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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable J C Nicholson, Jr , Circuit Court Judge

C A No 2010-CP-10-5197

Storm M H , a minor, by her parent, Gayla S L McSwain, and Gayla
S L McSwain, pro se, Respondents/Appellants,

v

Charleston County Board of Trustees and Nancy J McGinley, in her
official capacity as Superintendent of Charleston County School
District, Appellants/Respondents

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

THE COURT OF COMMON PLEAS

[REDACTED], a minor,
by her parent, Gayla S L McSwain,

and

Gayla S L McSwain, pro se,

Plaintiffs

vs

CHARLESTON COUNTY
BOARD OF TRUSTEES

and

NANCY J MCGINLEY, in her official
capacity as Superintendent of
Charleston County School District,

Defendants

C/A NO 2010-CP-10-5197

ORDER

(Declaratory Judgment)

FILED
2010 JUL 28 PM 5.09
JULIE M. HOPKINS
CLERK OF COURT

INTRODUCTION

 This case is brought pursuant to S C Code Section 15-53-10 *et seq* (1976), as amended, commonly referred to as the Uniform Declaratory Judgments Act, to request the court to declare the Plaintiffs' legal rights under S C Code Section 59-63-30 and 59-63-490 (1976), as amended, which are part of the Education statute. Specifically, Plaintiffs are requesting this court to declare whether they are required to move their residence and domicile from Berkeley County to Charleston County in order for Plaintiff Harvey to enroll in the Academic Magnet High School, which is located in the Charleston County School District ("CCSD"), on or before August 9, 2010.

Pursuant to § 15-53-80, Defendants have been named as parties to this action because that statute requires "When declaratory relief is sought all persons shall be made parties who have or claim any interest which would be affected by the declaration,

and no declaration shall prejudice the rights of persons not parties to the proceeding ”
Defendants have moved this court to dismiss Plaintiffs’ request for declaration of their
legal rights because they believe this court has no, or should decline to exercise, subject
matter jurisdiction

I FINDINGS OF FACTS

1 The Academic Magnet High School (“AMHS”) is a taxpayer- funded school located in the Charleston County School District (“CCSD”) In December of 2009, a reputable, internationally distributed news magazine ranked the AMHS as the number one magnet high school, and as the 12th best public high school, in the United States The AMHS’s curriculum is very rigorous, with almost all of its courses being taught at the honors or college advanced placement level It is the sole high school located in the tri-county area (Berkeley, Charleston, Dorchester Counties) that has only academically gifted and motivated students enrolled See Defendants’ Trial Exhibit # 1

2 The AMHS has less than 600 students enrolled, has a 20 1 student - to - teacher ratio, and has class sizes with no more than 25 students with most classes having fewer than 25

3 Students must apply to attend the AMHS which admits only students who demonstrate exceptional academic ability and performance as shown by national and state standardized test scores, grades, courses taken, and teacher recommendations

4 The Defendants cannot, and do not, transfer or assign students to the AMHS, a student must qualify for admission in accordance with the above referenced admission standards

5 Importantly, the AMHS admits students who are qualified for admission regardless of whether they live in Charleston County at the time of application, however, the Defendants have taken the legal position that the AMHS is reserved only for students who have established Charleston County as their residence and domicile (“resident child”) Therefore, Defendants refuse to allow an admitted student who does not live in Charleston County (“nonresident child”) to enroll in the AMHS unless the student and the student’s parent or guardian move to Charleston County The student’s parent or guardian must sign an affidavit stating, essentially, that he or she and the child are domiciled in Charleston County before enrollment into the AMHS will be allowed See Plaintiffs’ Exhibit # 34

6 Plaintiff Gayla S L McSwain (“Parent”) is the mother and guardian of Plaintiff Storm [REDACTED] (“Daughter”) They live in an adjoining school district, Berkeley County School District (“BCSD”) Daughter is a minor who applied to, and was accepted for admission by, the AMHS in January 2010 to begin the 9th grade on August 18, 2010 The AMHS required daughter to confirm her intention to enroll at the AMHS by January 28, 2010, Daughter did so See Plaintiffs’ Exhibits 5 & 6 Registration and

orientation for the 9th grade class is required not later than August 9, 2010 See Plaintiffs' Exhibit # 33

7 In February of 2010, Daughter was released by the BCSD to attend school in the CCSD with the caveat that BCSD would not be responsible for any tuition or transportation fees that the CCSD might charge to Plaintiffs See Plaintiffs' Exhibit # 7

8 Parent inquired of Defendants about their policy that would require Plaintiffs to move to Charleston County because Plaintiffs do not want to move Defendants, through their attorney, John F. Emerson, initially indicated that Plaintiffs, to avoid moving to Charleston County, could pay tuition, or buy real property in Charleston County with a tax assessed value worth at least \$300 00 under Code section 59-63-30(c), or get the consent of the CCSD Board of Trustees for an inter-district transfer to enroll Daughter at the AMHS under Code section 59-63-490 See Plaintiffs' Exhibits # 11 & 13

9 Plaintiffs offered to pay tuition but never received a response from the Defendants about the amount of that tuition See Plaintiffs' Trial Exhibits 25 & 26, p 2

10 Plaintiffs also began negotiations to purchase real estate in Charleston County See Plaintiffs' Trial Exhibits 25 & 26, p 2

 11 Plaintiffs also requested the consent of the CCSD Board for an inter-district transfer pursuant to 59-63-490 by writing a letter to the CCSD's Superintendent on May 11, 2010 See Plaintiffs' Trial Exhibit # 16 In response to that letter, Defendant McGinley called Parent on May 25, 2010 to inform Parent that the AMHS is reserved for Charleston County residents only, and that she would recommend that the Board not allow Daughter to attend the AMHS Parent inquired about being able to speak to the board but Defendant McGinley stated that the Board would make its decision in a "closed" executive session, and that Parent could not appear or speak at that session Parent then asked about an appeal of that decision and Defendant McGinley stated that there would be no appeal from the Board's decision Parent explained that, although she did not want to do so, she most probably would have to ask a court of law to decide the issue to which, among other statements, Defendant McGinley responded, "Well, do what you gotta do" and "You will have to take it to court" and that she would let Parent know the Board's decision on June 8 after the Board meeting of June 7th (which did not actually occur until June 14th) See Plaintiffs' Trial Exhibit # 16, 18 and Complaint

12 Plaintiff received a letter dated June 7, 2010 from the CCSD's attorney wherein he confirmed the information that Defendant McGinley gave to Parent in late May Daughter must live in Charleston County to enroll at the AMHS See Plaintiffs' Trial Exhibit #21

13 After further correspondence, via email with CCSD's attorney wherein he confirmed that the board would not afford a hearing to Plaintiffs, Parent, at the attorney's instruction, wrote a letter to him, dated June 12, 2010, asking the CCSD Board to accept Daughter as an inter-district transfer student pursuant to 59-63-490 which would not

require Plaintiffs to move to Charleston County See Plaintiffs' Trial Exhibits #17, 18, 19, 20, 25 & 26

14 The CCSD Board, on June 14, 2010, without affording Plaintiffs a due process hearing, after its attorney informed it that Parent had sent a very detailed letter regarding Plaintiffs' transfer request, after it did not read the letter, and after refusing to postpone consideration of the Plaintiffs' transfer request until after they could at least read the letter, voted unanimously and then issued a final, administrative decision that Plaintiffs must establish "residence and domicile in Charleston County before school starts [on August 18, 2010]" in order for Daughter to enroll at the AMHS See Plaintiffs' Trial Exhibits 27 (p 4) & 28

15 Although it was voted upon in "open session" during Defendants' public meeting on June 14, 2010, Defendants' decision was discussed and made in "executive session" that was closed to the public, including Plaintiffs, and it was rendered without a due process hearing being afforded to the Plaintiffs in spite of Parent's requesting one See Plaintiffs' Trial Exhibit 28 On June 22, 2010 Parent received the board's decision in a June 16, 2010 letter from CCSD's lawyer

16 Although Plaintiffs had already requested to be heard before the Board rendered its decision, and only out of caution to protect their procedural due process rights while this declaratory judgment action is pending, Plaintiffs petitioned Defendants for a *de novo* hearing pursuant to 59-19-560, however, this court finds that any hearing conducted by the Defendants— after the Defendants had already conducted one in "closed session" — would have been futile in light of its public unanimous vote

17 The Board, through its attorney, has now stated that because the AMHS is a magnet school, as opposed to a non-magnet school, Daughter will not be allowed to enroll at the AMHS unless Plaintiffs establish their "residence and domicile" in Charleston County The only reason that the Defendants have given for that policy and decision is that the AMHS is reserved for students who are domiciled in Charleston County See Plaintiffs' Trial Exhibit #28

18 Plaintiffs have not purchased real estate in Charleston County due to the Defendants' position that even if Plaintiffs made such a purchase, Defendants will not allow Daughter to enroll in the AMHS unless Plaintiffs move to Charleston County See Plaintiffs' Trial Exhibit 21 This court finds that Plaintiffs were not required to do a futile act before filing for a declaration of their rights under 59-63-30

19 Defendants have also refused to accept tuition to allow Daughter to enroll in the AMHS

20 The Berkeley County high school that Daughter would otherwise attend is expected to have approximately 2,400 students enrolled in August, 2010, and routinely has a minimum of 35 students in its classes

21 BCSD does not have an academic magnet high school

22 Daughter has a high degree of intellectual capacity, having been identified as “gifted and talented” by the SC Department of Education criteria, therefore her education will benefit by attending a school with a rigorous curriculum, with her academically gifted and motivated peers, and one with smaller classes of students See Plaintiff’s Trial Exhibit #1, “Gifted and Talented Facts” defining “gifted” as students who give evidence of high achievement capability in areas such as intellectual creative artistic or leadership capacity, or in specific academic fields, and who need services and activities not ordinarily provided by [a regular] school in order to fully develop those capabilities See Plaintiff’s Trial Exhibit #2, Chapter 4, “Finding a Good Educational Fit,” A Parent’s Guide to Gifted Children” For more information about the special educational needs of intellectually gifted children, also see <http://www.youtube.com/watch?v=zxKAIAh5XSU&feature=related> <http://www.youtube.com/watch?v=UP-uEX8hGzI&feature=related>

23 Daughter has performed very well academically while enrolled in the public schools of the Berkeley County School District Standardized test scores and grades for Daughter in the Fall of 2009 - 99% in reading (equivalent of 2nd year college student), 98% in math, 95% in language, 94% science, rhetorical skills -100%) See Plaintiff’s Trial Exhibit #4

24 Additionally, Daughter has a hearing impairment, that impairment is best, and specially, accommodated by attending a school where the number of students in a classroom is as small as possible because, among many other reasons, smaller classes ensure an acoustically quieter classroom and a greater degree of individualized attention from the teacher – both of which are imperative to the education of a hearing impaired student See Plaintiff’s Trial Exhibit 4, letter from Nevitte Swink Morris, MSP, CCC-SLP, Cert AVT Coordinator Pediatric Speech-Language Pathology at MUSC and Certified Auditory-Verbal Therapist “Storm should be in a class with the smallest number of students possible due to there being fewer distractions, less noise, and more individualized attention from the teacher”

25 Based upon the affidavit of Kathleen Magliacane, who at one time worked as the Director of Special Education Services for the Berkeley County School District, that school district can provide Daughter with appropriate special educational services and/or accommodations See Defendant’s Trial Exhibit # 2

26 Parent has informed Defendants that she believes Daughter’s education and hearing impairment can be accommodated best, and specially, by the AMHS due to, among other things, its smaller class sizes, due to its being populated only by gifted and academically motivated students, due to its 20 to 1, student to teacher ratio, and due to its rigorous curriculum See Plaintiffs’ Trial Exhibits 25 & 26

27 Defendants' written policy regarding the admission to CCSD schools of children who do not reside in the CCSD states as follows

Policy JFAB Nonresident Students

Purpose To establish guidelines for admitting to Charleston County School District schools those students who do not reside in the district

Tuition

The district may charge tuition to certain non-resident students. Students who qualify for attendance under circumstances set out in Section 59-63-30 of the South Carolina Code of Laws shall **not** be charged tuition.

Examples of students who **must** pay tuition include a person so situated as to be better accommodated by a school of an adjoining district (59-63-490).

The associate superintendent shall collect the tuition as specified in Section 59-63-480, South Carolina Code of Laws 1976. In accordance therewith, the district shall determine the monthly per student cost of all overhead expenses of the school which shall include all expenses of the school not paid by the state and shall require that the parent/legal guardian make those monthly payments (Emphasis added). See Plaintiffs Trial Exhibit #21.

II ISSUES

A Does this court have subject matter jurisdiction to declare Plaintiffs' legal rights under 59-63-30 and 59-63-490?

B Does the CCSD policy that requires Plaintiffs to establish their domicile in Charleston County before it will allow Daughter to enroll in the AMHS violate 59-63-30?

III THE LAW AND ITS APPLICATION TO THE FACTS OF THIS CASE

A. This Court Has Subject Matter Jurisdiction to Declare Plaintiffs' Legal Rights under 59-63-30 but not under 59-63-490

The Code expressly states that the Declaratory Judgment Act is "remedial." Its purpose is to "settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations." "The decision to grant a declaratory judgment is a matter within the sound discretion of the trial court." *Eargle v. Horry County*, 335 SC 425, 517 SE2d 3 (Ct. App. 1998). Defendants' contention that this court does not have subject matter jurisdiction of this controversy is partially correct but not for the reasons they advance.

The Defendants contend this court has no, or should not exercise, jurisdiction because the Board has not entered a final appealable 'order,' however, such an order is not a prerequisite to obtaining a declaratory judgment. Sections 15-53-20 and 15-53-30 state

Section 15-53-20 Courts of record may declare rights, status and other legal relations

Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree

Section 15-53-30 Determination of questions under statute

Any person whose rights, status or other legal relations are affected by a statute may have determined any question of construction or validity arising under the statute and obtain a declaration of rights status or other legal relations thereunder

Defendants' contention is simply incorrect with respect to this court's jurisdiction over 59-63-30 First the Plaintiffs never asked the Board to accept payment of tuition or whether Plaintiffs could purchase property in order to enroll Daughter under 59-63-30, therefore, the Board has never addressed that issue and could not have issued a final "order" regarding 59-63-30 Secondly, regardless of whether Defendants have taken any action at all, final or not, the plain language of the statute gives this court the power to declare Plaintiffs' rights under 59-63-30 which is the very definition of subject matter jurisdiction. The Defendants have no standing to object to this court's declaring Plaintiffs' rights under 59-63-30

Defendants are correct that this court does not have jurisdiction to declare Plaintiffs' legal rights under 59-63-490 because this court takes judicial notice of the fact that Plaintiffs have appealed that decision to this court, therefore, this court now has appellate jurisdiction only to review that decision and cannot exercise original jurisdiction to declare Plaintiffs' rights under 59-63-490

Defendants also contend that this court has no, or should decline to exercise, jurisdiction because Plaintiffs have failed to state facts sufficient to constitute a cause of action. Again, Defendants contention is simply incorrect with respect to 59-63-30. To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy. *Power v McNair* 255 S C at 154, 177 S E 2d at 553. A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character. See *Graham v State Farm Mutual Automobile Ins Co* 319 S C 69, 71, 459 S E 2d 844, 845 (1995) (same), *Holden v Cribb* 349 S C 132, 137, 561 S E 2d 634, 637 (Ct App 2002).

gm
The Declaratory Judgment Act is a proper vehicle in which to bring a controversy before the court when there is an existing controversy or at least the ripening seeds of a controversy. *Waller* 220 S C at 223, 66 S E 2d at 882. The basic purpose of the Act is to provide for declaratory judgments without awaiting a breach of existing rights. The Act should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships, without awaiting a violation of the rights or a disturbance of the relationship. *Graham* 319 S C at 71, 459 S E 2d at 845, *Power* 255 S C at 154, 177 S E 2d at 553, *Waller* 220 S C at 223, 66 S E 2d at 882, *Pond Place Partners Inc v Poole* 351 S C 1, 16, 567 S E 2d 881, 888-89 (Ct App 2002).

This court finds that Plaintiffs present a real, existing controversy that needs a speedy resolution because Defendants' decision requires Plaintiffs to move to Charleston County prior to August 9, 2010 so as to enroll Daughter in the AMHS, and Plaintiffs believe that such a requirement violates their statutory and constitutional rights.

Defendants contend also that this court does not have, or should decline to exercise, jurisdiction because Plaintiffs have failed to exhaust their administrative remedies. First of all, as stated *supra*, Plaintiffs were not required to exhaust administrative remedies prior to obtaining a declaration of their legal rights under 59-63-30 because they never requested Board action under that statute. Additionally, Plaintiffs requested a hearing before the Board regarding an inter-district transfer under 59-63-490 and have not filed a **cause of action against** the Defendants under that statute in this

action, rather, here, before they appealed the Board's final decision regarding 59-63-490, they were asking for a **declaration** of Plaintiffs' rights under 59-63-490 as well as under 59-63-30. Only if the Plaintiffs had filed a cause of action against the Defendants under 59-63-490 would the Defendants have had a credible argument that Plaintiffs had an obligation to exhaust administrative remedies before filing that cause of action against the Defendants.

The court finds that Plaintiffs, having never requested Board action under 59-63-30, could not have had a duty to exhaust administrative remedies regarding 59-63-30; therefore they could not have failed to exercise that duty and this court has jurisdiction to declare Plaintiffs' legal rights under 59-63-30.

B The CCSD Policy that Requires Plaintiffs to Establish their Domicile in Charleston County Before the Board will Allow Daughter to Enroll in the AMHS Violates 59-63-30(c)

South Carolina Code § 59-63-30, in relevant part, states

Qualifications for attendance

Children shall be entitled to attend the public schools of any school district, without charge, only if qualified under the following provisions of this section:

- (a) Such child resides with its parent or legal guardian,
- (b) The parent or legal guardian, with whom the child resides, is a resident of such school district, or
- (c) The child owns real estate in the district having an assessed value of three hundred dollars or more, and ”
- d) The child has maintained a satisfactory scholastic record
(Emphasis added)

Giving these statutes and the CCSD policy their plain meaning, Plaintiffs contend that they do not require Plaintiffs move to Charleston County. The AMHS is a taxpayer-funded school located in the CCSD and because Plaintiffs do not reside in the CCSD, Plaintiffs need only pay tuition to the CCSD or purchase real property in the CCSD for Daughter to be entitled to enroll at the AMHS because she has already met its admissions standards and been accepted. Plaintiffs have offered to pay tuition but Defendants have refused such payment. And, Defendants have stated that although

property ownership in the CCSD would entitle Daughter to attend a CCSD school, its policy is that such ownership would not entitle her to attend a magnet school because magnet schools are reserved for students who are domiciled in Charleston County

jm
The Board has established the attendance zone for the AMHS as being the entire school district which encompasses all of Charleston County. This court finds that Defendants' policy of requiring domicile for a child to attend a CCSD magnet school violates 59-63-30(c) because domicile by a child and that child's parent or guardian is not required by the statute, only property ownership is required. Ownership of property anywhere in the CCSD which has a taxed assessed value of at least \$300.00 tax meets the property ownership requirement under 59-63-30(c) because the Board has established the attendance zone for the AMHS as being district wide. Therefore, a nonresident child who owns the requisite property in the CCSD is eligible to apply for acceptance into the AMHS just as is a resident child. However, this court finds that the Board, under 59-19-90(9), is empowered to "determine the school within its district in which any pupil shall enroll" and that, pursuant to 59-19-90(9), the Board has set admission criteria for enrollment at the AMHS¹. Therefore, a nonresident child who is eligible to attend a CCSD school by owning the requisite property in the AMHS attendance zone and who meets the admission requirements of the AMHS is entitled to enroll there just as is any resident child who meets the admission requirements.

To support their policy that only children who are domiciled in Charleston County are entitled to enroll in a magnet school is a June 3, 1988, SC Attorney General's opinion, 1988 WL 38531 (S C A G). The facts underlying that opinion are that a nonresident child who owned real property in a school district was demanding to attend a particular school within that district. The AG opined that Section 59-19-90(9) allowed the district, not the child, to choose which school the child would attend. That section states that the district is empowered to "determine the school within its district in which any pupil shall enroll." Based upon that language, the AG concluded "[T]he power

¹ The Defendants also rely on their authority under local legislation Act No. 340, 1967 S.C. Act 470, to establish attendance criteria for county wide magnet schools. The Court finds that 59-63-30(c) limits the Defendants' authority under Act No. 340, 1967 S.C. Act 470, for the same reasons it limits their authority under 59-19-90(9), as discussed herein.

of school districts to determine pupil assignments is not altered by the provisions of school attendance based upon property ownership under 56-63-30. Therefore, property ownership within a district does not, itself, entitle a student to demand attendance at a particular school within that district.” (Emphasis added)

First, that AG opinion is just that - an opinion of the executive branch of government, therefore, it is not binding on this court. This court has not found a judicial interpretation of Section 59-63-30(c) with respect to enrollment at a magnet school, however, in 1950, before magnet schools existed, the SC Supreme Court, in Moseley v Welch, 62 SE2d 313, ordered that parents who owned and paid taxes on real estate in two adjoining school districts were entitled to send their children to school in either school district without being charged tuition or operating expenses.²



Secondly, the facts underlying that AG opinion are distinguishable from the facts before this court because Section 59-19-90(9), which is titled “Transfer and assign pupils,” does not address enrollment in a magnet school. Section 59-19-90(9) gives a school board the authority to “[t]ransfer any pupil from one school to another so as to promote the best interests of education, and determine the school within its district in which any pupil shall enroll.” In the case before this court, the Defendants cannot just assign or transfer a child to the AMHS, despite the language of Section 59-19-90(9), unless it were to violate the school’s admission standards, therefore, the AG opinion is simply not on point with the facts at hand.

Third, even if this court were to assume, *arguendo*, that the 1988 AG opinion were relevant to these facts, it supports Plaintiffs’ position by implication. By stating that property ownership within a district does not, itself, entitle a student to demand attendance at a particular school, the AG opinion implies, conversely, that a nonresident child is entitled to enroll in a particular school based upon a reason other than property ownership. Here, Daughter is a nonresident child who is entitled to enroll at a particular

² Moseley was decided pursuant to Section 5346 of the 1942 SC Code predecessor to 59-63-30(c) which stated: “Provided, however, that when either parent, the guardian or other person having in charge any pupil and maintain any such pupil at his home, shall own and pay tax on any property in a school district adjoining that in which any such person and pupil reside such pupil may be enrolled either in the district in which he resides, or in any such adjoining district without being required to pay tuition fee or other operating expenses and shall be entitled to all of the privileges of such school as if he resided in such school district.”

school - the AMHS - based **not solely** upon property ownership but also based upon her having met the AMHS admissions standards and based upon her special educational needs exceptional academic capacity and hearing impairment Thus insofar as the AG opinion applies to this case, if at all, this court finds that it supports Daughter's position because she has reasons, other than property ownership, that entitle her to enroll in that particular school

FM
Lastly, and regardless of the 1988 AG opinion, Plaintiffs contend that the court is required to construe Sections 59-63-30(c) Section 59-19-90(9) together, and that in light of the facts of this case, the only reasonable construction of those statutes leads this court to only one interpretation of those laws Daughter is qualified to attend the AMHS, having already been accepted for admission, and, pursuant to 59-63-30(c), she is entitled to enroll in the AMHS on, or before, August 9, 2010, without moving to Charleston County This court agrees with Plaintiffs' contention and finds that Daughter is entitled to enroll in the AMHS so long as Plaintiffs purchase the requisite property in the CCSD not later than September 30, 2010³

Plaintiffs also contend that because Daughter has already been accepted to the AMHS that they should be allowed to pay tuition under 59-63-30 rather than being required to buy the requisite property in the CCSD in order to enroll Daughter in the AMHS, however, this court finds that although a nonresident child can pay tuition to attend school in a particular attendance zone within the CCSD, the Board is empowered, via 59-19-90(9), to choose which particular school in which that child may enroll Therefore, a nonresident child's payment of tuition does not statutorily entitle that child to enroll at a particular school, including a magnet school, regardless of the attendance zone in which the school is located and regardless of whether the attendance zone is the

³ In the case at bar the Defendants have noted that the Plaintiffs do not own the requisite property in the CCSD While that notation is true, this court notes that Plaintiffs would own such property if the Defendants had not told them that Daughter would not be allowed to enroll even if they did own property in the CCSD, hence the reason for the Plaintiffs asking this court to declare their rights under 59 63 30(c) Plaintiffs stopped negotiations on a purchase of property pending the outcome of this declaration. The law does not require one to perform a futile act Under the unique set of facts of this case where the child has already been accepted into the AMHS and where it is the Defendants' fault that Plaintiffs have not purchased property in the CCSD Defendants are estopped from attempting to use that fact to deprive Plaintiffs of their legal rights Daughter may enroll pending purchase of the requisite property so long as that purchase occurs by September 30 2010

whole of the CCSD. Rather, a nonresident child who wants to be ~~statutorily~~ ^{permanently} enrolled to enroll at a magnet school must meet one of the residency requirements of 59-63-30.

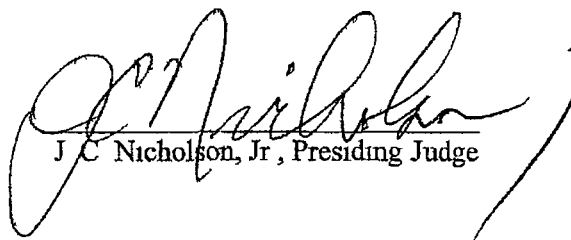
Lastly, Plaintiffs contend that even if the Board's policy of requiring domicile as a prerequisite to a child's being allowed to enroll in a magnet school does not violate 59-63-30(c), the Board's application of that policy with respect to eligible nonresident students violates the nonresident child's right to equal protection of 59-63-30(c). This court does not agree with that contention and finds that a violation of equal protection is not implicated in this case.

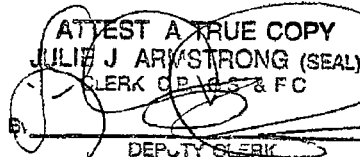
IV CONCLUSIONS OF LAW

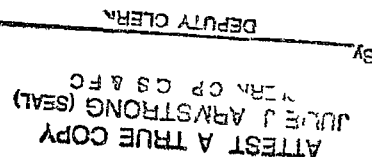
This court concludes that it has subject matter jurisdiction to declare Plaintiffs' legal rights under South Code Section 59-63-30 but not under South Carolina Code Section 59-63-490, therefore, Defendants' motion to dismiss is granted only with respect to 59-63-490. Furthermore, this court concludes that the Board's policy that requires Plaintiffs to establish domicile in Charleston County before enrolling Daughter in the AMHS violates 59-63-30 of the South Carolina Code.

Furthermore, as a result of these conclusions, this court declares and orders that Plaintiffs are not required to establish domicile in Charleston County and are entitled to enroll Daughter in the AMHS on or before August 9, 2010, pursuant to South Carolina Code Section 59-63-30(c) so long as they purchase real property in the CCSD with a tax assessed value of \$300.00 or more not later than September 30, 2010.

July 28, 2010
Charleston, SC


J. C. Nicholson, Jr., Presiding Judge

ATTEST A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK OF DISTRICT & FC
By 
DEPUTY CLERK

By 
JULIE J. ARMSTRONG (SEAL)
CLERK OF DISTRICT & FC
ATTEST A TRUE COPY

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

Storia, et al

Plaintiff(s)

vs

Charleston County School District Board of Trustees et al

Defendant(s)

(Please Print)

Submitted By: David S. L. McSwain

Address: 105 Hoinersville Place

Georgetown SC 29445

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2010 -CP-10-5197

SC Bar #

Telephone # 843-443-3155

Fax #

Other

E-mail: david.s.l.mcswain.com

NOTES: This coversheet and information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the summons and complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules
☐ This case is exempt from ADR (Proof of ADR Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|--|--|
| Contracts
☐ Contract (100)
☐ Deed/Conveyance (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Personal Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Professional Malpractice (230)
☐ Professional Liability (240)
☐ Other (299) | Tort - Personal Injury
☐ Assault/Battery (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condominium (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Easement (450)
☐ Building Code Violation (460)
☐ Other (499) |
| In Rem Petitions
☐ PCR (500)
☐ Mandamus (510)
☐ Habeas Corpus (520)
☐ Other (599) | Judgment/Settlements
☐ Debt Settlement (600)
☐ Foreign Judgment (710)
☐ Mediation (720)
☐ Minor Settlement (730)
☐ Disputed Judgment (740)
☐ Full Payment (750)
☐ Satisfaction of Judgment
☐ Satisfaction of Payment Rights
☐ Application (760)
☒ Other (799) | Administrative Law/Relief
☐ Reinstatement License (800)
☐ Health Care (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture/Penalty (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate Criminal (910)
☐ Magistrate Criminal (920)
☐ Criminal (930)
☐ Probate Court (940)
☐ SCDC (950)
☐ Workers Comp (960)
☐ Zoning Board (970)
☒ Public Service Commission (980)
☐ Employment Security Commission (990)
☐ Other (999) |
| Special/Complex
☐ Arbitration (900)
☐ Automobile (910)
☐ Medical (920)
☐ Other (999) | Other
☐ Pharmaceutical (930)
☐ Insurance Practices (940)
☐ Civil Service Disputes (950)
☐ Motor Vehicle (960)
☐ Out of County Action (970)
☐ Special Trial (980) | | |

Submitting Party Signature

[Signature]

Date

6/24/10

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRC² Rule 11 and the South Carolina Frivolous

000014

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

STORM [REDACTED] H [REDACTED], a minor,
by her parent, Gayla S L McSwain,

and

GAYLA S L McSWAIN, pro se
Plaintiffs

vs

CHARLESTON COUNTY SCHOOL
DISTRICT BOARD OF TRUSTEES

and

NANCY J MCGINLEY in her official
capacity as Superintendent of
Charleston County School District,
Defendants

CIVIL ACTION NO 2010-CP-10-5197

SUMMONS
(Declaratory Judgment)

SCRCP 57
IMMEDIATE ADVANCEMENT
ON CALENDAR REQUESTED

TO THE DEFENDANTS ABOVE NAMED

YOU ARE HEREBY SUMMONED and required to answer the Complaint, herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the subscriber at [REDACTED] Goose Creek, South Carolina [REDACTED], within thirty (30) days after service hereof, exclusive of the day of service. If you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for the relief demanded therein, and judgment by default will be rendered against you for the relief demanded in the Complaint

Gayla S L McSwain
[REDACTED]
Goose Creek, SC [REDACTED]
(843) 693-8155

June 26, 2010

Charleston 223359
CHARLESTON 223359v1

000015

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

STORM [REDACTED] H [REDACTED], a minor,
by her parent Gayla S L McSwain,

and

GAYLA S L McSWAIN, pro se,
Plaintiffs

VS

CHARLESTON COUNTY
BOARD OF TRUSTEES

and

NANCY J MCGINLEY, in her official
capacity as Superintendent of
Charleston County School District,
Defendants

CIVIL ACTION NO 2010-CP 10-5197

COMPLAINT
(Declaratory Judgment)

SCRCP 57
IMMEDIATE ADVANCEMENT
ON CALENDAR REQUESTED

The Plaintiffs, complaining of the Defendants herein would respectfully show unto this Court

THE PARTIES/JURISDICTION

1 Plaintiff H [REDACTED] ("Daughter") is a child that has been released by the Berkeley County School District to attend high school in the Charleston County School District. She resides with her family in Berkeley County South Carolina, including her mother Plaintiff McSwain (Parent")

2 Defendants are the Board of Trustees for the Charleston County School District ("CCSD") and the Superintendent of the CCSD, in her official capacity, both conducting business in the County of Charleston, South Carolina

GENERAL ALLEGATIONS

3 Daughter applied, and was accepted for admission in January of 2010, to the Academic Magnet High School (AMHS') which is located in Charleston County, SC

4 At the time that Daughter applied to the AMHS Parent assumed that it would be necessary for Plaintiffs to change their legal residency to Charleston County if Daughter were accepted for admission to the AMHS

5 Upon Daughter's being admitted to the AMHS Parent made further investigation into the residency requirement being professed by the CCSD

6 Defendants, through their agent and attorney, initially represented to Parent that she could pay tuition to the CCSD rather than move the Plaintiffs residency to Charleston County, however, Defendants have changed their position and now state that Plaintiffs must establish residence and domicile" in Charleston County in order for Daughter to enroll at the AMHS on August 18, 2010

7 Defendants also represented, through their agent and attorney, that Parent, on behalf of Daughter, could purchase real property in Charleston County valued at \$300 00 or more in order to enroll Daughter at the AMHS rather than change the Plaintiffs' residency to Charleston County

8 Based upon that representation, Parent began negotiations, on behalf of Daughter, to purchase such real property, however, Defendants changed their position, yet again, and stated that even if such purchase occurred Plaintiffs would still be required to establish their residency in Charleston County before Daughter would be allowed to enroll at the AMHS because it is a magnet school whose "slots are highly coveted and are reserved for Charleston County residents" Please see attached, and incorporated herein for all purposes, **Exhibit A** – letter of June 7, 2010, to Gayla S L McSwain

9 Parent stopped negotiations to purchase said real estate because it would be futile to make that purchase given the Defendants position regarding such purchase until the court determines the parties' rights and obligations under the governing statutes

10 Parent believes she is not required to establish Plaintiffs residence and domicile in Charleston County in order for Daughter to enroll in the AMHS because, instead,

- a) Parent can pay tuition to CCSD pursuant to SC Code Sections 59-63-30(a) and (b), or
- b) Daughter can purchase real estate in Charleston County valued at \$300 00 pursuant to Code Section 59-63-30(c) or
- c) Daughter's education can best be accommodated by the AMHS pursuant to Code Section 59-63-490

Please see attached and incorporated herein for all purposes **Exhibit B** - letter of June 12, 2010, to John Emerson, Esq, attorney for the Defendants

11 Defendants do not agree with Parent and, after voting unanimously to do so issued a directive on June 14, 2010, that Plaintiffs must establish residence and domicile in Charleston County before school starts [on August 18, 2010]" in order for Daughter to enroll at the AMHS Please see attached, and incorporated herein for all purposes, **Exhibit C** - letter of June 16, 2010, to Gayla S L McSwain

12 Although it was voted upon in 'open session" during Defendants' public meeting on June 14 2010 Defendants directive was discussed in 'executive session" that was closed to the public, including Plaintiffs, and it was rendered without a due process hearing being afforded to the Plaintiffs

13 Defendants' directive is a final decision and is immediately appealable to this court Any hearing before the CCSD - after the fact - would be futile in light of its unanimous vote,

therefore Plaintiffs are not required to exhaust any administrative remedies that might, otherwise be available to them ¹

14 Defendants' directive violates the laws of South Carolina

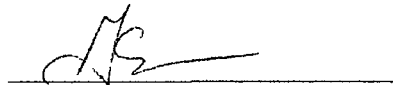
CAUSE OF ACTION
(Declaratory Judgment)

15 The preceding paragraphs are incorporated herein as if repeated verbatim

16 This action is brought pursuant to S C Code Section 15-53-10 *et seq* (1976), as amended, commonly referred to as the Uniform Declaratory Judgments Act, to request the court to declare the Plaintiffs' legal rights under S C Code Section 59-63-10 *et seq* (1976), as amended specifically, declaring whether they are required to establish their residence and domicile in Charleston County in order for Daughter to enroll in the Academic Magnet High School on or before August 18, 2010

RELIEF REQUESTED

WHEREFORE, Plaintiffs request this court to declare that Plaintiffs are not required to establish residence and domicile in Charleston County in order for Daughter to enroll at the Academic Magnet High School on or before August 18 2010 to award Patent the costs of this action, and to award any other relief the Court deems just and proper



Gayla S L McSwain, pro se

105 Horncastle Place

Goose Creek, SC 29445

(843) 572-5803

June 26, 2010

¹ Although Plaintiffs believe that it is unnecessary but out of precaution to protect their rights Plaintiffs have sent a petition for a *de novo* hearing before the CCSD Board of Trustees to appeal its directive

June 7, 2010

Ms Gayla S L McSwain

Goose Creek, SC

Re Storm Harvey

John F Emerson
General Counsel

Dr Nancy J McGinley
Superintendent of Schools

75 Calhoun Street
Charleston, SC 29401
Tel (843) 937 6515
Fax (843) 937 6546

Dear Ms McSwain

I am informed by Dr McGinley that you have asked the Board of Trustees to review your request to allow your child, Storm H., to attend the CCSD Academic Magnet. I have not taken the time to spell out in detail our position and I want to do so now so that, if you wish, you can respond in writing in time for the Board's review, which will likely take place at the next meeting, June 14, 2010

I understand that, though you are a resident of Berkeley County, your daughter applied for admission to the CCSD Academic Magnet and was accepted. You are aware that the application itself states that the school is only open to *residents* of Charleston County. The Academic Magnet did not realize that you did not have a Charleston County address and therefore inadvertently processed the application as if Storm was a resident.

