

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012-CP-40-7122

Student #1 John Doe, Redacted Name of

Board of Trustees, Richland School District Two et al

Mother

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41, SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: This Motion to Alter and Amend Order is denied without oral argument. In addition, the motion was not served within 10 days of entry of the order.

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order: _____ _____		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

James E. Dault
Circuit Court Judge

2110
Judge Code

2/11/13
Date

NOV 08 2013
RICHLAND COUNTY
FILED
JANETTE W. MCBRIDE
3 FEB 13 AM 10:37
C.C.P. & G.C.

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 13 day of Feb, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jeanette W. Hilde
ATTORNEY(S) FOR THE DEFENDANT(S)
CLERK OF COURT

Court Reporter: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Student # 1 One John Doe, REDACTED,)
NAME OF STUDENT, REDACTED)
NAME OF MOTHER OF STUDENT #1)
JOHN DOE,)

C.A. No. 2012-CP-40-07122

**ORDER DENYING TEMPORARY
INJUNCTION**

Plaintiff,)

vs.)

Board of Trustees, Richland School)
District Two, Richland School District)
Two Superintendent, Dr. Katie Brochu, In)
her official capacity as School)
Superintendent,)

Defendant.)

2012 DEC 28 AM 11:07

This matter is before the Court on Plaintiffs' motion for a temporary injunction pursuant to Rule 65, SCRCF. On Monday, November 26, 2012, Plaintiffs filed a motion for a temporary restraining order compelling Defendants to transfer John Doe from Westwood High School (WHS) and immediately enroll him in the ninth grade at Blythewood High School (BHS). Following a brief telephone conference with Plaintiff, Mother of Student #1 John Doe ("Mother"), and counsel for Defendants on November 26, 2012, the Court scheduled a follow-up conference in chambers with the parties for 9:30 a.m., Tuesday, November, 27, 2012. Plaintiff Mother was representing herself and her minor son, Plaintiff John Doe at both conferences. The Court then set Plaintiffs' request for interim injunctive relief for hearing at 9:30 a.m. on November 28, 2012. At the hearing, Plaintiff Mother appeared pro se and Plaintiff John Doe was represented by Attorney Glenn Bowen, who entered his appearance on behalf of John Doe that morning. The parties submitted memoranda of law, supporting affidavits, and presented witnesses at the hearing. Specifically, Mr. Ralph Schmidt, Principal of Westwood High School,

Dr. Fred McDaniel, II, Chief Planning Officer for Richland School District Two, Dr. Maria Kratsios, Senior Research Associate for Advanced Programs for Richland School District Two, Mr. Roger Wiley, Registrar for Richland School District Two, and Plaintiff Mother, all testified at the hearing. Based on the evidence presented at the hearing and through the affidavits the Court hereby denies the Plaintiffs' requested temporary injunctive relief.

I. BACKGROUND

Plaintiff John Doe is currently enrolled and attending the ninth grade at WHS. John Doe is zoned to attend WHS based on his residence. The 2012-13 school year is WHS's first year of operation, and its attendance zone was not established by the Richland School District Two Board of Trustees ("School Board") until December 2011. Plaintiffs allege that they were not properly notified of WHS's attendance zone and that they initially understood John Doe was zoned to attend BHS. The Defendants assert Plaintiffs were notified by a variety of methods, including direct mail, of the WHS attendance zone in December 2011.

Plaintiffs applied for John Doe's intra-District transfer to BHS in the summer of 2012. The District administration denied the requested transfer primarily on the grounds that BHS has a wait list of approximately 100 students, some of whom had previously been enrolled in and attended BHS, but were zoned into other schools as a result of the re-zoning of Richland Two's schools in 2011.

Plaintiffs appealed the District administration's denial of their transfer request to the School Board. On October 9, 2012, the School Board heard Plaintiffs' appeal and upheld the administration's denial of the transfer request. Ten days later, or October 19, 2012, Plaintiffs appealed the School Boards' decision to this Court, pursuant to S.C. Code Ann. § 59-19-560. Plaintiffs' appeal appears to be based on grounds of alleged violations of the Gifted and Talented

Program Statute, § 59-29-170, negligence and violation of Equal Protection guarantees under the Fourteenth Amendment to the United States Constitution.

In response to Plaintiffs' complaint, Defendant filed a motion to dismiss under Rule 12(b), SCRPC. Plaintiffs subsequently filed on November 13, 2012, an amended complaint styled "Second Amended Complaint Appeal Of Decision of Richland County School District Two and Board of Trustees, District Two." Defendants have filed a motion to dismiss this complaint as well.

Plaintiffs' motion for a temporary injunction is chiefly based on the contention that unless John Doe is immediately transferred to BHS he will suffer irreparable injury and the School Board did not comply with state law in considering Plaintiffs' transfer request, particularly with respect to John Doe's status as a gifted and talented student.

