

# **Exhibit**

**D**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

-----X  
TERRYN LEAHY,

Plaintiff,

-against-

GARY JACOBS,

Defendant.  
-----X

**AFFIRMATION  
IN PARTIAL  
OPPOSITION**

Index No.: 12-15789  
06-10815

**Return Date: 7/31/12**

KATHY B. SMALL, ESQ., an attorney duly admitted to practice law before the courts of the State of New York, hereby affirms under penalties of perjury as follows:

1. I was appointed as Attorney for the Child, Carlie Jacobs, date of birth December 23, 1995 by Justice Marion T. McNulty in an order dated May 24, 2012.
2. I am fully familiar with the facts and circumstances of this case through several conversations with each of the parties and meetings with my client as well as prior representation of Carlie Jacobs in a prior proceeding.
3. I submit this affirmation in partial opposition to GARY JACOB's Order to Show Cause which requests an order granting custody of Carlie Jacobs and GARY JACOB's Order to Show Cause requesting TERRYNN LEAHY, be held in contempt, that he be granted an additional week visitation over summer recess, information relating to the health issues of Carlie Jacobs and for Carlie Jacobs to seek psychological help and that TERRYNN LEAHY pay costs of that application.
4. I submit at this juncture the Court should not transfer custody to MR. JACOBS, even if assuming arguendo the defendant can prove that there is some basis for his allegation that the child was in some way alienated against her father. The transfer of custody is such a drastic result especially in light of the fact that Carlie is a 16 1/2 year old. Carlie just completed her sophomore

year at Syosset High School and did consistently well in all subjects except History. In History she obtained the same grade in all four quarters as evidenced by her report card which is attached hereto as Exhibit "A". A transfer of custody is certainly against Carlie's wishes and would require her to transfer to Smithtown High School for her junior year of high school and where she would not even be in the same County with her friends. I would ask the Court to take judicial notice of the importance of friendships to my client who is 16½ years old. The defendant in his papers offers to drive Carlie to and from Syosset High School if necessary. The Court cannot overlook the fact that this would be a fraud on the Syosset taxpayers if the Court awarded custody to MR. JACOBS with the Court's understanding that although MR. JACOBS is a resident of Smithtown, New York, she would attend high school at Syosset High School at Syosset taxpayer's expense. It should be noted that the plaintiff TERRYNN LEAHY adamantly denies any alienation and alleges that Carlie has stopped visiting her father because she can no longer take being treated poorly by the defendant.

5. I further submit that the defendant has not demonstrated the need for the Court to hold a hearing on the issue of custody. Modification for an existing custody arrangement is permissible upon a showing that there has been a change in circumstances such that a modification is necessary to ensure the continued best interest and welfare of the child. Wakefield v. Wakefield, 74 A.D.3d 1213, 902 N.Y.S.2d 421 (Second Dept. 2010). In the case at bar, the child has been attending school in Syosset where the mother resides since the parties divorced in 2007 and she is doing well. As demonstrated by the child's report card, she is attending and doing well in school. The defendant states in his affirmation that the plaintiff stated to the Court that the child is having problems in school and that she was cutting. The defendant goes on to state in his affirmation that he investigated these allegations and found that Carlie was not cutting, at least according to the school staff. Carlie has her driver's permit and last I spoke to her she was looking for summer employment.

These are all normal and age appropriate activities. A parent seeking a change of custody is not automatically entitled to a hearing but must make some evidentiary showing of a change in circumstances sufficient to warrant a hearing Wakefield supra.

6. The defendant has not demonstrated in any way the Carlie is in need of psychological help. As stated above she presents as a normal teenager and the father has contacted the school and found no issue of cutting.

7. It is uncontested that Carlie was regularly visiting with her father up until March, 2012 and that her brother Ryan turned 18 in March 2012, and has discontinued his visits with his father. It is apparent through my recent meetings with Carlie that she is adamant about not wanting to visit with her father or wanting to go to any mental health provider in order to facilitate a relationship with her father. Is this because she is alienated against her father, I am not qualified to say, however there have been long drawn out legal proceedings that have taken place because of the defendant's filings. These proceedings have included two forensic evaluations and therapeutic visitation with Linda Gottlieb. They have also included three writs since May, 2012 which required this teenage girl to be brought into Court each time. In light of this, it is reasonable, I submit that she has just had enough and wants to be a teenager and not deal with coming to Court and having weekends away from her friends in the next County. This is not in any way to say that it is MR. JACOBS' fault nor that these applications were baseless, whether it has been her mother or her father to blame the legal proceedings have affected her in a negative way. The Court should be aware that my client has stated that she feels it is her father's fault, however the Court does not need to even reach that decision to determine custody or an additional visitation request. This information could be presented to the Court in an in-camera interview with the child, however I submit that this should not be necessary.

**Syosset High School**  
70 Southwoods Road  
Syosset, NY 11791-3204  
(516)364-5675

**Jacobs, Carlie A**  
2011 - 2012 Report Card  
Grade: 10 Student ID: 14774  
Counselor: CONTINO, DEBORAH

### Grade Report:

Course	Task	Q1	Q2	Q3	Q4
1220-2 English 10 E [INFELD, ROBIN]	Quarter Grade	B	B+	B+	B+
	<i>Term 4 Comments:GOOD CLASS PARTICIPATION.</i>				
	Final Exam				A
2220-2 Global History&Geo 10R [KAGAN, GEORGETTE]	Final Grade				B+
	Quarter Grade	D	D	D	D
	<i>Term 4 Comments:EXCELLENT PROGRESS.</i>				
	Final Grade				D
3840-2 Algebra2/Trig-L [KOEGL, DENISE]	Regents				78
	Quarter Grade	C	C	B	D
	<i>Term 4 Comments:NOT WORKING TO POTENTIAL. INCONSISTENT PERFORMANCE.</i>				
4120-6 LE/Biology [CASTANEDA, MILDRED]	Final Grade				C
	Regents				55
	Quarter Grade	B+	C	B	B+
5430-6 Spanish 3 [BENGIO-FRIEDSON, GILA]	Final Grade				B
	Regents				88
	Quarter Grade	C+	C	C+	C
7174-7 InternationalFoods-Ait [GLAZER, BETH]	<i>Term 4 Comments:CONSISTENT EFFORT. POSITIVE ATTITUDE.</i>				
	Final Grade				C+
	Regents				76
7400-6 AP Psychology [OCCHIUTO, SUSAN]	Quarter Grade	A+	B	A	A
	<i>Term 4 Comments:INCONSISTENT PERFORMANCE.</i>				
	Final Exam				A
8074-11 10th Grade General PE-Ait [WAXER, BRETT]	Final Grade				A
	Quarter Grade	C	D	C	B
	<i>Term 4 Comments:CONSISTENT EFFORT.</i>				
8074-11 10th Grade General PE-Ait [WAXER, BRETT]	Final Exam				A+
	Final Grade				C+
	Quarter Grade	A	B+	B	A
8074-11 10th Grade General PE-Ait [WAXER, BRETT]	<i>Term 4 Comments:CONSISTENT EFFORT.</i>				
	Final Grade				B+

To Parent/Guardian of Carlie A Jacobs