As you and I have discussed, there are a number of statutes and policies implicated here. The primary statute addressing the right to attend a given school district's schools is S.C. Code § 59-63-30.

SECTION 59-63-30 Qualifications for attendance

Children within the ages prescribed by Section 59-63-20 shall be entitled to attend the public schools of any school district, without charge, only if qualified under the following provisions of this section:

- (a) Such child resides with its parent or legal guardian,
- (b) The parent or legal guardian with whom the child resides, is a resident of such school district, or
- (c) The child owns real estate in the district having an assessed value of three hundred dollars or more, and
- (d) The child has maintained a satisfactory scholastic record in accordance with scholastic standards of achievement prescribed by the trustees pursuant to Section 59-19-90, and

(e) The child has not been guilty of infraction of the rules of conduct promulgated by the trustees of such school district pursuant to Section 59-19-90

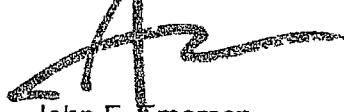
It states that a child will be permitted to attend public school in a district if the child *resides* with his parent or legal guardian and the parent or legal guardian *resides* in the district or if the child owns real estate in the district having an assessed value of \$300 00 or more 59-63-30 (a)-(c) (emphasis added) While the first two paragraphs address the rights of those who reside in the district the third addresses another category or ground for the right to attend that does not hinge on residence Since you do not reside in the District we have discussed whether (c) could be used to qualify Storm to attend a CCSD school. You have talked about the possibility of moving to the District and, more recently, you have talked about the possibility of acquiring real property and placing it in Storm's name

While this would qualify Storm to attend a school in the District, it would not qualify Storm to attend a magnet school in the District An opinion of the S C Attorney General states that property ownership within a district does not, itself, entitle a student to demand attendance at a particular school within that district 1988 Op Atty Gen No 88-48 p 145 (copy attached)

As noted, the application itself requires residence in Charleston County Further, our Policy JFAB (copy attached) in discussing courtesies to employees, states that, while children of employees who live in other counties may be permitted to attend CCSD schools, they are *not* permitted to attend CCSD magnet schools

The Academic Magnet has been named one of the ten best high schools in the nation Its slots are highly coveted and are reserved for Charleston County residents It is the staff position that Storm cannot be admitted to the Academic Magnet unless she actually resides in Charleston County, in compliance with 59-63-30(a)-(b)

Sincerely,



John F. Emerson
General Counsel

JFE/scb
Enclosures

June 12 2010

Mr John F Emerson
General Counsel
Charleston County School District
75 Calhoun Street
Charleston, S C 29401

Via email only

Dear Mr Emerson

Thank you for your letter of June 7, 2010. As a preliminary matter, I am surprised by the statement, in your letter, that the Academic Magnet failed to realize that I did not have a Charleston County address and, therefore, inadvertently processed Storm's application as if she were a resident. I am quite certain that the Academic Magnet has processed applications whereon the parent of the child applying for admission gives an address that is not a Charleston County address. In fact, I am certain that it has processed applications that show a different **state** not just a different county. And, students with out-of-state addresses have been accepted by the Academic Magnet. It is my belief that there is nothing wrong or illegal with such processing because, as a practical matter, children planning to move to Charleston from out of state would necessarily have to give an address that is not in Charleston County. Based upon the very cordial phone conversation that I had with the Academic Magnet's principal on March 3, 2010, it is my understanding that I have until enrollment day in August to establish my legal residency in Charleston County in order for Storm to enroll.

And, as a second preliminary matter, it is a little disturbing that CCSD staff's legal position seems to be a moving target. Please recall that your email to me of Friday, May 7 2010, wherein you stated,

'Once you either buy land in your daughter's name or get consent from both boards, you won't have to sign [an affidavit stating that your legal residence is in Charleston County]. Until then you do not have the requirements to be admitted without the affidavit. One of those two things has to happen first.'

Based upon that email, which I believe is a correct interpretation of the law, and hoping to avoid the expense of purchasing property in Charleston County, I sent the 'consent letter of transfer' from Berkeley County School Board to Dr McGinley and asked that she request consent from the CCSD Board for Storm's transfer. Dr McGinley called me thereafter to state that she would recommend that the CCSD Board not grant its consent because Storm is not a resident of Charleston County.

Based upon that phone call and your email of May 7, I started a search to purchase property in Charleston County worth at least \$300,000 so as to conclude this matter. However, I was unpleasantly surprised that your letter of June 7 contradicts your email of May 7 by stating that even if I purchase land in Storm's name she still will not be allowed to enroll in the Academic Magnet. I have already put an offer on a piece of property and am awaiting an acceptance.

Now, in addressing the CCSD staff's position that my daughter, Storm H[REDACTED] cannot enroll at the Academic Magnet unless she actually resides in Charleston County, I believe that position violates state law because I am willing to pay the tuition associated with that enrollment. Secondly, even if that position does not violate state law, Storm, upon purchasing \$300,000 worth of property in Charleston County would be deemed to be a Charleston County resident and, therefore, is entitled to enroll at the Academic Magnet because she has met its admission requirements, having been admitted there in January 2010. And third, regardless of whether Storm resides in, or owns property in, Charleston County, she is entitled to enroll at the Academic Magnet because it can accommodate her education better than any other high school in either Berkeley County or Charleston County based upon the school's rigorous curriculum, her intellectual ability, and her hearing impairment.

Please recall that Storm was accepted by the Academic Magnet High School for enrollment into the 9th grade in the Fall of 2010. In your letter, you cite South Carolina Code § 59-63-30(a)-(b) which states as follows:

“Qualifications for attendance

Children within the ages prescribed by Section 59-63-20 shall be entitled to attend the public schools of any school district, without charge, only if qualified under the following provisions of this section

(a) Such child resides with its parent or legal guardian,

(b) The parent or legal guardian, with whom the child resides, is a resident of such school district ” (Emphasis added)

I believe this language means that Storm, regardless of the county in which she resides may enroll in the Academic Magnet so long as I pay tuition in accordance with 59-63-45, therefore, the CCSD staff's position that Storm cannot be enrolled at the Academic Magnet unless she actually resides in Charleston County violates the plain language of the statute Please recall that in one of our phone discussions, I offered to pay the required tuition, however, you did not know how much the tuition would be but that you would 'get that number to me ” Having heard nothing further from you in that regard, I presume that the CCSD staff will not accept tuition for Storm's enrollment at the Academic Magnet Please let me know immediately if my presumption is incorrect because, obviously, that fact would end our debate on this issue

Secondly, even if the CCSD staff's position - that Storm must actually live in Charleston County, regardless of tuition payment, to enroll in the Academic Magnet - does not violate state law I believe that Storm is entitled to enroll at the Academic Magnet pursuant to 59-63-30(c) which states, in relevant part

“Children shall be entitled to attend the public schools of any school district, without charge if [t]he child owns real estate in the district having an assessed value of three hundred dollars or more ”

While the CCSD staff agrees that Storm is eligible to enroll in a CCSD school upon purchasing \$300 worth of real property in Charleston County, it does not agree that she is eligible to enroll in the Academic Magnet unless she actually lives in Charleston County

simply because it is a 'magnet' school, rather than a 'non-magnet school.' And, I would agree with that assessment if Storm were just eligible but not qualified, to attend the Academic Magnet, however she has already been found qualified, and has already been admitted to, the Academic Magnet.

You cite a June 3, 1988, SC Attorney General's opinion to support the staff's position. The facts of the case underlying that 1988 AG opinion appear to be that a child who was eligible to attend a school in a district pursuant to Section 59-63-30(c) (a nonresident child who owned \$300 worth of real property in that district) was demanding to attend a particular school within that school district. The AG concluded that Section 59-19-90(9) allowed the district, not the child, to choose which school the child could attend. That section states that the district is empowered to determine the school within its district in which any pupil shall enroll. [t]herefore, property ownership within a district does not itself, entitle a student to demand attendance at a particular school within that district." (Emphasis added.)

First, the CCSD cannot just assign any child to the Academic Magnet despite the language of Section 59-19-90(9) unless it were to violate the school's admission standards. Acceptance for admission into the Academic Magnet is based upon a very rigorous process including evaluation of the student's grades, courses taken, standardized test scores, teacher recommendations, and writing ability. The AG opinion is simply not relevant to the facts at hand.

Even if the AG opinion were relevant to my daughter's case, it would be favorable to her because she is not demanding enrollment at the Academic Magnet based solely upon property ownership pursuant to 59-63-30(c), she has already been accepted for admission to the Academic Magnet based upon the aforementioned, very rigorous application process. If the facts underlying the 1988 AG opinion were that a child was demanding enrollment into a magnet school which had merit-based admission requirements, based solely upon property ownership pursuant to 59-63-30(c), only then would that opinion be applicable to my daughter's case. Given the disparity in the facts of the two cases, that opinion is simply irrelevant to the facts of my daughter's case.

Third, an AG opinion is just that - an opinion. As far as I know, there has not been a judicial interpretation of Section 59-63-30(c) with respect to enrollment at a

magnet school I believe that if a judge alone or with an advisory jury, were asked to interpret, and to construe together, 59-63-30(c) and 59-19-90(9), in light of the facts of the case at hand, he or she would be obligated to interpret those statutes to conclude that so long as a child is qualified to attend the Academic Magnet (by meeting its admission requirements) and is eligible to attend the Academic Magnet (by owning \$300 00 worth of real property) she may enroll at the Academic Magnet, without charge

Lastly, although we have discussed it in previous email, 59-63-490 was not addressed in your letter That statute states

‘ [w]hen it shall so happen that any person is so situated as to be better accommodated at the school of an adjoining school district **whether special or otherwise**, the board of trustees of the school district in which such person resides may, with the consent of the board of trustees of the school district in which such school is located, transfer such person for education to the school district in which such school is located, and the trustees of the school district in which the school is located shall receive such person into the school as though he resided within the district ”
(Emphasis added)

Without question, Berkeley County does not have an academic magnet school As stated in your letter the Academic Magnet has been named one of the best 10 high schools in the nation Without question, based upon her grades and test scores, Storm’s education would be better accommodated by the Academic Magnet than by any high school in Berkeley County At the Academic Magnet she will be amongst her academic peers who, along with the teachers, will challenge her more than any Berkeley County high school could simply because there is no Berkeley County high school populated solely by intellectually gifted and motivated students Berkeley County School District has already agreed to transfer Storm to the CCSD There should be no question that the CCSD will consent to that transfer because Storm s education will be better accommodated by the Academic Magnet

Lastly, and we have not discussed this topic before, however, Storm has had a hearing impairment since birth. She has had an Individualized Education Program (IEP) throughout her education, and utilizes an FM system and a wireless, lapel microphone with her BAHA (bone anchored hearing aid) while in the classroom. She has always attended a small school for that reason. The Academic Magnet limits its student-to-teacher ratio to 25:1 or less in all classes and generally has around 600 students in total. The Berkeley County high school for which Storm is zoned for attendance is Statford High School which I am informed, consistently has 35 or more students in its classrooms and has almost 3000 students in total. And with the recent and foreseeable legislative cuts in education funding, the number of students in non-magnet high school classrooms most probably will increase.

Although I do not have any affidavits from Storm's audiologist, her hearing itinerant teacher or a psychologist I can get them. I am confident that they all will say that a smaller number of students in the classroom results in less noise, less distractions, and more individualized attention to all students, and that such conditions are absolutely imperative to accommodate, and bring about the best result in, the education of a hearing impaired student.

Additionally, and this is just common sense but can be supported by a psychologist, if need be, Storm needs to attend a high school with other intellectually gifted students because high schoolers not only are developing intellectually but also are developing emotionally and socially. Although Storm's hearing impairment/disability is invisible (for instance, she has no speech impediment and the hearing aid is beneath her hair), Storm's teachers will be required to wear a wireless lapel microphone that Storm must carry from teacher to teacher throughout the school day. My observation throughout the past eight years of her education is that the smarter the child or teacher the more accepting they are of her disability. They expressed curiosity about how her BAHA works but didn't treat her differently from a regular-hearing student.

On the other hand, I have observed a few students and one teacher who thought that Storm was intellectually impaired just because she is hearing impaired and therefore treated her markedly different from other regular-hearing students. It is my belief that all of the teachers and students that comprise the Academic Magnet will be more accepting

of Storm's hearing impairment due to their being as intellectually gifted as she is, therefore, Storm's hearing impairment and education can be especially accommodated by the Academic Magnet due to the smaller number of students in each class, due to its rigorous curriculum and academic standards, and due to Storm's being able to attend high school with her intellectually gifted peers

For all of the above stated reasons, I, on behalf of my daughter, Storm H[REDACTED], respectfully request that the CCSD staff recommend to the CCSD Board of Trustees that she be allowed to enroll in the Academic Magnet based upon 56-63-30(c) or 56-63-490. I would also respectfully request that a decision be made as soon as possible but not later than June 29, 2010.

Thank you for your kind consideration,

Gayla S. L. McSwain

Charleston County School District

June 16, 2010

Ms Gayla S L McSwain
[REDACTED]
Goose Creek SC [REDACTED]

John F Emerson
General Counsel

Re Storm H [REDACTED]

Ms Gayla S L McSwain,
Superintendent of Schools

75 Calhoun St ee
Charleston SC 29401
Tel (843) 937 6545
Fax (843) 937 6546

Dear Ms McSwain,

I communicated to the CCSD Board of Trustees Monday night your request that they postpone until the next Board meeting, consideration of your request to admit Storm to the Academic Magnet High School I told them you had sent a detailed letter explaining your position but that I had not had a chance to review it

The Board elected to take up the issue anyway It voted unanimously in open session to admit Storm to the AMHS if your family establishes 'residence and domicile' in Charleston County before school starts

I have now had a chance to review your letter While I am not going to respond to each argument I will say, at best, the law you reference allows a student to attend a school in any district, it does not say that the student may choose Further in each case, the receiving Board must approve

I wish you luck Please advise as to your plans

Sincerely yours


John F Emerson
General Counsel

JFE/scb
Enclosures

STATE OF SOUTH CAROLINA

ISSUED BY THE Common Pleas Civ 1 COURT IN THE COUNTY OF Charleston

Storm [REDACTED], a minor, Plaintiff

by her parent,
Gayla S L McSwain

Defendant

SUBPOENA IN A CIVIL CASE

Case Number
2010 CP 10-5197

County

Charleston County School
District Board of Trustees, et al

Pending in
[REDACTED] Court

TO John F Emerson, Esq, attorney for Defendant

☐ YOU ARE COMMANDED to appear in the above named court at the place and time specified below to testify in the above case

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

AM

☐ 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

AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place date and time specified below (list documents of objects All documents, regardless of form or medium, that relate to the Defendants' directive to Plaintiffs up June 16, 2010, that Plaintiff H [REDACTED] will not be allowed to enroll in the Academic Magnet High School unless Plaintiffs establish their residence in Charleston County

PLACE Charleston County School District

DATE AND TIME

AM

75 Calhoun Street Charleston, SC 29401

July 9th

10 a m

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below

PREMISES

DATE AND TIME

AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6) SOUTH CAROLINA RULES OF CIVIL PROCEDURE TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS DIRECTORS OR MANAGING AGENTS OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF SHALL SET FORTH, FOR EACH PERSON DESIGNATED THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1) AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES

[Signature]

DATE

ATTORNEY/ISSUING OFFICER'S SIGNATURE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

Plaintiff, pro se
Julie J Armstrong

6/28/10

Julie J Armstrong

CLERK OF COURT/ISSUING OFFICER SIGNATURE

DATE

PRINT NAME

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Storm [REDACTED] H [REDACTED], a minor, by her
parent, Gayla S L McSwain, and Gayla
S L McSwain,

C A No 2010-CP 10-5197

AFFIDAVIT OF JUDITH A PETERSON

Plaintiff,

vs

Charleston County School District Board
of Trustees and Nancy J McGinley, in her
official capacity as Superintendent of
Charleston County School District,

Defendant

PERSONALLY APPEARED BEFORE ME Judith A Peterson, who being first duly sworn,
deposes and says as follows

1 I am the principal of Charleston County School District's Academic
Magnet High School ("AMHS")

2 I have served in this capacity since July 2008

3 I am knowledgeable and familiar with the student attendance requirements
and process for enrollment at AMHS

4 Attached to this affidavit as Exhibit A is a true and correct copy of the
attendance requirement documents for AMHS

5 As stated in the attendance requirement documents, a necessary condition
for ultimate enrollment in AMHS is that the student actually reside in Charleston County School
District, which geographic area is the attendance zone for AMHS, as well as other magnet
schools in the District, and this residency requirement has been and is uniformly applied

6 AMHS currently has a wait-list of approximately 80 students for the ninth grade, and if a student who is not an actual resident of Charleston County were to enroll in AMHS, he or she would displace another student who would be in fact a resident of Charleston County

7 In addition to the application itself, parents of enrolling students are required to complete the Residency Verification/Legal Residence Assessment Form prior to actual attendance

8 The AMHS materials make the residency condition for attendance in AMHS clear. Not only is the residency requirement stated on the front page of the application itself, but the residency affidavit and the admission requirements form both make clear that in addition to being academically qualified to attend AMHS, a prospective student must also meet the residency requirement for attendance. Furthermore, the recruiting powerpoint presentation used by the Charleston County School District makes clear that residency in Charleston County is a condition of admission to the school. A copy of this powerpoint presentation is attached as Exhibit B.

CONTINUED ON NEXT PAGE

9 With respect to the admission of Storm H [REDACTED] it was made clear to her mother that actual residency in Charleston County was a requirement for admission, along with meeting the AMHS academic standards, and she understood this requirement Correspondence with Ms McSwain is attached as Exhibit C

FURTHER AFFIANT SAYETH NAUGHT

Judith A Peterson
Judith A Peterson, Principal
Academic Magnet High School

July 20, 2010
Charleston, South Carolina

SWORN TO BEFORE ME THIS 20th
DAY OF July 2010

Robin S King
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires 7/7/2014

EXHIBIT A

APPLICATIONS FOR ACADEMIC MAGNET HIGH SCHOOL

NINTH GRADE APPLICATIONS ARE DUE DECEMBER 18 2009

TENTH/ELEVENTH APPLICATIONS ARE DUE APRIL 1, 2010

To learn more about AMHS, we offer the following opportunities

OPEN HOUSE NOVEMBER 5, 2009, 6 OOPM at AMHS

SHADOWING Please, call 746-1300 to schedule a time to shadow an AMHS student. You may select any day that works for you. AMHS does work on an A/B Schedule, 8 15-3 20

TOURS Tuesdays and Thursdays at 9 00 AM Please call 746 1300 to schedule a tour

ADMISSION REQUIREMENTS

Students must be residents of Charleston County and complete an AMHS application. The application includes teacher recommendations, test scores, writing sample and grades (a minimum overall B average in core academic courses)

Students must have a minimum national percentile rank of 85 on recent norm-referenced achievement tests

Students must demonstrate proficiency in composition and grammar by successfully completing a writing sample. Writing sample sessions will be offered at stand alone CCSD middle schools. Other students may call AMHS to schedule an appointment for the writing sample. Writing samples will be offered at AMHS on Tuesday and Thursday from 3 30 – 4 30

Completion of Algebra I in eighth grade is **required**

French I or Spanish I in eighth grade is recommended but not required. French I and Spanish I are offered to ninth graders at AMHS

1525 Avenue B South
North Charleston, SC 29405
746-1300, Fax 746-1310

Principal Judith Peterson
Assistant Principal Dr. Patrick Harrington
Guidance Director Margaret Dobson 746-7907
Counselor James Yates 746-7911

<http://amhs.ccsdschools.com>



CCSD's Choice Application:

Academic Magnet High School
 Form 10-2009-2010



ABOUT ACADEMIC MAGNET HIGH SCHOOL

The mission of the **Academic Magnet High School (AMHS)** is to challenge each student, teacher, and parent with the high expectations of a rigorous curriculum. Centrally-located and serving approximately 600 students, AMHS provides a close-knit learning environment that prepares young adults for college and develops self-esteem. Students are encouraged to be citizens of the world, cultivate a respect for cultural diversity, and acquire a sense of global responsibility.

All courses are taught at the honors or Advanced Placement level, offering students an unmatched opportunity to earn college credit and to earn a grade point average greater than 4.0 on a 4.0 scale. AMHS students are required to conduct a year-long independent research project in the field of the student's choice with the guidance and direction of the faculty and a mentor. Students have been published in academic and professional journals in such fields as psychology, chemistry, and epidemiology.



APPLICATION DIRECTIONS

- Completed applications (Parts A and B) should be submitted to AMHS by **Friday, December 4, 2009**. All mailed applications must be postmarked by this date. Please keep this page for your records.
- As a county wide magnet school any resident of Charleston County may apply for AMHS admission. Please call (843) 746-1300. If you need to verify your attendance zone.
- Please call (843) 746-1300 or visit amhs.ccsdschools.com for more information.
- Application materials may be hand delivered or mailed to 1525 Avenue B South North Charleston, SC 29405.
- If contact or student information changes, parents are responsible for contacting the school and making those changes.

ACADEMIC MAGNET HIGH SCHOOL'S APPLICATION SELECTION PROCESS

Date	Application Step
Thursday October 29, 2009	Applications available online and at school
Thursday November 5, 2009 6:00 pm	Open House at AMHS All students interested in applying and their parents are encouraged to attend one of these sessions
Saturday November 14, 2009 at Burke High	District Wide Choice Fair for Students & Parents
Friday, December 4, 2009	Applications MUST be postmarked or received by 4:00 p.m. to be included in the AMHS selection process
December 2009 January 2010	Applications reviewed
January 2010	Letters indicating selection status issued to all applicants who applied by the deadline
January 2010	Students selected for admission must notify school regarding their decisions.

Charleston County SCHOOL DISTRICT

School Student Is Wishing to Attend in 2010-2011

Student Information

Last Name	First Name	Middle Name
Date of Birth	Gender ☐ Male ☐ Female	Grade for the 2010-2011 School Year
Name of School Student is Enrolled in During the 2009-2010 School Year <i>(if applicable)</i>		
Street Address		Apartment/Unit #
City	State	Zip code
Mailing Address <i>(if different from above)</i>		Apartment/Unit #
City	State	Zip code
Home Phone	Cell Phone	Email Address

Parent/Guardian Information

Last Name	First Name	Relationship to Child
Street Address		Apartment/Unit #
City	State	Zip code
Mailing Address <i>(if different from above)</i>		Apartment/Unit #
City	State	Zip code
Home Phone	Personal Cell Phone	Personal Email Address
Employer	Work Phone	Work Email Address

Additional Parent/Guardian Information *(if applicable)*

Last Name	First Name	Relationship to Child
Street Address		Apartment/Unit #
City	State	Zip code
Mailing Address <i>(if different from above)</i>		Apartment/Unit #
City	State	Zip code
Home Phone	Personal Cell Phone	Personal Email Address
Employer	Work Phone	Work Email Address

Academic Magnet High School Application

To Parents and Students Please read this form carefully. To be considered for admission, Parts A and B must be completed by you and your school official and returned or postmarked to Academic Magnet High School (AMHS) **no later than December 4, 2009**. Therefore, you are responsible for completing Part A in its entirety and the "To Be Completed by Student" section of each recommendation form in Part B. Submit Part A and all sections of Part B to your school's guidance counselor or teacher for recommendations. Your guidance counselor or school official will submit all application materials to AMHS. Please call (843) 746-1300 or visit amhs.ccsd.schools.com for more information.

ALL INFORMATION MUST BE SUBMITTED BEFORE STUDENT CAN BE CONSIDERED FOR ACCEPTANCE.

To School Guidance Personnel or Administrator Please submit the school's application packet (including Part A, Part B, and the required documents as outlined below) to Academic Magnet High School (AMHS) **no later than December 4, 2009**. Mailed packets must be postmarked by this date. Application materials may be hand delivered, faxed to (843) 746-1310, or mailed to 1525 Avenue B South, North Charleston SC, 29405. Please call (843) 746-1300 or visit amhs.ccsd.schools.com for more information.

ALL INFORMATION MUST BE SUBMITTED BEFORE STUDENT CAN BE CONSIDERED FOR ACCEPTANCE.

Part I- To be Completed by School Guidance Personnel

School _____ Address _____

Test Name _____ Date _____

This application must include:

- A copy of student's most **current test score report**
- A copy of student's **most current 2009-2010 report card** (not progress report)

Each 9th grade applicant must also include a copy of his or her seventh grade report card.

Students applying for 10th or 11th grade must also include an official transcript.

Name and Signature of Official School Personnel _____

Position _____

Part II- Writing Sample

Writing samples must be completed by December 4, 2009 for 9th grade & April 1, 2010 for 10th & 11th grades. The deadline for applications, which includes a writing sample, is December 4, 2009 for 9th and April 1, 2010 for 10th & 11th.

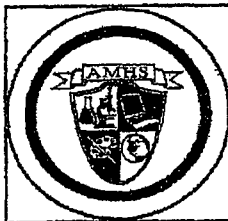
Writing sample sessions will be scheduled at most public middle schools. Please call the middle school guidance office for the date. Other students should call AMHS to schedule an appointment. Writing sample sessions at AMHS will be on Tuesdays and Thursdays from 3:30 - 4:30.

The Admission Committee will complete the selection process for 9th grade by January 15, 2010 and mail a confirmation form. Once a student is selected for admission to the 9th grade, parents must confirm acceptance by the date stated on the form.

Admission to 10th & 11th is limited to space availability. You will be notified by mail of your position on the waiting list for these spaces by May 15, 2010.

Part III- Teacher Recommendations

Three teacher recommendations are required and confidential. Please use the form provided. The recommendations must come from the student's **English Language Arts** teacher, **Math** teacher and either their **Science** or **Social Studies** teacher.



**Academic Magnet High School—
Recommendation, English Language Arts Teacher**

To be Completed By Student:

Dear Student:

Please submit this form and an envelope labeled with your name to your English Language Arts teacher. The teacher will submit the envelope with the completed recommendation to your guidance counselor or school official.

Student's Name _____

Current School _____

To be Completed By Teacher

Dear Teacher:

Thank you for your assistance in the AMHS application process. Please complete the information below and return this form to the school guidance counselor or other school official. All application materials must be submitted to AMHS by **December 4, 2009** for all applicants applying for the 9th grade.

Teacher's Name _____

Telephone _____

Subject Area _____

Please circle the appropriate point on the scale to show the applicant's rating on the characteristics below in relation to other students you have taught.

Characteristics	Cannot Judge	Below Average	Average	Very Good	Outstanding	Excellent
Analytical Thinking	0	1	2	3	4	5
Independence of Thought	0	1	2	3	4	5
Originality	0	1	2	3	4	5
Effectiveness of Oral Communication	0	1	2	3	4	5
Effectiveness of Written Communication	0	1	2	3	4	5
Judgment and Maturity	0	1	2	3	4	5
Industry and Persistence	0	1	2	3	4	5
Leadership Ability	0	1	2	3	4	5

Do you recommend this student for honors level classes?

☐ Yes

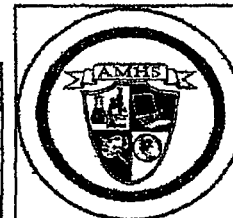
☐ No

Additional comments *(If necessary, please attach a separate sheet with typed comments.)*

Teacher's Signature _____

Date _____

**Academic Magnet High School—
Recommendation, Mathematics Teacher**



To be Completed By Student*

Dear Student:

Please submit this form and an envelope labeled with your name to your Mathematics teacher. The teacher will submit the envelope with the completed recommendation to your guidance counselor or school official.

Student's Name _____

Current School _____

To be Completed By Teacher*

Dear Teacher:

Thank you for your assistance in the AMHS application process. Please complete the information below and return this form to the school guidance counselor or other school official. All application materials must be submitted to AMHS by **December 4, 2009** for all applicants applying for the 9th grade.

Teacher's Name _____

Telephone _____

Subject Area _____

Please circle the appropriate point on the scale to show the applicant's rating on the characteristics below in relation to other students you have taught.

Characteristics	Cannot Judge	Below Average	Average	Very Good	Outstanding	Excellent
Analytical Thinking	0	1	2	3	4	5
Independence of Thought	0	1	2	3	4	5
Originality	0	1	2	3	4	5
Effectiveness of Oral Communication	0	1	2	3	4	5
Effectiveness of Written Communication	0	1	2	3	4	5
Judgment and Maturity	0	1	2	3	4	5
Industry and Persistence	0	1	2	3	4	5
Leadership Ability	0	1	2	3	4	5

Do you recommend this student for honors level classes?

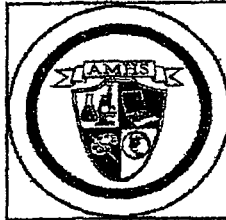
☐ Yes

☐ No

Additional comments (If necessary, please attach a separate sheet with typed comments.)

Teacher's Signature _____

Date _____



**Academic Magnet High School—
Recommendation, Science or Social Studies Teacher**

To be Completed By Student*

Dear Student:

Please submit this form and an envelope labeled with your name to your Science or Social Studies teacher. The teacher will submit the envelope with the completed recommendation to your guidance counselor or school official.

Student's Name _____

Current School _____

To be Completed By Teacher

Dear Teacher:

Thank you for your assistance in the AMHS application process. Please complete the information below and return this form to the school guidance counselor or other school official. All application materials must be submitted to AMHS by **December 4, 2009** for all applicants applying for the 9th grade.

Teacher's Name _____

Telephone _____

Subject Area _____

Please circle the appropriate point on the scale to show the applicant's rating on the characteristics below in relation to other students you have taught.

Characteristics	Cannot Judge	Below Average	Average	Very Good	Outstanding	Excellent
Analytical Thinking	0	1	2	3	4	5
Independence of Thought	0	1	2	3	4	5
Originality	0	1	2	3	4	5
Effectiveness of Oral Communication	0	1	2	3	4	5
Effectiveness of Written Communication	0	1	2	3	4	5
Judgment and Maturity	0	1	2	3	4	5
Industry and Persistence	0	1	2	3	4	5
Leadership Ability	0	1	2	3	4	5

Do you recommend this student for honors level classes?

