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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

The School District of Greenville County..... Appellant,

v.

Lee C. P. and Nelle S. P., as Guardians ad Litem for
Lee P., a minor Respondents.

Case No. 2013-CP-23-03447

**Appeal from Greenville County
Court of Common Pleas
Edward W. Miller, Circuit Court Judge**

**BRIEF OF AMICI CURIAE IN SUPPORT OF
APPELLANT, THE SCHOOL DISTRICT
OF GREENVILLE COUNTY,
SUBMITTED BY
JEREMY B., GERIANN B. & DAVID B.;
HARRISON S., SUSAN S. & RUSSELL S.**

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STATEMENT OF ISSUES ON APPEAL

GeriAnn B. and David B., together with their son Jeremy B., and Susan S. and Russell S., together with their son Harrison S., (collectively “Amici”) adopt the Statement of Issues on Appeal presented in the Brief of Appellant.

STATEMENT OF THE CASE

Amici adopt the Statement of the Case presented in the Brief of Appellant. As set out in Amici’s Motion for Leave to File a Brief Amici Curiae, Jeremy B. and Harrison S. are both students at Southside High School. Their respective parents are GeriAnn B. and David B., and Susan S. and Russell S. Prior to the Circuit Court’s entry of mandamus against the Appellant, Jeremy B. had the highest grade point ratio (“GPR”) in the Southside High School class of 2014 and was therefore ranked first in his class. Harrison S. had the second highest GPR and was ranked second. Following the Circuit Court’s entry of mandamus, Respondent Lee P. became first in the Southside class, Jeremy B. fell to second, and Harrison S. fell to third.

SUMMARY OF ARGUMENT

Academic decisions, such as grades and class rankings, are within the particular expertise of educators. Courts have, everywhere and at all times, given the highest level of deference to school authorities when students have attempted to litigate such core academic matters. Federal courts, from the United States Supreme Court down, have overwhelmingly agreed that a court may override an academic decision only if that decision was arbitrary and capricious. South Carolina courts apply an even higher bar, holding that only clear evidence of bad faith, corruption, or an abuse of power will lead a court to overturn an academic decision. There is good reason for this deference; literally millions of academic decisions are made every day, and judicial review of them would be utterly impractical — both for the judiciary and for an educational system already strained to its limits.

Far from being “arbitrary” or “capricious,” the challenged decision of Southside was both carefully reasoned and consistent with South Carolina law and regulations. Southside officials recognized — and carefully exercised their discretion to avoid — a particular problem. When a student transfers in with Honors or AP credits, he can receive a “double bump” — one grant of “extra credit” from his old school, and a second grant from the new school. Southside’s decisions were designed to avoid that unfairness, and they were consistent with all applicable law.

Particularly given these facts and the discretion available to schools under the very general guidance provided by South Carolina law, mandamus was improper here. The decision at issue here was not purely ministerial, and Respondents had no clear right that a court could enforce. Instead, Southside had and exercised appropriate discretion.

The Circuit Court should not have engaged in reviewing Southside's class rank determination in the first place, and it certainly should not have disturbed Southside's correct application of the rules. The writ of mandamus issued below should be vacated.

ARGUMENT

I. Courts Routinely Defer to Educators Concerning Academic Decisions.

Amici represent students and their families, who have an interest in having academic decisions made by their teachers and principals, and not in the courts. Local teachers and administrators have far greater insights into grades and class ranks, and into the underlying accomplishments that these measurements indicate. Grades and class ranks can have a substantial impact on students and their parents; students should not have to go into court to have these things determined. And, with respect, courts are not well situated to resolve such academic questions.

Courts both in South Carolina and across the nation have recognized this concern, and they routinely decline to adjudicate academic questions. Courts — up to and including the United States Supreme Court — give great deference to school authorities. The United States Supreme Court has articulated the rationale for this deference in two key decisions. In *Epperson v. Arkansas*, 393 U.S. 97 (1968), the Court recognized that

Judicial interposition in the operation of the public school system of the Nation raises problems requiring care and restraint. . . . By and large, public education in our Nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values.

Id. at 104. *Epperson* involved a teacher's challenge to her dismissal for violation of a state statute that forbade teaching the theory of evolution, but the Supreme Court reiterated the same principle of deference seven years later in *Goss v. Lopez*, 419 U.S. 565, 578 (1975), which involved a student's challenge to a school's disciplinary decision.

