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

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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

APPELLANTS' FINAL BRIEF
of
RESPONDENTS/APPELLANTS

Gayla S L McSwain, *pro se*
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II Did the trial judge err by finding that Charleston County School District's policy of excluding nonresident children from its magnet schools does not violate the equal protection clause of the South Carolina Constitution?

STATEMENT OF THE CASE

On June 28, 2010, Respondents/Appellants ("Plaintiffs") brought this lawsuit 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 circuit court to declare the Plaintiffs' legal rights under S C Code Section 59-63-30(c) and Code Section 59-63-490 which are part of the Education statute Specifically, Plaintiffs requested the lower court to declare whether they were required to move their residence and domicile from Berkeley County to Charleston County in order for Storm M H ("Daughter") to enroll in the Academic Magnet High School ("AMHS"), which is located in the Charleston County School District ("CCSD"), on or before August 9, 2010

Pursuant to § 15-53-80, Appellants/Respondents ("Defendants") were named as parties to that action because the Declaratory Judgment Act requires that "[w]hen 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 moved the lower court to dismiss Plaintiffs' request for declaration of their legal rights because they believed that the Plaintiffs must, but did not, exhaust

administrative remedies and failed to state sufficient facts to constitute a cause of action and that, therefore, the lower court did not have subject matter jurisdiction

On July 19, 2010, the lower court began a non-jury trial It continued the trial until July 22, 2010 On July 21, 2010, pursuant to Code Section 59-19-560, Plaintiffs appealed the Defendants' decision to deny Daughter an inter-district transfer under Code Section 59-63-490 to the circuit court in its appellate capacity After the second day of trial, July 22, 2010, the lower court took the case under advisement On July 28, 2010, the lower court issued its order and took judicial notice of the fact that, on July 21, 2010, Plaintiffs had appealed the Board's administrative decision regarding Code Section 59-63-490, therefore, the lower court found that it no longer had original jurisdiction over that issue and could not make a declaration with respect to 59-63-490 The lower court granted Defendants' motion to dismiss regarding that issue

However, the lower court found that it had jurisdiction to declare Plaintiffs' legal rights under Code Section 59-63-30 and concluded that the Defendants' policy that requires Plaintiffs to establish domicile in Charleston County before enrolling Daughter in the AMHS violates 59-63-30(c) On July 28, 2010, the lower court declared and ordered that Plaintiffs were not required to establish domicile in Charleston County and were entitled to enroll Daughter in the AMHS on or before August 9, 2010, 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

Additionally, the lower court found that Daughter, as a nonresident child, may not pay tuition to attend the AMHS because it is a magnet school but, instead, must meet one of the residency requirements of 59-63-30 July 28, 2010 Order p 12-13 at R p 12-13 And, the

lower court found that CCSD's policy of excluding nonresident children from its magnet schools does not violate the equal protection clause of the South Carolina Constitution July 28, 2010 Order p 13 at R p 13

On August 5, 2010, Defendants appealed the lower court's order In accordance with S C Code Section 18-9-220 and Rule 241, SCACR, that appeal automatically stayed the relief given to the Plaintiffs by the lower court Plaintiffs requested the lower court, by motion of August 9, 2010, to lift the automatic stay pursuant to Rule 241, SCACR Also, on August 9, 2010, Daughter purchased real property in the CCSD with a tax assessed value greater than $300 00

On Friday, August 13, 2010, five days before school was to start, the lower court lifted the automatic stay stating "Daughter has only one opportunity to attend the AMHS as a ninth grader She, not the CCSD, will suffer irreparable harm if this court does not lift the automatic stay If she prevails on appeal and this court does not lift the automatic stay, it will impossible for her to attend the AMHS in the ninth grade due to the time delay caused by Defendants' appeal That opportunity will be lost forever and Daughter has no other legal remedies available to her to recover that lost opportunity" August 13, 2010 Order p 4 During the same hearing before the lower court, Defendants then requested the lower court to stay its order lifting the stay while they petitioned this court to review the order lifting the automatic stay The lower court denied that request The AMHS enrolled Daughter on the afternoon of August 13, 2010