☐ Yes

☐ No

Additional comments (If necessary, please attach a separate sheet with typed comments.)

Teacher's Signature _____

Date _____

RESIDENCY VERIFICATION/LEGAL RESIDENCE ASSESSMENT

STATE OF SOUTH CAROLINA }
COUNTY OF CHARLESTON }

AFFIDAVIT OF A STUDENT'S DOMICILE

PENALTIES FOR PROVIDING FALSE INFORMATION

This affidavit is made under penalty of perjury. I acknowledge that if I provide false information about where a student lives I can be prosecuted for perjury.

In addition, S C Code §59-63-32 states (emphasis added):

- (D) If it is found that information contained in the affidavit is false, the child must be removed from the school after notice and an opportunity to appeal the removal pursuant to the appropriate district grievance policy.
- (E) If it is found that a person willfully and knowingly has provided false information in the affidavit to enroll a child in a school district for which the child is not eligible, the maker of the false affidavit is guilty of a misdemeanor and, upon conviction, must be fined an amount not to exceed two hundred dollars or imprisoned for not more than 30 days and must also be required to pay to the school district an amount equal to the cost to the district of educating the child during the period of enrollment. Repayment does not include funds paid by the state.

- 1 I am _____ and it is my signature that appears below.
- 2 I make this affidavit based upon my own personal knowledge, and if called upon I believe I would be deemed competent to testify to the facts and beliefs set forth in this affidavit.
- 3 I am aware of the penalties to myself and to the student for providing false information in this affidavit.
- 4 I am an adult responsible for the care and well being of the following student: _____
- 5 As of the date I have signed this affidavit that student for whom I am responsible actually lives at the following address: _____
- 6 Under penalty of perjury I certify that, as primary caregiver of my applicant child:
- a) the resident which is the subject of this application is my legal residence and my domicile, the place where I and the student actually live at the time of this application and that I do not claim to be a legal resident of a jurisdiction other than Charleston County South Carolina for any other purpose, and

Charleston County School District

b) that neither I nor any other member of my household (that is, the owner-occupant's or leaser-occupant's spouse, except when that spouse is legally separated from the owner/leaser occupant and any child of the owner/leaser-occupant claimed or eligible to be claimed as a dependent on the owner/leaser-occupant's federal income tax return) is residing in or occupying any other residence which I, or any member of my immediate family has qualified for legal residency

7 I acknowledge that if a challenge is made to the truthfulness of information I provide that additional information may be required of me.

8 Further, affiant says/it not,

Signature of affiant

Printed name of affiant

SWORN to and subscribed before me this _____
day of _____, 20 _____

Notary Public for South Carolina
My commission expires _____

Charleston County School District

EXHIBIT B

Academic
MAGNET
High School

ACADEMIC MAGNET HIGH SCHOOL

*Serving the academically gifted
and motivated student*

MISSION



The **Mission** of the Academic Magnet High School is to challenge each student, teacher and parent with the high expectations of a rigorous curriculum,

To provide a learning environment that thoroughly prepares students for college and to be citizens of the world,

And to encourage in students self-esteem, a sense of global responsibility, and a respect for cultural diversity.



THE FINEST PUBLIC SCHOOL ENVIRONMENT IN CHARLESTON COUNTY

- Established 1988
 - Small size allows for personalized education
 - 565 Students
- Student Faculty Ratio (20:1)
- Almost all Courses taught at the Honors or Advanced Placement Level

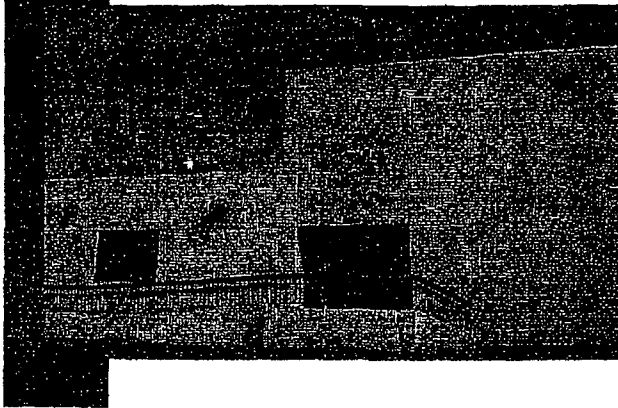
OUR STUDENTS

- Very **diverse** population in terms of religion and ethnicity
- Very **homogeneous** population in terms of goals and mindset: AMHS is their school of choice and academics are their focus.



OUR SCHOOL

- Safe and nurturing environment
- Central location in the county
- Relaxed yet focused environment where students can learn without distraction



AMHS CONTRACT

- Each student signs a contract with his/her parents, faculty and administration committing to
 - Complete a challenging curriculum of Honor-level courses with a minimum of four Advanced Placements courses;
 - Complete a summer reading list

AMHS CONTRACT

- Demonstrate advanced levels of computer literacy and applications,
- Demonstrate advanced levels of proficiency in a foreign language,
- Complete a senior thesis that requires original research, collaborative study/research with a professional mentor, and the oral defense of the thesis, and
- Complete a 90-hour community service requirement

SENIOR THESIS

- A year-long research project with the guidance and direction of our faculty and a mentor (a professional in that field)
- Unique opportunity for guided but independent research in the field of student's choice
- Opportunity for publication in academic or professional journals.

AMHS OPPORTUNITIES:

- Graduates Receive Two Diplomas:
 - South Carolina HS Diploma and the Academic Magnet Diploma
 - Unmatched Opportunity for Advanced Placement Courses

ADVANCED PLACEMENT COURSES

- AP courses offer the opportunity to earn college credit while in high school and earn a grade point average greater than 4.0 on a 4.0 scale. AP studies begin in 10th grade, seniors often take as many as 5 AP courses. Unmatched opportunity in Charleston County.
- AP English Literature
- AP European History
- AP Psychology
- AP US History
- AP Macroeconomics
- AP US Government
- AP Music Theory
- AP French Language
- AP English Language
- AP Calculus (AB & BC)
- AP Statistics
- AP Computer Science
- AP Studio Art
- AP European History
- AP Psychology
- AP US History
- AP Macroeconomics
- AP US Government
- AP Music Theory
- AP French Language
- AP Biology
- AP Chemistry
- AP Physics
- AP Environmental Science

AMHS GRADUATES:

- 1196 Average SAT· 2nd in state and Charleston County's best.
- 97 AP Scholars
- 9 National Merit Semifinalists
- 94 2006 graduates received **\$7 Million +** in scholarship offers
- 100% of graduates go to college

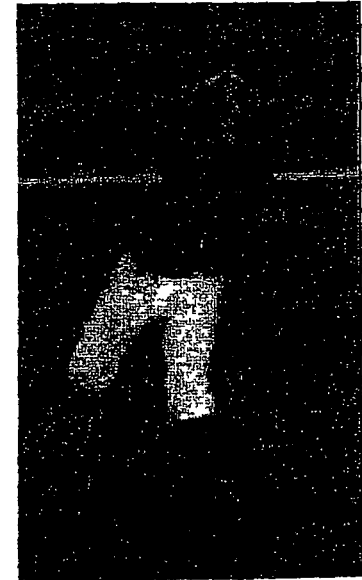
AMHS GRADUATES ATTEND:

- Dartmouth
- MIT
- Georgetown
- Georgia Tech
- UVA
- C of C Honors
- Emory
- Harvard
- Brown
- Duke
- UNC
- Swarthmore
- Lafayette
- Boston U
- Rice
- USC Honors
- U Florida
- Clemson Honors
- Delaware
- Cornell
- Johns Hopkins
- Davidson
- Yale
- Furman
- Williams
- Princeton
- Wellesley

SPORTS AT THE MAGNET

•We offer a full range of sports to our students
Due to small school population, 9th graders
often contribute to the varsity teams ***almost
immediately.***

- Football
- Tennis
- Cross-country
- Track
- Basketball
- Volleyball
- Sailing
- Soccer
- Baseball
- Softball
- Golf
- Swimming
- Wrestling



CLUBS AT THE MAGNET

- Student Government
- Academic Bowl
- ACTS
- Art Club
- Chess Club
- Drama Club
- Environmental Team
- Forensics, Debate and Mock Trial
- French Club
- Future Problem Solving
- Garden Club
- Habitat for Humanity
- Jr Academy of Sciences
- Young Democrats
- Young Republicans
- Yearbook
- Science Olympiad
- Key Club
- Martial Arts Club
- Mu Alpha Theta (Math Honor Society)
- National Honor Society
- Newspaper
- Photography Club
- Pep Club
- Senior Class Advisory Board
- SHOUT
- Soccer Club
- Step Club
- Student Environmental Action Committee



ADMISSION REQUIREMENTS

- Students must be residents of Charleston County and complete an AMHS application
- The application includes teacher recommendations and grades, minimum overall B average
- Students must have a minimum national percentile rank of 85 on recent norm-referenced achievement tests OR comparable scores on PACT spring testing
- Students must demonstrate proficiency in composition and grammar by successfully completing a writing sample Call the school for appointments at AMHS
- Writing sample sessions will be offered at public middle schools
- Completion of Algebra I and Spanish I or French I in grade eight is recommended **Applications are due January 10, 2007 and are available at your middle schools and at the Magnet (746-1300).**



Academic
MAGNET
High School



ACADEMIC MAGNET HIGH SCHOOL

*SERVING THE ACADEMICALLY
GIFTED
AND MOTIVATED STUDENT*

1525 Avenue B South
North Charleston, SC 29405
On the Navy Base
843-746-1300

margaret_dobson@charleston k12 sc us

EXHIBIT C

APPLICATIONS FOR ACADEMIC MAGNET HIGH SCHOOL

**NINTH GRADE APPLICATIONS ARE DUE DECEMBER 18 2009
TENTH/ELEVENTH APPLICATIONS ARE DUE APRIL 1, 2010**

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SHADOWING Please, call the school to schedule a time to shadow an AMHS student.
You may select any day that works for you AMHS does work on an A/B Schedule, 8 15
3 20

TOURS Tuesdays and Thursdays at 9 00 AM Please call the school to schedule a tour

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grades (a minimum overall B average in core academic courses)

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achievement tests

Students must demonstrate proficiency in composition and grammar by successfully
completing a writing sample Writing sample sessions will be offered at stand alone
CCSD middle schools Other students may call AMHS to schedule an appointment for
the writing sample Writing samples will be offered at AMHS on Tuesday and Thursday
from 3 30 – 4 30

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Spanish Is are offered to ninth graders at AMHS

1525 Avenue B South
North Charleston SC 29405
746-1300 Fax 746-1310

Principal Judith Peterson
Assistant Principal Dr Patrick Harrington
Guidance Director Margaret Dobson 746-7907
Counselor James Yates 746-7911

[http //amhs ccsdschools com](http://amhs.ccsdschools.com)

1'alel 11/23/10

Admissions

Academic Magnet High School
1525 Avenue B South
North Charleston, SC 29405
843-746-1300 FAX 746-1310

AMHS CONFIRMATION FORM DUE in AMHS office by 4pm, January 28, 2010
NINTH GRADE 2010 - 2011

Name H [REDACTED] Storm [REDACTED]
Last First Middle

Telephone Number 572-5803 email gaylene@aylameswain.com

Charleston County Residence Address

We will provide prior to enrollment.

Mailing Address if different

[REDACTED]
Goose Creek, SC [REDACTED]

Middle School Marston Middle School of the Arts

High School zoned for based on ^{current} home address Stratford

I plan to attend the Academic Magnet High School in 2010 - 2011 Enclosed is

a \$20.00 NON-REFUNDABLE DEPOSIT on the 2010 - 2011 AMHS fees Ck# 578 Cash

Student Signature Storm H [REDACTED]

Parent Signature [REDACTED]

* The AMHS Program of Studies is on our website <http://amhs.ccsdschools.com>

SCHOOL DISTRICT

July 2010

Dear Parent and Student

Judith Peterson

Principal

Dr. Mary J. McCrory
Superintendent of Schools

Mr. Louis Martin
Associate Superintendent

1525 Avenue B South
North Charleston SC 29405
Tel (843) 746 1300

We hope that your summer has been filled with family friends and good times. While you have been on summer break work has continued at AMHS to prepare for the coming year the "move" to the new campus is underway, the schedule is being finalized, and preparations for the next school year have begun.

The new buildings are close to completion, and they are beautiful. I am very excited for the AMHS community. As we prepare for the coming school year, there are several important items to consider.

Registration Dates –

Seniors Monday August 2 8:00 – 12:00
Juniors Tuesday, August 3 8:00 – 12:00
Sophomores Wednesday August 4 8:00 – 12:00
Freshmen Thursday, August 5 8:00 – 12:00
Make-up Monday August 9 8:00 – 12:00

(Registration will be held in the new AMHS academic building please follow the signs.)

Registration Needs – To complete the registration process, we must have all of the listed items. Please pay close attention to the three items for Address Verification because we cannot complete registration without them.

1. **Address Verification Information** This information must be presented and completed on the day of registration. I must collect and file the following **three** items as 'proof of residence' as outlined in Policy JIFAAA.

One document from this category

If you rent—a copy of the signed/dated lease agreement
If you own—a copy of your tax bill or tax receipt
If you are building—a copy of the contract

AND

One document from this category

Copy of a water bill phone bill (not cell) cable bill voter registration card, pay stub local, state or federal correspondence

AND

Affidavit of Domicile - signed and notarized

Additional details and the affidavit form are available on the website
To insure your student's ability to complete registration at AMHS I must urge you to meet this expectation and to bring the documents with you to your registration session

2 Student Activity Fee \$45.00

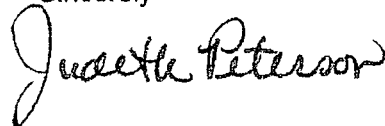
Parking Fee \$25.00 (Spaces are very limited this year and will be distributed by grade level - Seniors first)

3 Student Contract will be signed at registration but you ought to review it on the website because there are some important changes

We are looking forward to the new school year in our wonderful new facilities at the Bonds-Wilson Campus. We will schedule tour opportunities and have flyers available at registration. In the meantime, please be patient with us as we work from temporary stations.

As always, thank you very much for your support of AMHS and our efforts to offer your student the very best we can.

Sincerely,



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J C Nicholson, Jr , Circuit Court Judge

Case No 2010-CP-10-5197

Storm M.H., a minor, by her parent, Gayla S.L. McSwain,
and Gayla S L McSwain, pro se,

Respondents-Appellants

v

Charleston County Board of Trustees and Nancy J McGmley,
in her official capacity as Superintendent
of Charleston County School District,

Appellants-Respondents

AFFIDAVIT AND VERIFICATION OF GAYLA S L McSWAIN

Personally appeared before me Gayla S L McSwain who, based upon personal knowledge, swears, under oath, as follows

1 The Academic Magnet High School ("AMHS") is a taxpayer- funded school located in the Charleston County School District (CCSD") In December of 2009, a reputable, internationally distributed news magazine ranked the AMHS as the number one magnet high school, and as the 12th best public high school, in the United States The AMHS's curriculum is very rigorous, with almost all of its courses being taught at the honors or college advanced placement level It is the sole high school located in the tri-county area (Berkeley, Charleston, Dorchester Counties) that has only academically gifted and motivated students enrolled See Defendants' Trial Exhibit # 1

2 The AMHS has approximately 600 students enrolled, has a 20 1 student - to - teacher ratio, and has class sizes with no more than 24 students with most classes having fewer than 24

3 Students must apply to attend the AMHS which admits only students who demonstrate exceptional academic ability and performance as shown by national and state standardized test scores, grades, courses taken, and teacher recommendations

4 The Defendants cannot, and do not transfer or assign students to the AMHS, a student must qualify for admission in accordance with the above referenced admission standards

5 Importantly, the AMHS admits students who are qualified for admission regardless of whether they live in Charleston County at the time of application, however the Defendants have taken the legal position that the AMHS is reserved only for students who have established Charleston County as their residence and domicile (resident child") Therefore Defendants refuse to allow an already-admitted student who does not live in Charleston County ("nonresident child") to actually enroll and attend classes at the AMHS unless the student and the student's parent or guardian physically move to Charleston County and declare it as their domicile The student's parent or guardian must sign an affidavit stating that he or she and the child are domiciled in Charleston County before enrollment/attendance at the AMHS will be allowed See Plaintiffs' Exhibit # 34

(6) I am mother and guardian of Plaintiff Storm [REDACTED] ("Daughter") We live in the Berkeley County School District ("BCSD") which adjoins the CCSD My Daughter is a minor who applied to, and was accepted for admission by, the AMHS in January 2010 to begin the 9th grade on August 18, 2010 In response to the Defendants' unfounded assertion, at page 11 of their Petition, that Plaintiffs "promised in writing to provide AMHS with a Charleston County address of residence prior to minor Plaintiff's enrollment at AMHS [and] Plaintiffs' repeated promises to AMHS concerning Plaintiffs' intentions to relocate to Charleston County prior to minor Plaintiff's enrollment," the AMHS application asked for the street address" (and not a Charleston County address) of the student and parent. I stated that we currently live at a Berkeley County address because I assumed that if Daughter were accepted for admission at the AMHS, we would have to move to a Charleston County address before she could enroll there because part of the application stated that the student had to be a Charleston County resident. See Plaintiffs' Exhibit 36 Two months later Daughter received a letter of acceptance dated January 20, 2010, along with an AMHS Confirmation [of attendance] Form See Plaintiffs' Exhibits 5 & 6, respectively The Confirmation Form asked for the student's Charleston County Residence Address " Upon seeing that request, I filled in all of the blanks of that form (please note those portions in blue ink) except the blank requesting a Charleston County address At some point later I called the AMHS and spoke with whoever answered the phone, explained that we could not provide a Charleston County residence address because we don't live in Charleston County yet The lady answering the phone stated something to the effect of that "this issue comes up every year, you should just state that you'll be providing the address sometime before she enrolls" (I did not note the lady's name because it wasn't important at the time to do so, and, isn't important or relevant now) I stated on the Confirmation Form that 'we will provide [a Charleston County residence address] prior to enrollment' (Please note that that information, along with my Daughter's signature, is in black ink) After mailing the

Confirmation Form to the AMHS, I found out that a number of children who I knew to be living in Berkeley County were attending magnet schools in the CCSD. Registration and orientation for the 9th grade class was required not later than August 9, 2010. See Plaintiffs' Exhibit # 33.

7 In February of 2010, my Daughter was released by the BCSD to attend school in the CCSD with the caveat that BCSD would not be responsible for any tuition or transportation fees that the CCSD might charge to us. Upon seeing a reference to "tuition," I began to research the Education statutes of South Carolina. See Plaintiffs' Exhibit # 7.

8 After researching the statutes, I inquired of Defendants about their policy that would require me to move to Charleston County because I and my family do not want to move.¹ Defendants, through their attorney, John F. Emerson, initially indicated that for us to avoid moving to Charleston County, I could pay tuition, or buy real property in Charleston County with a tax assessed value worth at least \$300,000 under Code section 59-63-30, or get the consent of the CCSD Board of Trustees for an inter-district transfer to enroll my Daughter at the AMHS under Code section 59-63-490. See Plaintiffs' Exhibits # 11 & 13.

9 I offered to pay tuition but never received a response from the Defendants about the amount of that tuition. See Plaintiffs' Exhibits 25 & 26, p. 2.

10 I also began negotiations to purchase real estate in Charleston County. See Plaintiffs' Exhibits 25 & 26, p. 2.

11 I also requested the consent of the CCSD Board for an inter-district transfer pursuant to 59-63-490 by writing a letter to the CCSD's Superintendent on May 11, 2010. See Plaintiffs' Exhibit # 16. In response to that letter, Defendant McGinley called me on May 25, 2010 to inform me that the AMHS is reserved for Charleston County residents only, and that she would recommend that the Board not allow Daughter to attend the AMHS. I inquired about being able to speak to the Board but Defendant McGinley stated that the Board would make its decision in a "closed" executive session, and that I could not appear or speak at that session. I then asked about an appeal of that decision and Defendant McGinley stated that there would be no appeal from the Board's decision. I explained that, although I did not want to do so, I most probably would have to ask a court of law to decide the issue to which, among other statements, Defendant McGinley responded: "Well, do what you gotta do" and "You will have to take it to court" and that she would let me know the Board decision on June 8 after the Board meeting of June 7th (which did not actually occur until June 14th). See Plaintiffs' Exhibit # 16, 18 and Complaint.

¹ Besides uprooting Daughter from our neighborhood of 20 years, her sibling would also be uprooted from friends, neighbors, sports teams, etc. Due to economic conditions in general, we would be unable to sell our house. Purchase and/or rental of another house, plus maintenance, taxes, and utility costs of two houses, would be very expensive. Plaintiff McSwain is also an appointee to several governmental bodies in the City of Goose Creek, Berkeley County, those positions would have to be resigned.

12 I received a letter dated June 7, 2010 from the CCSD's attorney wherein he confirmed the information that Defendant McGinley gave to me during our phone conversation in late May. My Daughter must live in Charleston County to enroll at the AMHS. See Plaintiffs' Exhibit #21.

13 After further correspondence, via email with CCSD's attorney wherein he confirmed that the board would not afford a hearing to me and my Daughter, I, at the attorney's instruction, wrote a letter to him, dated June 12, 2010 asking the CCSD Board to accept my Daughter as an inter-district transfer student pursuant to 59-63-490 which would not require me and my family to move to Charleston County. See Plaintiffs' Exhibits #17, 18, 19, 20, 25 & 26.

14 The Berkeley County high school that Daughter would otherwise attend is expected to have approximately 2,400 students enrolled in August, 2010, and routinely has a minimum of 35 students in its classes.

15 BCSD does not have an academic magnet high school.

16 I know I sound like a bragging parent but my Daughter has a high degree of intellectual capacity, having been identified as gifted and talented by the SC Department of Education criteria, therefore, her education will benefit by attending a school with a rigorous curriculum, with her academically gifted and motivated peers, and one with smaller classes of students. See Plaintiffs' Exhibit #1, "Gifted and Talented Facts" defining "gifted" as students who give evidence of high achievement capability in areas such as intellectual, creative, artistic or leadership capacity, or in specific academic fields, and who need services and activities not ordinarily provided by [a regular] school in order to fully develop those capabilities. See Plaintiffs' Exhibit #2, Chapter 4, 'Finding a Good Educational Fit,' A Parent's Guide to Gifted Children. For more information about the special educational needs of intellectually gifted children, also see <http://www.youtube.com/watch?v=zxKA1Ah5XSU&feature=related> <http://www.youtube.com/watch?v=UP-uEX8hGzI&feature=related>

17 Thus far by being in classes through middle school that have catered to academically gifted students, my Daughter has performed very well academically. Standardized test scores and grades for her in the Fall of 2009 were 99% in reading (equivalent of 2nd year college student), 98% in math, 95% in language, 94% science, rhetorical skills -100%. See Plaintiff's Exhibit #4. However, the BCSD does not have a high school that will challenge her to her full potential academically. It does not have an academic magnet high school.

18 Additionally, my Daughter has a hearing impairment, that impairment is best, and specially, accommodated by attending a school where the number of students in a classroom is as small as possible because, among many other reasons, smaller classes ensure an acoustically quieter classroom and a greater degree of individualized attention from the teacher – both of which are imperative to the education of a hearing impaired

student. See Plaintiff's Exhibit 3, letter from Neville Swink Morris MSP, CCC-SLP Cert. AVT Coordinator Pediatric Speech-Language Pathology at MUSC and Certified Auditory-Verbal Therapist. "Storm should be in a class with the smallest number of students possible due to there being fewer distractions, less noise, and more individualized attention from the teacher." Unbeknownst to me until August 17, 2010, every classroom in the AMHS has a "built in sound system" that projects the teacher's voice into all corners of the room. The BCSD high school for which Daughter is otherwise zoned to attend does not have such a system. The AMHS sound system will be extremely helpful in accommodating my Daughter's hearing impairment.

19 The CCSD Board, on June 14, 2010, without affording me or my Daughter a due process hearing, after its attorney informed it that I had sent a very detailed letter regarding my Daughter's inter-district transfer request under S.C. Code 59-63-490, after it did not read the letter, and after refusing to postpone consideration of my Daughter's transfer request until after the Board members could at least read the letter, voted unanimously and then issued a final, administrative decision that I and my family must establish "residence and domicile in Charleston County before school starts [on August 18, 2010]" in order for my Daughter to enroll at the AMHS. See Plaintiffs' Exhibits 27 (p. 4) & 28.

20 Although it was voted upon in "open session" during Defendants' public meeting on June 14, 2010, Defendants' decision was discussed and made in "executive session" that was closed to the public, including me and my Daughter, and it was rendered without a due process hearing being afforded to us despite my requesting one. On June 22, 2010, I received official notice of the board's decision in a June 16, 2010 letter from CCSD's lawyer. See Plaintiffs' Exhibit 28.

21 Although I had already requested to be heard prior to the Board's rendering its decision to not grant an inter-district transfer under 59-63-490, and only out of caution to protect our procedural due process rights while I pursued a declaratory judgment action in civil court, I petitioned Defendants for a *de novo* hearing regarding its decision, however, to ensure that we would not be time-barred from doing so, I have since appealed that administrative decision to the Charleston County Circuit Court pursuant to 59-19-560.

22 The Board, through its in-house attorney, has now stated that because the AMHS is a magnet school, as opposed to a non-magnet school, my Daughter will not be allowed to enroll at the AMHS unless I and my family establish our "residence and domicile" in Charleston County. The only reason that the Defendants have given for that policy and decision is that the AMHS is reserved for students who are domiciled in Charleston County. See Plaintiffs' Exhibit #28.

23 On June 28, 2010, I filed a declaratory judgment action to have the court issue an order declaring our rights under 59-63-30 and 59-63-490, specifically, whether we must establish residency and domicile in Charleston County before my Daughter can enroll in the AMHS.

24 On July 28 2010, the court found that it did not have original jurisdiction to declare our rights under 59-63-490 due to my appeal of the Board's decision under that statute however, under 59-63-30 it ordered that I and my family do not have to establish residence and domicile in Charleston County, and that my Daughter is entitled to enroll in the AMHS on or before August 9, 2010, so long as we purchase real property in the CCSD with a tax assessed value of \$300 00 or more not later than September 30, 2010

25 On or about August 5, 2010, Defendants filed a Notice of Appeal of the July 28 order

26 On August 9 2010, my Daughter purchased real property in the CCSD with a tax assessed value greater than \$300 00

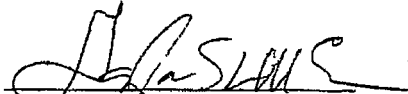
27 On August 13 2010, the lower court ordered that the AMHS enroll my Daughter which the principal very graciously did so that same afternoon. My Daughter very happily began attending the AMHS on the first day of the academic school year, August 18, 2010

28 I have followed and guided my daughter's education very carefully and closely for the past nine years. I have sat in many of her classes, observed many teachers, and interacted extensively with school administrators to ensure that she is receiving the best and most appropriate education. I have visited and evaluated two different BCSD high schools and have visited and evaluated the AMHS. By far, the AMHS is the best, and the only fit in the immediate geographic region, for my Daughter due to, among other things, its smaller class sizes, due to its being populated only by gifted and academically motivated students, due to its 20 to 1, student to teacher ratio, due to its rigorous curriculum, and due to the sound system found in each classroom. See Plaintiffs' Exhibits 25 & 26

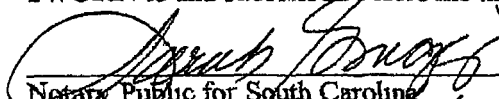
29 In response to the Defendants' assertion, at page 11 of their Petition, that "Plaintiff McSwain has repeatedly represented that she will relocate her residence to Charleston County in order to enroll her daughter at AMHS if necessary" I have done so however, the Defendants fail to state that I have repeatedly represented that I will relocate my family if the law requires me to do so and not because the Defendants illegally require me to move and then to sign an affidavit stating that my residence and domicile are in Charleston County. If this court "vacates" the lower court's order that lifted the automatic stay then we will be required to establish our domicile in Charleston County so that my daughter can continue to attend the AMHS and, we will do so, however, this court will then be giving the Defendants, via legal procedure rather than through legal merit, the result that the Defendants are seeking to obtain in their appeal of the lower court's order. Make the Plaintiffs establish their domicile in Charleston County. After Plaintiffs move to Charleston County, the issue on appeal - does the law require Storm M. H. to move to Charleston County to attend the AMHS - will become moot.

30 I have also attached hereto letters and email amongst Judge Nicholson, Mr. Childs

and me, four in total, dated July 21, August 10 and 11, 2010 that are relevant to the proceedings in this case


Gayla S. McSwain

SWORN to and subscribed before me this 3 day of September 2010


Notary Public for South Carolina
My commission expires Feb 4, 2020

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

THE COURT OF COMMON PLEAS
2010-CP-10-5197

ORIGINAL

STORM [REDACTED] H [REDACTED], a minor)
by her parent, Gayla McSwain)
ET AL)

TRANSCRIPT OF RECORD

vs)

CHARLESTON COUNTY SCHOOL)
DISTRICT BOARD OF TRUSTEES and)
NANCY MCGINLEY, ET AL)

JULY 19 & 22, 2010
CHARLESTON, SOUTH CAROLINA

B E F O R E

THE HONORABLE J C NICHOLSON, JR

A P P E A R A N C E S

GAYLA S L MCSWAIN, ESQUIRE
APPEARING PRO SE

JOHN M REAGLE, ESQUIRE
KENNETH L CHILDS, ESQUIRE
JOHN EMERSON, ESQUIRE
ATTORNEYS FOR DEFENDANT

VIVIAN CROSS
SHARON D JONES,
OFFICIAL COURT REPORTERS

I N D E X

(Index at rear of Transcript)

WITNESSES

GAYLA MCSWAIN

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* * * JULY 19, 2010 * * *

1

2

3 THE COURT Good morning Let me see, Ms McSwain?

4 MS MCSWAIN Yes, sir

5 THE COURT And Mr Emerson?

6 MR EMERSON Your Honor, I'm John Emerson, but
7 we're represented here today by Mr Childs and Mr Reagle
8 from Childs & Halligan

9 THE COURT Mr who?

10 MR EMERSON Mr Ken Childs and Mr John Reagle
11 from Childs & Halligan

12 THE COURT Okay Mr Childs, how are you doing?

13 MR CHILDS Just fine, Your Honor

14 THE COURT And who else?

15 MR REAGLE John Reagle, Your Honor

16 THE COURT How about y'all come back here in the
17 conference room and let me talk to you for a few minutes

18 (After a recess, court reconvened)

19 THE COURT Okay All right Having had a
20 pretrial conference with the attorneys on Storm [REDACTED]
21 H [REDACTED], et al, vs Charleston County School District with
22 the attorneys -- the Charleston County School District has
23 filed a motion And the first thing we're going to do
24 this morning is hear that motion

25 The Plaintiff has filed a pretrial brief and a

1 Complaint And the exhibits are attached to the motion
2 about non-resident students and the School Board policy
3 Also attached -- application for the Academic Magnet High
4 School will be attached and made part of the record And
5 the memo and the motion for the dismissal and the
6 Plaintiff's memo are all made part of the record

7 I'll mark them all as Court's exhibits 1 and 2

8 And the attachments are also made part of the record The
9 only thing I understand that the parties need to make part
10 of the record is the application itself to the Magnet High
11 School And my law clerk is downstairs running a copy of
12 that off for the School Board, which I'll mark as Court's
13 Exhibit No 3

14 Is there anything else that we need to mark as
15 Court's exhibits for the court to make a decision on the
16 Motion?

17 (Court's Exhibits Nos 1, 2 and 3 received)

18 **MS MCSWAIN** The only other thing, Your Honor, is
19 I asked your law clerk to also print off -- there's an
20 ~~affidavit~~ affidavit that the school district requires prospective
21 students' parents to sign, basically stating ~~that~~ that they are
22 residents of Charleston County before a child will be
23 allowed to enroll into a Charleston County School District
24 school

25 **THE COURT** Okay And I will also make a copy of a

1 correspondence attached to the Complaint as a Court's
2 exhibit in making the decision on this case

3 MS MCSWAIN Yes, sir And I would just ask the
4 court -- I don't know what position they're going to take
5 as far as presenting testimony, if they're going to
6 present Mr Emerson as a witness, then I would like to
7 enter into evidence the different emails that have been
8 exchanged between Mr Emerson and I over the last several
9 months

10 THE COURT Well, what -- what I'm planning on
11 doing, okay --

12 MS MCSWAIN Yes, sir

13 THE COURT -- is I'm going to listen to the
14 motion And I did not receive the motion and the
15 memorandum until this morning I'm going to listen to
16 both parties and I'm going to take it under advisement
17 because I want to read all the information that both
18 parties have supplied to the court And I understand the
19 attorneys are going to talk to see if they can work out
20 something agreeable

21 And if, in the event that the parties want to
22 supplement the record, I will be available Thursday
23 morning for the supplementation of any record that the
24 parties would like to make in reference to the motion as
25 well as to the DJ action

1 MS MCSWAIN Yes, sir

2 THE COURT Okay And -- and, Ms McSwain, is
3 there anything else that you want to make part of the
4 court's record in -- pursuant to your DJ action?

