reasons that the testimony is desired by Petitioner. TRCP 202.2(g). The Petitioners have met this requirement. Petitioners expect Respondents to testify regarding their disciplinary policies and procedures, the events of week of September 22, 2014, John Doe, Jr.'s, disciplinary history at ESD, the facts and information relied on by ESD in relation to the actions taken against John Doe, Jr., the procedures followed in reaching that decision, whether ESD consistently and uniformly interprets, applies and enforces its policies and procedures relating to the investigation, determination and punishment of alleged violations, whether it did so in this instance and, if not, the reasons therefore. Any documents requested by Petitioners will relate to the investigation and determination of and communications regarding John Doe, Jr.'s, alleged actions, John Doe, Jr.'s punishment and disciplinary history, video footage from the day in question, ESD's policies, procedures and handbooks pertaining to student conduct, honor code or academic pledge violations, the Honor Council, punishment and due process, and documents evidencing that such

policies are consistently and uniformly applied, redacted to prevent disclosure of student information.

19. Lastly, the Petition should request that the Court issue an order allowing for the deposition. After filing of the Petition, the Court will set the matter for hearing. The Petition and notice of hearing must be served, in accordance with Rule 21a, at least 15 days before the date of the hearing.

20. If the Court finds that (1) allowing the requested depositions may prevent failure or delay of justice in an anticipated suit; or (2) the likely benefit of allowing the depositions to investigate a potential claim outweighs the burden or expense of the procedure, the Court must order the depositions to be taken. TRCP 202.4(a). Petitioners have demonstrated that the benefit of allowing them such limited discovery to investigate their claim outweighs the burden and expense of the procedure as such investigation may avoid an unnecessary lawsuit. The Court's order for the depositions must specify whether it is to be oral or written, and the time and place in which the depositions will be taken.

WHEREFORE, PREMISES CONSIDERED, for the reasons stated, the Petitioners respectfully request that this Honorable Court set a date for hearing on this Petition, and after the hearing find that the likely benefit of allowing the Petitioners to take the requested depositions to investigate a potential claim outweighs the burden or expenses of the procedure. The Petitioners further respectfully request that this Honorable Court issue an order authorizing Petitioners to take the oral and videotaped depositions of Respondents, to be taken at a time and place to be specified by Petitioners in deposition notices as required by the TEXAS RULES OF CIVIL PROCEDURES, and be ordered to produce at the depositions for inspection and copying of the documents and items which will be listed on Exhibit "A" to each deposition notice.

Respectfully submitted,

**BELLINGER & SUBERG, L.L.P.**



By: \_\_\_\_\_

BARBARA L. EMERSON

Texas State Bar No. 06599400

bemerson@bd-law.com

STACI C. PIRNAR

Texas State Bar No. 00793291

spirnar@bd-law.com

10,000 N. Central Expy., Suite 900

Dallas, Texas 75231

Telephone: 214/954-9540

Facsimile: 214/954-9541

**ATTORNEYS FOR PETITIONERS**

VERIFICATION

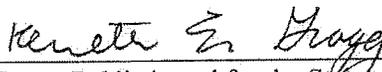
STATE OF TEXAS           §  
                                     §  
COUNTY OF DALLAS      §

BEFORE ME personally appeared REDACTED, and being by me first duly sworn, upon oath declared that the facts and statements contained in the Verified Petition Requesting Deposition Before Suit Pursuant to Texas Rules of Civil Procedure 202 are within my personal knowledge or have been reported to me by people with personal knowledge and are true and correct.

REDACTED

\_\_\_\_\_  
REDACTED

SWORN AND SUBSCRIBED to before me on the 23<sup>rd</sup> day of October, 2015, to certify which, witness my hand and seal of office.

  
\_\_\_\_\_  
Notary Public in and for the State of Texas



REDACTED