Against this backdrop, the Supreme Court has declined numerous invitations to engage in judicial oversight of a school's academic decision making. In *Board of*

Curators of the University of Missouri v. Horowitz, 435 U.S. 78 (1978), for example, a student challenged her dismissal on academic grounds from a degree program of a public university. In rejecting that challenge and reversing a lower court decision, the Supreme Court relied on the high level of deference articulated in *Epperson* and *Goss*. Indeed, the Court questioned whether the judiciary could even review under an “arbitrary and capricious” standard, or whether academic decisions are entitled to even greater deference. See *Board of Curators*, 435 U.S. at 85, 91-92 (quoting from *Epperson* and *Goss* and noting that “[e]ven assuming that the courts can review under such a[n] [arbitrary and capricious] standard an academic decision of a public institution, we agree with the District Court that no showing of arbitrariness or capriciousness has been made in this case”). “Courts are *particularly ill-equipped*,” the Supreme Court concluded, “to evaluate academic performance.” *Id.* at 91 (emphasis added). Similarly, in *Regents of the University of Michigan v. Ewing*, 474 U.S. 214 (1985), the Court turned back a student’s challenge to his dismissal after he failed to pass a key examination. The Court reasoned that

When judges are asked to review the substance of a genuinely academic decision, . . . they should show great respect for the faculty’s professional judgment. Plainly, they may not override it unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment.

Ewing, 474 U.S. at 225 (footnote omitted). At least one decision of the Fourth Circuit has recognized the same basic principle. See *Hardwick ex rel. Hardwick v. Heyward*, 711 F.3d 426, 440 (4th Cir. 2013) (“Because school officials are far more intimately involved with running schools than federal courts are, ‘[i]t is axiomatic that federal courts should

not lightly interfere with the day-to-day operation of schools.” (citing *Augustus v. School Bd. of Escambia Cnty., Fla.*, 507 F.2d 152, 155 (5th Cir.1975))).

Indeed, South Carolina courts have set forth an extremely deferential standard, declining to review academic decisions in the absence of “**clear evidence of corruption, bad faith, or a clear abuse of power.**” *Davis v. Greenwood County School District 50*, 365 S.C. 629, 635, 620 S.E.2d 65, 68 (2005) (emphasis added) (“In general, courts will not disturb matters within the school board’s discretion unless there is clear evidence of corruption, bad faith, or a clear abuse of power.”)

This is an extraordinarily deferential standard, and our appellate courts have invoked this standard and deferred to the decisions of educators on several occasions. In *Laws v. Richland County School District No. 1*, our Supreme Court rejected a teacher’s challenge to a school district’s decision not to renew his contract, holding that

Consistency with relevant precedent requires that the scope of judicial review be a limited one. In view of the powers, functions, and discretion which must necessarily be vested in educational authorities if they are to execute the duties imposed upon them, this Court cannot substitute its judgment for that of these authorities.

Laws v. Richland Cnty. Sch. Dist. No. 1, 270 S.C. 492, 495, 243 S.E.2d 192, 193 (1978).

This Court relied on the *Laws* decision in *Singleton v. Horry County School District*, 289 S.C. 223, 345 S.E.2d 751 (Ct. App. 1986), turning back a teacher’s attempt to expunge a two-day suspension from his records and collect back pay for the suspension. This Court explained:

Courts will not interfere with the exercise of discretion by school boards in matters committed by law to their judgment **unless there is clear evidence that the board has acted corruptly, in bad faith, or in clear abuse of its powers.** An appellate court will not substitute its judgment for that of school board’s in view of the powers, functions and discretion which must

necessarily be vested in such boards if they are to execute the duties imposed upon them.

Singleton, 289 S.C. at 227-28, 345 S.E.2d at 753-54 (emphasis added; citations omitted).

Courts from a variety of jurisdictions have routinely rejected challenges to a school's determinations about a student's grade or grade point ratio. As one court observed, "[t]here is a widely accepted rule of judicial non-intervention into the academic affairs of schools." *Paulson v. Golden State Univ.*, 602 P.2d 778, 781 (Cal. 1979). See also *Keys v. Sawyer*, 353 F. Supp. 936, 940 (S.D. Tex. 1973) (applying arbitrary and capricious standard of review in rejecting former law school student's challenge to one of his grades and observing that "[t]here is a compelling need and very strong policy consideration in favor of giving local school officials the widest possible latitude in the management of school affairs"); *Keefe v. New York Law Sch.*, 71 A.D.3d 569, 571 (2010) (applying arbitrary and capricious standard of review and rejecting challenge to grade and grading system); *Delekta v. Memphis Cmty. Sch.*, No. 249325, 2004 WL 2290462 (Mich. Ct. App. Oct. 12, 2004) (affirming summary judgment for school district in student's challenge to the recording and weighting of a grade); *Hingel v. Bd. of Educ. of Austintown Local Sch. Dist.*, No. 08 MA 258, 2009 WL 4547721 (Ohio Ct. App. Nov. 23, 2009) (affirming trial court's denial of mandamus to plaintiff seeking to change grades that student received in two advanced classes and noting that "[i]n the context of public school systems, courts are historically deferent to a school board's decision making process, presuming that decisions are made in good faith and declining to substitute judgment absent a gross abuse of discretion, clear demonstration of bad faith, or fraud").

