

\*\*\*\*\*

NORTH CAROLINA COURT OF APPEALS

\*\*\*\*\*

THE NEWS AND OBSERVER  
PUBLISHING COMPANY; DTH  
MEDIA CORP; THE CHARLOTTE  
OBSERVER PUBLISHING  
COMPANY; TIME-WARNER  
ENTERTAINMENT-ADVANCE/NE  
WHOUSE PARTNERSHIP; WTVD  
TELEVISION, LLC; CAPITOL  
BROADCASTING COMPANY,  
INCORPORATED; THE  
ASSOCIATED PRESS; and MEDIA  
GENERAL OPERATIONS, INC.,

From Orange County  
10 CVS 1941

Plaintiffs,

v.

RICHARD A. BADDOUR, as  
Director of Athletics for The  
University of North Carolina at Chapel  
Hill; PAUL HILTON "BUTCH"  
DAVIS, JR., as Head Football Coach  
at UNC-CH; JEFF B. McCRACKEN,  
as Director of Public Safety at  
UNC-CH; and HOLDEN THORP, as  
Chancellor at UNC-CH,

Defendants.

\*\*\*\*\*  
PETITION FOR WRIT OF SUPERSEDEAS UNDER RULE 23  
AND MOTION FOR TEMPORARY STAY  
\*\*\*\*\*

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

Pursuant to N.C. R. App. P. 8 and 23, and pending review by this Court, Defendants Richard A. Baddour, Paul Hilton “Butch” Davis, Jr., Jeff B. McCracken, and Holden Thorp, employees of the University of North Carolina at Chapel Hill (collectively, “the University”), respectfully petition this Court to issue a writ of supersedeas to stay enforcement of the judgment of the Honorable Howard E. Manning, Jr., Judge Presiding, Superior Court, Orange County, dated 13 May 2011.

Defendants seek a stay pending review by this Court of the trial court’s order granting judgment on the pleadings in favor of plaintiffs. If not stayed by this Court, the trial court’s order would require the public disclosure of documents that are confidential under federal and State law. In support of this petition, the University shows the following:

Facts

This case concerns the scope of federal and State laws that protect student and employee information from public disclosure. Plaintiffs, a group of print and broadcast media outlets, allege that Defendants, in their official capacity, violated the Public Records Law by failing to provide certain documents in response to

media requests. Plaintiffs' complaint sought an order to compel inspection and review of records pursuant to N.C. GEN. STAT. § 132-9(a), and an order in the nature of a writ of mandamus to require the University to produce records. Cmpt ¶ 18.

The University answered that it had devoted resources in excess of four full-time employees and produced thousands of pages of documents in response to Plaintiffs' requests. Answer ¶ 19. Wherever possible, the University produced records in redacted form rather than withholding them entirely. *See* Answer ¶ 19. The disputed material Plaintiffs seek is protected from disclosure by the federal Family Educational Rights and Privacy Act (FERPA) and the State Personnel Act. Answer ¶ 19.

Plaintiffs do not allege that FERPA does not protect students' education records and personally identifiable information. *See* Cmpt ¶ 20. Nor do they allege that the State Personnel Act does not shield certain employee records from public view. *See* Cmpt ¶ 20. Instead, the parties' dispute concerns whether these statutory protections apply to the particular documents and information that Plaintiffs requested. *See* Cmpt ¶ 19, Answer ¶ 19.

Plaintiffs' complaint identified six categories of disputed requests:

- a. All documents and records of any investigation conducted by the University related to any misconduct by any UNC-CH football coach, any UNC-CH football player, any sports agent, any UNC-CH booster and/or any UNC-CH academic tutor.
- b. Names of all individuals or organizations that provided impermissible benefits to any UNC football players.
- c. Unredacted phone numbers on telephone bills for phones provided to and used by defendants Baddour and Davis and by former associate football coach John Blake.
- d. Parking tickets issued by UNC-CH relating to 11 players.
- e. Names, employment dates and salaries of all individuals employed as tutors/mentors for UNC-CH student athletes since January 1, 2007, including any documents mentioning former tutor Jennifer Wiley.
- f. Names of recipients of athletic scholarships.