5 MS MCSWAIN I would have to supplement on
6 Thursday, I suppose, Your Honor Again, I would state
7 that if -- depending on what they present, as part of
8 their motion, any witnesses, anything like that, I would
9 like to -- to make part of the evidentiary record the
10 emails that were exchanged between Mr Emerson and I over
11 the last several months So I guess we'll just have to
12 kind of wait and see what they do --

13 THE COURT Okay All right I will -- I will
14 make that opportunity to both parties Thursday I will be
15 here Thursday And if you come, fine If you don't, I'll
16 make a decision on whatever is before me, okay?

17 MS MCSWAIN Yes, sir

18 THE COURT All right Mr Childs, or whoever is
19 going to make the argument -- I'm sorry -- Mr Reagle, you
20 going to make them or Mr Childs?

21 MR REAGLE Mr Childs, Your Honor

22 THE COURT Mr Childs Okay

23 MR CHILDS May I suggest this, I would like to
24 make a brief opening statement and I assume that Ms
25 McSwain would have an opportunity to respond, and then I

1 would like for Mr Reagle --

2 THE COURT That's fine

3 MR CHILDS -- to do the reply

4 THE COURT That's fine That's fine

5 MR CHILDS Your Honor, first of all, officially
6 on the record, we want to apologize to the court and the
7 court personnel for not getting the pleadings in your
8 hands prior to the hearing this morning It was a
9 misunderstanding and we certainly regret the inconvenience
10 that that has caused We appreciate the time you've
11 already devoted to this

12 And I also want to say for the record, just very
13 quickly, that the positive thing that's going on here is
14 that we have a bright, capable student in the Berkeley
15 School District, who wants to move to Charleston

16 We have a devoted parent obviously That's what
17 the schools need And we have -- we can all be proud of
18 the fact that we've got one of the ten best high schools
19 in the United States located in South Carolina, here in
20 Charleston County

21 Now, basically, I think what Your Honor has already
22 pointed -- put your finger on part of this case, is
23 59-19-90 -- section 9, our statute that I believe has been
24 on the books almost a hundred years And it lists the
25 powers of school trustees And it clearly says -- and

1 Your Honor has also pointed out that this is really --
2 this particular provision has never even been construed by
3 the courts, which is one way of saying there hasn't been a
4 lot of debate about what it means

5 And I want to say if you look at the big picture
6 here, there are almost 700,000 students in South
7 Carolina's 85 school districts And what is really going
8 on here is the Plaintiff is asking the court -- or the
9 courts of South Carolina to get in the business of
10 assigning students You can imagine what many of your
11 colleagues and the Appellate Court is going to think about
12 that

13 In fact, we have cited some cases, a recent case --
14 the Byrd case recently decided out of Lexington, is that
15 -- I argued where the Supreme Court of our state said that
16 Circuit Courts do not have jurisdiction to hear ten day
17 suspension of pupils They say if the student is
18 expelled, you can appeal it to the court, but we're not
19 going to allow a multitude of suspension cases to be
20 brought into court

21 We -- and attached to the pleadings that we gave
22 the court this morning, we included the Andrews v
23 Dorchester County School District II, which is a Court of
24 Appeals decision written by Judge Goolsby, in which he
25 said the Circuit Courts are not -- don't have jurisdiction

1 to hear a case unless they have a final order from -- from
2 the County Board, from the School Board

3 And, in fact, in that case you had a letter --
4 which you really don't have here -- a letter from the --
5 from the attorney representing the County Board saying
6 what their position was And the court -- our Appellate
7 Court said that's not an order That's the attorney's
8 opinion We have to have an adjudication or a ruling by
9 -- by the Board itself

10 We also cited the Adamson case It's another case
11 that I was involved in dealing with Richland School
12 District One, in which the same thing that was being
13 attempted here, we had an employment dispute before the
14 School Board And the lawyer, a very good lawyer, Mr
15 Nichols, Richard Gerber's (ph) partner, went to the Court
16 of Appeals and filed a declaratory judgment action, just
17 what's going on here And said to the court, tell us what
18 the law is about this employment dispute

19 And our appellate court, in the Adamson case said,
20 listen, we're not going to get into giving you an advisory
21 opinion or entertain a declaratory judgment action when
22 you've got something pending before the School Board Let
23 the School Board rule on it and then bring it Present
24 your arguments first

25 We've already seen an example of that this morning

1 in our discussions in the -- in the lengthy memo that I
2 got yesterday from Plaintiff's counsel -- and I appreciate
3 the fact that she sent it by email to us My partner got
4 it to me yesterday, 17 pages long For the first time,
5 she raises an equal protection argument That has never
6 been presented to the School Board

7 So, just to nail things down here, I want -- I want
8 to say what's really going on here is do the Circuit
9 Courts of our state, and are the Appellate Courts going to
10 allow Circuit Courts getting into the business of
11 assigning students

12 Charleston is a good -- is an interesting district
13 This is the second largest school district in the state
14 They have about 44 or 45,000 students Probably 50 or 60
15 schools They have a number of magnet schools Can you
16 imagine how expensive this magnet school is? They only
17 have 20 kids to the class They only have 500 students on
18 the campus You're familiar with high schools in Anderson
19 where they're 1500 students on the high school campus

20 This is a very expensive proposition and you can
21 understand -- and I would say that in the Board's
22 policy -- and this is where opposing counsel and I
23 disregard -- in their policy they say "our magnet schools
24 are only open to residents of the county" They say that
25 in their policy

1 In the statement -- and we attached this to the
2 pleadings -- the procedures for applying to the magnet
3 school, it says you must get admitted and you must be a
4 resident of Charleston County So, with all due respect,
5 Plaintiff has been on notice that this was an issue and
6 she was trying to get her -- I applaud her for her
7 efforts -- she's trying to get her daughter in the best
8 school she can And she, in effect, was asking the School
9 Board, please make an exception Let me buy property
10 Let me pay the tuition

11 And the Board in effect, to the extent that they've
12 considered the matter -- and you know my position is that
13 they have not fully considered it To the extent they
14 have considered it, they've said to this point -- and
15 we're going to ask them today if they want to reconsider,
16 and we're going to tell the court tomorrow what their
17 position is But they have said no We're not going to
18 back away from this, to go to one of our magnet schools

19 So, the issue -- and I think Your Honor has already
20 clearly said this in chambers, it's no question that her
21 child has a right to come into the Charleston School
22 District if she has assessed property of \$300 or if she
23 pays tuition The issue here is can she pick the school

24 Now, let me take -- fortunately here we're talking
25 about an academically talented student, but can you

1 imagine the furor that would exist if we were dealing with
2 a star football player and he wanted to pick the school in
3 Charleston or if some coach wanted him? School Boards
4 have to -- have to go about this business of assigning
5 students very thoughtfully

6 So, to summarize very quickly in a minute, we --
7 we filed a Motion to Dismiss based on 12-B-1, no
8 jurisdiction I know the court has already said you
9 disagree with me on that

10 **THE COURT** I don't disagree with you, if in fact
11 she has exhausted administrative remedies, okay I don't
12 disagree with you on that aspect of it

13 **MR CHILDS** All right

14 **THE COURT** I just think, as a whole, subject
15 matter -- the court does has subject matter over the
16 schools Now, whether she exhausted administrative
17 remedies would affect subject matter jurisdiction -- I
18 agree with that Okay Let me -- I miss -- I don't want
19 you to misquote me I --

20 **MR CHILDS** Okay I didn't mean to misquote you
21 and I understand That is our second position I'm
22 saying first, I -- I acknowledge that you have
23 jurisdiction over final orders of the Charleston School
24 Board And I take the position that they haven't made an
25 order here

1 **THE COURT** Right

2 **MR CHILDS** And then secondly, I say clearly in
3 this case, because it's right in the record and I have --
4 I have a copy -- and I want to make sure the court has
5 this -- she has a petition right now pending before the
6 Charleston School Board, which they have not ruled on It
7 raises all these issues So, my second argument is,
8 clearly there's been no exhaustion here

9 Now, I'm not saying that in any declaratory
10 judgment situation there must be an absolute exhaustion,
11 but I'm saying in the context of this case, where what's
12 really going on is what school in Charleston County a
13 student is going to go to, I cannot imagine a situation
14 where a court would not want to know, well, how does the
15 Board feel about this And I don't want a little flimsy
16 email or some motion that they passed, I want to see a
17 record I want to see a final decision by the School
18 Board as to their position about the assignment of
19 students, and we don't have that here

20 We do not have -- the Board -- in all due respect,
21 Mr Emerson was trying to get a fast resolution on this
22 He said, you know, here's a child whose been admitted
23 She's not a resident How do you feel about this? And
24 the Board said, let's admit her, but she must be a
25 resident They didn't hear -- they didn't hear all of her

1 arguments They didn't have her well written lengthy
2 letter

3 It's conceivable that the Board can change its mind
4 when they hear all that's transpired here this morning and
5 if they met and saw this parent It's conceivable I
6 don't think so because of the political problem that I've
7 already described And that's really the essence of my
8 argument, there's clearly no exhaustion here

9 We've handed up to the court the pertinent cases
10 and you've been extremely accommodating and we appreciate
11 it

12 **THE COURT** Well, let me ask you one question
13 When you talk about an order from the School District, I
14 would presume that would be an order from an -- an appeal
15 from some type of issue, is that what you're referring to?

16 **MR CHILDS** Yes, Your Honor And this is the
17 interesting situation because you're very familiar -- in
18 Anderson, you have an active County Board, one of four
19 counties in our state that still has a County Board And
20 you have five districts and things routinely come to the
21 County Board

22 **THE COURT** Right

23 **MR CHILDS** Well, in Charleston, you don't have
24 different districts There's only one district So, the
25 -- the appeal procedures in 59-19-510 through -- 59-19-510

1 through 560 say that even if she had a hearing -- a full
2 hearing in front of the School Board, and they ruled
3 against her, she would still have to come back to the
4 Board and ask them to reconsider before she could come to
5 court And you know, really, that makes sense If we're
6 talking about 700,000 students, we don't want all these
7 students before our circuit judges demanding to go to this
8 school or that school

9 So, look -- look at 59-19-510 through 560, that
10 sets out the procedure There's a specific statute that
11 says where the County Board and the district board have
12 been combined, you have to go back to the --

13 **THE COURT** Yeah, to the County Board, right

14 **MR CHILDS** -- for a second time

15 **THE COURT** Yeah I'm used to the ones coming from
16 the County Board

17 **MR CHILDS** And if we were in Anderson, I would
18 say to you the County Board has ruled

19 **THE COURT** Right

20 **MR CHILDS** And that's clearly the case here

21 **THE COURT** Would y'all -- would the parties take a
22 look at this application that was taken off of the School
23 Board -- is that the right application before I mark it as
24 an court's exhibit? It's a blank copy of application

25 **MR EMERSON** Your Honor, I -- I -- this certainly

1 is consistent with my recollection of what the application
2 looks like I'm not -- I have no doubt this was what was
3 downloaded, so I have no reason to think this is not the
4 -- the correct application I guess --

5 **THE COURT** Is it the right application?

6 **MR EMERSON** I don't have any -- I don't -- I
7 don't -- I don't doubt that it is, but I --

8 **THE COURT** Okay I'll mark -- it's a blank copy
9 and I'll mark it as a court's exhibit

10 **MR EMERSON** Yes, sir

11 (Court's Exhibit No 1 received into evidence)

12 **THE COURT** Yeah And remind me to mark those
13 other things as court's 2 and 3 --

14 **MR EMERSON** Your Honor, could I just ask -- I
15 know I'm not appearing here -- but if there's a signature
16 page at the end of that application -- because I'm not
17 intimately familiar with the application I -- that's why
18 I'm a little concerned about authenticating it, if you
19 will, for the court

20 **THE COURT** Well, this is just a blank copy, I
21 mean

22 **MR EMERSON** Yes, sir

23 **THE COURT** It's not -- it's not the application
24 made in this case

25 **MR EMERSON** No, sir I'm not suggesting that I

1 just meant -- I assume this is --

2 **THE COURT** It has a signature for the teacher on
3 each page, recommendations as -- English recommendations,
4 English Arts, or Social Studies, Science, Mathematics
5 And there's a place for the -- name and signature of the
6 official school personnel And I guess -- I don't see
7 where the legal guardian or parent has to sign it
8 anywhere

9 **MR EMERSON** That's the only thing that -- that I
10 noted There is no signature page for the parent That
11 seems odd to me, but I don't know that it would --

12 **THE COURT** Well, as a School Board attorney, maybe
13 you can modify your application

14 **MR EMERSON** Well, I --

15 **THE COURT** Okay I did not see a place where the
16 parent has to sign it There's numerous places for
17 teachers on recommendations on the child to sign I may
18 have overlooked it, okay

19 **MR EMERSON** I just don't want to go on record
20 saying that is an accurate, true copy of the application,
21 because I cannot say for sure that it is because I don't
22 deal with it every day

23 **THE COURT** Well, then, what do you want me to do?

24 **MR CHILDS** Well, may I suggest this, Your Honor,
25 we'll confer with the school --

1 **THE COURT** I mean, if it's not the right
2 application, then get me the right application

3 **MR CHILDS** We'll get it to you --

4 **THE COURT** That's all I can tell you, okay I
5 mean, I'll allow you to substitute it if it's not the
6 right application

7 **MS MCSWAIN** Your Honor, as far as I know, that is
8 the correct application

9 **THE COURT** Okay If it's not, Mr Childs, just
10 get me the right one, okay?

11 **MR CHILDS** Will do

12 **THE COURT** All right Yes, ma'am

13 **MS MCSWAIN** I apologize, I thought that Mr
14 Reagle was going to be speaking

15 **THE COURT** I think what's going to happen Mr
16 Reagle wants to speak after you, then I'll allow you to
17 rebut Mr Reagle, okay?

18 **MS MCSWAIN** Yes, sir

19 **THE COURT** I'll allow you to address whatever he
20 says after he speaks, okay?

21 **MS MCSWAIN** Yes, sir I pretty much just want to
22 say what's written in my brief, it took a while to write
23 that and to research the history of Charleston County
24 School District

25 I will briefly state this, Your Honor Mr Childs

1 stated that -- that for some reason he thinks the
2 Plaintiff is asking the court to go to -- this is
3 assigning a student within the School District, but
4 actually what we're asking this court to do is to not
5 allow the School District to exclude students who are
6 eligible to attend the Charleston County School
7 District

8 It's all pretty clear under 560, a student can
9 either pay tuition or can purchase property in Charleston
10 County with an assessed -- a tax assessed value of \$300 or
11 more Your Honor, that's an eligibility requirement, an
12 entitlement It doesn't require consent from the
13 Charleston County School Board The legislature wrote
14 that law

15 It's basically, Your Honor, they want to make sure
16 the School District in which the child attends school pays
17 either tuition or taxes That's the whole purpose behind
18 that statute, Your Honor And, again, it doesn't require
19 consent from the School Board

20 Under 490, the School Board does have the
21 discretion to admit a child if the child can be specially
22 accommodated, either the child's education or physical
23 disability, whichever or both in this situation

24 And, of course, as the court knows, the
25 administrative agency, being an arm of the government, is

1 required to exercise its discretion reasonably and
2 responsibly After all, they get their power from the
3 citizens, and that's who their decisions affect, are the
4 citizens

5 So, there's actually two different things going on
6 here One, is an entitlement, no consent required No
7 one's discretion, consent required And again, it cannot
8 be a capricious discretionary decision

9 Your Honor, it really doesn't matter how expensive
10 this school is Again, the statute has a specific formula
11 that a non-resident child has to follow to pay tuition I
12 think it's -- I want to say its 480 or 490 But basically
13 it requires a non-resident child -- parent in this
14 situation, to pay anything above and beyond the expense,
15 other than what the State has allocated for that child

16 This is legislative action Legislators,
17 hopefully, do a pretty good job at taking testimony and
18 deciding what -- you know, what's best as far as the law
19 goes And this court, of course, interprets that law
20 That's the separation of powers

21 But, again, the argument that somehow this is so
22 expensive for Charleston County is really irrelevant The
23 statute says the child can pay the difference There's a
24 specific formula If the legislature didn't contemplate a
25 child being able to pay that, why in the world did the

1 legislature put that formula in there, into the statute,
2 or the child's parents can go and buy property at an
3 assessed value of \$300 or more, which was a long time ago
4 Maybe the legislation needs to go back and increase that
5 --

6 **THE COURT** Probably need to raise that value a
7 little bit on today's market

8 **MS MCSWAIN** They probably do But the point is
9 that --

10 **THE COURT** It would be hard to find \$300 --
11 property worth \$300 -- that you could buy for \$300

12 **MS MCSWAIN** Yes, sir And the school districts
13 have made this argument in the past, in 1950 the Moseley
14 decision, which I cite in my brief Basically in that
15 case, you had some parents who owned property in two
16 different adjoining school districts And the court said
17 that you can send your child to either one because you're
18 paying property taxes in both of those districts --

19 **THE COURT** But let me ask you this on that subject
20 matter, you're talking about it's an entitlement under the
21 state statute And I understand that you have a dispute
22 -- your position is your -- your child was accepted at the
23 magnet school by the school And the defense's position
24 is provided they established residency in Charleston
25 County -- the acceptance with a qualification according to

1 the Defendant Your position is they were accepted
2 unilaterally without any qualifications, is that correct?

3 MS MCSWAIN Your Honor, the way I recall it is --
4 and you might have to put me under oath, I don't know --
5 but the way I recall it is, is that the application does
6 not require -- it doesn't even ask about residency I
7 think it does ask for the address, but I'm not sure

8 My recollection is whatever I submitted, I put in
9 parentheses current address because I was aware that
10 Charleston County did take the position that with regard
11 to this particular magnet school, that they required the
12 children to actually live in Charleston County And the
13 reason I was aware of that, also on their web site, and I
14 believe that they have submitted this as a part of their
15 brief -- and it appears, I'm not sure they meant to do it,
16 but they're trying to represent that is their policy And
17 it's -- it's a piece of paper --

18 THE COURT I guess my second question to you is
19 this Let's assume that it is the policy of the School
20 Board -- I'm not trying to say it is -- but for purposes
21 of my question, assume that the Charleston County School
22 Board has a policy to go to this particular magnet school,
23 they have to be a resident of Charleston County

24 MS MCSWAIN Yes, sir

25 THE COURT How does that square with your 59-50

1 sections where you can own property and pay tuition? Do
2 you think the school districts can require residency when
3 the state statute does not require it under the code
4 section for property owned in the district?

5 **MS MCSWAIN** That would be correct, Your Honor I
6 do not think that a child has to physically live in the
7 Charleston County School District in accordance with that
8 statute that you just referenced because it gives you the
9 choice --

10 **THE COURT** But do you think the school district
11 can restrict that, by requiring for a particular school
12 that they be a resident of the county?

13 **MS MCSWAIN** No, sir, I do not

14 **THE COURT** My second question then, why do you
15 think that gives you the right or your child the right to
16 pick the school that they want to go to in a county?

17 **MS MCSWAIN** That was the next point, Your Honor
18 Under 59-19-90 (9) what they have done -- and they're
19 allowed to do this, I think, is they can restrict access
20 to the school under that statute, which says transfer and
21 assign by setting up specific qualifications for the
22 school, for magnet schools This statute doesn't even
23 address, which is understandable, it doesn't --

24 **THE COURT** Even though they didn't have magnet
25 schools when they passed this statute

1 **MS MCSWAIN** Exactly Exactly So, what you have
2 to do, Your Honor, is this court is required to construe
3 documents that -- or excuse me -- statutes And in my
4 opinion, if you look at 560 and 19-90 (9), basically, Your
5 Honor, I think the only interpretation the court can come
6 up with is that a non-resident child who meets the
7 qualifications, the admission qualifications for a magnet
8 school, is on the same footing as a resident child Both
9 of them have to show residency, either by living there, or
10 through being a non-resident, a paying student or paying
11 taxes, but they both also have to qualify to get in That
12 is what 15-19-90 (9) allows them to do They can't just
13 transfer a student within their district to the Academic
14 Magnet

15 Every child has to go through a very rigorous
16 admissions process And I have attached as Exhibit D to
17 our legal brief, those exhibits that the school was
18 considering, that they require the guidance counselor at
19 my child's middle school to send to them as part of the
20 application process

21 So, you have a resident child and non-resident
22 child Both are allowed to go Both are eligible to
23 attend the Charleston County School District, but it
24 doesn't stop there You're right, Your Honor The filter
25 is 15-19-90 (9) which they're allowed to use as

1 qualifications --

2 **THE COURT** So, what you're saying, as far as the
3 magnet school is concerned and under 59-19-90 subsection
4 9, if your child did not qualify for the magnet school
5 after application, then the School Board would have the
6 right to place your child somewhere in the Charleston
7 School District? You wouldn't be able to choose But
8 since this --

9 **MS MCSWAIN** Correct

10 **THE COURT** -- particular school requires special
11 -- I'm not that familiar with the school, but apparently
12 it's -- it's competitive to get in It takes the brighter
13 students If your child -- since they pick and choose
14 students within the school district because of the state
15 statute, you have the right to apply to that school And
16 if they accept the student on her qualifications on
17 grades, et cetera, whatever the requirements are by the
18 school, then she's accepted, they can't impose residency
19 for that particular school?

20 **MS MCSWAIN** Right, Your Honor Because that
21 would be -- that would be -- the law requires equal
22 protection And what you're -- what -- and what that
23 means, Your Honor, is that they can't impose some sort of
24 filter that would not allow a non-resident child to be
25 eligible to even apply to the magnet school

1 And I get into this in my brief, Your Honor, but
2 very briefly In my opinion, this situation needs to be
3 evaluated as a rationale relationship between the law and
4 how it's being defined In this situation, the reason you
5 have the 560 is for Charleston County to be able to
6 collect from non-resident students money, to help support
7 the school, which makes perfect sense, and that's why the
8 statute is there Sorry -- I forgot my train of thought
9 -- whatever that was

10 Um -- so the purpose behind that statute is to
11 allow them to collect money It doesn't matter whether a
12 non-resident student goes to a magnet school or non-magnet
13 school, the non-resident student has to pay either tuition
14 or property taxes, which is property So for them to
15 somehow apply this to keep non-resident students out,
16 doesn't accomplish their goal It has no relationship to
17 their goal of collecting money from non-resident students

18 **THE COURT** But shouldn't the school district have
19 the right to tell that non-resident student where he's
20 going to school based upon the -- the buildings, the
21 enrollment in the schools, etc etc etc ? I mean, I
22 don't -- do you really think that statute gives the
23 student the right to tell the school district what school
24 they're going to? I mean, even if you were a resident,
25 you can't do that

1 **MS MCSWAIN** Right If you're a resident, you
2 have to qualify to get in the Academic Magnet High School
3 If you're a non-resident, you have to qualify to get into
4 the Academic Magnet High School

5 **THE COURT** So, what you're -- what you're doing is
6 issuing out an exception under 59-19-90 subsection 9
7 because it's a magnet school?

8 **MS MCSWAIN** No, sir They're trying to carve out
9 an exception, like excluding non-resident students from
10 even being able to apply to that school, when they're
11 eligible to get into any Charleston County School --

12 **THE COURT** Well, but --

13 **MS MCSWAIN** -- so long as they qualify to get in
14 Your Honor, they have other magnet schools They have
15 those that are chosen by lottery Are they trying to say
16 now that a child who pays tuition, a child who buys the
17 property under the statute, that's entitled to do so, can
18 not even --

19 **THE COURT** Well, let's forget about the magnet
20 school for a minute, okay

21 **MS MCSWAIN** Yes, sir

22 **THE COURT** Do you think if you paid the taxes
23 and/or tuition, that you would have the right to tell the
24 school district your child is going to Wando vs
25 Strafford?

1 **MS MCSWAIN** No, sir Those are not magnet
2 schools

3 **THE COURT** Well, what -- why should magnet schools
4 be excluded on control of who goes there by the school
5 district?

6 **MS MCSWAIN** They're the ones that set up the
7 qualifications, Your Honor And non-resident children who
8 meet those qualifications, because they're eligible to go
9 and entitled to go, if they meet those qualifications,
10 they're just as entitled as the resident student is
11 They're the ones who set the qualifications

12 And, again, I think that they can do that under
13 19-90 (9) But they trying to say is 19-90 (9) allows
14 them to exclude non-resident students from magnet schools,
15 and I just don't think that that's what was intended,
16 particularly since magnet schools weren't even in
17 existence then

18 **THE COURT** Okay I -- I didn't mean to interrupt
19 your argument Anything else you want to tell me?

20 **MS MCSWAIN** No No Please, I like for the
21 court to ask questions because that's what you need to
22 know when you're asking

23 Your Honor, they keep alluding to this policy If
24 you look at the policy itself, there's nothing in their
25 written policy that says anything about a non-resident

1 child having to move to Charleston County It does say
2 underneath one section, that the children of Charleston
3 County School District Three are not allowed --

4 **THE COURT** Well, the preamble refers to Charleston
5 County residents, doesn't it? At least something I was
6 shown in chambers referred --

7 **MS MCSWAIN** That's not the policy That's what I
8 was trying to point out, Your Honor I think the thing
9 they showed you in chambers was not their policy

10 **THE COURT** What was -- what was it that I was
11 shown in chambers?

12 **MS MCSWAIN** I think it's attached to a copy of
13 their brief, is it not?

14 **MR CHILDS** It's policy JFAB It's attached to
15 the pleadings I gave to the court, isn't it?

16 **THE COURT** Yeah Here it is Policy J -- JFAB,
17 what's JFAB, what's that stand for?

18 **MR EMERSON** Your Honor, the School Board has a
19 big fat policy book and they go section A, section B,
20 section -- and this is section J

21 **THE COURT** Okay

22 **MR EMERSON** And it's one of the policies in
23 section J

24 **THE COURT** Okay That's for non-resident
25 students, right? And it has children of employees down

1 here?

2 MR EMERSON Correct

3 THE COURT Non-resident may not attend magnet
4 school programs?

5 MS MCSWAIN Yes, sir That's referring to
6 Charleston County School District employees

7 THE COURT That's not what I was referring to
8 You showed me something, Mr Childs, that you said in the
9 preamble of the application or something, that it referred
10 to residency?

11 MR CHILDS That -- that's also attached to our
12 pleading And the top of it reads, Application for
13 Academic Magnet --

14 THE COURT Magnet High School Okay

15 MR CHILDS And the second --

16 THE COURT Students must be a resident of
17 Charleston County, complete a -- AMHS application, is that
18 what you're referring to, admission requirements?

19 MR EMERSON Yes, Your Honor

20 THE COURT Well, that's basically her argument,
21 that you can't --

22 MS MCSWAIN You can't do that

23 THE COURT Okay All right I understand

24 MS MCSWAIN Here's the written policy, Your
25 Honor I'm not sure how they characterized that piece of

1 paper That's not an admission requirement But that is
2 the question before the court, is that admission
3 requirement that a non-resident child physically has to
4 move --

5 **THE COURT** So -- so -- really, your argument is
6 really very, very narrow as far as 59-19-90 (9), in that
7 it only applies to the magnet schools because the only way
8 you can get into that school is to meet their stringent
9 academic requirements, whereas you don't have that at
10 Wando High School? And you concede to the court that you
11 couldn't tell the School Board whether they would go to
12 Wando -- or what's another school, I -- that's -- the only
13 one I can think of right now is Wando or Strafford And I
14 know they have how many --

15 **MR REAGLE** Stafford's in Berkeley

16 **THE COURT** Oh, that's in Berkeley I'm sorry
17 What's another high school in Charleston County? I'm
18 sorry

19 **MR EMERSON** Burke

20 **THE COURT** Burke Yeah Burke is over there by
21 the Citadel

22 **MS MCSWAIN** Your Honor, I'm not sure what you're
23 asking --

24 **THE COURT** My -- my question, do you really think
25 being a non-resident student that you should have the

1 legal authority, the legal right to tell the School Board
2 whether your child should go to Wando or Burke High
3 School?

4 MS MCSWAIN I would say that if those -- if my
5 child had not qualified to get into one of their magnet
6 schools, yes, sir

7 THE COURT Okay And so -- so -- the exception
8 you're trying to present to the court is strictly limited
9 to the magnet type schools, that are separate from your
10 regular high schools?

11 MS MCSWAIN Yes, sir Because they're the ones
12 saying that the magnet schools are an exception to the
13 law

14 THE COURT Okay All right

15 MS MCSWAIN And I don't agree

16 THE COURT So, that's a real narrow exception to
17 59-19-90 subsection 9?

18 MS MCSWAIN Yes, sir

19 THE COURT Okay All right Anything else? And
20 the reason I'm asking these questions, just off the top of
21 my head, it just makes sense that the Attorney General's
22 opinion is probably correct that you can't -- you can't --
23 the -- a non-resident student cannot direct what school
24 they're going to

25 MS MCSWAIN Well, let's talk about that

1 statement, Your Honor, if that's what your proceeding on,
2 I need to get rid --

3 THE COURT All right

4 MS MCSWAIN -- of that misconception

5 THE COURT Okay All right Okay

6 MS MCSWAIN Okay In my brief, I basically state
7 that that is the only authority that they are citing, it's
8 dated 1988

9 THE COURT Right

10 MS MCSWAIN Academic High School was formed in --

11 THE COURT And when I asked that question, I
12 wasn't talking about the magnet schools, I was talking
13 about your regular high schools And I used the example
14 of Burke and Wando

15 MS MCSWAIN I would agree that the Attorney
16 General's opinion, although it's not binding on this
17 court, of course, makes sense with respect to non-magnet
18 schools

19 THE COURT Right That's what I was -- that's
20 what I was saying

21 MS MCSWAIN Yes, sir However, if you look at
22 the language of that opinion -- I'm trying to find it --

23 THE COURT I haven't read the opinion other than
24 what y'all told me it said in chambers

25 MS MCSWAIN I'm trying to find it right now

1 because that's pretty important

2 MR CHILDS I have it right here

3 MS MCSWAIN Here we go Your Honor, the
4 Defendant's attendance policy regarding non-resident
5 children, states students who qualify for attendance under
6 circumstances set out in 59-63-30 of the code shall not be
7 charged tuition Nothing in the policy states that a
8 non-resident child, who is entitled to attend a Charleston
9 County School District School, either by paying tuition or
10 by owning property, is not entitled to enroll in a magnet
11 school And further, there's nothing in their policy that
12 requires the child to move to Charleston County

13 I say that, Your Honor, because if you look at the
14 Attorney General's opinion, again dated 1988, it basically
15 supports our position conversely Because that opinion
16 states that the power of school districts -- and this --
17 this is when the Attorney general is talking about
18 59-19-90 (9), it says the power of school districts to
19 determine pupil assignments is not altered by the
20 provisions of school attendance based upon property
21 ownership under 56-63-30 Therefore, property ownership
22 in a district does not itself entitle a student to demand
23 attendance in a particular school within that district

24 Your Honor, we're not asking for admission to this
25 school based solely upon property ownership We're asking

1 because there are other reasons for her to get into this
2 school --

3 THE COURT Well, I understand your daughter has
4 been accepted by the --

5 MS MCSWAIN Yes, sir

6 THE COURT -- school

7 MS MCSWAIN She has been So -- but if you're
8 going to look at this opinion and -- it actually -- it
9 actually favors us Because this opinion basically says,
10 well, you know, if a child owns property there, they can't
11 tell the school district where they want to go The child
12 doesn't get to choose, the school district gets to choose,
13 which makes sense You've got the busing issues, you
14 know, all the practical problems of running the school
15 district But this opinion says that property ownership
16 itself doesn't allow it, but if there's -- meaning, Your
17 Honor, conversely, if there's other reasons other than
18 just owning -- property ownership of the child, if the
19 child needs to go to the school or wants to go to the
20 school, then they have consider that

21 And, Your Honor, actually in 1994 -- I'm trying to
22 find the case -- the Charleston County School District got
23 sued in the Federal Court -- and I can't find anything
24 today And that case was -- and it's the Ganoway (ph)
25 case in 1994 -- here we go, the United States District

1 Court, Charleston Division, found that when -- and we're
2 going -- I'm sorry -- I'm going to skip over the 490 now,
3 which is the discretionary issue, meaning that the child
4 can be specially accommodated under 490, they exercise
5 their discretion to allow the child as an inter-district
6 transfer, being that there is no residency requirements
7 The child doesn't have to own property The child doesn't
8 have to live there The child doesn't have to pay any
9 tuition The child is in another school district -- an
10 adjoining district has something that child needs So,
11 that's what that 490 is about and that's what this court
12 was talking about

13 June of 1994, that court found that when a
14 inter-district transfer is involved, a no-residency
15 requirement even being talked about, under 56-63-490, a
16 student states a valid reason to transfer between
17 districts, when one district provides programs to meet a
18 student's special needs or when the student wants to
19 attend a magnet school It's the first case I could find
20 that really, you know, directly addressed a magnet school

21 The court found further that although the school
22 board has the discretion to consider each transfer case on
23 its merits, the board must exercise that discretion in
24 accordance with law

25 So, Your Honor, I would have to say that when you

1 read the Attorney General's opinion, which is dated eight
2 years prior to the District Court, you have to bear that
3 in mind that this opinion basically supports our position
4 that we're not asking for either a transfer or to be
5 admitted -- because she's already been admitted -- but to
6 enroll would be a better term at this point in time -- to
7 enroll in this school based on property ownership

8 She has other valid good reasons to ask to go to
9 this school She has been admitted to this school, to
10 enroll in this school So, I would submit that this
11 opinion supports our position conversely --

12 **THE COURT** All right Well, what about Mr
13 Childs' position that you haven't exhausted your
14 administrative remedies? Now, I understand from reading
15 the pleadings that I've marked as a court's exhibit, that
16 the School Board met in executive session, took up the
17 issue And apparently a motion was made and seconded, and
18 the votes were carried where your daughter was accepted by
19 -- into the magnet school provided she established
20 residency And I think Mr Emerson, on behalf of the
21 School Board, wrote a letter to you to that effect

22 Now that, in essence, technically, according to the
23 legal jargon, is not an order under -- under the
24 Appellate's Court decision about a order before
25 administrative remedies have been exhausted, and this

1 court has jurisdiction to hear this mater That's the
2 first thing

3 The second thing I want to ask you is -- I'm like
4 you -- my thought just escaped me So, what I want to
5 hear is why do you think you've exhausted your remedy,
6 i e , for two reasons, Number 1, the letter written by the
7 attorney, saying the School Board had rejected -- well,
8 not really rejected your -- I guess they rejected your
9 enrollment They accepted you, but said, hey, but in
10 order to enroll, you're going to have to establish
11 residence

12 And, number two, I understand you filed an appeal
13 to that decision and that appeal is pending So, why have
14 you exhausted your administrative remedies under his
15 motion? Which, I -- I think if you haven't exhausted your
16 administrative remedies, then you'd have to do that And
17 this matter is really not ripe to be heard by this court

18 MS MCSWAIN Yes, Your Honor And I think there's
19 a lot of confusion out there about that If you actually
20 read about the declaratory judgement action, it's totally
21 independent of any -- any losses that I might bring
22 against Charleston County School District, which would be
23 for damages

24 THE COURT Right

25 MS MCSWAIN This is a declaratory judgement

1 action I'm -- they -- the declaratory judgement statute
2 itself --

3 **THE COURT** It's just to establish the law or the
4 rights of the parties involved, respective parties

5 **MS MCSWAIN** Yes, sir But it also says any
6 person's whose rights, status or other legal relations are
7 protected by a statute, meaning the Charleston County
8 School District -- I'm sorry -- I read the wrong thing --
9 I don't have the act in front of me, but from recollection
10 it states that -- under the declaratory judgment action
11 states that when relief is sought all persons shall be
12 made parties who have a claim -- have a claim -- or
13 claiming an interest which would be affected by the
14 declaration And no declaration shall prejudice the
15 rights of persons not parties to the proceeding

16 In other words, Your Honor, I had to name them
17 because the statute says I have to invite them here This
18 isn't an action against them That will come later in the
19 way of damages Right now, the only thing before this
20 court are what are my and my daughter's rights

21 They're invited to put their position on the
22 record That's pretty much it We don't have to exhaust
23 administrative remedies with them This is an entirely
24 independent action of that proceeding I filed that --
25 whatever you're going to call it -- appeal for a de novo

1 hearing because there's only ten days --

2 THE COURT So, do you think -- so you --- your
3 position is in your DJ action, administrative remedies do
4 not have to be exhausted?