On August 17, 2010, the day before school was to start, Defendants petitioned this court to review and revoke the lower court's August 13, 2010, order that lifted the automatic stay triggered by the lower court's July 28, 2010, Order Daughter began attending classes at the

AMHS on August 18, 2010, the first day of the 2010-2011 academic school year By order of September 16, 2010, this court denied the Defendants' petition to revoke the trial court's order that lifted the automatic stay

Plaintiffs received notice of the lower court's July 28, 2010 Order on July 31, 2010, and notice of the Defendants' appeal of that order on August 7, 2010 Plaintiff's cross-appealed the lower court's July 28, 2010 Order by serving notice of that appeal on Defendants on August 23, 2010

STATEMENT OF FACTS

The Academic Magnet High School ("AMHS") is a taxpayer - funded school located in the Charleston County School District ("CCSD") The attendance zone for this magnet school, as set up by the CCSD, is the whole of Charleston County, therefore, regardless of where a child lives in Charleston County, the child is eligible to attend the AMHS subject only to its academic admission criteria which is discussed *infra* 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

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 Students must apply to attend the AMHS which enrolls only students who demonstrate exceptional academic ability and performance as shown by national and state standardized test

scores, grades, courses taken, and teacher recommendations 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 academic admission criteria

Importantly, the AMHS accepts students who are qualified for admission regardless of whether they live in the CCSD at the time of application, however, the Defendants have taken the legal position that the AMHS is reserved only for students who are physically domiciled in the CCSD ("resident child") Therefore, Defendants refuse to allow an admitted student who does not live in the CCSD ("nonresident child") to enroll in the AMHS unless the student and the student's parent or guardian move to the CCSD (June 7, 2010, letter from Emerson to McSwain, p 2 at R p 200) 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 into the AMHS will be allowed (Affidavit of a Student's Domicile at R p 159)

Plaintiff Gayla S L McSwain ("Parent") is the mother and guardian of minor Plaintiff Storm M H ("Daughter") They live in an adjoining school district, Berkeley County School District ("BCSD") Daughter applied to the AMHS in the Winter of 2009 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 because the AMHS's application stated that an applicant had to be a Charleston County resident (Complaint p 2 at R p 17)

In January of 2010, Daughter was accepted for admission by the AMHS 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 The Confirmation Form asked for the student's "Charleston

County Residence Address " (Confirmation Form at R p 174) Upon seeing that request, Parent 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, Parent called the AMHS and spoke with whoever answered the phone, explained that Parent could not provide a Charleston County address because "we don't live in Charleston County yet " (McSwain *affidavit* p 2 at R p 67) 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 " (Parent did not note the lady's name because it was not important at the time to do so, and it is neither important nor relevant now) (McSwain *affidavit* p 2 at R p 67) Parent stated on the Confirmation Form that "we will provide [a Charleston County residence address] prior to enrollment " (McSwain *affidavit* p 2, R p 67) (Please note that that information, along with Daughter's signature, is in black ink) After mailing the Confirmation Form to the AMHS, Parent discovered that a number of children who she knew to be living in Berkeley County were attending magnet schools in the CCSD (McSwain *affidavit* p 3 at R p 68)

In February of 2010, *via* letter, 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 (BCSD letter to McSwain at R p 188) Upon seeing the reference to "tuition" in the letter from BCSD, Parent researched the Education Statute and inquired of Defendants about their policy that would require Plaintiffs to move to Charleston County because Plaintiffs did not want to move if they could pay tuition instead (McSwain *affidavit* p 3 at R p 68) 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, or could 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 (March 24, April 20, and April 21, 2010, email from Emerson to McSwain at R p 189-190, McSwain *affidavit* p 3 at R p 68)

Plaintiffs offered to pay tuition but Parent never received a response from the Defendants about the amount of that tuition (March 24, April 20, and April 21,2010, email from McSwain to Emerson at R p 189-190, McSwain *affidavit* p 3 at R p 68) Plaintiffs also began negotiations to purchase real estate in Charleston County (McSwain *affidavit* p 3 at R p 68)