Cmplt. ¶ 18.

It is undisputed that the University has satisfied in full the requests identified in Categories (b) and (f). The trial court granted judgment on the pleadings in favor of the University as to Category (e) and granted judgment on the pleadings in favor of plaintiffs as to Categories (c) and (d). *See* Exhibit A, 13 May 2011 Order. The trial court informed the parties that its order regarding these requests would guide the parties' approach to Category (a), which remains unresolved.

The University appealed the trial court's order on 13 May 2011. *See* Exhibit B, Notice of Appeal. The trial court denied the University's motion for a stay pending the appeal on 23 May 2011. *See* Exhibit C, Order Denying Stay. The University seeks a temporary stay and writ of supersedeas from this Court pursuant to Rules 8 and 23 of the North Carolina Rules of Appellate Procedure.

### Reasons Why Writ Should Issue

I. A Stay Is Necessary to Avoid Irreparable Harm and to Protect the University's Right to a Meaningful Appeal.

A stay as to the execution of the Court's order is appropriate on the ground that the information ordered to be produced is confidential and privileged under state and federal law and otherwise subject to immediate appeal as it affects a substantial right. *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 444 S.E.2d 252 (1994).

The purpose of a writ of supersedeas is "to preserve the status quo pending the exercise of the appellate court's jurisdiction" and "is issued only to hold the matter in abeyance pending review." *City of New Bern v. Walker*, 255 N.C. 355, 356, 121 S.E.2d 544, 545-46 (1961). In this case, a writ of supersedeas is proper and necessary to preserve the status quo pending this Court's decision on the University's appeal. The trial court's order is subject to immediate appeal, because it compels defendants to produce information that is confidential and privileged

under state and federal law and otherwise affects a substantial right. *Sharpe v. Worland*, 351 N.C. 159, 164-65, 522 S.E.2d 577, 580-81 (1999); *see also N.C. State Bd. of Dental Examiners*, \_\_\_ N.C. App. \_\_\_, 688 S.E.2d 84 (2010).

In the absence of a writ of supersedeas, the University would suffer irreparable harm and be deprived of its right to a meaningful appeal. The trial court's order commands the University to produce records that are statutorily privileged under FERPA and the State Personnel Act. If this Court disagrees with the trial court, and determines that *either* of these laws protects *any* of the records at issue, their production in advance of that decision would deprive the University of the benefit of its appeal. In short, requiring the University to make public such information before the appeal is resolved effectively may render the appeal moot.

In addition, a stay will serve to protect the privacy rights of third parties pending appeal. Immediate compliance with the trial court's order would result in the disclosure of information that students, their parents, and University employees expect, under University policy, to remain confidential.

Moreover, the University would be placed in an untenable position if a writ of supersedeas does not issue. It must comply with either the statutory obligations it anticipates will be upheld on appeal, or the trial court's order that fails to recognize these obligations. To comply with the trial court's order, the University must

produce material that this Court could well determine is statutorily protected, making its release a statutory violation.

Immediate release of the disputed records also would result in additional irreparable harm. Once this information has been made public, it cannot be made confidential again – even if this Court determines that privacy laws preclude the disclosure of this material.

A writ of supersedeas would avoid this harm and preserve the integrity of the University's appeal. This Court has granted petitions for supersedeas under similar circumstances. In *Knight Pub. Co. v. Charlotte-Mecklenburg Hosp. Auth.*, 172 N.C. App. 486, 487-88 616 S.E.2d 602, 604 (2005), for example, a writ issued to stay the public disclosure of confidential employee documents by a county hospital. Under circumstances of the kind presented here, our Supreme Court has recognized that “the substantial right asserted by defendants will be lost if the trial court's order is not reviewed before entry of a final judgment.” *Sharpe*, 351 N.C. at 65, 522 S.E.2d at 581 (citing *Cook v. Bankers Life and Casualty Co.*, 329 N.C. 488, 491, 406 S.E.2d 848, 850 (1991)).

