

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND SCHOOL DISTRICT TWO BOARD OF TRUSTEES
Circuit Court Decision

Judge James R. Barber III, Circuit Court Judge Presidency

Appellate Case Number 2013-000532

Student #1 John Doe, Plaintiff;
Redacted name of Student
Redacted name of Mother of
Student #1 John Doe, Plaintiff Appellants,

v.

Board of Trustees, Richland School District Two;
Richland School District Two, Superintendent
Dr. Katie Brochu, in her official capacity as School
Superintendent..... Respondents.

REPLY TO RESPONDENT'S RETURN TO COUNSEL'S PETITION TO WITHDRAW
AS COUNSEL

Mother respectfully submits this Memorandum in reply to Respondents Return to
Counsel's Petition to Withdraw as Counsel.

Respectfully submitted,
Rhonda L. Meisner, Appellant

By: 

Rhonda Meisner
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MAY 28 2013

SC Court of Appeals

Appellant, Mother of Student #1 John Doe respectfully submits this reply to "the District's Return to Counsel's Petition to Withdraw as Counsel." Respondents seek to silence the voice of Student #1 John Doe by cutting, metaphorically speaking, Student #1's John Doe's umbilical cord from Mother. In this appeal, as a minor and without representation of an adult, Student #1 John Doe's individual claims cease to exist with the separation of his and his Mother's rights in the appeal. The State Legislature has directly reaffirmed the rights of parents to be involved in their children's education via S.C. Code Ann. §59-28-100. While these rights do not include the right to act as an attorney; the Statute does confer the right to be involved in their children's education and if their children's education is lacking; it is not only the parent's right but their duty to intervene on behalf of their child.

The State has devised a system of appealing school Board decisions that requires entry into the Circuit Court as the Appellate Court and as such should not exclude those parents unable to pay for an attorney as a free public education is provided to all citizens of the state of South Carolina. The Circuit Court judges certainly have the ability to discern whether or not an appeal is proper or has merit. There are many State supported reasons to educate the students of the State and certainly parents have a vested interest in their student/children's education; however, there are very few reasons a board or agency should evade judicial review. As a Gifted and Talented student (and a minor) Student #1 has no voice to appeal the decisions of the District should elements of his state enhanced education be lacking. As a result of his membership in the group of gifted and

talented students, the State has specifically conferred educational rights to this group. The Statute speaks to providing programs for the “unique” talents (meaning individual) talents as the State Board of Education must specify. Students must individually qualify to be accepted in the Gifted and Talented program, it is not available to every student. The current state school board appeals system requires the Mother to represent both the Student #1 and Mother’s claims in the early administrative phases held at the school level; not in the role of an attorney, but as the legal representative of Student #1’s claims as well as her own claims. Additionally, one of the questions presented to the Court of Appeals for a legal opinion is whether “in an appeal of a school Board decision, can the rights of the parent and the rights of the student/ child be separated?” As the Respondents acknowledge, under South Carolina law S.C. Code Ann. §40-5-80, Appellants are able to represent their own interests to the Court. S.C. Code Ann. §59-19-560 allows “any party aggrieved” by a decision of the school Board to appeal to the Court of Common Pleas. At the School phase of the appeal, Students are not allowed to appeal to the school Board and the student must be represented by their parent. The parent is not required to hire an attorney but can represent both the parents and students interests at the school phase of the appeal. It follows then, that the parent should be able to continue the representation of both the parents’ and the students’ rights into the Circuit Court as a continuation of the appeals process.

The Respondents go to great lengths to explain why non-lawyers cannot represent other entities; however, they do not offer an alternative forum for

appeals of a school board decision to ensure a fair determination of issues because one does not exist. They simply ignore that an appeal of a school board decision is in fact an individual decision, based on individual facts, concerning an individual family with individual student issues. Respondents expect South Carolina parents to return home after an adverse decision of the school board as the end of the appeal even-though the Legislature has specifically given “any aggrieved party” an appeals process that in the initial stages does not include hiring an attorney. In some cases such as this one, the Board is the cause of the appeal so the Board should not be the final answer. While the Winkelman’s in *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516 (2007) gained their right to represent their own interests under the IDEA, it is Mother Appellant’s position that under the South Carolina Statutory Scheme for appeals of school Board decisions, she as a parent of a Gifted and talented student derives her ability to represent both her and her son’s interests in Court as a continuation of the appeals process from the State itself. The state confers rights for parents to be involved in their children’s education under State Statutes S. C. Code Ann. §59-28-100; S. C. Code Ann. §59-29-170 and 2 S. C Code Regs 43-220(2011).

Determining whether a statute gives a private cause of action is a legal question of Statute interpretation reserved for the Court. Unlike general statutes for the education of students in South Carolina, the Gifted and Talented statute S. C. Code Ann. §59-29-170 uses words like “unique” meaning “no other” or “individual” to identify the students served. The State regulations reference the SC Best Practices for Gifted Education Manual, 2006 as guidance for schools.

Whether or not a statute confers a “right” or a “private cause of action” is a question of law for the Court and not a fact for the Respondents to declare. The State has in this instance conferred “special education” opportunities for the gifted and talented students to develop their “unique” or individual talents. Appellant Mother additionally argues that the State Statute S. C. Code Ann. § 59-28-110 grants Mother the right to be involved in Student #1’s education throughout the appeals process of adverse education decisions. For the above reasons, Mother of Student #1 respectfully requests to remain the legal representative of Student #1 John Doe until the Court of Appeals issues their opinion on the questions presented to the Court in the main Appeal.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Rhonda L. Meisner".

Mother of Student #1
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May 28, 2013

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The Honorable James R. Barber III, Circuit Court Judge Presidency

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Board of Trustees, Richland School District Two;
Richland School District Two, Superintendent
Dr. Katie Brochu, in her official capacity as School
Superintendent.....Respondents.

CERTIFICATE OF SERVICE

I, Rhonda Meisner, mother of Student #1 John Doe certify that I have served a copy of the Reply to Respondents Return to Counsel's Petition to Withdraw as Counsel on the following :

Bowens Law Firm
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Winnsboro, SC 29080

Tyler R. Turner, Esquire
Kathryn Long Mahoney, Esquire
John M. Reagle, Esquire
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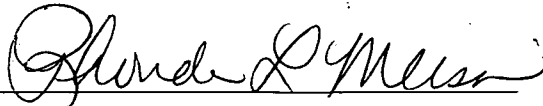
Page 2 Certificate of service Reply to Return to Counsel's Petition to Withdraw as
Counsel.

South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

By depositing the same in the United States Mail, postage prepaid, this the 28 Day of May, 2013

Rhonda Meisner, Appellant

Date 5-28-2013

A handwritten signature in cursive script, appearing to read "Rhonda Meisner", written over a horizontal line.