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 in late May 2010 (May 11, 2010, McSwain letter to McGinley at R p 194) In response to that letter, Defendant McGinley called Parent to inform Parent that AMHS is reserved for Charleston County residents only, and that she would recommend that the Board not allow Daughter to enroll in 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) (May 11, 2010, McSwain letter to McGinley with May 25 , 2010, McSwain handwritten notes regarding call from McGinley at R p 194, McSwain *affidavit* p 3 at R p 68)

On June 11, 2010, Parent received a letter from CCSD's attorney (dated June 7, 2010) which stated that it is the CCSD "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)-(c) " (June 7, 2010, Emerson letter to McSwain, p 2 at R p 200) After further correspondence via email with CCSD's attorney and at his instruction, on June 12, 2010, Parent requested, by letter emailed to the CCSD's attorney, that the CCSD Board accept Daughter as an inter-district transfer student pursuant to Code Section 59-63-490 or pursuant to 59-63-30(c) (June 12, 2010, McSwain letter to Emerson, p 5 at R p 208) CCSD's attorney had earlier informed Parent that he might not be able to get Parent's June 12 letter to the Board prior to its June 14 meeting (8 32 a m June 9, 2010, Emerson email to McSwain at R p 202) Parent requested that the Board's decision regarding Plaintiffs' request be postponed until the Board's next meeting of June 28 if the letter could not be read by the Board before it made a decision on June 14, 2010 (June 12, 2010, McSwain email to Emerson at R p 203)

On June 22, 2010, Parent received a letter from the CCSD's attorney (that was dated June 16, 2010) that stated the Board "elected to take up the issue anyway," although its attorney had informed it that Plaintiffs had requested that the Board postpone its decision until after it had read the Plaintiffs' "detailed letter explaining [their] position " The letter continued by stating that the Board "voted unanimously in open session to admit Storm to the AMHS if your family establishes 'residence and domicile' in Charleston County before school starts " (June 16, 2010, Emerson letter to McSwain at R p 200)

On June 27, 2010, Plaintiffs filed a declaratory judgment action to have the court determine whether they must move to Charleston County to enroll Daughter in the AMHS Complaint, p 4 at R p 19) On June 28, 2010, the Plaintiffs served a *subpoena* on the CCSD requesting that it produce all documents that relate to the Defendants' decision that Daughter must move to Charleston County to enroll in the AMHS In response, on July 8, 2010, the Plaintiffs received the minutes of the Board's June 14, 2010, meeting Those minutes show that "the Board approved [Daughter's]Appeal, subject to residency and domicile confirmation The motion was approved 7-0 " June 14, 2010, CCSD Board minutes, p 4 at R p 179) The only reason that the Defendants have given for their decision is that the AMHS is reserved for students who are domiciled in Charleston County

Daughter did not purchase real estate in Charleston County until after the trial judge declared that she could enroll in the AMHS so long as she purchased that real estate by September 30, 2010 due to the Defendants' position that even if Plaintiffs made such a purchase, Defendants would not allow Daughter to enroll in the AMHS (June 7, 2010, Emerson letter to McSwain, p 2 at R p 200) Daughter purchased the requisite real estate on August 9, 2010 (Quitclaim deed at R p 185)

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 (CCSD Policy JFAB at R p 161)

ARGUMENTS

I A nonresident child may pay tuition under South Carolina Code § 59-63-30 so as to be eligible to enroll in a magnet school

The trial court erred because its construction of Code § 59-63-30 and Code § 59-19-90 together is flawed 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 (Emphasis added)

Code Section 59-19-90, in relevant part, states

> General powers and duties of school trustees
>
> The board of trustees shall also
>
> (10) Prescribe conditions and charges for attendance Be empowered to prescribe conditions and a schedule of charges based on cost per pupil as last determined, for attendance in the public schools of the school district for
>
> (a) children of parents temporarily residing within the school district,
>
> (b) children whose parents or legal guardians live elsewhere but who are residing with residents of the school district, and
>
> (c) children of parents residing on Federal property or military or naval bases of the United States located within or adjacent to the boundaries of such school district, and