By contrast, Plaintiffs face no irreparable harm if a stay is granted. If Plaintiffs ultimately prevail on appeal, they will obtain the relief ordered by this

Court. The only harm they will suffer is a delay in writing follow-up articles to stories published or aired months ago.

II. The University Is Likely to Succeed on the Merits.

A. The trial court erred as a matter of law in its interpretation and application of FERPA and the State Personnel Act, resulting in the erroneous granting of judgment on the pleadings in favor of plaintiffs.

1. FERPA.

FERPA protects the privacy interests of students and their parents. *United States v. Miami Univ.*, 294 F.3d 797, 806 (6th Cir. 2002); *DTH Publishing Corp., d/b/a The Daily Tar Heel v. The University of North Carolina at Chapel Hill*, 128 N.C. App. 534, 540-41, 496 S.E.2d 8, 12 (1998). FERPA achieves this purpose by making unlawful the disclosure of "education records" and "personally identifiable information" contained in those records unless a specific exception applies. *DTH Publ'g Corp.*, 128 N.C. App. at 540-42, 496 S.E.2d 8 at 12.

"Education records" are materials that:

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

20 U.S.C. § 1232g(a)(4)(A). This is a broad definition. "Notably, Congress made no content-based judgments with regard to its 'education records' definition."

*Miami Univ.*, 294 F.3d at 812. In fact, FERPA originally included a defined list of

“education records.” P.L. 93-380, codified at 20 U.S.C. § 1232g (1974). When this enumerated list proved unworkable, Congress amended the statute to change the definition to its current, broad form. P.L. 93-568; *See also* Joint Statement in Explanation of Buckley/Pell Amendment, 120 Cong. Rec. 39858, 39862 (1974). Nothing in FERPA or its implementing regulations limits such records to grades, transcripts, or disciplinary proceedings. *See* 20 U.S.C. § 1232g(a)(4)(A); 34 C.F.R. § 99.3. If a document is an “education record,” FERPA protects it from disclosure.

Plaintiffs’ complaint seeks documents that are related to students. *See* Cmpt ¶ 18(a) (“parking tickets issued by UNC-CH relating to 11 players”). These records contain information related to a student; otherwise, they would not be responsive to plaintiffs’ requests. They are in the University’s possession; otherwise, plaintiffs would not have sought them from the University. Despite these facts, the trial court concluded that FERPA does not apply to these records. *See* Order at 4, 5. This determination – that FERPA means something other than what its plain language provides, or that its application is narrower than Congress intended – is error.

There is, then, a reasonable likelihood that the University will prevail on its appeal. In addition, as other courts have recognized, disagreements among courts as to the breadth of FERPA support the University’s burden to show a likelihood of success. A “split in authority” or “difference of opinion” among courts,

demonstrating that “reasonable jurists can disagree” on the question at issue, is sufficient to establish a “likelihood of success on the merits.” *Aslam v. Chertoff*, No. 1:07cv331, 2008 WL 341434, \*1 (E.D. Va. Feb. 4, 2008). *See also In re Hunt*, 93 B.R. 484, 494 (Bankr. N.D. Tex. 1988)(finding that, in light of the existence of “conflicting authority” on the disputed legal question, “there exists some likelihood of success” on the merits). This is particularly notable, when, as here, the trial court appears to take a divergent view of this Court, which has applied FERPA broadly. *DTH Publ'g Corp.*, 128 N.C. App. at 534, 496 S.E.2d at 8.

2. State Personnel Act.

Similarly, the personal telephone numbers of University employees are protected by the State Personnel Act. Answer at 10, aff. def. #1. As a general rule, personnel files of state employees are not public records within the meaning of the Public Records Law. N.C. GEN. STAT. § 126-22. Section 126-23 of the State Personnel Act enumerates the items from a personnel file that may be disclosed. N.C. GEN. STAT. § 126-23. "All other information contained in a personnel file is confidential and shall not be open for inspection and examination" by the public. N.C. GEN. STAT. § 126-24. Personal telephone numbers are not included in the statute's list of specific exclusions. Accordingly, plaintiffs are not entitled to the personal phone numbers of University employees.