The "widely accepted rule of judicial non-intervention into the academic affairs of schools" recognized by the Supreme Court of California is recognized in South Carolina.

Under *Davis* and *Singleton*, students and parents like Amici are entitled to have their grades and class ranks determined, without having to go to court, unless there is “clear evidence” of corruption, bad faith, or clear abuse of power.

II. Southside High School’s Class Rank Determination Was Not Infected by Corruption, Bad Faith, or Clear Abuse of Power.

The Circuit Court should have deferred to Southside’s calculation of class ranks. Far from being “corrupt” or “in bad faith,” Southside’s decision was, as the Circuit Court itself assumed, “a well-intentioned effort at what it considered to be fairness and equality in interpreting Plaintiff’s transcript grades,” Order p. 2; R. p. ___, and — more critically — one completely in conformity with South Carolina statutes and regulations. Given this, the Circuit Court should not have substituted its judgment for that of Southside High.

The South Carolina law addressing transfer of student grades is sparse, leaving considerable room for school authorities to exercise discretion. First, S.C. Code Ann. Reg. 43-273 provides that when a student transfers to a South Carolina school from an accredited school in another state, course credits “will be accepted *under the same value which would apply to students in the school to which they transferred.*” (emphasis added). Second, under the State Board of Education’s Uniform Grading Policy (“UGP”) – which the Board was required to adopt by S.C. Code Ann. § 59-5-68: “When transcripts are received from accredited out-of-state schools . . . and numerical averages are provided, those averages must be used in transferring the grades to the student’s record.” R. p. ___. Aside from these two guideposts,¹ school authorities exercise their

¹ The status of the UGP under South Carolina law is itself unclear. It is not officially codified among the other regulations issued by the State Board of Education. See S.C. Code Ann. Regs. Chapter 43. Instead, it is a state policy adopted by the

discretion as they see fit to regulate and administer the transfer of student grades. *Cf.* S.C. Code Ann. § 59-19-110 (“The boards of trustees of the several school districts may prescribe such rules and regulations *not inconsistent with* the statute law of this State as they may deem necessary or advisable to the proper disposition of matters brought before them.” (emphasis added)).

As explained in detail in Appellant’s brief, the UGP states only that “numerical averages” should be used to calculate a transfer student’s GPR. The marks on Lee P.’s Riverside Military Academy (“RMA”) transcript were not, however, the *numerical averages* from his classes. Instead, they were *weighted grades*, which included up to a 5 or 10 point “bump” in certain courses to reflect that those courses were taught at, respectively, the Honors or Advanced Placement level. Nothing in the UGP requires school authorities to blindly accept any numbers provided on a transfer student’s transcript without any inquiry into how those numbers were calculated. Grading systems are many and varied. What the record shows in this case is that Southside authorities appropriately determined what Lee P.’s true *numerical averages* were and then recalculated his GPR according to the standards in the UGP.

In addition, school authorities were required to comply with, and did in fact comply with, Regulation 43-273, which mandates that classes transfer “under the same value which would apply to students in the school to which they transferred.” Students at Southside do not receive a 5 or 10 point bump in their numerical averages in classes that

Greenville County School Board. Accordingly, it is uncertain whether there is any law here to apply at all. *See* S.C. Code Ann. § 1-23-10(4) (providing that “[p]olicy or guidance issued by an agency other than in a regulation does not have the force or effect of law” and that “[t]he term regulation . . . does not include . . . policy statements or rules of local school boards”).

are taught at the Honors or Advanced Placement levels. Instead, classes at Southside are weighted only when the GPR is calculated. Lee P.'s grades from RMA were therefore given "the same value which would apply to students in [Southside]" once school authorities at Southside learned how Lee P.'s RMA grades had been calculated.