> (d) all other children specially situated and not meeting the eligibility requirements of Section 59-63-30, but who shall have petitioned the trustees in writing seeking permission to attend the public schools of the school district

"When the language of a statute is 'plain and unambiguous, and conveys a clear and definite meaning,' there is no need to employ rules of statutory construction, and [a] court 'has no right to look for or impose another meaning '" *State v Jihad*, 339 S C 235 at 240, 528 S E 2d 696 at 698-699 (S C App 2000), *r'vd on other grounds*, 347 S C 12, 553 S E 2d 249 (2001) citing *City of Columbia v American Civil Liberties Union*, 323 S C 384, 387, 475 S E 2d 747, 749 (1996) "[A] Court cannot construe a statute without regard to its plain and ordinary meaning, and may not resort to subtle or forced construction in an attempt to limit or expand a statute's scope " *City of Columbia* , 323 at 388, 475 S E 2d at 749 "A court simply cannot ignore such patent and definite statutory language in order to force a construction not intended by the legislature " *State v Jihad*, 339 S C at 249, 528 S E 2d at 699 *citing Whitner v State*, 328 S C 1, 6, 492 S E 2d 777, 779 (1997) (explaining "where a statute is complete, plain, and unambiguous, legislative intent must be determined from the language of the statute itself ") *cert denied*, 523 U S 1145, 118 S Ct 1857, 140 L Ed 2d 1104 (1998)

The meaning of Code § 59-63-30 and 59-19-90(10) is plain and unambiguous A child is entitled to attend a public school, without charge, if the child either resides or owns real estate within the school district in which the school is located If the child does not so reside or own, the child must pay to attend a school within the school district If this were not the meaning, then the words "without charge" contained in 59-63-30 and the whole of 59-19-90(10) would be superfluous See *State v Jihad*, 347 S C 12, 553 S E 2d 249 (2001) *citing In re Decker*, 322 S C

215, 471 S E 2d 462 (1995) (a statute should be construed so that no word, clause, provision, or part is rendered superfluous)

Moreover, the legislative intent behind Code § 59-63-30 and 59-19-90(10) is clear "[W]here a court is called upon to interpret statutes, [it] must be mindful of the principle that the intention of the legislature is the primary guideline to be used " *See Adams v Clarendon County School Dist No 2*, 270 S C 266, 272, 241 S E 2d 897, 900 (S C 1978) *citing, e g Helfrich v Brasington Sand & Gravel Co* 268 S C 236, 233 S E 2d 291 (1977) Both code sections ensure that the school district receives payment for providing a nonresident child with an education *via* tuition since the child neither resides nor owns real estate within the district In other words, the school district is allowed to charge tuition to a nonresident child to compensate the district for being unable to collect any revenue *via* taxes from the nonresident child *See S C Op Atty Gen 31 (1969-1970)* (explaining that school districts are authorized to impose a schedule of charges for attendance at public schools if the residential requirements of Code Section 21-752 1[1] are not met by the child)

Even though Code Section 59-63-30 and 59-19-90(10) both clearly and unambiguously require and, therefore, allow a nonresident child to pay tuition to enroll in school in any school district, the trial court found that a nonresident child, regardless of whether that child has met a magnet school's admission criteria, is not statutorily eligible to enroll in a CCSD magnet school by paying tuition, instead, the child must meet one of the residential requirements of Code Section 59-63-30 (Order p 13 at R p 13) The trial court reasoned that "although a nonresident child can pay tuition to attend school in a particular attendance zone within the CCSD, the board is empowered, via [Code Section] 59-19-90(9), to choose the particular school

[1] Predecessor of Code Section 59 63 30

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 whole of the CCSD Rather a nonresident child who wants to be statutorily entitled to enroll at a magnet school must meet one of the residency requirements of 59-63-30 " (Order p 12-13 at R p 12-13)

Code Section 59-19-90(9), in relevant part, states

> General powers and duties of school trustees
>
> The board of trustees shall also
>
> (9) Transfer and assign pupils Transfer 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