The trial court's order includes no analysis of the statutorily enumerated list. Exhibit A, 13 May 2011 Order. Instead, the trial court relied on *News & Observer Pub. Co., Inc. v. Poole*, 330 N.C. 465, 412 S.E.2d 7 (1992). That case construed a prior version of the State Personnel Act that is no longer in effect. The trial court erred when it awarded judgment on the pleadings in favor of Plaintiffs based on an erroneous interpretation of the State Personnel Act. Order at 4.

- B. The trial court erred in granting judgment for plaintiffs, because the pleadings do not provide sufficient information to determine that FERPA does not protect the disputed records.

The trial court awarded plaintiffs judgment on the pleadings because it determined that FERPA does not protect the records at issue. *See* Order at 4, 5. The sparse pleadings in this case do not provide the trial court with a sufficient factual basis to reach this conclusion. A motion for judgment on the pleadings is decided exclusively on “facts properly pleaded and documents referred to or attached to the pleadings.” *N.C. Concrete Finishers*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 688 S.E.2d 534, 535 (2010) (quoting *Reese v. Mecklenburg County*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 685 S.E.2d 34, 37-38 (2009)). Accordingly, the trial court's decision to grant judgment for plaintiffs was error.

A determination about whether a particular document is an “education record” necessarily turns on whether that document is maintained by an education institution and contains personally identifiable information related to a student. *See* 20 U.S.C. § 1232g(a)(4)(A). For this reason, courts rarely determine whether FERPA protects disputed material without factual knowledge of the documents at issue. The vast majority of decisions that analyze FERPA’s applicability to disputed documents arise from stipulated facts, motions for summary judgment, or *in camera* reviews of the disputed material. *See, e.g., DTH Publ'g Corp.*, 128 N.C. App. at 540-42, 496 S.E.2d at 12 (parties stipulated as to the facts); *An Unincorporated Operating Division of Indiana Newspapers, Inc., Indiana Corp. v. The Trustees of Indiana Univ.*, 787 N.E.2d 893, 906 (Ind. App. 2003) (summary judgment); *DeFeo v. McAboy*, 260 F. Supp. 2d 790 (E.D.Mo. 2003) (*in camera* review).

Here, the trial court determined that the records at issue are not “education records” without examining the records themselves, any consideration of personally identifiable information they contain, or analysis of the circumstances under which they are maintained. The pleadings in this case contain none of these essential facts. Under these circumstances, the trial court lacked sufficient facts to conclude that FERPA does not protect the material Plaintiffs seek – particularly where any

facts before the Court are construed in the University's favor. *See Shehan v. Gaston County*, 190 N.C. App. 803, 661 S.E.2d 300 (2008).

Motion for Temporary Stay

The University respectfully applies to this Court for an order temporarily staying the enforcement of the 13 May 2011, Superior Court order that is the subject of this accompanying petition for writ of supersedeas, such order to be in effect until determination by this Court whether it shall enter its writ. In support of this application for a temporary stay, the University references the arguments above showing that harm will be done to the University as well as those persons whose records are sought by the plaintiffs if such records are disclosed in the interim only to have this Court ultimately rule that the records are protected and not subject to disclosure. Specifically, permitting release of these records prior to Court review may moot all issues presented by this appeal.

Attachments

Attached to this petition for consideration by this Court are certified copies of the order sought to be stayed; the University's notice of appeal; and the trial court's order denying the University's motion for stay.

WHEREFORE, the University respectfully prays that this Court issue a temporary stay of the enforcement of the trial court's 13 May 2011 order pending this Court's ruling on the University's petition for writ of supersedeas. The University further prays that this Court issue its writ of supersedeas to the Superior Court, Orange County, staying enforcement of its order, pending issuance of the mandate to this Court following its review and determination of the appeal now pending; and that the University have such other relief as the Court may deem proper.