5 MS MCSWAIN I'm sorry?

6 THE COURT Your administrative remedies do not
7 have to be exhausted in order for the court to have
8 jurisdiction in a DJ action?

9 MS MCSWAIN Yes, sir And, Your Honor, even if
10 for whatever reason this court would find that we should
11 have or could have, or whatever, exhausted administrative
12 remedies, there's case law out there that says -- and it's
13 in April of this year, I think the case was decided, is
14 basically the general rule is that when you have some
15 administrative schemes set up for appeal, that the general
16 rule is that you do have to exhaust administrative
17 remedies Of course, as with any general rule, there's
18 exceptions to that

19 Probably the most common exception to that general
20 rule is that you don't exhaust administrative remedies,
21 when it would just be a futile act There would be no
22 reason to do it

23 Let me find that case Yes The one -- the one case
24 that I found, it's a 1989 case, but it's being quoted by
25 an April 12, 2010 case, states that the Doctrine of

1 Exhaustion Administrative Remedies is generally considered
2 a rule of policy, convenience and discretion, rather than
3 one of law It is not jurisdictional

4 So, Your Honor, the threshold issue is -- is that
5 under a DJ action, there's no requirement for us
6 exhausting these remedies over there Again, if we wind
7 up in a lawsuit with them, then they can bring that up,
8 but it's irrelevant to the action here today

9 Secondly, if for whatever reason you think that we
10 had to do so, the general rule is -- well, number one,
11 it's not jurisdictional according to this case The
12 general rule is, is that South Carolina, like most
13 jurisdictions, recognize these exceptions to the
14 exhaustion of administrative remedy requirement The
15 general rule is administrative remedies must be exhausted
16 absent circumstances supporting an exception to
17 application of the general rule

18 One case that I found states -- and it's Ward vs
19 State, a 2000 --

20 **COURT REPORTER** Could you state the case again?

21 **MS MCSWAIN** Ward vs State states that one does
22 not have to exhaust administrative remedies when it would
23 be futile And, Your Honor, it's totally within your
24 discretion as to whether you believe it would have been
25 futile for us to have gone any further with the school

1 district

2 And I would just ask the Court to read over the
3 facts carefully as recited in our brief, as to why we
4 think it would have been futile "Whether administrative
5 remedies must be exhausted is a matter within the trial's
6 judges sound discretion and his decision will not be
7 disturbed on appeal absent an abuse " Total
8 discretionary, as is a DJ action, Your Honor, whether you
9 want to grant this DJ action is totally within your
10 discretion and you won't be reversed on appeal unless
11 there is some abuse

12 And I have one case, futility has been defined
13 "Futility, however, must be demonstrated by a showing
14 comparable to the administrative agency taking a, quote,
15 hard and fast position that makes an adverse ruling a
16 certainty " And, Your Honor, I would say carefully review
17 the facts And, again, there's been a lot back and forth
18 between Mr Emerson and I It's -- you know, I've been
19 told two or three different things along the line, and
20 then they started backtracking

21 And then I get a call, after asking for consent for
22 her to be transferred, from the superintendent of the
23 school district And basically -- and I have my notes --
24 maybe I should offer this as evidence -- basically, she
25 says, you know, do what you gotta do Because I explained

1 to her that I thought that their position was wrong and
2 that I might have to resort to going through the courts
3 And she said, well, you'll just have to sue us, do what
4 you've gotta do I think that's pretty clear that -- and
5 she told me -- and, again, I know I'm -- this is hearsay
6 you're going to have to swear me -- but she told me
7 basically that I'm going to recommend that they hold to
8 that policy That this magnet school is only for
9 Charleston County residents

10 And I asked can I appear before the Board? No, you
11 cannot Well, when will they be taking up this matter?
12 You know, I'm not sure We're pretty busy this summer,
13 those sorts of things That they were decided in closed
14 executive session, that I was not allowed to speak at that
15 session

16 I wrote a letter to Mr Emerson asking for it to be
17 put before the Board, before they rendered that decision
18 And I have the email that says if they can't get to it,
19 please postpone it Because I thought it was important
20 that they see the letter, the reasoning behind my request,
21 why it was so important before they rendered a decision

22 It was in closed session I had no idea what was
23 discussed I sent a subpoena to them asking them to
24 basically provide me every document that explained why
25 they rendered it the way they did All I got was a DVD of

1 the public open session So they came out of closed
2 session and said something to the effect, Student H, she
3 can come to -- she can go to the Academic Magnet High
4 School if she moves to Charleston County and so forth

5 So, it's a pretty hard and fast position if you ask
6 me, Your Honor I don't think there's anything else I can
7 present to them that they don't already know, to change
8 their mind So, I think that we -- even if we were
9 required, which we're not, to exhaust administrative
10 remedies before a DJ action, I think that it would be an
11 exercise of futility and also I don't have to do that

12 THE COURT Okay Anything else?

13 MS MCSWAIN Unless you have any questions

14 THE COURT No I -- I don't have any questions
15 Thank you very much though

16 MS MCSWAIN You're welcome

17 THE COURT Mr Reagle

18 MR REAGLE Just a brief reply, Your Honor I
19 think it's important to establish some of the facts that
20 are admitted in the -- in the Complaint The first is,
21 again, our Exhibit 1, and it's under the document,
22 Applications for Academic Magnet School In bold,
23 admissions requirements states there's two, students must
24 be residents of Charleston County and complete an AMS
25 application It's clear that there are -- right up front

1 -- with two requirements for ultimately being able to
2 enroll in the magnet school

3 The Plaintiff clearly understood this as well
4 Allegation number 4 in her Complaint states, "At the time
5 the daughter applied to the AMHS, parent assumed that it
6 would be necessary for Plaintiffs to change their legal
7 residency if daughter were accepted for admission to
8 AMHS " And then additionally, Exhibit D to the Complaint,
9 the Plaintiff's letter to John Emerson dated June 12th,
10 the bottom of the very first paragraph of that letter, she
11 writes "based upon the cordial phone conversation that I
12 had with the Academic Magnet's principal on March 3, 2010,
13 it is my understanding I will have until -- I will have
14 until enrollment day in August to establish my legal
15 residency in Charleston County in order for Storm to
16 enroll " So, it's clear right up front that -- that
17 establishing legal residency was an admissions requirement
18 and also an admissions enrolling with regard to the magnet
19 school

20 It was subsequent to that March 3rd discussion with
21 the principal of the magnet school, when Mr Emerson, in
22 an effort to be helpful, tried to work with the Plaintiff
23 to see if there wasn't some other way she could obtain
24 admission and get around the residency requirement
25 Ultimately, the Board determined, at least preliminarily

1 in the motion, that she could not and would have to
2 establish legal residency

3 Another thing I want to clear up is, I could -- my
4 understanding of the statutes, and I haven't seen anything
5 to the contrary -- is that there is no entitlement to
6 simply pay tuition to a school district and attend those
7 schools Nothing in 59-63-30 says you can just plunk down
8 a chunk of change and are entitled to attend a school or
9 any school in a school district, you have to either have
10 live with the legal resident or own \$300 worth of property
11 in a student's name The tuition requirements come in
12 under statutes like 59-63-480 or 490, and those all
13 require the consent of the School Board to attend the
14 school

15 Here, you know, as a preliminary matter, the Plaintiff
16 does not own \$300 worth of property and has not
17 established the legal residency in the district and has
18 not obtained the consent of the School Board So, really,
19 right now, this is entirely hypothetical Instead she
20 seeks a declaration that if she were to purchase \$300
21 worth of property in Storm's name, that she would be
22 entitled then to attend without establishing legal
23 residency in the school district

24 The legal obligation of the School Board,
25 Charleston County School Board, is to establish schools

1 for the Charleston County School District, to educate the
2 students of Charleston County School District And
3 there's not -- I've been confused that there is somehow
4 this entitlement of students anywhere else in the state to
5 attend schools in Charleston County That's not the
6 mandate for the School Board The School Board's
7 mandates, the legal obligations provide --

8 THE COURT I -- I don't think she takes the
9 position it's entitlement unless she owns property

10 MR REAGLE Okay

11 THE COURT Okay That's the way I took it

12 MR REAGLE And that is correct I mean, if you
13 own \$300 worth of property, you are entitled to attend a
14 school --

15 THE COURT And you can take that one step further
16 basically -- the way I understand her argument is that you
17 can't -- once that property is owned, you can't restrict
18 her from applying to this school on a residency
19 requirement, is her argument

20 MR REAGLE Yes, I understand that, in that --

21 THE COURT What's your response to that?

22 MR REAGLE The response is that that -- the
23 residency -- meeting the residency requirement to be
24 eligible to attend the school in the district, which is
25 what Emory Smith in his opinion says, is that owning

1 property entitles you to attend a school in the district
2 It doesn't entitle you then to attend any school you want
3 to I think -- and maybe a couple of examples, you talked
4 about Wando and Burke Had the plaintiff said, look, I'm
5 moving into the Wando district, I want to enroll my child
6 there It would have been the same thing We would have
7 said, okay, that's fine You know, she hasn't been
8 expelled from Berkeley And she's old enough, so she's
9 met the attendance -- the other attendance criteria But
10 then if she just puts down \$300 and says, you know, I'm
11 not going to move there, we wouldn't be bound by that
12 decision that said it's okay if you move into the district
13 of Wando to attend the Wando school We would then have
14 the right to say, look, you're not moving into this
15 attendance zone anymore, so we're going to assign you or
16 allow you to attend a different school

17 **THE COURT** Well, I don't -- she conceded that
18 argument But her argument is because the magnet school
19 is such a special school, that it brings students from
20 other areas, other high school areas to that school, but
21 they have to qualify academically and it's very stringent
22 academically So, therefore, that makes it an exception
23 to the magnet schools -- and really, a very narrow
24 exception under the rules So, let me hear you on that --

25 **MR REAGLE** I --

1 **THE COURT** I think she concedes your argument
2 about Wando and Burke or whatever other high school you
3 want to attend I mean, right now, I assume in Charleston
4 County, you've got to live in a particular high school
5 area before you can go to that high school You can't go
6 to one on the other side of the county, I assume I don't
7 know That's the way it is in Anderson County But I
8 assume it's that way in Charleston County But because
9 Burke is not -- their students aren't composed
10 geographically of a geographical area, that makes --
11 that's a unique situation

12 **MR REAGLE** And I think I -- my response to that
13 is, there is a geographical attendance zone

14 **THE COURT** Charleston County

15 **MR REAGLE** Charleston County And --

16 **THE COURT** But once she's complied with that --
17 complied by owning property -- the child owning the
18 property, then how can you then add additional
19 requirements over and above that state law?

20 **MR REAGLE** Because she -- she hasn't complied
21 with that It's -- it's an attendance zone requirement
22 In order to attend this school, you have to live in
23 Charleston County Just like in order to attend Wando,
24 you have to live in the Wando attendance zone

25 The -- the owning \$300 worth of property merely

1 establishes --

2 **THE COURT** But the state statute doesn't say that
3 The state statute says you could live in Richland County
4 and the child can own property in Charleston County, and
5 go to school in Charleston County

6 **MR REAGLE** Correct

7 **THE COURT** That's what the statute says

8 **MR REAGLE** And the question is under 59-19-90
9 (9), do we have authority to put -- superimpose on that
10 an attendance zone requirement

11 **THE COURT** Right

12 **MR REAGLE** Basically And clearly we do, we have
13 attendance zones --

14 **THE COURT** Your argument --

15 **MR REAGLE** -- all over the place for schools

16 **THE COURT** -- is the attendance zone for the
17 magnet school is the entire county?

18 **MR REAGLE** Yes Yes And just by way of
19 example, my children attend an elementary magnet school in
20 Richland One It serves three elementary school zones
21 So, you have to live in that zone in order to attend that
22 school That's how they can control among other things
23 the race, gender and overcrowding issues So magnet
24 schools have attendance zones The importance of that --
25 I keep thinking of the University of Virginia You know,

1 if you're only -- you have a very high quality school
2 You know, this is established by the Charleston County
3 School Board It's funded by the Charleston County
4 taxpayers All of them, not just the ones that send kids
5 there, it's a valuable resource and asset It loses
6 public support, community support, the School Board
7 support if the children that actually are living in
8 Charleston County and whose parents are voting for School
9 Board members, aren't able to attend those schools if
10 spots are being eaten up by kids from Dorchester or
11 Berkeley or Richland, if they happen to own property down
12 here So, it is reserved -- you know, because these are
13 highly coveted spots, it is reserved for, really, the
14 children of the constituents of the School Board, that the
15 School Board is mandated by law to serve That's their
16 primary purpose is to educate those students

17 And that clearly is a rationale basis You know,
18 we impose those kind of attendance requirements all the
19 time I mean, these kids are not similarly situated One
20 lives and pays taxes in Charleston County And, you know,
21 not just while their children attend the schools, they do
22 it for year after year after year after year It might be
23 their grandchildren -- you know, they are paying taxes for
24 their grandchildren And it's an important element of
25 community support for their school, not just financial

1 support that it be limited to -- to the actual residence
2 of Charleston County And that's a rationale basis

3 And they're not similarly situated because some are
4 not residents and some are not -- we have all sorts of
5 rights in this society that are determined based on your
6 legal residence You know, it's not a equal protection
7 violation because people in Berkeley County don't get to
8 vote for the Charleston County School Board, no more than
9 any equal protection violation, that they can't send their
10 kids, as a matter of right, to any school they want to in
11 Charleston County

12 So, I think the equal protection argument is really
13 just a -- you know, a non-starter in that sense And that
14 this issue is really one of the board's authority under
15 59-19-90, and the board sets -- here clearly has set two
16 criteria, completing the application and being a resident
17 of Charleston County And that -- setting those two
18 criteria are clearly within its authority under 59-19-90,
19 and I think that's really what the Attorney General was
20 saying

21 There's nothing in these other statutes that limit
22 the Board's authority in terms of establishing specific
23 additional admissions criteria for each of its schools,
24 whether it's an attendance zone, academic requirement
25 You know, some cases, students are assigned based on race

1 or gender, you know, if -- if we had a single gender
2 program You know, I don't think she could apply to that
3 and then say, well, you know, we're not going to establish
4 our residency here, but we want to have a single gender
5 program That's -- that's what a psychologist has said

6 A final point that I tried to lead into on that, is
7 she has said that the Academic Magnet School can better
8 accommodate her daughter than in this case at Strafford
9 High School in Berkeley Federal law requires that every
10 school district offer an appropriate program to children
11 with disabilities You know, there's simply as a matter
12 of law, no dispute that Berkeley County can provide her
13 daughter with an appropriate educational program It
14 merely -- that Berkeley -- or Strafford High School is a
15 bigger high school, doesn't mean it's going to have larger
16 class sizes It doesn't mean it's not going to have
17 academically challenging classes

18 It's -- the Plaintiff's daughter is obviously an
19 extremely accomplished and bright young girl and she has
20 been in the Berkeley County Public Schools all this time
21 There is no reason to think they cannot continue to allow
22 her to make the outstanding academic progress that she has
23 made should -- should the Plaintiff chose not to establish
24 a legal residency in Charleston County Thank you

25 THE COURT Thank you very much Thank you Ms

1 McSwain?

2 MS MCSWAIN Yes, sir One point that I did want
3 to make, Your Honor, before we leave the subject is
4 regarding subject matter jurisdiction and the question
5 about the exhaustion of administrative remedies, if the
6 court looks at the declaratory judgment act itself, it
7 states that Courts of record within the respective
8 jurisdiction shall have the power to declare rights,
9 status and legal relations And here's some clear
10 language, Your Honor, which is why I think we don't have
11 to exhaust administrative remedies at all -- "shall have
12 the power to declare rights and legal relations whether or
13 not further relief is or could be claimed"

14 The way I read the case law that interprets that is
15 that, again, it's a totally independent action We have
16 not filed a lawsuit against Charleston County School
17 District We're asking the court to tell us what our
18 rights are

19 THE COURT What about his argument that the magnet
20 school, geographically, is the entire county, whereas
21 Burke has a geographic area and Wando has a geographic
22 area -- if they just expanded Burke to the whole county
23 geographically?

24 MS MCSWAIN I'm not sure I see a difference, Your
25 Honor, in our argument --

1 **THE COURT** Pardon?

2 **MS MCSWAIN** I'm not sure I see a difference
3 there The statutes state -- I mean, why do we have
4 statutes that state a non-resident student can pay tuition
5 or can buy property so as to go to any school district in
6 the State of South Carolina

7 It is true the Academic Magnet High School,
8 apparently the attendance zone that they have established
9 is the entire County of Charleston But once a
10 non-resident child is deemed to be a Charleston County
11 resident for purposes of eligibility, qualifications to
12 attend magnet, whatever else by paying tuition or owning
13 property, then they have the same rights as the resident
14 student who lives throughout the county So, I'm not sure
15 what the answer to your question is

16 **THE COURT** Okay I mean, I just wanted to hear
17 what you're going to say about it

18 **MS MCSWAIN** Okay

19 **THE COURT** I'm not saying the argument is correct,
20 right or wrong --

21 **MS MCSWAIN** I understand

22 **THE COURT** I'm just curious as to what you're
23 going to say

24 **MS MCSWAIN** I -- I -- again, I just don't -- I
25 don't see the -- I won't say relevance of it, but it just

1 doesn't add anything

2 **THE COURT** But, basically, all they're saying is
3 Wando has a certain geographical area, if you want to go
4 to that school, you live in that area The same thing
5 with Burke or other high schools in Charleston County
6 However, the magnet school, they said you've got to live
7 somewhere in the whole county because they take students
8 from all over the county

9 **MS MCSWAIN** Yes, sir I would -- I guess the
10 only thing I would respond with is that within the
11 district itself, that would be an inter-district transfer
12 I would say that just because the child lives in the
13 attendance zone, say Wando, doesn't mean a child can't be
14 transferred or ask for assignment at a different school if
15 they have a good reason for it

16 **THE COURT** Yeah, I think that's --

17 **MS MCSWAIN** -- within the district

18 **THE COURT** Within the district

19 **MS MCSWAIN** Or as the court said, if there's
20 something in Richland, particularly if the child has a
21 special accommodation need -- if, for instance, there --
22 I guess there's a school for the deaf and blind -- I hope
23 I'm using the correct term for that -- a child could asked
24 to be transferred there for obvious reasons And it's an
25 entirely different school district than perhaps where they

1 live That's why the statutes are there, Your Honor Why
2 else would the legislature even bother And, again, the
3 legislature has provided a formula by which to pay, how to
4 figure out how much tuition has to be paid

5 Equal protection is not a non-starter --

6 **THE COURT** Let me ask you about this payment deal,
7 isn't the -- does the statute -- another statute require
8 approval for the payment by the School Board? You just
9 can't walk into a school district and say here's my money,
10 I want to go to Wando

11 **MS MCSWAIN** No, sir You certainly can't do
12 that

13 **THE COURT** The School Board has to approve it,
14 don't they, the payment?

15 **MS MCSWAIN** Meaning that they have to approve the
16 amount?

17 **THE COURT** Well, the amount or whether they're
18 going to allow the payment?

19 **MS MCSWAIN** Not according to -- I mean, I guess
20 you'd have to construe the -- I don't have that statute in
21 front of me, Your Honor

22 **THE COURT** Okay I'm just asking I don't know

23 **MS MCSWAIN** I --

24 **THE COURT** I'm just asking a question

25 **MS MCSWAIN** Do y'all have that statute? Yeah, I

1 just -- common sense, Your Honor, I would think you would
2 construe it with 560 C because that statute says you can
3 pay tuition

4 Now, how do we figure that out I guess you'd go
5 to the statute that they're talking about

6 This thing about consent, I don't know if -- I
7 don't know what you're referring to -- I don't what the
8 statute says

9 **THE COURT** I don't know You know, they made that
10 argument, the School Board has to approve it I just
11 don't know what code section they're relying on

12 **MS MCSWAIN** I think it's --

13 **THE COURT** I guess I should ask them that
14 question I'm sorry

15 **MS MCSWAIN** That's all right But getting back
16 to the -- the central argument, Your Honor, is that --
17 that basically said that a non-resident child can't go to
18 a magnet school in Charleston County, and they call that
19 an "admission requirement", I think is the way they're
20 phrasing it We're begging the question here The
21 question is, is that constitutional? Does it violate
22 equal protection? The answer is, it does Does it
23 violate state statutes? Yes, sir, it does Does it
24 violate their own policy? Yes, sir, it does So, for
25 them to stand up and say, well, she's met one of the two

1 admission requirements -- again, the question is, is that
2 admission requirement constitutional So, for them to
3 just state that -- that's why we're here today, Your
4 Honor, is to -- for you to declare is that admission
5 requirement, as they're calling it, which is even part of
6 their own written policy, whether that violates my
7 daughter's rights

8 **THE COURT** Okay Thank you Thank you very much

9 **MS MCSWAIN** Yes, sir

10 **THE COURT** Mr Childs, can you address that issue
11 about the consent on the --

12 **MR CHILDS** Yes, sir

13 **THE COURT** -- tuition, or can somebody just walk
14 in from Berkeley and plunk the money down and say, I want
15 to go to this school?

16 **MR CHILDS** Your Honor, I think that's --

17 **THE COURT** Or it's totally your choice It's your
18 argument

19 **MR CHILDS** I think that's addressed by 59-63-490

20 **THE COURT** Okay What does it say?

21 **MR CHILDS** And it says, when it so happens that
22 any person that is so situated as to be better
23 accommodated at the school of an adjoining school
24 district, whether special or otherwise, the Board of
25 Trustees at the school district in which such person

1 resides may, with the consent of the Board of Trustees of
2 the School District in which such school is located,
3 transfer such person

4 THE COURT Okay

5 MR CHILDS So, it is consent

6 THE COURT Okay

7 MS MCSWAIN Your Honor, that -- that's not the
8 statute that addresses payment and tuition, that's the
9 discretionary statute that I referred to earlier That's
10 a special accommodation statute

11 I have in my brief the cite to the tuition payment
12 formula

13 THE COURT Okay All right I'll take a look at
14 it

15 MS MCSWAIN Okay

16 THE COURT Okay I just asked a question because
17 I didn't know the answer I thought y'all -- all right
18 Thank y'all very much I think I have stated on the
19 record what I'm going to mark as a court's exhibit, and
20 make a decision in this case

21 I'm going to take it under advisement I'll leave
22 the record open If either of the parties would like to
23 present anything additional, I'll be here Thursday
24 morning Just notify me as to what time you would like to
25 start I have got a couple of other hearings, but I can

1 work you in sometime Thursday, or I can do it Wednesday or
2 Friday at y'all's convenience I can work you in on one
3 of those three days I prefer Thursday

4 ~~REAGLE~~ So, I understand y'all are going to talk and see if
5 y'all can work something out And I hope ~~to~~ hear from you
6 tomorrow or Wednesday about Thursday

7 MR REAGLE Thank you very much

8 THE COURT Okay And I will allow either party to
9 supplement the record factually or however you want to
10 supplement it Thursday morning But as of 5 00 Thursday,
11 I'm going to make a decision on what's before me if it's
12 not supplemented Okay?

13 MR CHILDS Thank you, Your Honor

14 THE COURT All right Thank y'all very much

15 MR REAGLE Thank you

16 (Whereupon, the hearing adjourned)

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1 * * * JULY 22, 2010 * * *

2 (WHEREUPON, THE HEARING RESUMED)

3

4 **THE COURT** This is the case of Storm [REDACTED]
5 H[REDACTED] vs Charleston County Board of Trustees and Nancy
6 McGinley -- McGinley -- is it --

7 **MR CHILDS** McGinley, Your Honor

8 **THE COURT** And I believe we took oral arguments
9 Monday And I gave the parties an opportunity to come
10 back today if they wanted to supplement the record And
11 by email, they notified the court that y'all wanted to
12 supplement the record, so here we are today

13 Who wants to go first? Whose going to supplement?

14 **MS MCSWAIN** I can, Your Honor

15 **THE COURT** Okay

16 **MS MCSWAIN** Preliminarily, Your Honor, I noticed
17 that the defendant sent some affidavits to the court --

18 **COURT REPORTER** Would you adjust the microphones?

19 **MS MCSWAIN** I apologize Hang on You warned me
20 about that, didn't you

21 **THE COURT** I saw your exhibit list, at least I got
22 a copy of it I assume, Mr Childs has a copy of it, is
23 that correct -- it's 35 exhibits you wanted to admit?

24 **MS MCSWAIN** Yes, sir And actually there's --
25 there's actually 36 now

1 **THE COURT** Thirty-six Okay

2 **MS MCSWAIN** I hadn't put it on your list yet I
3 had requested a copy of the original application

4 **THE COURT** Okay I assumed you've given them to
5 Mr Childs?

6 **MS MCSWAIN** Yes, sir

7 **THE COURT** Okay Mr Childs, do you have any
8 problem with any of the 36?

9 **MR CHILDS** We're looking at them now, Your Honor

10 **THE COURT** Okay Well, why don't we give them an
11 opportunity to look at them And if he agrees to them,
12 you won't have to go through each one I will give you an
13 opportunity to let me look at them and see if I understand
14 what they are And if I have any questions about them,
15 I'll ask you

16 **MS MCSWAIN** Perfect

17 **THE COURT** I don't want to look at them until he
18 -- I know whether he's got an objection to them or not

19 **MS MCSWAIN** I understand, Your Honor

20 **MR CHILDS** Well, Your Honor, if I might make a
21 suggestion, if it's all right with my partner, I -- I
22 thought you and I -- we just got them a minute or two ago
23 -- and I thought we'd say we had no objection to them
24 provided that we have an opportunity to respond to them if
25 it's necessary

1 **THE COURT** I don't have any problem if you want to
2 respond to them

3 **MR CHILDS** Okay Down the road

4 **THE COURT** But, I mean, I did get an email of the
5 exhibits, I didn't get the exhibits themselves, but I got
6 an exhibit list

7 **MR CHILDS** Is that okay with you, John?

8 **MR REAGLE** Yes I mean, really, we don't have
9 any objections to these exhibits There are a couple of
10 emails that we would want to add, I think, for
11 completeness because these involve a stream of
12 correspondence and there -- really one email I didn't see
13 in here that I think -- from July 13th --

14 **THE COURT** All right Which one -- which ones do
15 you want to respond to, which number on the exhibit list?

16 **MR REAGLE** Twenty-six and --

17 **THE COURT** Twenty-six?

18 **MR REAGLE** Twenty-four, 25 and 26

19 **THE COURT** So, do you want to submit an additional
20 email or just --

21 **MR REAGLE** Let -- let me check real quick,
22 whether 23 includes it

23 **COURT REPORTER** Your Honor, may I clarify just a
24 minute --

25 **THE COURT** Pardon?

1 **COURT REPORTER** May I make a clarification,
2 exhibits 1 through 4 on this list --

3 **THE COURT** Are Court's exhibits I understand
4 that

5 **COURT REPORTER** Okay

6 **THE COURT** But they can still be Plaintiff's
7 Exhibits

8 **COURT REPORTER** Okay So, they'll be converted

9 **THE COURT** And I'll give you a list in just a
10 second

11 **COURT REPORTER** I have a list

12 **THE COURT** Oh, you do Okay

13 **MR REAGLE** Respond to 23 and 24, it would just be
14 by adding --

15 **THE COURT** All right So, what do you want to add
16 to 23, the rest of the email?

17 **MR REAGLE** Yes

18 **THE COURT** You just want to put in the entire
19 email?

20 **MR REAGLE** Yes

21 **THE COURT** Ms McSwain, do you have the entire
22 email of Wednesday, June 9, 2010 -- Saturday the 12th,
23 2010 If you've got the entire email, we'll just put the
24 entire email in, if that's what you want

25 **MS MCSWAIN** Your Honor, I'll have to hook up my

1 laptop I'm sure I have it in there, if you'll give me a
2 minute for that In the meantime, I'm going to give you a
3 copy of Exhibit 36, that we just added The original
4 application

5 THE COURT Okay

6 MR REAGLE And maybe it's in there

7 MS MCSWAIN If I can just get my laptop out

8 THE COURT So, 23 and 24, those are emails from
9 Emerson to McSwain and McSwain to Emerson, is that
10 correct?

11 MR REAGLE Yes, Your Honor

12 THE COURT You want to put in the entire email on
13 June 9, 2010 at 8 32 and June 12, 2010 at 8 57, is that
14 correct?

15 MR REAGLE Yes Specifically what I want to
16 supplement these exhibits with is John Emerson's response
17 dated June 12th

18 THE COURT That's number 25 If that's the email
19 from McSwain to Emerson --

20 MR REAGLE Yes And Emerson sent a response back
21 to that email -- or actually -- it's a response to the --
22 the date and times don't quite line up But yes, it's --

23 THE COURT He sent an email back or a letter?

24 MR REAGLE An email

25 THE COURT Okay Do you have that email?

1 **MR REAGLE** Yes, Your Honor

2 **THE COURT** I don't have any problem with that

3 We'll add it

4 **MS MCSWAIN** Do you have a copy of it?

5 **MR REAGLE** Yes

6 **THE COURT** Any emails you want to supplement with

7 these emails, that's fine

8 **MS MCSWAIN** Right Yeah I just put in what I

9 thought was relevant

10 **MR REAGLE** And I would rather be able to

11 supplement later on rather than provide it --

12 **THE COURT** I don't mind you providing that

13 **MR REAGLE** Okay Thank you

14 **THE COURT** It doesn't offend my sensitivities at

15 all Do you want to mark it as a Defendant's exhibit or

16 do you want to just add it to the Plaintiff's exhibit?

17 **MR REAGLE** I'm happy to do it as either We'll

18 just add it to her exhibits

19 **THE COURT** Which one is in response to -- June the

20 9th or June 12th?

21 **MR REAGLE** June 12th

22 **THE COURT** All right Why don't I just make it

23 24-A?

24 **MR REAGLE** Okay Thank you

25 **THE COURT** Will that be okay? I'm just going to

1 put the entire email -- or at least Emerson's response by
2 email Would somebody hand me a copy of it? Did you mark
3 the exhibits? Have the exhibits been marked 1 through 36?

4 MS MCSWAIN Yes, sir

5 COURT REPORTER I haven't marked them

6 THE COURT I'm just trying to find the right one
7 So, this would be 24-A, right?

8 MR REAGLE May I approach, Your Honor?

9 THE COURT I'll put them in this stack, 24-A

10 MR REAGLE Did you want a copy of it?

11 THE COURT Yeah If I'm going to mark it, I need
12 a copy of it I'll mark that as Exhibit 24-A Okay

13 All right Anything else you want to supplement to
14 her list?

15 MR REAGLE Not to her list, Your Honor We did
16 have the two affidavits that we have submitted

17 THE COURT All right Anything else, Ms McSwain,
18 you want to add to this list?

19 MS MCSWAIN I apologize, Your Honor Exhibit 36
20 is -- there are several other pieces of paper, other than
21 the two that I handed to you, if I can just switch those
22 out for what I handed you as Exhibit 36?

