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Eric Rothschild  
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September 15, 2005

**VIA CERTIFIED MAIL**

Niles S. Benn, Esquire  
103 E. Market Street  
York, Pennsylvania 17405-5185

**RE: Kitzmiller, et al. v. Dover Area School District, et al.;**  
**No.: CV 04-2688**

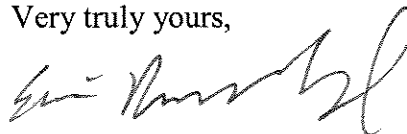
Dear Niles:

Thank you for agreeing to accept by mail the enclosed subpoenas for Joseph Maldonado and Heidi Bernhard-Bubb to testify at trial in the above captioned matter, in lieu of formal service. Plaintiffs expressly acknowledge that by accepting service by mail in lieu of formal service of process, Mr. Maldonado and Ms. Bernhard-Bubb do not waive, and fully reserve all other objections to the subpoenas, including objections relating to jurisdiction as a result of the pending appeal.

Please note that the date and time on the enclosed subpoenas, September 26, 2005 at 9 a.m., is the date and time that the trial for the above matter is set to commence. At this time, I am unable to tell you the exact days Mr. Maldonado and Ms. Bernhard-Bubb will be called to testify. However, we will do our best to notify you at least 48 hours before each of them will be called to testify.

If you have any questions or concerns, please feel free to contact me.

Very truly yours,



Eric Rothschild

ER/cp  
Enclosures

Philadelphia

Washington, D.C.

Detroit

New York

Pittsburgh

PHLEGAL: #1773542 v1 (120H2011.DOC)  
Berwyn Harrisburg

Orange County

Princeton

Wilmington

cc: Patrick T. Gillen, Esquire  
Ron Turo, Esquire  
Witold J. Walczak, Esquire  
Richard Katskee, Esquire  
Alex Luchenitser, Esquire  
Paula K. Knudsen, Esquire  
Stephen G. Harvey, Esquire  
Alfred H. Wilcox, Esquire  
Thomas B. Schmidt, III, Esquire (via email only)(all w/enclosures)

Issued by the  
**UNITED STATES DISTRICT COURT**

Middle DISTRICT OF Pennsylvania

TAMMY KITZMILLER, et al.

V.

DOVER AREA SCHOOL DISTRICT; DOVER AREA  
SCHOOL DISTRICT BOARD OF DIRECTORS

**SUBPOENA IN A CIVIL CASE**

Case Number: <sup>1</sup> 04-CV-2688  
Judge Jones

TO: Joseph Maldonado  
c/o \_\_\_\_\_, attorney for Mr. Maldonado

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY Federal Building & U.S. Courthouse, 228 Walnut Street, Harrisburg, PA 17108	COURTROOM Courtroom # 2
	DATE AND TIME September 26, 2005 at 9 a.m.

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME
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YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)  _____, Attorney for Plaintiffs	DATE 9/15/05
---	-----------------

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER Eric Rothschild Pepper Hamilton LLP, 3000 Two Logan Square 18th & Arch Streets, Philadelphia, PA 19103 (215) 981-4813
---

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

**PROOF OF SERVICE**

DATE

PLACE

SERVED:

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF SERVER

\_\_\_\_\_  
ADDRESS OF SERVER  
\_\_\_\_\_

**Rule 45, Federal Rules of Civil Procedure, Parts C & D:**

**(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance,

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend

trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) DUTIES IN RESPONDING TO SUBPOENA.**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

**Issued by the  
UNITED STATES DISTRICT COURT**

Middle DISTRICT OF Pennsylvania

TAMMY KITZMILLER, et al.

**SUBPOENA IN A CIVIL CASE**

V.  
DOVER AREA SCHOOL DISTRICT; DOVER AREA  
SCHOOL DISTRICT BOARD OF DIRECTORS

Case Number:<sup>1</sup> 04-CV-2688  
Judge Jones

TO: Heidi Bernhard-Bubb  
c/o \_\_\_\_\_, attorney for Ms. Bernhard-Bubb

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ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) , Attorney for Plaintiffs	DATE 9/15/05
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ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER Eric Rothschild Pepper Hamilton LLP, 3000 Two Logan Square 18th & Arch Streets, Philadelphia, PA 19103 (215) 981-4813
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of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

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(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in who behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

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