Respectfully submitted, this the 1st day of June, 2011.

ROY COOPER  
Attorney General

Electronically Submitted  
Melissa L. Trippe  
Special Deputy Attorney General  
N.C. State Bar No. 13739  
E-mail: [mtrippe@ncdoj.gov](mailto:mtrippe@ncdoj.gov)

N.C. App. R. 33(b) Certification: I certify that the attorney listed below has authorized me to list his name on this petition as if he had personally signed.

Electronically Submitted  
Alexander McC. Peters  
Special Deputy Attorney General  
State Bar No. 13654  
E-mail: [apeters@ncdoj.gov](mailto:apeters@ncdoj.gov)

North Carolina Department of Justice  
P.O. Box 629  
Raleigh, North Carolina 27602-0629  
Tel: (919) 716-6900  
Fax: (919) 716-6763

*Counsel for Defendants*

STATE OF NORTH CAROLINA  
ORANGE COUNTY

**FILED** IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
CASE NO. 10 CVS 1941

2011 MAY 13 AM 9:12

THE NEWS AND OBSERVER  
PUBLISHING COMPANY; DTH  
MEDIA CORP; THE CHARLOTTE  
OBSERVER PUBLISHING COMPANY;  
TIME-WARNER ENTERTAINMENT-  
ADVANCE/NEWHOUSE PARTNERSHIP;  
WTVD TELEVISION, LLC; CAPITOL  
BROADCASTING COMPANY,  
INCORPORATED; THE ASSOCIATED  
PRESS; and MEDIA GENERAL  
OPERATIONS, INC.,

Plaintiffs

v.

RICHARD A. BADDOUR, as Director  
of Athletics for The University of North  
Carolina at Chapel Hill; PAUL HILTON  
"BUTCH" DAVIS, JR., as Head Football  
Coach at UNC-CH; JEFF B. McCRACKEN,  
as Director of Public Safety at UNC-CH;  
and HOLDEN THORP, as Chancellor at  
UNC-CH,

Defendants.

OFFICE OF THE CLERK  
BY aba

~~FILED~~  
~~2011 MAY 13 AM 1:19~~  
~~WAKE COUNTY N.C.~~  
~~BY~~

ORDER

This matter came on for hearing before the undersigned on April 15, 2011 on the plaintiffs' Motion for Judgment on the Pleadings. This matter previously was designated as a Rule 2.1 Exceptional Case and thus was permissibly heard out of term and out of county. The Plaintiffs appeared through Hugh Stevens and Amanda Martin of the law firm Stevens Martin Vaughn & Tadych, PLLC. The defendants appeared through Special Deputy Attorneys General Alexander McC. Peters and Melissa Trippe of the North Carolina Department of Justice. After

considering the pleadings and the written and oral arguments of the parties, the Court finds and concludes as follows.

This lawsuit was brought by media organizations seeking to obtain copies of records from the University of North Carolina at Chapel Hill ("UNC-CH") pursuant to the North Carolina Public Records Law, Chapter 132 of the General Statutes. The requested records that are the subject of this suit relate to the football program at UNC-CH, and allegations of improprieties in the program. The plaintiffs are eight media organizations that investigate and report on news throughout the state of North Carolina and nationally. The defendants are Richard Baddour, the Director of Athletics for the University of North Carolina at Chapel Hill ("UNC" or "the University"); Paul Hilton "Butch" Davis, Jr., the head football coach at UNC; Chief Jeff B. McCracken, the Director of Public Safety at UNC; and Holden Thorp, the Chancellor of UNC-CH. At issue are six categories of information:

- a. All documents and records of any investigation conducted by the University related to any misconduct by any UNC-CH football coach, any UNC-CH football player, any sports agent, any UNC-CH booster and/or any UNC-CH academic tutor.
- b. Names of all individuals or organizations that provided impermissible benefits to any UNC-CH football players.
- c. Unredacted phone numbers on telephone bills for mobile phones provided to and used by defendants Baddour and Davis and by former associate football coach John Blake.
- d. Parking tickets issued by UNC-CH relating to 11 players.
- e. Names, employment dates and salaries of all individuals employed as tutors/mentors for UNC-CH student athletes since January 1, 2007, including any documents mentioning former tutor Jennifer Wiley.
- f. Names of recipients of athletic scholarships.