II. ANALYSIS

Plaintiffs have moved the Court for a temporary injunction requiring the Defendants to immediately transfer John Doe from WHS to BHS while their appeal from the School Board's denial of their requested transfer is pending before the Court. Such temporary injunctive relief is an extraordinary equitable remedy within the discretion of the Court. Generally, interim injunctive relief is granted for the purpose of preserving the status quo during litigation to prevent irreparable harm to a plaintiff. *Scratch Golf Co. v. Dune W. Residential Golf Prop., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004) ("An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff."); *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 601, 553 S.E.2d 110, 121 (2001) ("The sole purpose of a temporary injunction is to preserve the status quo and thus avoid possible irreparable injury to a party pending litigation."). Accordingly, to obtain a temporary injunction, a party must show he would suffer irreparable harm if the status quo is not preserved and a temporary injunction not granted.

MailSource, LLC. v. M.A. Bailey & Assocs., 356 S.C. 363, 368, 588 S.E. 2d 635, 638 (Ct. App. 2003).

Here, the status quo is John Doe's enrollment at WHS. John Doe was zoned to attend WHS in December 2011, while he was still in the 8th grade at Muller Road Middle School. His status in the gifted and talented program was not a factor in his zoning. John Doe has at all times been enrolled in and attending high school at WHS. Plaintiffs sought a transfer to BHS from Richland Two administration and School Board, and both denied the requested transfer. Consequently, the status quo is John Doe's enrollment at WHS.

Plaintiffs' requested injunction seeks not to preserve the status quo during their appeal, but rather to alter the current status of his school attendance. Plaintiffs contend that such affirmative injunctive relief is necessary to avoid irreparable harm to John Doe. Plaintiffs assert John Doe is suffering harm at WHS because, due to his gifted and talented academic status and recent traumatic events in his life, he needs to attend BHS where his friends attend school. The Plaintiff Mother testified she has observed John Doe exhibit recent signs of possible depression that she attributes to his attendance at WHS.

At this stage of the proceedings, the Defendants have not disputed that John Doe is a gifted and talented student, that he suffered from recent traumatic events, or that his friends attend BHS. However, Defendants contend and presented evidence to the Court establishing that WHS offers comparable gifted and talented educational programs with those at BHS, WHS has and can offer guidance and counseling services to John Doe, and opportunities for developing new friendships among gifted and talented students exist at WHS and developing new friendships is a meaningful and constructive experience for gifted and talented students, such as John Doe. The evidence at the hearing further established that John Doe's academic performance at WHS is consistent with his previous academic achievement, though he has required the assistance of his parents with studying in order to maintain his grades.

Importantly, Plaintiffs presented no evidence from a psychological or medical professional that John Doe is being harmed educationally, psychologically, or academically by attending WHS instead of BHS or that by attending BHS his educational or mental health status would improve. Indeed, Plaintiff Mother testified that John Doe has not been formally diagnosed with any mental or physical condition and has not received any formal professional counseling for the effects of trauma or depression. Likewise, no evidence shows John Doe's education has suffered as a result of attending WHS or not attending BHS. Accordingly, Plaintiffs have not established at this point that John Doe will likely suffer irreparable harm if he continues to attend WHS and not BHS.


Finally, Plaintiffs' appeal from the School Board's decision to deny John Doe's transfer to BHS is made under § 59-19-560. The General Assembly has expressly made school boards responsible for the assignment of students to schools § 59-19-90(9). See also *Wharton v. Abbeville School District No. 60*, 608 F.Supp 70, 75 (D.S.C. 1984) ("South Carolina law grants a child of school age the right to a free education but does not confer a right upon pupils to attend a specific school."). The General Assembly has further provided with regard to appeals under § 59-19-560 that "[u]ntil the matter in controversy has been finally disposed of, no appeal shall act as a supercedeas or suspension of the order of the board having original jurisdiction of the cause." § 59-19-570. Accordingly, the General Assembly has clearly vested the power to assign students to schools in local school boards and instructed and declared its intent that school boards' decisions in such matters remain in effect pending judicial review.

Plaintiffs' requested temporary injunction seeks precisely what the General Assembly has discouraged, i.e., the suspension of the School Board's decision to deny their transfer request. Moreover, the proposed injunction asks the Court to invade the discretionary authority of the School Board under § 59-19-90(9) to assign students to schools. On the record before the Court,

the Court cannot find the equities of Plaintiffs' claim justify the granting of extraordinary temporary injunctive relief.¹

Plaintiffs' motion for a temporary injunction is hereby denied.

IT IS SO ORDERED.



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

December 28, 2012
Columbia, South Carolina

¹ Because Plaintiffs have failed to establish a temporary injunction is necessary to prevent possible irreparable injury, the Court does not reach the issues of whether Plaintiffs have alleged a prima facie claim for relief or whether Plaintiff Mother has stated a claim on her own behalf on which she can properly proceed pro se.