23 THE COURT That's fine All right Does the
24 Defendant have anything they would like to supplement?

25 MR CHILDS Yes, Your Honor We have two

1 affidavits to provide to the court

2 THE COURT Okay

3 MR CHILDS I certainly would like to have Mr
4 Emerson's letter Monday, in the record --

5 THE COURT Okay Do you want to mark that Defense
6 Exhibits 1, 2 and 3?

7 MR REAGLE Yes, Your Honor

8 THE COURT Okay While you're getting those
9 (Discussion off-record concerning exhibits)

10 THE COURT All right 1 through 4 previously
11 marked as Court's Exhibits will be Plaintiff's 1 through
12 4 All right The Defendants have 1 through 3, is that
13 correct?

14 MR REAGLE Well, it's just one through -- one and
15 two, because the letter that we previously referred to is
16 a -- is already an exhibit

17 THE COURT Okay

18 MR REAGLE One of the Plaintiff's exhibits

19 THE COURT All right

20 MR REAGLE May I approach?

21 THE COURT Yes, sir

22 MR REAGLE Thank you

23 THE COURT Is there anything -- I obviously
24 haven't seen them before now All right This is the
25 affidavit of Judy Peterson, is that correct?

1 **MR REAGLE** Yes, Your Honor That's number 1

2 **THE COURT** That's Defendant's No 1 And then
3 we've got an affidavit of Kathleen Magllacane?

4 **MR REAGLE** Yes, Your Honor

5 **THE COURT** That's number 2?

6 **MR REAGLE** Yes, Your Honor

7 **THE COURT** All right And what else? Is that it?

8 **MR REAGLE** That is -- yes

9 (Discussion off-record concerning exhibits)

10 **THE COURT** All right I haven't read all your new
11 exhibits, but let me look at the list real quick

12 **MS MCSWAIN** Your Honor, if I may, I hate to do
13 this to you, I need to substitute one more --

14 **THE COURT** Okay

15 **MS MCSWAIN** -- exhibit 6 Exhibit 6 was pulled
16 up in two different inks at a time for a very good reason,
17 so I want to make sure that the evidentiary record has a
18 colored ink copy of that exhibit

19 **THE COURT** That will be fine Now, I believe you
20 said you wanted a letter Mr Emerson wrote Monday? Are
21 you going to make that part of the record or not?

22 **MR CHILDS** Your Honor, after I said that, we
23 discovered that that is part of Plaintiff's exhibits -- I
24 think it's number 35, is that correct?

25 **MS MCSWAIN** Yes, sir

1 **THE COURT** She's got 1-21 marked, and I'm going to
2 be looking at them while she's marking the rest of them,
3 okay?

4 (Pause)

5 **THE COURT** Ms McSwain, the letter that you've got
6 marked 25, it's already -- I've already marked that It
7 was marked along with the other stuff that was submitted
8 last week, in Plaintiff's Exhibit No 4 No I'm sorry
9 That's a different letter Excuse me I'm sorry That's
10 a different letter Excuse me My mistake

11 (Pause)

12 **THE COURT** I assume referring to Plaintiff's
13 Exhibit No 27 on page 3 of 5, Motions of Executive
14 Session, board approval may affect such student transfer
15 appeals Approved A, B, G and H student transfers, C, D,
16 E, F, I, J, and K were denied Which one are we talking
17 about in this case?

18 **MS MCSWAIN** Turn to page four

19 **THE COURT** Pardon?

20 **MS MCSWAIN** Turn to page four of that document

21 **THE COURT** It's on page four?

22 **MS MCSWAIN** Yes, sir Under 1 9, at the top

23 **THE COURT** 1 9?

24 **MS MCSWAIN** Yes, sir Academic Magnet Student --

25 **THE COURT** Okay Okay

1 MS MCSWAIN I'm -- I'm also --

2 THE COURT So that would be -- that would be Storm
3 on 1 9 on page four of five of Plaintiff's Exhibit 27, is
4 that correct? Because it doesn't mention the name I
5 assume that's who it is

6 MR REAGLE I --

7 THE COURT It just says the Board approves
8 Academic Magnet Student appeal subject to residency and
9 domicile confirmation, motion was approved --

10 MR REAGLE That's correct

11 THE COURT So, that's the Plaintiff in this case?

12 MR REAGLE Yes, Your Honor

13 THE COURT Okay Because they don't mention the
14 name

15 MR REAGLE Yes

16 THE COURT Okay All right I assume Plaintiff's
17 Exhibit No 34, residency verification is what the School
18 Board is asking you to sign before they will allow her to
19 enroll, is that correct?

20 MS MCSWAIN That's correct

21 THE COURT Okay That's a blank copy of it, is
22 that correct?

23 MS MCSWAIN That's correct

24 THE COURT Okay I've read the new Plaintiff's
25 exhibits I have looked at the affidavits and looked at

1 Plaintiff's Exhibits 1 and 2 -- or excuse me --
2 Defendant's Exhibits 1 and 2 Is there any argument -- I
3 mean, from the Plaintiff that you would like to make very
4 briefly?

5 MS MCSWAIN Very briefly, Your Honor First, as
6 to the matter of evidence, I would object to the
7 affidavits being considered by this court Under the
8 rules of evidence, obviously the witnesses are not here
9 for me to cross examine And just so the court has a
10 flavor for why I'm objecting -- I'm not trying to be
11 recalcitrant -- but for instance, the affidavit from
12 Principal Peterson, I'm not here to question her based
13 upon my conversation that I had with her on March 3, 2010
14 --

15 THE COURT Wait You object to both of them?

16 MS MCSWAIN Yes, sir

17 THE COURT Okay

18 MS MCSWAIN Simply because -- for two reasons,
19 what's good for the goose, is good for the gander I had
20 requested them, maybe two and a half weeks ago -- you will
21 see in the emails, asking them is it okay if I just bring
22 affidavits from the Medical University of South Carolina
23 staff I never got a response to that So, you know,
24 again, I -- I don't mean to be recalcitrant, I really
25 don't think the affidavits hurt, but I would object on

1 evidentiary grounds

2 And, again, as an example, Your Honor, when I
3 talked to Principal Peterson on March 3, we were
4 discussing this issue about legal residency And she said
5 that, yes, you're in the same boat with about six other
6 students I don't really agree with it, but, you know, I
7 have a student like yours from Marrington, one from
8 Rollings, one from Daniel Island that we have accepted and
9 that are in the same boat that you are And, again, I'm
10 just not here to cross examine her on her affidavit I
11 understand she just talks about the policy --

12 **THE COURT** I mean, the affidavit just basically
13 states what has already been presented to the court

14 **MS MCSWAIN** Yes, sir

15 **THE COURT** And -- with the exception the affidavit
16 number 2, which states that your child could be cared for
17 in the Berkeley County Schools?

18 **MS MCSWAIN** Yes, sir

19 **THE COURT** That's the only new information in the
20 affidavits before the court?

21 **MS MCSWAIN** Yes, sir The only other thing I
22 would state about the affidavit in addition to my
23 objection to it coming in, because I can't cross examine
24 the witness, is that Exhibit C, it seems to -- the
25 affidavit seems to imply that I was mailed Exhibit C,

1 there's two documents under Exhibit C One of them talks
2 about the admission requirements Again, I don't think it
3 really makes a difference, but that I was never mailed the
4 first document that has been labeled Exhibit C It's
5 always been on the web site

6 **THE COURT** All right I'm going to allow the
7 affidavits in Okay

8 **MS MCSWAIN** All right The other thing is, Your
9 Honor, again, I would object to the affidavit of Ms
10 Magllacane Again, she's not here for me to cross
11 examine I would point out to the court nothing in her
12 affidavit states that Berkeley County can afford my child
13 a classroom with 25 or less students, with only gifted and
14 talented students in that classroom, because it simply
15 doesn't exist in Berkeley County

16 **THE COURT** Okay

17 **MS MCSWAIN** And, Your Honor, I didn't know if you
18 need any testimony at all from me, if I need to be sworn,
19 because I am pro se in this matter, I'll be happy to be
20 sworn Actually, I think I kind of prefer it and then I
21 can just --

22 **THE COURT** I mean, as a pro se, you can be sworn
23 and make a statement if you want to do that

24 **MS MCSWAIN** Can we do that very briefly?

25 **THE COURT** Yes

1 **THE CLERK** Just raise your right hand

2 GAYLA MCSWAIN, having been
3 first duly sworn, testified as follows

4 **MS MCSWAIN** Your Honor, very briefly, every
5 allegation of fact that I have made in any of the
6 documents presented to the court are true and accurate to
7 my knowledge, all of them Everything that I presented in
8 the way of exhibits, I can authenticate and believe them
9 to be accurate to the best of my knowledge

10 The only other thing that I would like to point out
11 to Your Honor, is that there was some question on Monday
12 about the tuition statutes --

13 **THE COURT** About what now? I'm sorry

14 **MS MCSWAIN** The tuition statutes I just want to
15 give you the cites for all the different tuition statutes
16 that I have been able to find

17 The ones that I found, Your Honor, are section
18 59-63-30

19 **THE COURT** 59-62-30?

20 **MS MCSWAIN** Sixty-three

21 **THE COURT** Fifty-three I'm sorry

22 **MS MCSWAIN** Sixty-three

23 **THE COURT** Okay

24 **MS MCSWAIN** The other one is and this was the
25 very end of our argument Monday, the cite for

1 reimbursement for attending another school district It's
2 59-63-45 And, Your Honor, I would point out in that --

3 **THE COURT** That's -- that's the tuition issue?

4 **MS MCSWAIN** Yes, sir Here's the way it reads,
5 "Notwithstanding the provisions of this chapter" -- and
6 this is chapter 63 -- "a non-resident child, otherwise
7 meeting the enrollment requirements of this chapter, may
8 attend a school in a school district in which he is
9 otherwise qualified to attend If the person responsible
10 for educating the child pays an amount equal to the prior
11 year's local revenue per child raised by the millage
12 levied for school district operations and debt service,
13 reduced by school taxes on real property owned by the
14 child paid to the school district in which he is enrolled,
15 the district may waive all or a portion of the payment
16 required by this section "

17 I would submit, Your Honor, that this statute in
18 and of itself basically says the child is eligible to
19 attend and is qualified to attend, all he had to do is pay
20 his tuition in accordance with this

21 In my initial legal brief, I just cited the wrong
22 statute For that I apologize In my letters to the
23 district and emails, I did cite this particular statute to
24 them

25 **THE COURT** Okay

1 **MS MCSWAIN** The only other thing, Your Honor, is
2 in the proposed order that I sent to the court, there is a
3 section regarding standard of review This court is not
4 reviewing anything, so that should not even be in there
5 It was cut and pasted from another document For that, I
6 apologize It's just been -- this case has been moving it
7 around And with that, Your Honor, I think that I am
8 finished And I would like to refute anything that the
9 defendants have to say

10 **THE COURT** Okay I'll be glad to hear you

11 **MR CHILDS** May it please the court?

12 **THE COURT** Yes, sir

13 **MR CHILDS** Very briefly A couple of 'just
14 introductory observations The court has obviously
15 devoted a lot of time to this And I acknowledge when we
16 were here Monday that this student certainly has a
17 thoroughly dedicated and committed mother, who is
18 interested in her education That is beyond -- not in
19 dispute

20 I am absolutely convinced that the correct legal
21 result here is to grant our Motion to Dismiss, for any one
22 of several reasons That -- that, in my opinion, is the
23 absolutely correct legal result

24 If the court is -- disinclined, for whatever
25 reason, to grant the Motion to Dismiss, the next best

1 thing to do would be to stay these proceedings until this
2 matter is fully presented to the Charleston County School
3 Board And that, to me, is the essence of our argument

4 If the court has any questions, we have submitted
5 now two memorandums to the court, the first one Monday and
6 one that was provided yesterday The court -- Your Honor
7 observed yourself on Monday that 59-19-90, has been on the
8 books a long time It's never been challenged that a
9 School Board has the right to assign students to
10 particular schools in the district

11 I -- I don't -- and I said in correspondence to the
12 court yesterday, I -- I cannot conceive of why the Adamson
13 case, Richland School District One, is not fully
14 dispositive of this matter There you had something
15 pending before the School Board The teacher's attorney
16 was unhappy with it, brought a declaratory judgment
17 action It went to the Court of Appeals The Court of
18 Appeals said no The correct position is to present this
19 matter to the School Board

20 Just within the last year, we provided the court, I
21 believe yesterday, with a copy of the Davis case from
22 Greenville County, where in that case the South Carolina
23 Supreme Court said -- where the Greenville County School
24 Board had transferred a student from J L Mann High
25 School, I believe, to the alternative school, it was not

1 even reviewable in court That's how strong the South
2 Carolina Supreme Court feels

3 In -- in the Byrd case and in the Horry case, they
4 said that discipline decisions were not reviewable in the
5 Circuit Court So, there is a long standing tradition to
6 defer to School Boards on matters of this kind

7 And in the information we provided to the court
8 yesterday, and interestingly here in Charleston County,
9 it's a complicated school system, as Your Honor is well
10 aware, they have -- while they have a County Board, they
11 also have something called a constituent board There are
12 eight of them

13 And in the Stewart case, you had another one of
14 these magnet schools in a particular constituent district,
15 namely Buist, which is elementary and middle school And
16 that's -- it's on the peninsular of Charleston And that
17 constituent board said, we're only going to let kids here
18 in this magnet school who live in this constituent
19 district -- and the County Board overruled them, said --
20 and took it to court And the court ruled that the --
21 that the County Board's rule that that magnet school was
22 open to all citizens of Charleston County was upheld

23 So, I just think the authority is overwhelming
24 The legal authority, the history, logic that school boards
25 have the right to assign students

1 For example, under the Davis case, if a child was
2 admitted to the magnet school, and for some reason
3 disciplined and assigned to the alternative school, it
4 wouldn't even be reviewable in court under the South
5 Carolina Supreme Court's holding in Davis

6 So, I don't want to waste the court's time I
7 think you've been very accommodating of us And I'm sorry
8 we didn't have more in front of you on Monday But if
9 there are any questions, I want to respond to them But
10 I'm absolutely convinced our Motion to Dismiss is proper

11 And if there is any reluctance at all to grant it,
12 I think the next best thing would be to require the
13 Charleston Board to provide an evidentiary hearing, which
14 Mr Emerson's correspondence of Monday, says they are
15 willing and able to do

16 **THE COURT** Okay Thank you so very much
17 Anything in response?

18 **MS MCSWAIN** Your Honor, I had sent you a letter
19 this morning I just want to make sure that you did
20 receive it

21 **THE COURT** I may have received it, but I have been
22 here in the courtroom since 9 30

23 **MS MCSWAIN** Yes, sir

24 **THE COURT** So, it may have come on the email, but
25 I haven't looked at it yet

1 MS MCSWAIN All right
2 THE COURT We do
3 MS MCSWAIN You have it?
4 THE COURT He says we have it, I haven't seen it
5 MS MCSWAIN I would --
6 THE COURT Did it come by email -- I haven't read
7 it No
8 MS MCSWAIN Could you -- would you mind taking
9 just a minute --
10 THE COURT I'll be happy to, but I haven't seen
11 it I've been up here all morning
12 MS MCSWAIN Yeah I understand, Your Honor
13 I've been up all night
14 THE COURT Have y'all got a copy of the letter?
15 MR CHILDS We just got it, Your Honor
16 THE COURT I did, too
17 MR CHILDS She emailed it to us and I couldn't
18 pick it up on my Blackberry
19 THE COURT Okay
20 MR CHILDS We're looking at it now
21 THE COURT Why is it sometimes you can pick stuff
22 up -- read stuff on a Blackberry and sometimes you can't
23 Is it highly transmitted to you?
24 MR CHILDS My office manager says that I'm
25 technologically inept

1 **THE COURT** Well, I am too But even on my
2 Blackberry, it's got that zoom But you can't zoom it
3 sometimes big enough to see it I get it, but I can't
4 read it because it's so small And, again, some people
5 send emails with attachments that's easy to read

6 (Off-record discussion)

7 **MR CHILDS** Your Honor, I guess without having
8 carefully, you know, read or thought about all this four
9 page letter, the last paragraph is interesting to me,
10 where she says, "finally as stated in Mr Childs' letter,
11 it is true that defendants by law and long history, have
12 used 59-19-90 as a matter of transferring and assigning
13 students" And then she says "that history is shameful"
14 Well, she's certainly entitled to her opinion But then
15 she says something in here about an injunction And I'm
16 under the impression, and I hope the court is, that I've
17 already --

18 **THE COURT** They haven't asked for any injunctive
19 relief

20 **MR CHILDS** Right That's what I --

21 **THE COURT** There is no injunctive relief in a DJ
22 action Okay But let me read something real quick
23 (pause) All right Can I see the attorneys back here in
24 chambers just a second please

25 (Whereupon, the Court and attorneys met in Chambers)

1 (Whereupon, the hearing adjourned)

2 * * * * END OF TRANSCRIPT * * * *

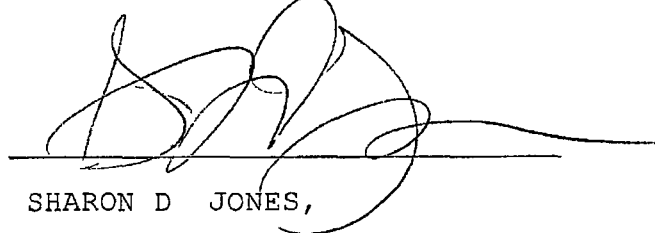
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CERTIFICATE OF REPORTER

I, SHARON D JONES, OFFICIAL COURT REPORTER FOR THE
9TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND
EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE,
RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR CHARLESTON
COUNTY, SOUTH CAROLINA, ON THE 19TH AND 22ND DAY OF JULY ,
2010

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL
NOR INTEREST TO ANY PARTY HERETO

DECEMBER 2, 2010

A handwritten signature in black ink, appearing to be 'Sharon D. Jones', is written over a horizontal line. The signature is stylized with loops and a long horizontal stroke extending to the right.

SHARON D JONES,

CERTIFIED COURT REPORTER

COMMISSION EXPIRES 3/20/12

PLAINTIFF'S EXHIBITS

1 Gifted and Talented Facts
2 Chapter 14 "Finding a Good Educational fit"
3 MUSC Health outpatient note
4 Standardized test scores
5 Jan 20, 2010 Letter from AMHS Principal
6 AMHS Confirmation Form
7 Feb 4, 2010 BCSD consent transfer form
8 Mar 1, 2010 AMHS welcome letter
9 Berkeley Co Center for Arts App
10 March 31, 2010 Berkeley Co Center Audition
11 March 24, 2010 email from McSwain to Emerson
12 Berkeley County "Procedures for Auditions "
13 Apr 21, 2010 email from Emerson
14 May 5, 2010 email fro McSwain
15 May 7, 2010, email from Emerson to McSwain
16 May 11, 2010 letter from McSwain to School District
17 June 4, 2010 at 5 01, email
18 June 4, 2010 at 7 46 email
19 June 4, 2010 at 9 58 email
20 June 7, 2010 email policy JFAB
21 June 7, 2010 letter from Emerson to McSwain
22 June 9, 2010, 6 30 a m email
23 June 9, 2010, 8 32 a am email from Emerson
24 June 12, 2010, 8 57 email
24a Emerson's response
25 June 12, 2010, 5 53, email
26 June 12, 2010, letter from McSwain
27 June 14, 2010, School Board minutes from public
28 June 16, 2010, letter from Emerson to McSwain
29 June 28, 2010, McSwain letter to Judge Dennis
30 July 1, 2010, email from McSwain to Emerson
31 July 7, 2010, email no need for Dfts to respond
32 July 8, 2010, email from McSwain to
Emerson subpoena
33 July 2010, no day in date -- letter to parent
34 Blank Affidavit
35 July 21, 2010, email from Emerson to McSwain
36 Application to AMHS

DEFENDANT'S EXHIBITS

1 Affidavit of Judith Peterson
2 Affidavit of Kathleen Magllacane

RESIDENCY VERIFICATION/LEGAL RESIDENCE ASSESSMENT

STATE OF SOUTH CAROLINA)
 } AFFIDAVIT OF A STUDENT'S DOMICILE
COUNTY OF CHARLESTON)

PENALTIES FOR PROVIDING FALSE INFORMATION

This affidavit is made under penalty of perjury. I acknowledge that if I provide false information about where a student lives, I can be prosecuted for perjury.

In addition, S C Code §59-63-32 states (emphasis added)

- (D) If it is found that information contained in the affidavit is false the child must be removed from the school after notice and an opportunity to appeal the removal pursuant to the appropriate district grievance policy.
- (E) If it is found that a person willfully and knowingly has provided false information in the affidavit to enroll a child in a school district for which the child is not eligible, the maker of the false affidavit is guilty of a misdemeanor and, upon conviction, must be fined an amount not to exceed two hundred dollars or imprisoned for not more than 30 days and must also be required to pay to the school district an amount equal to the cost to the district of educating the child during the period of enrollment. Repayment does not include funds paid by the state.

- 1 I am _____ and it is my signature that appears below
- 2 I make this affidavit based upon my own personal knowledge and if called upon I believe I would be deemed competent to testify to the facts and beliefs set forth in this affidavit.
- 3 I am aware of the penalties to myself and to the student for providing false information in this affidavit.
- 4 I am an adult responsible for the care and well being of the following student _____
- 5 As of the date I have signed this affidavit that student for whom I am responsible actually lives at the following address _____
- 6 Under penalty of perjury, I certify that, as primary caregiver of my applicant child
- a) the resident which is the subject of this application is my legal residence and my domicile, the place where I and the student actually live at the time of this application and that I do not claim to be a legal resident of a jurisdiction other than Charleston County South Carolina for any other purpose, and

Charleston County School District

b) that neither I nor any other member of my household (that is, the owner-occupant's or leaser-occupant's spouse except when that spouse is legally separated from the owner/leaser occupant and any child of the owner/leaser occupant claimed or eligible to be claimed as a dependent on the owner/leaser-occupant's federal income tax return) is residing in or occupying any other residence which I, or any member of my immediate family, has qualified for legal residency

7 I acknowledge that if a challenge is made to the truthfulness of information I provide that additional information may be required of me.

8 Further, affiant sayeth not,

Signature of affiant

Printed name of affiant

SWORN to and subscribed before me this _____
day of _____, 20 _____

Notary Public for South Carolina
My commission expires _____

Charleston County School District

Policy JFAB Nonresident Students

Issued 2/08

Purpose To establish guidelines for admitting to Charleston County School District schools those students who do not reside in the district

The associate superintendents shall make recommendations to the constituent boards when students residing outside of Charleston County request to be admitted to district schools. These recommendations shall follow applicable state law. No out-of-district student may be admitted unless the parent/legal guardian assumes responsibility for transportation. Behavioral and academic requirements set out in policy JFAA Admission of Resident Students apply to non-resident students.

Tuition

The district may charge tuition to certain non-resident students. Students who qualify for attendance under circumstances set out in Section 59-63-30 of the South Carolina Code of Laws shall not be charged tuition.

Examples of students who must pay tuition include the following:

- a child in one county who resides closer to schools in an adjacent county (59-63-480)
- a person so situated as to be better accommodated by a school of an adjoining district (59-63-490)

The associate superintendent shall collect the tuition as specified in Section 59-63-480, South Carolina Code of Laws, 1976. In accordance therewith, the district shall determine the monthly per student cost of all overhead expenses of the school, which shall include all expenses of the school not paid by the state and shall require that the parent/legal guardian make those monthly payments.

Students planning to move into the district

The superintendent shall not charge tuition for a student planning to move into the district, provided the parent/legal guardian provides a release from the district in which the student resides and demonstrates by a statement from a builder, buyer or lessor that the student and his/her parent/legal guardian plan to establish residence in the district.

Children of employees

As a fringe benefit of employment, when space is available, children of district employees may be allowed to attend the school in which the employee works or a school convenient to the employee's place of work.

Non-resident students may not attend magnet schools/programs.

Students who move during the school year

Students who move out of the district after the first reporting period may continue attending the district schools for the remainder of the year without tuition

Foreign exchange students

The district shall admit students from foreign countries who are age eligible and who are participating in a foreign student exchange program based on space availability in the requested school

Charleston County School District shall not deny admission to any student on the basis of race, religion, color, creed, sex, gender preference, immigrant status or English-speaking status, national origin or disabling condition

See policy JRA and administrative regulations for information pertaining to the transfer of student records

Adopted 10/25/76, Revised 1/23/06, 2/11/08

Legal references**Federal Law**

Homeless Assistance Act, Pub L No 100-77, 101 Stat 482-538 (1987), also known as the McKinney Act

Title VI of the Civil Rights Act of 1964 - Prohibits discrimination on the basis of race, color, national origin, religion or sex

Uniform Tax Act (Section 1524, Internal Code) Section 610 E, Code Section 6676 E
- All dependents age five and above required to have social security number

No Child Left Behind Act of 2001, P L 107-110, Section 4155

S C Code, 1976, as amended

Section 44-29-180 - Students must show immunization prior to admission

Section 59-63-30 - Qualifications for attendance

Section 59-63-45 - Procedures for reimbursement for districts for cost of educating non-resident students

Section 59-63-480 & 490 - Attendance of non-resident students

Section 59-19-90(10) - Power of board to transfer and assign pupils

Federal Court Decisions

Milliken v Bradley, 418 U S 717

Tasby v Estes, 412 F Supp 1185, aff'd 572 F 2d 1010

Evans v Buchanan, 393 F Supp 428

Armour v Nix, No 79-6108 (N.D. Ga. May 12, 1979)

State Board of Education Regulations

R-43-272 - School admission

R-43-273 - Transfers and withdrawals

CHARLESTON COUNTY SCHOOL DISTRICT

0000100167905

Charleston COUNTY SCHOOL DISTRICT	CCSD Choice Application For the 2010-2011 School Year
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School Student Is Wishing to Attend In 2010 2011

Academic Magnet High School

Student Information

Last Name <i>H</i>	First Name <i>Storm</i>	Middle Name <i>[Redacted]</i>
Date of Birth <i>3/16/96</i>	Gender ☐ Male ☒ Female	Grade for the 2010 2011 School Year <i>9th</i>
Name of School Student Is Enrolled In During the 2009 2010 School Year (if applicable) <i>Marrington Middle School of the Arts</i>		
Street Address (current) <i>[Redacted]</i>		Apartment/Unit #
City <i>Goose Creek</i>	State <i>SC</i>	Zip code <i>[Redacted]</i>
Mailing Address (if different from above)		Apartment/Unit #
City	State	Zip code
Home Phone	Cell Phone	Email Address

Parent/Guardian Information

Last Name <i>McSwain</i>	First Name <i>Gayla</i>	Relationship to Child <i>mother</i>
Street Address (current) <i>[Redacted]</i>		Apartment/Unit #
City <i>Goose Creek</i>	State <i>SC</i>	Zip code <i>[Redacted]</i>
Mailing Address (if different from above)		Apartment/Unit #
City	State	Zip code
Home Phone <i>(843) 572-5803</i>	Personal Cell Phone <i>(843) 693-8155</i>	Personal Email Address <i>gayla@gaylameswain.com</i>
Employer <i>McSwain Law Firm, LLC</i>	Work Phone " "	Work Email Address " "

Additional Parent/Guardian Information (if applicable)

Last Name <i>H</i>	First Name <i>William</i>	Relationship to Child <i>father</i>
Street Address <i>1665 Hazel Circle</i>		Apartment/Unit #
City <i>Goose Creek</i>	State <i>SC</i>	Zip code <i>29445</i>
Mailing Address (if different from above)		Apartment/Unit #
City	State	Zip code
Home Phone	Personal Cell Phone <i>(843) 693-1283</i>	Personal Email Address
Employer <i>41bay International</i>	Work Phone <i>(843) 567-3243</i>	Work Email Address <i>Bill H [Redacted]@albint.com</i>

Academic Magnet High School Application

To Parents and Students Please read this form carefully. To be considered for admission, Parts A and B must be completed by you and your school official and returned or postmarked to Academic Magnet High School (AMHS) **no later than December 4, 2009**. Therefore, you are responsible for completing Part A in its entirety and the "To Be Completed by Student" section of each recommendation form in Part B. Submit Part A and all sections of Part B to your school's guidance counselor or teacher for recommendations. Your guidance counselor or school official will submit all application materials to AMHS. Please call (843) 746-1300 or visit amhs.ccsdschools.com for more information.

ALL INFORMATION MUST BE SUBMITTED BEFORE STUDENT CAN BE CONSIDERED FOR ACCEPTANCE

To School Guidance Personnel or Administrator Please submit the school's application packet (including Part A, Part B, and the required documents as outlined below) to Academic Magnet High School (AMHS) **no later than December 4, 2009**. Mailed packets must be postmarked by this date. Application materials may be hand delivered, faxed to (843) 746-1310, or mailed to 1525 Avenue B South, North Charleston SC, 29405. Please call (843) 746-1300 or visit amhs.ccsdschools.com for more information.

ALL INFORMATION MUST BE SUBMITTED BEFORE STUDENT CAN BE CONSIDERED FOR ACCEPTANCE

Part I- To be Completed by School Guidance Personnel

School Marrington Middle Address 109 Glaring St. Goose Creek
SC 29448

Test Name EXPLORE Date Sept 2009

This application must include Test review → various tests
CMAPS PAC, EOCEP, CUSAT

- A copy of student's most **current test score report**
- A copy of student's **most current 2009-2010 report card** (not progress report)

Each 9th grade applicant must also include a copy of his or her seventh grade report card.

Students applying for 10th or 11th grade must also include an official transcript.

Keri Crawford Director of Guidance
Name and Signature of Official School Personnel Position

Part II- Writing Sample

Writing samples must be completed by December 4, 2009 for 9th grade & April 1, 2010 for 10th & 11th grades. The deadline for applications, which includes a writing sample, is December 4, 2009 for 9th and April 1, 2010 for 10th & 11th.

Writing sample sessions will be scheduled at most public middle schools. Please call the middle school guidance office for the date. Other students should call AMHS to schedule an appointment. Writing sample sessions at AMHS will be on Tuesdays and Thursdays from 3:30 - 4:30.

The Admission Committee will complete the selection process for 9th grade by January 15, 2010 and mail a confirmation form. Once a student is selected for admission to the 9th grade, parents must confirm acceptance by the date stated on the form.

Admission to 10th & 11th is limited to space availability. You will be notified by mail of your position on the waiting list for these spaces by May 15, 2010.

Part III- Teacher Recommendations

Three teacher recommendations are required and confidential. Please use the form provided. The recommendations must come from the student's **English Language Arts** teacher, **Math** teacher and either their **Science or Social Studies** teacher.

EXPLORE[®]

Your Score Report

ID# 24011004001

GRADE 8

CLASS/GROUP NAME

SCHOOL NAME MARRINGTON MIDDLE SCHOOL

SCHOOL CODE 01823714

TEST FORM 03B

TEST DATE September 2009

Your Scores

Composite Score 22

English 22

Usage/Mechanics (1-12) 10

Rhetorical Skills (1-12) 12

Mathematics 20

Reading 24

Science 20

Score
Range
(1-25)

Percent of students scoring at or below your score

In the U.S. (Fall 8th)	1%	10%	25%	50%	75%	90%	99%	In Your School	In Your State
98%								98%	
96%								95%	
93%								89%	
100%								100%	
92%								93%	
99%								96%	
94%								89%	

ACT

More info at
www.explorestudent.orgYour Estimated PLAN
Composite Score Range

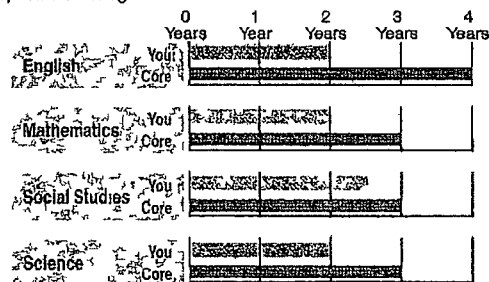
23-27

PLAN is a 10th grade test that helps you plan for the ACT tests and for college. Additional information is in your booklet *Using Your EXPLORE Results*.

Your Plans

Your High School Course Plans
Compared to Core

Core means minimum number of high school courses recommended to prepare for college.



About Your Course Plans Your plans fall far short of the recommended courses. (Most successful college students completed all of these recommended courses when they were in high school.) Talk to your counselor or teacher to make sure you are getting the courses you need.

Your Reported Needs

- ✓ Making plans for my education, career, and work after high school
- Improving my writing skills
- Improving my reading speed and comprehension
- Improving my study skills
- Improving my mathematical skills
- ✓ Improving my computer skills
- Improving my public speaking skills

Your Plans for
After High School

Educational Plans

Undecided

Career Area Preference

Applied Arts (Visual)

College Readiness

Students scoring at or above these EXPLORE benchmark scores and taking college prep courses throughout high school will likely be ready for first year college courses. How do your scores compare?

EXPLORE Benchmark Scores (8th Grade)	Below	At	Above
English 18	☐	☐	☒
Mathematics 17	☐	☐	☒
Reading 15	☐	☐	☒
Science 20	☐	☒	☐

About Your Scores All of your EXPLORE scores fall at or above the benchmark scores that show readiness for college level work. This means you are on track to do well in first year college courses. It's not too early to start thinking about college.