Based upon Code Section 59-19-90(9), Plaintiffs would agree that, subject to constitutional rights constraints, the CCSD has the right to assign a child, be they a resident or nonresident child, to a particular school so as to promote the best interests of education *See Wharton v Abbeville Sch Dist No 60*, 608 F Supp 70 (D S C 1984)(The power of a local school board to assign students to school will not be disturbed unless in the exercise of their official duties such action rises to the level of a constitutional deprivation of rights under the equal protection clause of the Constitution) However, Plaintiffs believe that the trial court erred by finding that a nonresident child who pays tuition, rather than meeting the residential requirements of 59-63-30, is not eligible to enroll in a magnet school because it is inconsistent with 59-63-30

"[It is] the elementary rule of [judicial] construction that all parts and provisions of an enactment must be given effect, if reasonably and logically possible " *Jolly v Atlantic Greyhound Corp* 207 S C 1, 8, 35 S E 2d 42, 44 (1945) Construing Code § 59-19-90 and

59-63-30 together can lead to only one reasonable, logical conclusion Because the CCSD has chosen to set up admission criteria for its magnet schools, i e , academic standards, which, in effect, "assigns" only the children who meet those criteria to those magnet schools, if a nonresident child qualifies for admission to a CCSD magnet school and chooses to establish statutory eligibility to attend a CCSD school by paying tuition pursuant to 59-63-30, rather than changing domicile to, or buying real estate within, the school district, then the CCSD must enroll that nonresident child in the magnet school

For the foregoing reasons, this court should partially reverse the lower court's findings and find that a nonresident child may pay tuition to be eligible to enroll in a magnet school

II The CCSD's policy of excluding nonresident children from its magnet schools violates the equal protection clause of the South Carolina Constitution

CCSD's policy treats nonresident children differently from resident children for no rational reason, therefore, that policy violates nonresident children's right to equal protection of South Carolina Code Section 59-63-30

The South Carolina Constitution states, in salient part, as follows

> Article I Bill of Rights
>
> § 3 Privileges and immunities, due process, equal protection of laws
>
> The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged nor shall any person be denied the equal protection of the laws

The Equal Protection Clause of both the federal and state constitutions provides that no person shall be denied the equal protection of the laws U S Const amend XIV, §1, S C Const art I, § 3 To satisfy the Equal Protection Clause, a classification by a governmental body must bear a reasonable relationship to the legislative purpose sought to be achieved, the members of the class must be treated alike under similar circumstances, and the classification must rest on some

rational basis *See German Evangelical Lutheran Church of Charleston v City of Charleston*, 352 S C 600, 608, 576 S E 2d 150, 154 (2003) There can be no doubt that the Defendants are violating Daughter's right to the equal protection of 59-63-30 by refusing her enrollment in a magnet school unless Plaintiffs move to the CCSD

As stated, *supra* the legislative purpose behind Code § 59-63-30 and 59-19-90(10) is to ensure that a school district is able to collect payment for the cost of educating a nonresident child from the nonresident child Code § 59-63-30 and 59-19-90(10) divide school children into two groups characterized by how their entitlement to attend school in a school district is defined One group's entitlement requires that the child and the child's guardian live in the district - the "resident" child - so that the guardian pays taxes in the district The other group's entitlement does not require the child to live in the district - the "nonresident" child - but requires the child either to pay tuition to the district, so as to compensate it for lost taxes, or to buy real estate within the district so that the child must pay property taxes Importantly, the statutes entitle both the nonresident and resident child to attend school within that district

Pursuant to Code § 59-63-30, Daughter's purchase of real estate in the CCSD or payment of tuition to the CCSD makes her situated legally the same as a resident child They both are statutorily eligible to attend the AMHS but neither can enroll at the AMHS unless they meet the CCSD's admission criteria, i e , academic standards As similarly situated citizens, a nonresident child and a resident child are entitled to equal protection under the law as guaranteed by the state constitution, therefore, both a resident and nonresident child are statutorily entitled to enroll at the AMHS so long they meet the admission criteria

Defendants' written policy regarding the admission to CCSD schools of nonresident children 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 CCSD Policy JFAB at R p 161