Subsequent to the suit being filed, the University provided documentation of category (b) (the identity of those who provided impermissible benefits to UNC players) and category (f) (names of athletic scholarship recipients). Plaintiffs conceded in open court that these two categories have been satisfied and are no longer at issue.

On March 28, 2011, plaintiffs filed a motion for judgment on the pleadings, which was heard on April 15, 2011. Neither the plaintiffs nor the defendants made arguments with regard to category (a), the plaintiffs' broad request for all documents related to the investigation. Accordingly, this Court rules only on the categories of information denoted above as (c), (d) and (e).

In describing the rationale underlying the Public Records Law, the North Carolina Supreme Court has adhered to the philosophy that "the general rule in the American political system must be that the affairs of government be subject to public scrutiny." *News and Observer Pub. Co., Inc. v. Poole*, 330 N.C. 465, 475, 412 S.E.2d 7, 13 (1992). Accord, *Advance Publications, Inc. v. City of Elizabeth City*, 53 N.C. App. 504, 507, 281 S.E.2d 69, 71 (1981) ("Good public policy is said to require liberality in the right to examine public records."). Moreover, North Carolina's appellate courts repeatedly have admonished that the Public Records Law is to be construed liberally and the exceptions to it interpreted narrowly.

The crux of the dispute between the University and the plaintiffs involves (a) the definition of an "education record" as that term is defined in FERPA, the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; and (b) whether the phone numbers of University employees that happen to appear on phone records of University-provided phones used by coaches or the athletic director are shielded from disclosure by the State Personnel Act. HEM JL 5/12/11

FERPA applies only to "education records," which are defined as "those records, files, documents, and other materials that (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution." 20 U.S.C. § 1232g(a)(4)(A). The U.S. Supreme Court has held, "The word "maintain" suggests FERPA records will be kept in a filing cabinet in a records room at the school or on a permanent secure database, perhaps even after the student is no longer enrolled." *Owasso Indep. Sch. Dist. No. 1-011 v. Falvo*, 534 U.S. 426, 431-33 (2002). FERPA

does not provide a student with an invisible cloak so that the student can remain hidden from public view while enrolled at UNC-CH.

#### Phone Records

The plaintiffs have requested unredacted telephone bills for mobile phones provided to and used by defendants Baddour and Davis and by former associate football coach John Blake. Such records presumably include the numbers of telephones from which calls were placed to those mobile phones and the numbers to which calls were placed from those phones. Release of such telephone bills would not divulge the content of the communication, and the telephone number of a student that happens to appear on the phone bill of a coach or the athletic director is not part of the education records protected by FERPA. Nor does the appearance of the phone number of a University employee on the phone bill of a coach or athletic director constitute a personnel record. The N.C. Supreme Court has held,

In order for personnel information to be protected by section 126-22, it must meet two requirements: (1) it must have been gathered by an individual's employer (including the Office of State Personnel) or considered in an individual's application for employment; and (2) the information must relate to at least one of the enumerated activities by the employer with respect to the individual employee or applicant for employment.

*News & Observer Pub. Co., Inc. v. Poole*, 330 N.C. 465, 476, 412 S.E.2d 7, 14 (1992).

Moreover, phone numbers are not even among the information listed in the personnel statute as employment-related or personal information to be withheld.