Berkeley County Schools

Marrington Middle School

109 Gearing Street
Goose Creek, SC 29445
843-572 0313

Student **H Storm**
Goose Creek SC

Grade 8
All Day Absences 0
Tardies 0

A 93-100 | S+ Excellent | FA 61
B 85-92 | S Good | WF 61
C 77-84 | S Satisfactory | WP Withdraw Pass
D 70-76 | N Needs Improvement | AU Audit
F Below 70 | U Unsatisfactory | TR - Transfer

Course/Class	Q1	Teacher	Comment
HR8		Laramée, Angela	
BAND8	99	Dadheech Swati	Excellent musical talent,
ALGEBRA2HON	95 ✓	Laramée Angela	
ENGLISH1H	98 ✓	Morrison Karen	
SCIENCE8	96 ✓	Connelly Diane	
ART8	98	Ellis Elizabeth	Very creative
SOCIALSTUDIES8	96 ✓	Colbert John	Storm is a pleasure to teach and is quite knowledgeable I hope I'm being of service to her

Please sign and return

Parent Signature _____

November 11 2009 is an early release day for students Dismissal time will be 2:00

Storm H
Marrington Middle 8th Grade

ID: [REDACTED] SUNS: [REDACTED] DOB: [REDACTED]

Test Scores

☛ CogAT

Administration ▼	Grade	Verbal	Quantitative	Nonverbal
		Age Percentile Rank	Age Percentile Rank	Age Percentile Rank
2003	02	88	89	97

☛ EOCEP

Administration ▼	Grade	Algebra
		SS Level
2009 Spring	07	95 A

☛ ITBS

Administration ▼	Grade	Reading	Language	Math	Social Studies	Science
		Standard Score	Standard Score	Standard Score	Standard Score	Standard Score
2003	02					

☛ MAP

<u>Administration</u> ▼	<u>Grade</u>	<u>Reading</u>			<u>Math</u>		<u>Language</u>	
		<u>RIT</u>	<u>Percentile</u>	<u>Lexile</u>	<u>RIT</u>	<u>Percentile</u>	<u>RIT</u>	<u>Percentile</u>
<u>2009 Spring</u>	07	236	92	1250	259	98	231	88
<u>2008 Fall</u>	07	240	98	1318	249	95	232	94
<u>2008 Spring</u>	06	235	94	1230	245	92		
<u>2007 Fall</u>	06	242	99	1359	233	87	227	91
<u>2007 Spring</u>	05	231	96	1154	236	90	218	85
<u>2007 Winter</u>	05	228	95	1103	235	93		
<u>2006 Fall</u>	05	228	97	1105	225	86	220	83
<u>2006 Spring</u>	04	226	96	1060	234	96	221	88
<u>2006 Winter</u>	04	230	99	1143	230	97		
<u>2005 Fall</u>	04	214	87	858	214	84	207	63
<u>2005 Spring</u>	03	208	75	751	223	97	211	79
<u>2004 Fall</u>	03	206	88	703	211	97	205	83
<u>2004 Spring</u>	02	207	91	735	206	93		

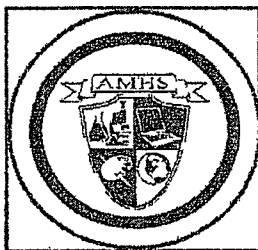
☛ PACT

<u>Administration</u> ▼	<u>Grade</u>	<u>ELA</u>		<u>Math</u>		<u>Social Studies</u>		<u>Science</u>	
		<u>Level</u>	<u>Scale Score</u>	<u>Level</u>	<u>Scale Score</u>	<u>Level</u>	<u>Scale Score</u>	<u>Level</u>	<u>Scale Score</u>
<u>2008</u>	06	Advanced	636	Advanced	630			Advanced	641
<u>2007</u>	05	Proficient	530	Proficient	522			Advanced	533
<u>2006</u>	04	Proficient	415	Advanced	429	Advanced	447	Advanced	443
<u>2005</u>	03	Advanced	341	Advanced	330	Advanced	326	Advanced	355

109 Gearing Street
Goose Creek SC 29445

01	Social Studies Grade 7	95	94	95	97		96	97	97	96	96	97		97	Simmons A
Comments		Have a great summer and READ!													
02	Physical Education Grade 7							98	98	98	98	98		98	Todd D
Comments		A pleasure to teach													
02	Drama Grade 7	97	99	99	98		99							99	Toler D
02	Dance Grade 7	91	97	100	100		99							99	Steele K
03	Language Arts Grade 7	96	97	98	99		98	98	98	92	94	96		97	✓ Sorrell S
Comments		A pleasure to teach													
04	Algebra I Hon	81	93	86	92		93	87	88	90	89	89	95	92	✓ Laramee A
06	Band Grade 7	100	99	100	100		100	98	97	100	100	99		100	Padheech S
Comments		Have a great summer and READ! - Excellent musical talent Leadership qualities													
07	Science Grade 7	100	95	98	98		97	98	97	96	93	95		96	✓ Rumph C

Summer Sch Required _____ Summer Sch Recommended _____



**Academic Magnet High School--
Recommendation English Language Arts Teacher**

To be Completed By Student

Dear Student

Please submit this form and an envelope labeled with your name to your English Language Arts teacher. The teacher will submit the envelope with the completed recommendation to your guidance counselor or school official.

Student Name Storm H
Current School Marrington Middle School of the Arts

To be Completed By Teacher

Dear Teacher

Thank you for your assistance in the AMHS application process. Please complete the information below and return this form to the school guidance counselor or other school official. All application materials must be submitted to AMHS by **December 4, 2009** for all applicants applying for the 9th grade.

Teacher's Name Karen Morrison Telephone 609-7437

Subject Area Honors English I

Please circle the appropriate point on the scale to show the applicant's rating on the characteristics below in relation to other students you have taught.

Characteristics	Cannot Judge	Below Average	Average	Very Good	Outstanding	Excellent
Analytical Thinking	0	1	2	3	4	5
Independence of Thought	0	1	2	3	4	5
Originality	0	1	2	3	4	5
Effectiveness of Oral Communication	0	1	2	3	4	5
Effectiveness of Oral Communication	0	1	2	3	4	5
Judgment and Maturity	0	1	2	3	4	5
Industry and Persistence	0	1	2	3	4	5
Leadership Ability	0	1	2	3	4	5

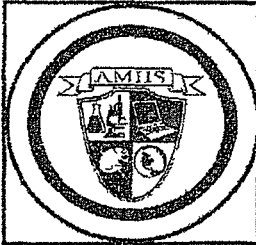
Do you recommend this student for honors level classes? ☒ Yes ☐ No

Additional comments (If necessary, please attach a separate sheet with typed comments.)

Storm has a definite thirst for knowledge, soaking up everything that is put before her. She has a winning personality and spirit. I have had the privilege of knowing Storm through Mock Trial, as well. She is a

Teacher's Signature Karen Morrison Date November 4, 2009

"dynamo" and would be a true asset to your school!



**Academic Magnet High School-
Recommendation Science or Social Studies Teacher**

To be Completed By Student

Dear Student:

Please submit this form and an envelope labeled with your name to your Science or Social Studies teacher. The teacher will submit the envelope with the completed recommendation to your guidance counselor or school official.

Student's Name Storm H. [redacted]
Current School Merrington Middle School of the Arts

To be Completed By Teacher

Dear Teacher:

Thank you for your assistance in the AMHS application process. Please complete the information below and return this form to the school guidance counselor or other school official. All application materials must be submitted to AMHS by **December 4, 2009** for all applicants applying for the 9th grade.

Teacher's Name John A. Colbert Telephone 843-572-0313

Subject Area Social Studies

Please circle the appropriate point on the scale to show the applicant's rating on the characteristics below in relation to other students you have taught.

Characteristics	Cannot Judge	Below Average	Average	Very Good	Outstanding	Excellent
Analytical Thinking	0	1	2	3	4	(5)
Independence of Thought	0	1	2	3	(4)	5
Originality	0	1	2	3	4	(5)
Effectiveness of Oral Communication	0	1	2	3	(4)	5
Effectiveness of Oral Communication	0	1	2	3	4	5
Judgment and Maturity	0	1	2	3	4	(5)
Industry and Persistence	0	1	2	3	4	(5)
Leadership Ability	0	1	2	3	4	(5)

Do you recommend this student for honors level classes?

☒ Yes

☐ No

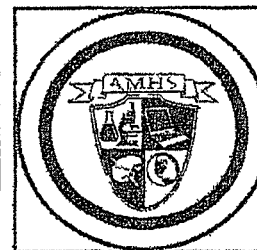
Additional comments (If necessary, please attach a separate sheet with typed comments.)

Storm is not only gifted with great intelligence but she combines it with dedication and hard work. Of all my students, I would select her first.

Teacher's Signature John A. Colbert

Date 11/12/09

**Academic Magnet High School-
Recommendation Mathematics Teacher**



To be Completed By Student

Dear Student

Please submit this form and an envelope labeled with your name to your Mathematics teacher. The teacher will submit the envelope with the completed recommendation to your guidance counselor or school official.

Student's Name Storm H [redacted]
Current School Marrington Middle School

To be Completed By Teacher

Dear Teacher

Thank you for your assistance in the AMHS application process. Please complete the information below and return this form to the school guidance counselor or other school official. All application materials must be submitted to AMHS by **December 4, 2009** for all applicants applying for the 9th grade.

Teacher's Name A Laramee Telephone 572-0313

Subject Area Algebra 2

Please circle the appropriate point on the scale to show the applicant's rating on the characteristics below in relation to other students you have taught

Characteristics	Cannot Judge	Below Average	Average	Very Good	Outstanding	Excellent
Analytical Thinking	0	1	2	3	4	5
Independence of Thought	0	1	2	3	4	5
Originality	0	1	2	3	4	5
Effectiveness of Oral Communication	0	1	2	3	4	5
Effectiveness of Written Communication	0	1	2	3	4	5
Judgment and Maturity	0	1	2	3	4	5
Industry and Persistence	0	1	2	3	4	5
Leadership Ability	0	1	2	3	4	5

Do you recommend this student for honors level classes?

☒ Yes

☐ No

Additional comments (If necessary, please attach a separate sheet with typed comments)

Storm would be an asset to Academic Magnet. She is a hard worker and extremely bright. I have had the honor of teaching Storm in Algebra I and Algebra II.

Teacher's Signature A Laramee

Date 11/4/09

1/23/10

Admissions

Academic Magnet High School
1525 Avenue B South
North Charleston, SC 29405
843-746-1300 FAX 746-1310

AMHS CONFIRMATION FORM DUE in AMHS office by 4pm, January 28, 2010
NINTH GRADE 2010 - 2011

Name H Storm
Last First Middle

Telephone Number 572-5843 - email gayle@gayleswain.com

Charleston County Residence Address

We will provide prior to enrollment.

Mailing Address if different

Goose Creek, SC

Middle School Marlington Middle School of the Arts

High School zoned for based on ^{current} home address Stratford

I plan to attend the Academic Magnet High School in 2010 - 2011 Enclosed is

a \$20.00 NON-REFUNDABLE DEPOSIT on the 2010 - 2011 AMHS fees Ck# 570 Cash

Student Signature Storm H

Parent Signature Margaret H Swain

* The AMHS Program of Studies is on our website <http://amhs.ccsdschools.com>

APPLICATIONS FOR ACADEMIC MAGNET HIGH SCHOOL

NINTH GRADE APPLICATIONS ARE DUE DECEMBER 18, 2009
TENTH/ELEVENTH APPLICATIONS ARE DUE APRIL 1, 2010

To learn more about AMHS, we offer the following opportunities

OPEN HOUSE NOVEMBER 5, 2009, 6 OOPM at AMHS

SHADOWING Please, call the school to schedule a time to shadow an AMHS student. You may select any day that works for you AMHS does work on an A/B Schedule, 8 15-3 20

TOURS Tuesdays and Thursdays at 9 00 AM Please call the school to schedule a tour

ADMISSION REQUIREMENTS

Students must be residents of Charleston County and complete an AMHS application. The application includes teacher recommendations, test scores, writing sample and grades (a minimum overall B average in core academic courses)

Students must have a minimum national percentile rank of 85 on recent norm-referenced achievement tests

Students must demonstrate proficiency in composition and grammar by successfully completing a writing sample. Writing sample sessions will be offered at stand alone CCSD middle schools. Other students may call AMHS to schedule an appointment for the writing sample. Writing samples will be offered at AMHS on Tuesday and Thursday from 3 30 – 4 30

Completion of Algebra I in eighth grade is **required**

French 1 or Spanish 1 in eighth grade is recommended but not required. French I and Spanish I are offered to ninth graders at AMHS

1525 Avenue B South
North Charleston, SC 29405
746-1300, Fax 746-1310

Principal Judith Peterson
Assistant Principal Dr. Patrick Harrington
Guidance Director Margaret Dobson 746-7907
Counselor James Yates 746-7911

<http://amhs.ccsdschools.com>

June 14, 2010

A regular meeting of the Board of Trustees of the Charleston County School District was held on Monday, June 14, 2010 with the following members of the Board present Vice Chair - Mr Ray Toler, Rev Chris Collins, Mr Chris Fraser, Mrs Elizabeth Kandrak, Mr Gregg Meyers, Mrs Ann Oplinger, Mr Arthur Ravenel and Dr Nancy J McGinley – Superintendent of Schools and Executive Secretary Chair – Mrs Ruth Jordan and Mrs Toya Hampton Green were absent Staff members Dr Doug Gepford, Mrs Audrey Lane, Mr Bill Lewis, and Dr Brenda Nelson, were also in attendance

The news media was duly notified of the meeting and representatives were present

Board Vice Chair – Mr Ray Toler called the meeting to order at 4 00 p m Mr Meyers motioned, seconded by Mr Collins to convene into Executive Session to discuss agenda items listed below The motion was unanimously approved

Executive Session Agenda Items

- 1 1 Student Transfer Appeals
- 1 2 Legal Briefing
- 1 3 Personnel Matters
- 1 4 Appointment - Assistant Associate Superintendent
- 1 5 Appointment – Principal – Morningside Middle School Boys Academy (ARMS)
- 1 6 Appointment – Principal – Daniel Jenkins Academy
- 1 7 Appointment – Principal – Sixth Grade Academy
- 1 8 Appointment – Principal – Baptist Hill High
- 1 9 Academic Magnet Student Appeal

II CALL TO ORDER, INVOCATION/MOMENT OF SILENCE, AND PLEDGE OF ALLEGIANCE

The Board reconvened in Open Session at 5 15 p m Vice Chair – Mr Toler called the meeting to order, led the group in a Moment of Silence followed by the Pledge of Allegiance

II SPECIAL RECOGNITION

South Carolina's 2010 School Improvement Advocate of the Year

The Board recognized Ms Clara Heinsohn, CCSD Director of Volunteers and Public Affairs, for being the recipient of South Carolina's 2010 School Improvement Advocate of the Year award

MUSC Recognition

The Board recognized Ms Melissa Cox of the Medical University of South Carolina for her work with the Teen Leadership Project between the College of Nursing and Medical Library at MUSC and St John's High School

Design Award Winners – Moultrie Middle and Ashley River Creative Arts

The Board recognized Moultrie Middle, the principals of Ashley River Creative Arts and Mt Pleasant Academy, as well as the construction and design teams, for receiving building design awards for their state of the art facilities

DAR Book Donation

The Board recognized Rebecca Jones, Janet Welsh and Ann Everett from the Daughters of the American Revolution for their donation of books to CCSD schools

IV SUPERINTENDENT'S REPORT

4 1 Superintendent's Report

Dr. McGinley shared the following

- She regretfully announced the death of Javonne Washington who was a student at Springfield Elementary then urged parents to take advantage of swimming lessons offered throughout the county
- Congratulations to the Class of 2010 and those who helped prepare those students for graduation
- Because the economy is forcing more people to do more with less, many are experiencing emotional and health issues. Administrators will discuss an initiative that deals with the health of staff members at the upcoming Summer Leadership Conference
- Information was shared on the June 13, 2010 Literacy article in the Post and Courier
- The FY2011 Budget will be presented to the Board for second reading on June 28, 2010
- The District is moving forward with Seismic Updates and Rebuilding Plans. The Board received an update last Thursday regarding the same
- A Public drop-in for the new Jennie Moore Elementary is scheduled from 6pm – 7:30pm on Tuesday, June 15, 2010
- Staff is looking at how the Tax Increment Financing requested by the City would impact CCSD. The district has been asked to amend the King Street Gateway TIF to include the Gaillard Auditorium at no financial impact. However, the second part of the request is to extend the TIF until 2023. While the upgrade of Gaillard Auditorium is commendable, she objects to the extension of the TIF. The Mayor was notified of the objection today.

At this time, Mrs. Oplinger said she was excited about the Literacy information and felt it was moving in the right direction. She also asked when data would be available. Dr. McGinley said last year the district did not have First Grade Academies, just Third and Sixth. Data on those two Academies is forthcoming. Literacy initiatives and clusters are making the most progress. Information will also be provided on sub groups—Special Education and ESL.

Mr. Fraser said he looks forward to getting data which will reveal which areas need help.

V VISITORS, PUBLIC COMMUNICATIONS

5 1 Visitors, Public Communications

- 1 Ms. Claudia Mazyck read the Governor's proclamation in recognition of Historic Preservation Month.
- 2 Dr. W. Eric Emerson of the SC Historical Society addressed the Board regarding preserving Jennie Moore Elementary as a historical site because it has a tangible link to the Gullah community.
- 3 Mr. George Freeman of the Gullah Heritage Preservation Society said two years ago he requested the Board to turn Jennie Moore Elementary over to the community. He urged the Board to work with the community, the Gullah Heritage Preservation Society, Parks and Recreation, the SC Historical Society and the community to save Jennie Moore Elementary for historical purposes.

- 4 Ms Kim Poff and Ms Stacey Podd reminded the Board that Harbor View Elementary conceded earlier to allow another school to be built first. They urged the Board to remember their patience and proceed with the promise to build them a new school.
- 5 Ms Sarah Mack, Ms Patricia Miller, Ms Deborah Grant and Mrs Daisy Mongo expressed concerns about Frierson Elementary School and a recent decision to move 5th and 6th grade students to Haut Gap Middle. They urged the Board to keep the school open and not to relocate 5th and 6th grade students.
- 6 Ms Can Goetchens, Assistant Professor, Department of Planning and Landscape Architecture with Clemson University shared information with the Board regarding South Carolina's Equalization Schools and efforts to preserve black schools. Ms Goetchens urged the Board to reconsider rehabilitation of Jennie Moore.
- 7 Ms Jennifer Smith expressed concerns regarding rumors of Buist Academy being housed in Oakland Elementary which would postpone the construction of St. Andrews Math and Science by 6-7 years.
- 8 Mr George Jefakis, Ms Candace Martin, and Ms Taylor Pauylder expressed concerns about relocating and rebuilding of Buist Academy.
- 9 Ms Tracey Thompson, a St. Andrews School of Math and Science School Improvement Council representative urged the Board not to change the plans for them to use the Oakland swing space while their school is being built.
- 10 Ms Ashley Brown-Marshall and Ms Elisha Clyburn urged the Board to consider additional traffic if the old Stiles Point facility was used to house Buist Academy.
- 11 Ms Ellen Fiester Smalls expressed concerns regarding Garrett Academy's facility.

XI APPROVAL OPEN SESSION AGENDA ITEM

Mr Collins motioned, seconded by Mr Meyers, approval of the Open Session minutes of May 24, 2010. The motion was approved 7-0.

6.2 Motions of Executive Session of June 14, 2010

The Board approved the following motions that were made in Executive Session:

1.1 Student Transfer Appeals – The Board approved A, B, G and H student transfer appeals, C, D, E, F, I, J, and K were denied, the Superintendent was directed to investigate safety concerns for student transfer appeal F. The vote was 7-0.

1.2 Legal Briefing - General Counsel provided a legal briefing for the Board in Executive Session. No action was taken.

1.3 Personnel Matters – The Board received information on Personnel Matters in Executive Session. No action was taken.

1.4 Appointment – Assistant Superintendent of Elementary Schools Learning Community – The Board approved the appointment of Ms Ruth Taylor to the position of Assistant Superintendent of Elementary Schools Learning Community. The motion was approved 7-0.

1.5 Appointment – Morningside Middle School Boys Academy (ARMS) Principal - The Board approved the appointment of Dr. Joseph Williams to the position of principal at Morningside Middle School Boys Academy (ARMS). The motion was approved 7-0.

1.6 Appointment – Daniel Jenkins Academy Principal - The Board approved a motion to appoint Ms Jennifer Coker to the position of principal at Daniel Jenkins Academy. The motion was approved 7-0.

1 7 Appointment – Sixth Grade Academy Principal - The Board approved a recommendation to appoint Ms. Lawanda Glears to the position of principal at the Sixth Grade Academy. The motion was approved 7-0.

1 8 Appointment – Baptist Hill High Principal- The Board approved the appointment of Adrian Busch to the position of principal at Baptist Hill High. The motion was approved 7-0.

1 9 Academic Magnet Student Appeal - The Board approved an Academic Magnet Student Appeal, subject to residency and domicile confirmation. The motion was approved 7-0.

6 3 Financial Minutes of May 24, 2010

Mr. Collins motioned, seconded by Mr. Meyers, approval of the financial minutes of May 24, 2010, 2010. The motion was approved 7-0.

VII. MANAGEMENT REPORT

There were no Management Reports to come before the Board at this meeting.

VIII. CHARLESTON ACHIEVING EXCELLENCE UPDATE

8 1 Summer Programs – Mr. Tom Widlowski

Mr. Tom Widlowski, Director of Community Education, presented information to the Board on summer camps and efforts to reinforce learning and show students that learning is fun.

NOTE: Mr. Ravenal left at 6:30 p.m. Therefore, he did not vote on Consent Agenda items.

IX. POTENTIAL CONSENT AGENDA ITEMS

9 1 Approval of Second Reading of Board Policies – *A recommendation to approve the second reading of Board Policies listed below.*

- A. GCKAA – Voluntary Teacher Transfer
- B. GBEB – Staff Dress Code
- C. KF – Community Use of School Facilities
- D. EBBA – Prevention of Disease/Infection Transmission

Mr. Fraser motioned, seconded by Mrs. Oplinger, approval of the Second Reading of Board Policies listed above. The motion was approved 6-0.

9 2 Approval of Pilot Courses – *A recommendation to approve Pilot Courses listed below.*

- A. HSAP for Math (District)
- B. HSAP Prep for ELA (District)
- C. World Music I and World Music II (James Island Charter)
- D. Introduction to Aeronautical Studies (Stall High)

Mr. Fraser motioned, seconded by Mrs. Oplinger, approval of Pilot Courses listed above. The motion was approved 6-0.

9 3 Voyager Reading and Math Intervention System – *A recommendation to purchase additional Voyager Reading Intervention Systems for Sixth Grade Academy students significantly below grade level. The funding source is Title II 2010-2011. The amount is*

\$55,996 00 for three years of materials for six (6) Sixth Grade Academy sites - Mr Fraser motioned, seconded by Mrs Oplinger, approval of the Voyager Reading and Math Intervention System The motion was approved 6 0

9 4 District wide Emergency Communication System – *A recommendation to approve the purchase of a new District wide Emergency and Transportation Communication System* The total estimated cost for the first three years is \$1,072,851 58, the total fifteen year cost is approximately \$1,216,851 58, not including parts to replace after expiration of the warranty The funding source is Fixed Cost of Ownership funds - Mr Fraser motioned, seconded by Mrs Oplinger, approval of the District wide Emergency Communication System The motion was approved 6-0

9 5 Military Style Uniforms for students at Military Magnet Academy – *A recommendation to approve Bid Award #B1038 for Military Style Uniforms for Students at Military Magnet Academy* The projected amount is \$41,000 General Operating funds and an estimated \$205,000 00 for the total contract period This account will be reimbursed as students register for enrollment Mr Fraser motioned, seconded by Mrs Oplinger, to approve Bid Award #B1038 for Military Style Uniforms for Students at Military Magnet Academy The motion was approved 6-0

9 6 Bid Award #B1027 – Renovations to IT Building on Bridge View Campus – *A recommendation to approve Bid #B1027 for renovations to the IT building at Bridge View Drive* The funding source is e-Rate funds, the amount is \$69,250 00 - Mr Fraser motioned, seconded by Mrs Oplinger, approval of Bid Award #1027 for Renovations to the IT Building on Bridge View Campus The motion was approved 6-0

9 7 School Attendance Zone GIS Verification – The Board received this agenda item as information No action was taken

9 8 Bid Results – Qualified School Construction Bond Projects – Stall High, Alice Birney, Midland Park, and Septima Clark Academy The Board received this agenda item as information No action was taken

There being no further business to come before the Board, at 6 50 p m Mr Meyers motioned, seconded by Mrs Oplinger to adjourn the meeting The motion was approved by consensus

Approved

Nancy J McGinley, Ed D
Superintendent of Schools

JUN 28 2011

Office of the
General Counsel**Petition to Appeal Charleston County School District Order/Directive****In re Storm [REDACTED] Harvey, a minor - Petitioner**

Pursuant to the following code sections of the South Carolina Code of Laws and **Statement of Facts and Issues**, Storm McSwain Harvey, a minor, by her mother and next friend, hereby appeals the Order/Directive issued by the Charleston County School District ("CCSD") on June 14, 2010, having been received by letter to Petitioner via U S mail on June 22, 2010

I Applicable Statutes**Title 59 Education****Chapter 19 SCHOOL TRUSTEES****Article 3 APPEAL FROM ACTION OF TRUSTEES**

Current through 2010, Act No 195

§ 59-19-510 Right to appeal to county board of education, petition

Subject to the provisions of Section 59-19-90, any parent or person standing in loco parentis to any child of school age, the representative of any school or any person aggrieved by any decision of the board of trustees of any school district in any matter of local controversy in reference to the construction or administration of the school laws or the placement of any pupil in any school within the district, shall have the right to appeal the matter in controversy to the county board of education by serving a written petition upon the chairman of the board of trustees, the chairman of the county board of education and the adverse party within ten days from the date upon which a copy of the order or directive of the board of trustees was delivered to him by mail or otherwise. The petition shall be verified and shall include a statement of the facts and issues involved in the matter in controversy.

§ 59-19-520 Appeal in counties where functions of trustees and board of education have been combined

In counties where the functions of the boards of trustees and those of the county board of education have been combined, the appeal provided in Section 59-19-510 shall lie to the county board of education from its original action disposing of the matter in controversy before hearing.

§ 59-19-530 Hearing, separate hearing for each child in controversies involving children of school age

The parties shall be entitled to a prompt and fair hearing by the county board of education, which shall try the matter de novo and in accordance with its rules and regulations. Where individual children of school age are involved in the matter in controversy, the case of each child shall be heard and disposed of separately.

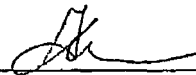
§ 59-19-540 Hearing, appearance of parties and evidence

At any hearing provided for in Section 59-19-530, the parties may appear in person or through an attorney licensed to practice in South Carolina and may submit such testimony, under oath, or other evidence as may be pertinent to the matter in controversy.

II Statement of Facts and Issues

I, Gayla McSwain, hereby **verify** that the attached letter to John F. Emerson, dated June 12, 2010, , incorporated into this Petition, includes a statement of the facts and issues involved in the matter in controversy.

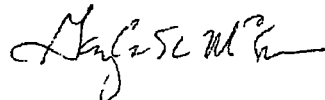
Respectfully submitted



Gayla S. L. McSwain

June 25, 2010

Certificate of Mailing I hereby certify that I have this day, June 25, 2010, mailed this Petition, via U S , first class mail, to Dr. Nancy J. McGinley, Superintendent of CCSD and to Ms. Ruth Jordan, Chair of the CCSD Board of Trustees, via their attorney in their public official capacities, John F. Emerson, at Charleston County School District, 75 Calhoun Street, Charleston, SC 29401.



vid
7/20/2010

Charleston Area School District
SCHOOL DISTRICT

July 2010

Dear Parent and Student

Judith Peterson
Principal

Dr. Nancy J. McGinley
Superintendent of Schools

Mr. Louis Martin
Associate Superintendent

Walter A. Wagner High School

1525 Avenue B South
North Charleston, SC 29405
Tel: (843) 746-1300

I hope that your summer has been filled with family, friends and good times. While you have been on summer break, work has continued at AMHS to prepare for the coming year. The "move" to the new campus is underway, the schedule is being finalized, and preparations for the next school year have begun.

The new buildings are close to completion, and they are beautiful. I am very excited for the AMHS community. As we prepare for the coming school year, there are several important items to consider:

Registration Dates –

Seniors: Monday, August 2 8:00 – 12:00

Juniors: Tuesday, August 3 8:00 – 12:00

Sophomores: Wednesday, August 4 8:00 – 12:00

Freshmen: Thursday, August 5 8:00 – 12:00

Make-up: Monday, August 9 8:00 – 12:00

(Registration will be held in the new AMHS academic building; please follow the signs.)

Registration Needs – To complete the registration process, we must have all the listed items. Please pay close attention to the three items for Address Verification because we cannot complete registration without them.

1. Address Verification Information: This information must be presented and complete on the day of registration. I must collect and file the following three items as "proof of residence" as outlined in Policy JIFAA.

One document from this category

If you rent—a copy of the signed/dated lease agreement

If you own—a copy of your tax bill or tax receipt

If you are building—a copy of the contract

AND

One document from this category

Copy of a water bill, phone bill (not cell), cable bill, voter registration card, pay stub, local, state or federal correspondence

AND

Affidavit of Domicile - signed and notarized

Additional details and the affidavit form are available on the website. To insure your student's ability to complete registration at AMHS, I must urge you to meet this expectation and to bring the documents with you to your registration session.

2. Student Activity Fee \$45.00

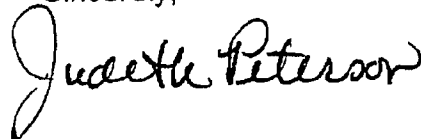
Parking Fee \$25.00 (Spaces are very limited this year and will be distributed by grade level - Seniors first.)

3. Student Contract will be signed at registration but you ought to review it on the website because there are some important changes.

We are looking forward to the new school year in our wonderful new facilities at the Bonds-Wilson Campus. We will schedule tour opportunities and have flyers available at registration. In the meantime, please be patient with us as we work from temporary stations.

As always, thank you very much for your support of AMHS and our efforts to offer your student the very best we can.

Sincerely,



100-443887-100

BR01 37473

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

GRANTEE'S ADDRESS

Goose Creek, SC

TMS# 469-15 00 051

TOGETHER with all and singular the rights members hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee and Grantee's successors and assigns forever so that neither the said Grantor, nor Grantor's assigns, nor Grantor's successors nor any other person or persons claiming under Grantor or them shall at any time hereafter, by any way or means have, claim or demand any right or title to the aforesaid premises or appurtenances or any part or parcel thereof forever

IN WITNESS WHEREOF the Grantor has caused this instrument to be signed sealed and delivered by its duly authorized representative this 9th day of August

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Michelle S. L.
WITNESS NO 1

Christina J. Russell
WITNESS NO 2 / NOTARY

Katherine Brown by R.W. Smith
KATHERINE BROWN BY R.W. SMITH
AS HER ATTORNEY IN FACT

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

THE FOREGOING instrument was acknowledged before me by Katherine Brown by R.W. Smith as her attorney in fact on this the 9th day of August, 2010

Christina J. Russell
Notary Public for South Carolina
My Commission Expires 3/22/2020
NC10 0056415/MCS:wan

CHRISTINA J. RUSSELL
Notary Public South Carolina
My Commission Expires
March 22 2020

STATE OF SOUTH CAROLINA

)

Date of Transfer of Title

) AFFIDAVIT

August 9, 2010

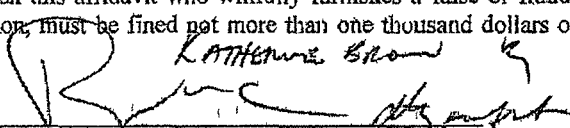
COUNTY OF CHARLESTON

)

RMC BK 0137 Pg 473 pg 3 *

PERSONALLY appeared before me the undersigned who being duly sworn, deposes and says

- 1 I have read the information on this Affidavit and I understand such information
- 2 The property is being transferred by Katherine Brown TO Storm Harvey ON 08/09/10
- 3 Check one of the following The deed is
 - (a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership or other entity and a stockholder, partner, or owner of the entity or is a transfer to a trust or as a distribution to a trust beneficiary
 - (c) _____ EXEMPT from the deed recording fee because (Exemption n/a) (Explanation, if required n/a If exempt, please skip items 4-6 and go to item #7 of this affidavit)
- 4 Check one of the following if either item 3(a) or item 3(b) above has been checked.
 - (a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$4 000 00
 - (b) _____ The fee is computed on the fair market value of the realty which is n/a
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is n/a
- 5 Check YES _____ or NO X to the following. A lien or encumbrance existed on the land, tenement or realty before the transfer and remained on the land, tenement or realty after the transfer If "YES" the amount of the outstanding balance of this lien or encumbrance is n/a
- 6 The DEED Recording Fee is computed as follows
 - (a) \$4,000 00 the amount listed in Item #4 above
 - (b) 0 00 the amount listed on Item #5 above (no amount, please zero)
 - (c) \$4 000 00 subtract Line 6(b) from Line 6(a) and place the result here
- 7 As required by Code Section 12-24 70 I state that I am a responsible person who was connected with the transaction is Attorney
- 8 I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year or both


Grantor Grantee or Legal Representative
Connected with this Transaction

SWORN to before me this
08/09/10


Notary Public for South Carolina
My Commission expires 5/6 2012

KATHERINE BROWN BY RW Smith
Print or Type Name Here

August 10 2010

**Berkeley
County
School
District**



Dr. Anthony Parker, Superintendent

February 24, 2010

Ms. Gayla S. L. McSwain

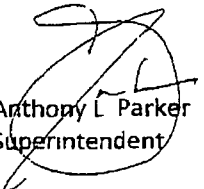
[REDACTED]
Goose Creek, SC [REDACTED]

Dear Ms. McSwain:

This is to confirm that the Berkeley County Board of Education has approved your request for permission to allow your daughter to attend school in Charleston County. The Berkeley County School District is not responsible for any tuition or transportation fees charged by Charleston County Schools.