The decisions of Southside's administrators in transferring Lee P.'s grades were plainly not, therefore, made "corruptly, in bad faith, or in clear abuse of [their] powers." *Singleton*, 289 S.C. at 227, 345 S.E.2d at 753. Nor were they "inconsistent with the statute law of this State." *See* S.C. Code Ann. § 59-19-110. Instead, those decisions were a good-faith application of neutral principles, in recognition of the interests not only of Lee P. but also the other students at Southside High School. Amici Jeremy B. and Harrison S. received only a single "bump" for Honors and AP courses; Respondents are asking the Courts to give Lee P. two "bumps." Southside High appropriately interpreted the rules and exercised its discretion to avoid such an unfair outcome.

III. The Extraordinary Remedy of Mandamus Was Inappropriate.

The Circuit Court's decision to interject itself into Southside's grading practices is even more unfortunate because of the *manner* in which it was executed — through issuance of a writ of mandamus. Respondents did not make the showing necessary for mandamus relief, and use of this extraordinary remedy in the educational setting was particularly inappropriate given the deference due school authorities when making academic decisions.

This Court and the Supreme Court have recognized on many occasions that a writ of mandamus "is the highest judicial writ and is issued only when there is a specific right to be enforced, a positive duty to be performed, and no other specific remedy." *Ex Parte Littlefield*, 343 S.C. 212, 222, 540 S.E.2d 81, 86 (2000). The required showing for

issuance of a writ is correspondingly high: “A petitioner seeking a writ of mandamus to require the performance of an act must show (1) a duty of respondent to perform the act, (2) the ministerial nature of the act, (3) the petitioner’s specific legal right for which discharge of the duty is necessary, and (4) a lack of any other legal remedy.” *Anderson v. State of South Carolina*, 338 S.C. 629, 631-32, 527 S.E.2d 398, 399 (Ct. App. 2000).

Doubtful cases do not merit mandamus:

[W]here for any reasons the duty to perform the act is doubtful, the obligation is not regarded as imperative, and the applicant will be left to his other remedies. So when the statute prescribing the duty does not clearly and directly create it, the writ will not lie Mandamus will not issue to enforce doubtful rights. The duty to perform an act must be ***indisputable and plainly defined***.

Charleston Cnty. Sch. Dist. v. Charleston Cnty. Election Comm’n, 336 S.C. 174, 182-83, 519 S.E.2d 567, 572 (1999) (citations and internal quotation marks omitted; emphasis added).

Given the wide latitude typically shown to school authorities, courts will rarely if ever interfere with the operation of school affairs through issuance of mandamus. As a leading secondary source concludes,

Although their authority is not without limit, a wide range of judgment and discretion is vested in school directors and officers in the matter of the government and details of conducting schools, and the courts will not ordinarily interfere by mandamus to direct or control the exercise of their powers or authority.

52 AM. JUR. 2D *Mandamus* § 226 (footnotes omitted).

The high bar required to justify mandamus relief is plainly not met here.² For the reasons set out above, Plaintiff’s right to have his weighted grades from RMA transferred

² The transcript of the hearing before the Circuit Court reveals substantial discussion of FERPA, the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g. Tr. pp. 9,

to Southside in a particular manner so as to effect a “double-bump” in his grade point ratio is hardly “indisputable and plainly defined.” Consequently the determination of class ranks was not “ministerial,” and school officials appropriately exercised their expertise and discretion. The Circuit Court was wrong to treat this as a matter in which mandamus is available.

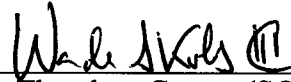
CONCLUSION

Educators make decisions each day that have an impact on thousands of individual students across this State. If these academic decisions were, as Respondents urge, subject to judicial review, the courts could be flooded with the concerns of disgruntled parents and students. Suits like this would draw teachers and administrators away from the primary task of educating students, to deal instead with the burden of defending their decisions in the courts. Upholding the writ of mandamus issued below would ensure more such challenges, and would remove academic discretion from the place where it should reside – with teachers and local administrators.

For the reasons set out above and in the Brief of Appellant, Amici respectfully request this court reverse the decision of the Circuit Court and vacate the writ of mandamus.

25, 30-31, 48-50; R. pp. __. FERPA has no bearing on this case for at least three reasons. First, it was not pled as a basis for relief. Second, it has nothing to do with grade calculations. Third, it is absolutely settled that there is no private right of action available under FERPA. *Gonzaga University v. Doe*, 536 U.S. 273 (2002).

Respectfully submitted,



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