#### Parking Tickets

The plaintiffs have asked for access to parking tickets issued by UNC-CH relating to 11 players. The University has argued that parking tickets and associated records are education records protected by FERPA and exempt from disclosure under the Public Records Law because one potential sanction for repeated violations or refusal to pay a ticket is disciplinary action before the student honor court. However, the fact that an ultimate sanction *might* include academic or disciplinary ramifications does not convert the entire UNC-CH parking system into

a disciplinary arm of the University. The parking tickets issued by UNC-CH public safety, if any, to 11 players are not education records protected by FERPA.

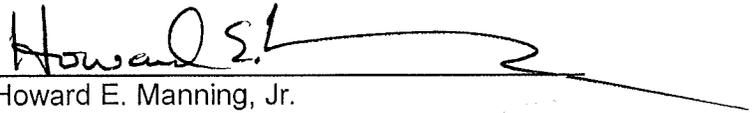
Tutor/Mentor Records

The plaintiffs have requested the names, employment dates and salaries of all individuals employed as tutors or mentors for UNC-CH student athletes since January 1, 2007. Although the athletic tutor program permits the employment of individuals who have received an undergraduate degree, the University has taken the position that undergraduate students who are employed as tutors can be so employed only by reason of their student status. "Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under paragraph (b)(3)(i) of this definition." 34 C.F.R. § 99.3. Therefore active, enrolled UNC students who are employed by UNC and whose employment <sup>was or</sup> is contingent upon their being students at UNC-CH <sup>was or</sup> are education records protected by FERPA and exempt from disclosure under the Public Records Law.

Accordingly, the Court grants judgment on the pleadings for the plaintiffs with respect to the phone records and parking tickets and grants judgment on the pleadings for the defendants with respect to the tutor records. The Court holds open the issue encompassed in category (a) above, as to the remaining request for all records of the investigation.

IT IS SO ORDERED.

This the 12<sup>th</sup> day of May, 2011.



Howard E. Manning, Jr.  
Superior Court Judge Presiding

**A TRUE COPY**  
CLERK OF SUPERIOR COURT  
ORANGE COUNTY

BY Anne Austin  
Assistant Deputy, Clerk Superior Court

5/24/11

STATE OF NORTH CAROLINA  
ORANGE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
10 CVS 1941

2011 MAY 13 A 9:20

THE NEWS AND OBSERVER  
PUBLISHING COMPANY; DTH MEDIA  
CORP; THE CHARLOTTE OBSERVER  
PUBLISHING COMPANY; TIME-  
WARNER ENTERTAINMENT-  
ADVANCE/NEWHOUSE  
PARTNERSHIP; WTVD TELEVISION,  
LLC; CAPITOL BROADCASTING  
COMPANY, INCORPORATED; THE  
ASSOCIATED PRESS; and MEDIA  
GENERAL OPERATIONS, INC.,

Plaintiffs,

v.

RICHARD A. BADDOUR, as Director of  
Athletics for The University of North  
Carolina at Chapel Hill; PAUL HILTON  
"BUTCH" DAVIS, JR., as Head Football  
Coach at UNC-CH; JEFF B.  
McCRACKEN, as Director of Public  
Safety at UNC-CH; and HOLDEN  
THORP, as Chancellor at UNC-CH,

Defendants.

ORANGE COUNTY S.S.C.  
BY asa

**DEFENDANTS'  
NOTICE OF APPEAL**

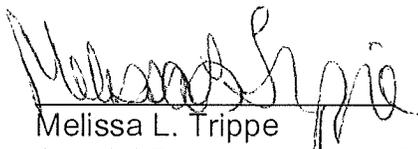
TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

Defendants Richard A. Baddour, as Director of Athletics for The University of North Carolina at Chapel Hill (UNC-CH); Paul Hilton "Butch" Davis, Jr., as Head Football Coach at UNC-CH; Jeff B. McCracken, as Director of Public Safety at UNC-CH; and Holden Thorpe, as Chancellor of UNC-CH; hereby give notice of appeal to the Court of Appeals of the final judgment entered on May 12, 2011, finding that certain

documents sought by plaintiffs under the North Carolina Public Records law are not confidential, privileged or otherwise protected from disclosure by the federal Family Educational Records and Privacy Act of 1974 (FERPA), the State Personnel Act or other relevant law.