This written policy clearly states that nonresident students who qualify for attendance in the CCSD under 59-63-30 - those that own real estate within the district - shall not be charged tuition, and, conversely, those that do not so qualify must pay tuition Importantly, there is no prohibition against nonresident children attending magnet schools found in this written policy[2] Although the CCSD professes to have a policy that nonresident children may not attend its magnet schools, it is apparently an unwritten policy That unwritten policy classifies school children as two groups, nonresident and resident, and takes away a nonresident child's entitlement to attend a magnet school while leaving a resident child's entitlement to attend a magnet school intact That policy violates the nonresident child's constitutional right to the equal protection of Code Section 59-63-30 because Defendant CCSD cannot show how excluding nonresident children from its magnet schools bears a reasonable relationship to the legislative purpose sought to be achieved by 59-63-30 and 59-19-90(10)

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[2] Defendants do have a written policy that prohibits CCSD employees nonresident children from attending CCSD magnet schools CCSD Policy JFAB at R p 161

As discussed, *supra*, the legislative purpose behind Code Section 59-63-30 and 59-19-90 (10) is to allow the CCSD to collect either tuition or tax payments from nonresident children who attend school in the CCSD Under those code sections, nonresident children must pay tuition or taxes to attend any CCSD school regardless of whether it is a magnet school CCSD's written policy, *supra*, clearly shows that the CCSD understands and enforces the legislative purpose behind Code Section 59-63-30 and 59-19-90(10) because the policy dictates that the district shall collect tuition from nonresident children Thus, CCSD's policy of excluding nonresident children from its magnet schools has no rational relationship to CCSD's ability to collect tuition or taxes from nonresident children

And, because the effect of applying that irrational exclusion is to treat one group of members of the class – nonresident children entitled to attend CCSD schools – differently from the other similarly situated group - resident children entitled to attend CCSD schools - under similar circumstances, Defendants' policy of excluding nonresident children from magnet schools is prohibited by the Equal Protection Clause as unconstitutional Therefore, Defendants' unwritten administrative policy that Daughter must be physically domiciled in the CCSD to be eligible to enroll in a magnet school is unconstitutional because it violates her right to equal protection of the law *See Whatley v Abbeville Sch Dist No 60*, 608 F Supp 70 (D S C 1984) (The power of a local school board to assign students to school will not be disturbed unless in the exercise of their official duties such action rises to the level of a constitutional deprivation of rights under the equal protection clause of the Constitution)

For the foregoing reasons, this court should partially reverse the lower court's findings and find that the CCSD's policy of excluding nonresident children from its magnet schools is

unconstitutional because it violates the Equal Protection Clause of the South Carolina Constitution

CONCLUSION

For the reasons stated, the trial judge erred by finding that a nonresident child may not pay tuition under South Carolina Code § 59-63-30 to be statutorily eligible to enroll in a CCSD magnet school The trial judge also erred by finding that CCSD's policy of excluding nonresident children from its magnet schools does not violate the Equal Protection Clause of the South Carolina Constitution Therefore, Plaintiffs request this Court to partially reverse the lower court's order regarding those findings and to order that Daughter, as a nonresident child, has the option to pay tuition to continue her enrollment at the AMHS and to declare that the CCSD's administrative policy of excluding nonresident children from eligibility to enroll in its magnet schools is unconstitutional

Respectively submitted,

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PROOF OF SERVICE

I certify that I have served Respondents' Final Brief of Respondents/Appellants, Appellants' Final Brief of Respondents/Appellants, and Appellants' Final Reply Brief of Respondents/Appellants on the attorneys for the Appellants/Respondents by depositing a copy of them in the U S Mail, postage prepaid, on April 25, 2011, addressed to Kenneth L Childs, Esq , at P O Box 11367, Columbia, SC 29211

And

CERTIFICATION

I certify that Respondents' Final Brief of Respondents/Appellants, Appellants' Final Brief of Respondents/Appellants, and Appellants' Final Reply Respondents/Appellants comply with Rule 211(b), SCACR

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