If you have any questions, please contact Charlie Davis, 899-8603.

Sincerely,


Anthony L. Parker, Ed.D.
Superintendent

cc: Mr. Davis

From JOHN EMERSON [JOHN_EMERSON@charleston k12 sc us]
Sent Wednesday April 21 2010 9 26 AM
To Gayla McSwain
Subject Re FW Policy

Please see my notes below

John F Emerson
General Counsel
Charleston County School District
75 Calhoun Street
Charleston, South Carolina 29401
Voice 843/937-6515
Facsimile 843/937-6546
john_emerson@charleston k12 sc us

Excellence Is Our Standard

>>> Gayla McSwain" <gayla@gaylamcswain.com> 4/20/2010 1 03 PM >>>

Good Afternoon John Have you had a chance to look into the answers to my questions? Thanks Gayla McSwain

From Gayla McSwain [mailto:gayla@gaylamcswain.com]
Sent Wednesday, March 24, 2010 1 59 PM
To 'JOHN EMERSON'
Subject RE Policy

Good morning John

Thanks for the link to the policies Please recall that I live in Berkeley County that my daughter has been "released" by the Berkeley County School District, and that she has been admitted to the Academic Magnet High School to begin her Freshman year next Fall One of the AMHS' guidance counselors has stated that I must prove that I live in Charleston County by this coming August in order for my daughter to begin classes Also, it appears that I must sign an affidavit to that effect You have indicated that, so long as I pay the difference in cost per pupil between the two districts, changing my residence is not necessary I don't recall saying this I would refer you to 59-63-45 for the formula, assuming the child has been legitimately accepted I thought I had brought to your attention the clear notification on the first page of the brochure/application that the AMHS is for Charleston County residents

http://www.ccsdschools.com/Our_Schools/documents/AMHSApplicationFinal2Communications200910
These slots are prized and intended for our students Have you been able to determine that amount, if any that I have to pay? And, will you be informing the school principal and/or guidance counselors that I do not have to sign an affidavit or prove that I live in Charleston County? No I just need to

know the process

Also I have a few questions

Code Section 59-63-30 states among other things, that so long as a child owns real estate in the district having an assessed value of \$300 or more (and meets the other qualifications set forth in that section – none of which are at issue), that child shall be entitled to attend the public schools of any school district, without charge I have found no case law that interprets this statute So I am assuming that my daughter can purchase a \$300+ property and attend the AMHS without charge Do you agree? Yes that is how I read the statute

Code Section 59-63-490 states, among other things, that a child shall be received by an adjoining district as though s/he resided within it if the child can be better accommodated by that adjoining school district Berkeley County has no academic magnet high school or an equivalent Do you agree that this section allows my daughter to attend the AMHS without charge because she would be deemed to be a residence of CCSD? Only if your district's Board and our Board of Trustees consent as the statute says

I appreciate your time and consideration of this matter I would appreciate a response fairly soon (because depending on that response, I will have to start shopping for a new house in Charleston County) Thanks!

Gayla McSwain

From JOHN EMERSON [mailto:JOHN_EMERSON@charleston k12 sc us]
Sent Friday, March 05, 2010 11 34 AM
To gayla@gaylamcswain com
Subject Policy

[http://policy.microscribepub.com/cgi-bin/om_isapi.dll?
clientID=206593703&depth=2&infobase=charles nfo&record={1036}&softpage=PL_frame](http://policy.microscribepub.com/cgi-bin/om_isapi.dll?clientID=206593703&depth=2&infobase=charles nfo&record={1036}&softpage=PL_frame)

John F Emerson
General Counsel
Charleston County School District
75 Calhoun Street
Charleston, South Carolina 29401
Voice 843/937-6515
Facsimile 843/937-6546
john_emerson@charleston k12 sc us

Excellence Is Our Standard

>>> 'Gayla McSwain' <gayla@gaylamcswain.com> 5/5/2010 11:08 AM >>>

Good morning John

First, although I could be wrong, I believe my notes and recollection reflect our conversation as I stated, and I don't recall a discussion concerning clear notification of a residency requirement on the application. I am well aware of that notification, which is one of the reasons I called you.

My concern is with the attached affidavit that I assume I will be required to sign upon registering my daughter for school at the AMHS in August unless someone explains to the principal that I am not so required. Obviously, I cannot sign the affidavit unless I move to Charleston County. My questions are simple: Given our earlier email discussion, assuming that my daughter either purchases property in Charleston or that she can be better accommodated at the AMHS and that both school boards consent to her transfer, must I sign the affidavit? If so, why? If not, who will be informing the school principal that I am not required to sign it?

Thank you. I look forward to hearing from you soon.

Gayla

From JOHN EMERSON [JOHN_EMERSON@charleston.k12.sc.us]
Sent Friday, May 07, 2010 4:33 PM
To Gayla McSwain
Subject RE: FW: Policy

Once you either buy land in your daughter's name or get consent from both boards, you won't have to sign it. Until then, you do not have the requirements to be admitted without the affidavit. One of those things has to happen first.

John F. Emerson
General Counsel
Charleston County School District
75 Calhoun Street
Charleston, South Carolina 29401
Voice 843/937-6515
Facsimile 843/937-6546
john_emerson@charleston.k12.sc.us

Excellence Is Our Standard

Gayla S L McSwain
105 Horncastle Place
Goose Creek, SC 29445

DRAFT

May 11, 2010

mailed

Dr Nancy J McGinley
c/o Charleston County School District
75 Calhoun Street
Charleston, SC 29401

Dear Dr McGinley

My daughter, Storm H[REDACTED], has been accepted to attend the Academic Magnet High School for the Fall of 2010. We live in Berkeley County but she has been released by the Berkeley County School Board to attend school in Charleston County. I enclose, for your review, that letter of release. Pursuant to S.C. Code Section 59-63-490, I am requesting that the Charleston County School District Board of Directors consent to her attending the AMHS.

Should you have any questions, please call me at 572-5803. Thank you for your consideration of this matter, and I look forward to hearing from you.

Sincerely,

Gayla S L McSwain

5/25/10 at 11:51 a.m. Dr. McGinley called, she will recommend "that be
phed admission/residency requirement" "The slots are for Charleston County students,
with 1st of over 100" "You will have to take it to court" "You must meet the
cc John F Emerson Esq, via email only
standards before school starts." He explained that the policy violates state statute,
but we would move if we have to do so but that it would take 30-40 days to
reimbursement. She will let us know her decision on June 8 after June
7th board meeting.

000194

From JOHN EMERSON [mailto:JOHN_EMERSON@charleston.k12.sc.us]
Sent Friday, June 04, 2010 5:02 PM
To gayla@gaylamcswain.com
Subject Academic Magnet

I understand you want the Board to consider your request to enroll Storm at the Academic Magnet. I will make sure it is on the next agenda. I am going to send you a letter, probably Monday, outlining the Dr. McGinley's position.

John F. Emerson
General Counsel
Charleston County School District
75 Calhoun Street
Charleston, South Carolina 29401
Voice 843/937-6515
Facsimile 843/937-6546
john_emerson@charleston.k12.sc.us

Excellence Is Our Standard

From Gayla McSwain [gayla@gaylamcswain.com]
Sent Friday, June 04, 2010 7:46 PM
To JOHN EMERSON
Subject RE: Academic Magnet

Thanks I think Does that mean that I will speak to the board? My understanding is that the next school board meeting is this coming Tuesday, June 7th. (Dr. McGinley told me over the phone that the discussion would take place in executive session, therefore I would not be allowed to address the board. She also stated that there would be no appeal from that decision.) I'll look for the letter – please send it by email too if you don't mind so that I will get it faster. Please let me know as soon as possible whether I will be addressing the board on Tuesday. Thanks again.

Gayla McSwain

From JOHN EMERSON [JOHN_EMERSON@charleston.k12.sc.us]
Sent Friday, June 04, 2010 9:58 PM
To gayla@gaylamcswain.com
Subject: Re: Academic Magnet

The board mtg would ordinarily be Monday but there is a Board budget workshop and hearing instead. So the mtg is Monday the 14th. You are correct that the matter will be taken up at Executive Session and they are not going to have a hearing or argument. So you don't need to be there. If that changes, I will let you know in advance. I am sending you a letter so you can see our logic and respond in writing if you wish. I will make sure the Board sees it. I will email it to you Monday. If you want to respond in writing you should probably get it to me by close of business Wednesday.

000197

From JOHN EMERSON [JOHN_EMERSON@charleston k12 sc us]
Sent Monday June 07 2010 5 50 PM
To gayla@gaylamcswain com
Subject Letter
Attachments Signed JFE ltr pdf Atty Gen residence pdf JFAB pdf

Here is my letter along with a couple of attachments I am placing your request on the agenda If you get me a letter by noon on Wednesday, I will see if we can add it to the Board packet
John

John F. Emerson
General Counsel
Charleston County School District
75 Calhoun Street
Charleston, South Carolina 29401
Voice 843/937-6515
Facsimile 843/937 6546
john_emerson@charleston k12 sc us

Excellence Is Our Standard

June 7, 2010

Ms. Gayla S. L. McSwain

Goose Creek, SC

Re: Storm H

John F. McGinley
Superintendent of Schools

John F. McGinley
Superintendent of Schools

75 Calhoun Street
Charleston, SC 29401
Tel: (843) 537-5515
Fax: (843) 527-5546

Dear Ms. McSwain,

I am informed by Dr. McGinley that you have asked the Board of Trustees to review your request to allow your child, Storm H, to attend the CCSD Academic Magnet. I have not taken the time to spell out in detail our position and I want to do so now so that if you wish, you can respond in writing in time for the Board's review which will likely take place at the next meeting June 14, 2010.

I understand that, though you are a resident of Berkeley County, your daughter applied for admission to the CCSD Academic Magnet and was accepted. You are aware that the application itself states that the school is only open to *residents* of Charleston County. The Academic Magnet did not realize that you did not have a Charleston County address and therefore inadvertently processed the application as if Storm was a resident.

As you and I have discussed, there are a number of statutes and policies implicated here. The primary statute addressing the right to attend a given school district's schools is S.C. Code § 59-63-30.

SECTION 59-63-30 Qualifications for attendance

Children within the ages prescribed by Section 59-63-20 shall be entitled to attend the public schools of any school district without charge, only if qualified under the following provisions of this section:

- (a) Such child resides with its parent or legal guardian;
- (b) The parent or legal guardian, with whom the child resides, is a resident of such school district; or
- (c) The child owns real estate in the district having an assessed value of three hundred dollars or more; and
- (d) The child has maintained a satisfactory scholastic record in accordance with scholastic standards of achievement prescribed by the trustees pursuant to Section 59-19-90, and

SCHOOL DISTRICT

(e) The child has not been guilty of infraction of the rules of conduct promulgated by the trustees of such school district pursuant to Section 59-19-90

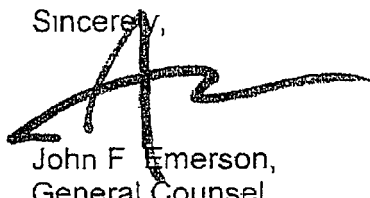
It states that a child will be permitted to attend public school in a district if the child *resides* with his parent or legal guardian and the parent or legal guardian *resides* in the district or if the child owns real estate in the district having an assessed value of \$300 00 or more 59-63-30 (a)-(c) (emphasis added) While the first two paragraphs address the rights of those who reside in the district the third addresses another category or ground for the right to attend that does not hinge on residence Since you do not reside in the District we have discussed whether (c) could be used to qualify Storm to attend a CCSD school You have talked about the possibility of moving to the District and, more recently you have talked about the possibility of acquiring real property and placing it in Storm's name

While this would qualify Storm to attend a school in the District it would not qualify Storm to attend a magnet school in the District An opinion of the S C Attorney General states that property ownership within a district does not itself entitle a student to demand attendance at a particular school within that district 1988 Op Atty Gen No 88-48 p 145 (copy attached)

As noted, the application itself requires residence in Charleston County Further, our Policy JFAB (copy attached) in discussing courtesies to employees states that, while children of employees who live in other counties may be permitted to attend CCSD schools, they are *not* permitted to attend CCSD magnet schools

The Academic Magnet has been named one of the ten best high schools in the nation Its slots are highly coveted and are reserved for Charleston County residents It is the staff position that Storm cannot be admitted to the Academic Magnet unless she actually resides in Charleston County in compliance with 59-63-30(a)-(b)

Sincerely,



John F. Emerson,
General Counsel

JFE/scb
Enclosures

>>> "Gayla McSwain <gayla@gaylamcswain.com> 6/9/2010 6:30 AM >>>

Good morning John. Thank you for your letter. Unfortunately, it is highly doubtful that I will be able to get a response to you by noon today. I have been out of town, however, I will get a response to you sometime later this week. I presume you would be able to email my letter to the board members prior to Monday. In the meantime, regardless of our differing legal positions, and just so I am sure that I have interpreted your staff's position correctly, so long as I change my legal residence to Charleston County prior to the day of AMHS's enrollment of children on August 18, 2010, Storm will be allowed to enroll in AMHS, correct? Thanks, Gayla

From JOHN EMERSON [JOHN_EMERSON@charleston k12 sc us]
Sent Wednesday June 09 2010 8 32 AM
To Gayla McSwain
Subject RE Letter

I cannot guarantee I can get your letter to the Board after today but I will try We create a packet and distribute all at one We mostly don't trickle except in urgent situations But I will look into it I will inquire about when residency is required

John F Emerson
General Counsel
Charleston County School District
75 Calhoun Street
Charleston, South Carolina 29401
Voice 843/937-6515
Facsimile 843/937-6546
john_emerson@charleston k12 sc us

Excellence Is Our Standard

From Gayla McSwain [gayla@gaylamcswain.com]
Sent Saturday, June 12, 2010 8:57 AM
To JOHN EMERSON
Subject Storm H [REDACTED]

Good morning John. Well, I have been educating myself on the torturous legal history of the Charleston County School District for past several days. Unbelievable. Anyway, I will try to have a response to your June 7 letter ready by this afternoon, however, if you are unable to get it to the board members prior to Monday, I ask that this issue be removed from the board's June 14 agenda and be placed on its June 28 agenda instead. Please let me know if that request cannot be honored. Thanks
Gayla

From Gayla McSwain [gayla@gaylamcswain.com]
Sent Saturday, June 12, 2010 5:53 PM
To JOHN EMERSON
Subject lettr to John Emerson for board

June 12, 2010

Mr. John F. Emerson
General Counsel
Charleston County School District
75 Calhoun Street
Charleston, SC 29401

Via email only

Dear Mr. Emerson,

Thank you for your letter of June 7, 2010. As a preliminary matter, I am surprised by the statement, in your letter, that the Academic Magnet failed to realize that I did not have a Charleston County address and, therefore, inadvertently processed Storm's application as if she were a resident. I am quite certain that the Academic Magnet has processed applications whereon the parent of the child applying for admission gives an address that is not a Charleston County address. In fact, I am certain that it has processed applications that show a different state, not just a different county. And, students with out-of-state addresses have been accepted by the Academic Magnet. It is my belief that there is nothing wrong or illegal with such processing because, as a practical matter, children planning to move to Charleston from out of state would necessarily have to give an address that is not in Charleston County. Based upon the very cordial phone conversation that I had with the Academic Magnet's principal on March 3, 2010, it is my understanding that I have until enrollment day in August to establish my legal residency in Charleston County in order for Storm to enroll.

And, as a second preliminary matter, it is a little disturbing that CCSD staff's legal position seems to be a moving target. Please recall that your email to me of Friday, May 7, 2010, wherein you stated

"Once you either buy land in your daughter's name or get consent from both boards, you won't have to sign [an affidavit stating that your legal residence is in Charleston County]. Until then you do not have the requirements to be admitted without the affidavit. One of those two things has to happen first."

Based upon that email, which I believe is a correct interpretation of the law, and hoping to avoid the expense of purchasing property in Charleston County, I sent the "consent letter of transfer" from

Berkeley County School Board to Dr McGinley and asked that she request consent from the CCSD Board for Storm's transfer Dr McGinley called me thereafter to state that she would recommend that the CCSD Board not grant its consent because Storm is not a resident of Charleston County

Based upon that phone call and your email of May 7, I started a search to purchase property in Charleston County worth at least \$300 00 so as to conclude this matter, however, I was unpleasantly surprised that your letter of June 7 contradicts your email of May 7 by stating that even if I purchase land in Storm's name she still will not be allowed to enroll in the Academic Magnet I have already put an offer on a piece of property and am awaiting an acceptance

Now, in addressing the CCSD staff's position that my daughter, Storm H [REDACTED], cannot enroll at the Academic Magnet unless she actually resides in Charleston County, I believe that position violates state law because I am willing to pay the tuition associated with that enrollment Secondly, even if that position does not violate state law, Storm, upon purchasing \$300 00 worth of property in Charleston County would be deemed to be a Charleston County resident and, therefore, is entitled to enroll at the Academic Magnet because she has met its admission requirements, having been admitted there in January 2010 And, third, regardless of whether Storm resides in, or owns property in, Charleston County, she is entitled to enroll at the Academic Magnet because it can accommodate her education better than any other high school in either Berkeley County or Charleston County based upon the school's rigorous curriculum her intellectual ability, and her hearing impairment

Please recall that Storm was accepted by the Academic Magnet High School for enrollment into the 9th grade in the Fall of 2010 In your letter, you cite South Carolina Code § 59 63-30(a)-(b) which states as follows

"Qualifications for attendance

Children within the ages prescribed by Section 59-63-20 **shall** be entitled to attend the public schools of **any** school district, **without charge**, only if qualified under the following provisions of this section

(a) Such child resides with its parent or legal guardian,

(b) The parent or legal guardian, with whom the child resides, is a resident of such school district " (Emphasis added)

I believe this language means that Storm, regardless of the county in which she resides, may enroll in the Academic Magnet so long as I pay tuition in accordance with 59-63-45 therefore, the CCSD staff's position that Storm cannot be enrolled at the Academic Magnet unless she actually resides in Charleston County violates the plain language of the statute Please recall that in one of our phone discussions, I offered to pay the required tuition however, you did not know how much the tuition would be but that you would "get that number to me " Having heard nothing further from you in that regard, I presume that the CCSD staff will not accept tuition for Storm's enrollment at the Academic Magnet Please let me know immediately if my presumption is incorrect because, obviously, that fact

would end our debate on this issue

Secondly, even if the CCSD staff's position - that Storm must actually live in Charleston County regardless of tuition payment, to enroll in the Academic Magnet - does not violate state law, I believe that Storm is entitled to enroll at the Academic Magnet pursuant to 59-63-30(c) which states, in relevant part

"Children shall be entitled to attend the public schools of any school district, without charge if [t]he child owns real estate in the district having an assessed value of three hundred ~~thirty~~ dollars or more "

While the CCSD staff agrees that Storm is eligible to enroll in a CCSD school upon purchasing \$300 worth of real property in Charleston County, it does not agree that she is eligible to enroll in the Academic Magnet unless she actually lives in Charleston County simply because it is a "magnet" school, rather than a "non-magnet school " And, I would agree with that assessment if Storm were just eligible, but not qualified, to attend the Academic Magnet however, she has already been found qualified, and has already been admitted to, the Academic Magnet

You cite a June 3, 1988, SC Attorney General's opinion to support the staff's position The facts of the case underlying that 1988 AG opinion appear to be that a child who was eligible to attend a school in a district pursuant to Section 59-63-30(c) (a nonresident child who owned \$300 worth of real property in that district) was demanding to attend a particular school within that school district The AG concluded that Section 59-19-90(9) allowed the district, not the child, to choose which school the child could attend That section states that the district is empowered to "determine the school within its district in which any pupil shall enroll [t]herefore, property ownership within a district does not, itself, entitle a student to demand attendance at a particular school within that district " (Emphasis added)

First, the CCSD cannot just "assign" any child to the Academic Magnet despite the language of Section 59-19-90(9) unless it were to violate the school's admission standards Acceptance for admission into the Academic Magnet is based upon a very rigorous process including evaluation of the student's grades, courses taken, standardized test scores, teacher recommendations, and writing ability The AG opinion is simply not relevant to the facts at hand

Even if the AG opinion were relevant to my daughter's case, it would be favorable to her because she is not "demanding" enrollment at the Academic Magnet based solely upon property ownership pursuant to 59-63-30(c), she has already been accepted for admission to the Academic Magnet based upon the aforementioned, very rigorous application process If the facts underlying the 1988 AG opinion were that a child was demanding enrollment into a magnet school which had merit-

based admission requirements, based solely upon property ownership pursuant to 59-63-30(c), only then would that opinion be applicable to my daughter's case. Given the disparity in the facts of the two cases, that opinion is simply irrelevant to the facts of my daughter's case.

Third, an AG opinion is just that - an opinion. As far as I know, there has not been a judicial interpretation of Section 59-63-30(c) with respect to enrollment at a magnet school. I believe that if a judge alone, or with an advisory jury, were asked to interpret, and to construe together, 59-63-30(c) and 59-19-90(9), in light of the facts of the case at hand, he or she would be obligated to interpret those statutes to conclude that so long as a child is qualified to attend the Academic Magnet (by meeting its admission requirements) and is eligible to attend the Academic Magnet (by owning \$300,000 worth of real property) she may enroll at the Academic Magnet, without charge.

Lastly, although we have discussed it in previous email, 59-63-490 was not addressed in your letter. That statute states:

'[w]hen it shall so happen that any person is so situated as to be better accommodated at the school of an adjoining school district, **whether special or otherwise**, the board of trustees of the school district in which such person resides may, with the consent of the board of trustees of the school district in which such school is located, transfer such person for education to the school district in which such school is located, and the trustees of the school district in which the school is located shall receive such person into the school as though he resided within the district.' (Emphasis added.)

Without question, Berkeley County does not have an academic magnet school. As stated in your letter, the Academic Magnet has been named one of the best 10 high schools in the nation. Without question, based upon her grades and test scores, Storm's education would be better accommodated by the Academic Magnet than by any high school in Berkeley County. At the Academic Magnet, she will be amongst her academic peers who, along with the teachers, will challenge her more than any Berkeley County high school could simply because there is no Berkeley County high school populated solely by intellectually gifted and motivated students. Berkeley County School District has already agreed to transfer Storm to the CCSD. There should be no question that the CCSD will consent to that transfer because Storm's education will be better accommodated by the Academic Magnet.

Lastly, and we have not discussed this topic before, however Storm has had a hearing impairment since birth. She has had an Individualized Education Program (IEP) throughout her education, and utilizes an FM system and a wireless lapel microphone with her BAHA (bone anchored hearing aid) while in the classroom. She has always attended a small school for that reason. The Academic Magnet limits its student-to-teacher ratio to 25:1 or less in all classes and generally has around 600 students in total. The Berkeley County high school for which Storm is zoned for attendance

is Stratford High School which, I am informed, consistently has 35 or more students in its classrooms and has almost 3000 student in total. And, with the recent and foreseeable legislative cuts in education funding, the number of students in non-magnet high school classrooms most probably will increase.

Although I do not have any affidavits from Storm's audiologist, her hearing itinerant teacher, or a psychologist, I can get them, I am confident that they all will say that a smaller number of students in the classroom results in less noise, less distractions, and more individualized attention to all students, and that such conditions are absolutely imperative to accommodate, and bring about the best result in, the education of a hearing impaired student.

Additionally, and this is just common sense but can be supported by a psychologist, if need be, Storm needs to attend a high school with other intellectually gifted students because high schoolers not only are developing intellectually but also are developing emotionally and socially. Although Storm's hearing impairment/disability is invisible (for instance, she has no speech impediment and the hearing aid is beneath her hair), Storm's teachers will be required to wear a wireless, lapel microphone that Storm must carry from teacher to teacher throughout the school day. My observation throughout the past eight years of her education is that the smarter the child or teacher, the more accepting they are of her "disability," they expressed curiosity about how her BAHSA works but didn't treat her differently from a regular-hearing student.

On the other hand, I have observed a few students and one teacher who thought that Storm was intellectually impaired just because she is hearing impaired and, therefore, treated her markedly different from other regular-hearing students. It is my belief that all of the teachers and students that comprise the Academic Magnet will be more accepting of Storm's hearing impairment due to their being as intellectually gifted as she is. Therefore, Storm's hearing impairment and education can be especially accommodated by the Academic Magnet due to the smaller number of students in each class, due to its rigorous curriculum and academic standards, and due to Storm's being able to attend high school with her intellectually gifted peers.

For all of the above stated reasons, I, on behalf of my daughter, Storm H[REDACTED], respectfully request that the CCSD staff recommend to the CCSD Board of Trustees that she be allowed to enroll in the Academic Magnet based upon 56-63-30(c) or 56-63-490. I would also respectfully request that a decision be made as soon as possible but not later than June 29, 2010.

Thank you for your kind consideration,

Gayla S. L. McSwain

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County SCHOOL DISTRICT

June 16, 2010

r'd 6/22

Ms Gayla S L McSwain
105 Horncastle Place
Goose Creek, SC 29445

John F Emerson
General Counsel

Re Storm H [REDACTED]

Dr Nancy J McGinley
Superintendent of Schools

Dear Ms McSwain,

75 Calhoun Street
Charleston SC 29401
Tel (843) 937 6515
Fax (843) 937-6546

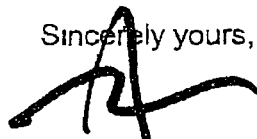
I communicated to the CCSD Board of Trustees Monday night your request that they postpone, until the next Board meeting, consideration of your request to admit Storm to the Academic Magnet High School I told them you had sent a detailed letter explaining your position but that I had not had a chance to review it

The Board elected to take up the issue anyway It voted unanimously in open session to admit Storm to the AMHS if your family establishes "residence and domicile" in Charleston County before school starts

I have now had a chance to review your letter While I am not going to respond to each argument I will say, at best, the law you reference allows a student to attend a school in any district it does not say that the student may choose Further, in each case, the receiving Board must approve

I wish you luck Please advise as to your plans

Sincerely yours,



John F Emerson,
General Counsel

JFE/scb [REDACTED]
Enc [REDACTED]

The Honorable R. Markley Dennis, Jr
Chief Administrative Judge, Ninth Judicial Circuit
P O Box 1800
300 B California Avenue
Moncks Corner, SC 29461-1800

June 28, 2010

Re H [REDACTED] v Charleston County School District Board of Trustees, et al
Case No 2010-CP - _____

Dear Judge Dennis [REDACTED]

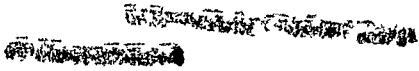
I hope you have been well. Enclosed, please find a copy of the above-referenced case which I filed with the court earlier today. As noted, I am appearing before the court pro se and on behalf of my daughter as her parent. Briefly, my family lives in Berkeley County. My daughter was accepted for admission to the Academic Magnet High School, located in Charleston County, in January of this year. The Charleston County School District Board of Trustees is refusing to allow my daughter to enroll at the Academic Magnet High School on August 18, 2010, unless I move my "residence and domicile" from Berkeley County to Charleston County. Based upon statutory and case law, I disagree that such a move is necessary.

I filed the enclosed declaratory judgment action so that I will know whether I must move my family to Charleston County prior to August 18th. Obviously, time is of the essence, therefore, I am requesting that the court hear our complaint just as soon as possible. Please know that my family will be visiting with friends in Idaho and Yellowstone National Park during a long-ago planned trip beginning on July 27th and that we will not return home until August 7th.

Thank you,

Gayla S. L. McSwain
[REDACTED]
Goose Creek, SC [REDACTED]
843 572-5803/693-8155
gayla@gaylamcswain.com

Email copy only John F. Emerson, Esq. w/out enclosures

From JOHN EMERSON [JOHN_EMERSON@charleston k12 sc us]
Sent Tuesday July 20 2010 5 04 PM
To gayla@gaylamcswain com
Cc Ruth Jordan NANCY MCGINLEY John M Reagle, Kenneth L Childs austin crosby@gmail com
jcnicholson@sccourts org
Subject McSwain v Charleston County School District Board of Trustees et al - C A No 2010-CP-10-5197
Attachments Ltr to McSwain signed pdf 

Ms McSwain
Attached please find a letter associated with the above-referenced case

John F Emerson
General Counsel
Charleston County School District
75 Calhoun Street
Charleston, South Carolina 29401
Voice 843/937-6515
Facsimile 843/937-6546
john_emerson@charleston k12 sc us

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County SCHOOL DISTRICT

July 20, 2010

By First Class Mail and Electronically

Gayla S L. McSwain, Esq

[REDACTED]

Goose Creek, SC [REDACTED]

gayla@gaylamcswain.com

John F. Emerson

General Counsel

Dr. Nancy J. McGinley

Superintendent of Schools

75 Calhoun Street
Charleston, SC 29401
Tel (843) 937-6515
Fax (843) 937-6323

Dear Ms. McSwain:

Following the Court proceeding Monday morning and our discussion among counsel thereafter, I was able to confer with the Superintendent and with the Board of Trustees for the Charleston County School District at the Board's meeting on July 19, 2010.

In summary, I informed the Board that it was their legal duty to provide your daughter and you with a fair evidentiary hearing on your daughter's attendance at the District's Academic Magnet High School this fall, despite your not being a resident of Charleston County, that you believe the Board's motion with respect to this issue, at its June 14, 2010 meeting, was contrary to applicable state and federal law, that you had petitioned the Board for further consideration pursuant to S.C. Code Ann. § 59-19-510, that you had filed a declaratory judgment action in the South Carolina Circuit Court and that an initial hearing had been held before the Circuit Court Monday morning with possible further proceedings scheduled for Thursday, July 22, 2010.

I believe the Board understands and respects its duty and role in this regard and, accordingly, the Board has agreed to provide you with a Board hearing on your petition currently pending before the Board either on the evening of August 3, 2010, August 10, 2010, or some other date you and I may mutually agree upon prior to August 18, 2010.

I am further authorized to make arrangements with you to organize and plan such a hearing, in accordance with the statute, on terms and conditions that will be mutually convenient and fair to all concerned.

While I realize you may prefer a personal appearance before the Board, which I understand cannot be arranged until August 10 due to your vacation plans, I want to offer the possibility of a telephone conference with the Board, or even a video conference, for the August 3 proceeding, assuming that can be practically arranged.

20100720 15:00:00 [REDACTED] (843) 937-6323 [REDACTED]

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County SCHOOL DISTRICT

I note that you have asked the Court for a hearing on Thursday, to which the District is certainly agreeable, and while we can talk with the Court Thursday, it may be useful to schedule a telephone conference between counsel sometime Wednesday. I understand Mr Childs is making these arrangements.

I look forward to speaking with you.

Respectfully submitted,



John F. Emerson, General Counsel
Charleston County School District

- c The Honorable J. C. Nicholson (electronically)
 Mrs. Ruth Jordan, Board Chair (electronically)
 Dr. Nancy J. McGinley, Superintendent (electronically)
 Kenneth L. Childs, Esq. (electronically)
 Mr. Austin Crosby (electronically)

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas**

The Honorable J C Nicholson, Jr , Circuit Court Judge

C A No 2010-CP-10-5197

Storm M H , a minor, by her parent, Gayla S L McSwain, and Gayla
S L McSwain, pro se, Respondents/Appellants,

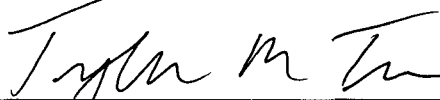
v

Charleston County Board of Trustees and Nancy J McGinley, in her
official capacity as Superintendent of Charleston County School
District, Appellants/Respondents

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record On appeal contains all material
proposed to be included by any of the parties and not any other material

CHILDS & HALLIGAN, P A



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General Counsel for the Charleston
County School District

Attorneys for Appellants/Respondents

April 5, 2011

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas**

The Honorable J C Nicholson, Jr , Circuit Court Judge

C A No 2010-CP-10-5197

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APR 05 2011

SC Court of Appeals

Storm M H , a minor, by her parent, Gayla S L McSwain, and Gayla
S L McSwain, pro se,

Respondents/Appellants,

v

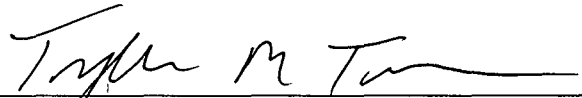
Charleston County Board of Trustees and Nancy J McGinley, in her
official capacity as Superintendent of Charleston County School
District,

Appellants/Respondents

PROOF OF SERVICE

I certify that I have served the **Record on Appeal** by depositing a copy of it in the
United States Mail, postage prepaid, on April 5, 2011, addressed to the *pro se*
Appellant/Respondent, Gayla S L McSwain, Esq, 105 Horncastle Place, Goose
Creek, SC 29445

CHILDS & HALLIGAN, P A



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General Counsel for the Charleston County
School District