Respectfully submitted, this the 10<sup>th</sup> day of May, 2011.

ROY COOPER  
Attorney General



Melissa L. Trippe  
Special Deputy Attorney General  
State Bar No. 13739  
E-mail: [mtrippe@ncdoj.gov](mailto:mtrippe@ncdoj.gov)

Alexander McC. Peters  
Special Deputy Attorney General  
State Bar No. 13654  
E-mail: [apeters@ncdoj.gov](mailto:apeters@ncdoj.gov)

North Carolina Department of Justice  
P.O. Box 629  
Raleigh, North Carolina 27602-0629  
Tel: (919) 716-6900  
Fax: (919) 716-6763  
*Counsel for Defendants*

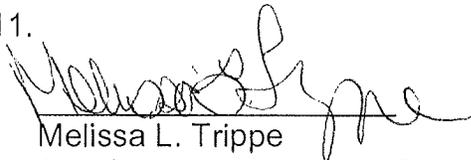
CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing **DEFENDANTS' NOTICE OF APPEAL** in the above titled action upon all other parties to this cause by:

- Hand delivering a copy hereof to each said party or to the attorney thereof;
- Transmitting a copy hereof to each said party via email; or
- Depositing a copy hereof, first class postage pre-paid in the United States mail, properly addressed to:

C. Amanda Martin  
Hugh Stevens  
Michael J. Tadych  
EVERETT, GASKINS, HANCOCK & STEVENS, LLP  
127 West Hargett Street, Suite 600  
Raleigh, North Carolina 27601  
*Counsel for Plaintiffs*

This the 24 day of May, 2011.

  
Melissa L. Trippe  
Special Deputy Attorney General

**A TRUE COPY**  
CLERK OF SUPERIOR COURT  
ORANGE COUNTY

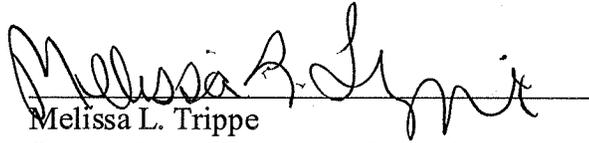
BY Anne Austin  
Assistant Deputy, Clerk Superior Court

5/24/11

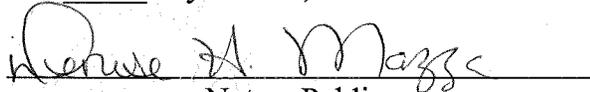


**VERIFICATION**

MELISSA L. TRIPPE, first duly sworn, deposes and says that she is the attorney of record for the University of North Carolina at Chapel Hill; that she reviewed the foregoing Petition for Writ of Supersedeas and Motion for Temporary Stay and knows the contents thereof; that the same are true of her own knowledge except as to those matters and things stated and alleged upon information and belief, and as to those, she believes them to be true.

  
Melissa L. Trippe  
Special Deputy Attorney General

Subscribed and sworn to before me  
this 1<sup>st</sup> day of June, 2011.

  
Notary Public

My Commission Expires: 2/9/16

(SEAL)

## CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing  
**PETITION FOR WRIT OF SUPERSEDEAS UNDER RULE 23 AND MOTION FOR  
TEMPORARY STAY** in the above titled action upon all other parties to this cause by:

- Hand delivering a copy hereof to each said party or to the attorney thereof;
- Transmitting a copy hereof to each said party via email; or
- Depositing a copy hereof, first class postage pre-paid in the United States mail, properly addressed to:

C. Amanda Martin  
Hugh Stevens  
Michael J. Tadych  
EVERETT, GASKINS, HANCOCK & STEVENS, LLP  
127 West Hargett Street, Suite 600  
Raleigh, North Carolina 27601  
*Counsel for Plaintiffs*

This the 1<sup>st</sup> day of June, 2011.

Electronically Submitted  
Melissa L. Trippe  
Special Deputy Attorney General