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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

v.

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

Appellate Case No. 2013-002232

Appeal from Greenville County
Court of Common Pleas
Edward W. Miller, Circuit Court Judge
Case No. 2013-CP-23-03447

INITIAL BRIEF OF RESPONDENTS

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D. Should the Court affirm the Circuit Court pursuant to Rule 220(c), SCACR, upon any grounds appearing in the Record on Appeal, including L.P.'s argument that the School District is estopped from changing his grades?

STATEMENT OF THE CASE

This action was brought on June 21, 2013 by the filing of a Summons and Complaint with the Court of Common Pleas in Greenville County. The Complaint sought a Writ of Mandamus directing Appellant, the School District of Greenville County ("School District"), forthwith to restore the grades and rank of the minor L.P., to the levels first determined by his school, Southside High School, at the beginning of his junior year, before the unlawful reduction by the School District. The Complaint also sought an injunction prohibiting the alteration of his grades and rank in a manner inconsistent with the Writ of Mandamus. Southside High School ("Southside") is a high school in Greenville County under the direction and control of the School District.

The School District answered on August 6, 2013 with a denial, challenge to the Court's subject matter jurisdiction and defenses of ripeness, lack of controversy, waiver, estoppel and good faith. On August 8, 2013, L.P. moved for expedited trial in the Business

Court on the ground that he was a rising senior and would be applying to college in the fall. On September 9, 2013, the Hon. Jean H. Toal, Chief Justice of the South Carolina Supreme Court, declined to assign the case to the Business Court Pilot Program but did assign it to the Hon. Edward W. Miller, Circuit Judge. She further ordered that "Judge Miller shall have jurisdiction over this case regardless of where he may be assigned and he shall insure that this case is resolved in an expedited manner." The case was tried to the Court without a jury on October 4, 2013. The Circuit Court entered a written Order on October 7, 2013, granting L.P.'s requested Writ of Mandamus and prohibitive injunction, as follows:

> "What the Plaintiff seeks is that his grades and rank be restored as originally determined by Southside High School on October 3, 2012. I hereby grant his request and issue this Writ of Mandamus requiring the Defendant to do so immediately. Also, the Plaintiff has requested an injunction prohibiting the alteration of his grades and rank in a manner inconsistent with this Writ of Mandamus. I hereby grant that injunction."

Writ of Mandamus at R. p.___. The School District filed a notice of appeal on October 7, 2013, and an amended notice of appeal on October 10, 2013.

STATEMENT OF FACTS

L.P. is a senior at Southside. At the time this case was filed in the Circuit Court, he was a rising senior. He transferred to Southside at the beginning of his junior year from Riverside Military Academy ("Riverside") in the State of Georgia. L.P. completed his freshman and sophomore years at Riverside. He worked diligently while at Riverside and received high marks reflective of his efforts. Often he would get everything correct on an assignment or test, yet only receive a 95 or a 90 as his grade. When he asked about that, his teachers would tell him it did not matter because the nature of the course would add five or

ten points, respectively, for him at the end of the semester. Tr., p. 19-20 at R. p.__. In other words, some of his teachers at Riverside actually lowered his earned grades artificially.

At the time of L.P.'s transfer to Southside, his grades from Riverside were provided to Southside in an official Riverside transcript dated August 1, 2012, and provided to School District at that time as part of L.P.'s initial enrollment papers. The transcript date is on the lower right-hand corner of the Exhibit. Plf. Exh. 1 at R. p. __. Southside correctly accepted these transferred grades and issued L.P. his grades and class rank in a Southside transcript. Plf. Exh. 2 at R. p. __. The Southside transcript is dated October 3, 2012 and in the bottom right-hand corner, it shows GPA of 5.215, reflecting the SC Uniform Grading Policy. *Id.* Southside accepted and transferred the grades in accordance with a statute passed by the General Assembly of the State of South Carolina, the South Carolina Uniform Grading Policy issued by the South Carolina Department of Education and the School District's own grading policy and rules. Plf. Exh. 3 at R. p. __.

S. C. Code Ann. § 59-5-68 mandated both the South Carolina State Board of Education Policy, and the School District's policy, which is required to be identical. The statute is as follows:

> "The General Assembly finds that given the fact the State provides substantial financial academic assistance to students to the State based on cumulative grade point averages and districts currently use a variety of grading scales, it is in the best interest of the students of South Carolina for a uniform grading scale to be developed and adopted by the State Board of Education to be implemented in all public schools of the State. Therefore, the State Board of Education is directed to establish a task force comprised of superintendents, principals, teachers, and representatives of school boards and higher education no later than June 30, 1999.

> The task force shall make recommendations to the board including, but not limited to, the following: consistent numerical breaks for letter grades; consideration of standards to define an honors course; appropriate weighting of courses; and determination of courses and weightings to be used in the calculation of class rank. The task force shall report its findings to the State Board of Education no later than December 1, 1999. The State Board of Education shall then adopt and school districts of the State shall begin using the adopted grading scale no later than the 2000-2001 school year."

The South Carolina Department of Education Uniform Grading Policy is as follows:

> "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. . . ."

South Carolina State Board of Education Policy, at Page 55-03-06, Plf. Exh. 4, p. 55-03-06, R. p. ____.

The School District's policy states under the heading Course Grading:

> "The district complies with the State Board of Education policy regarding a Statewide uniform grading scale."

Id. at page 1. The policy continues in the section titled "Conversion Process" to direct schools in the manner in which they convert grades for transfer students, as follows:

> "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. . . ."

Id. at page 2 (emphasis added). The State Board of Education Policy was adopted on January 9, 2007. Plf. Exh. 4 at R. p. __. It was the result not only of legislative mandate, but also

careful study. (*See also,* the synopsis agenda and executive summary that details the process and the blue ribbon committee who participated in developing that policy, including assistant superintendents of instruction, guidance counselors, Commission on Higher Education members, curriculum coordinators and South Carolina Department of Education personnel).

S. C. Code Ann. § 59-5-68 mandated the South Carolina State Board of Education Policy. The South Carolina State Board of Education Policy is *identical* to the School District policy. The transcript delivered by Southside to L.P. on October 3, 2012 was properly prepared according to this Statute and both policies.[1]

On October 4, 2012, the very next morning after L.P. received his Southside transcript, the mother of another student in the junior class at Southside complained to the school about L.P.'s grades in an email to the school. The complaining mother, Susan S., went so far as to call Riverside the morning of October 4, 2012 to inquire about L.P.'s grades and their calculation *without L.P.'s knowledge or consent.*[2] Plf. Exh. 6 at R. p. __. Susan S., writing for herself and her husband Russell S., asked that the school keep her complaint anonymous because "[o]ur son, [name redacted] [H.S.], has NO IDEA we are looking into this grading issue and would be horrified to find out. We do not want him involved in this

[1] L.P. and his parents relied upon the October 3, 2012 Southside transcript and did not learn until after more than a full semester of coursework was completed and graded at Southside, that the transcript would be adversely changed. At the time Southside finally informed L.P. of the changes more than half the school year was over and it was too late for L.P. to return to Riverside.

[2] Thus far, no one at Southside or the School District has told L.P. or his parents how Susan S. knew about L.P.'s grades on his Southside transcript or how they had been calculated. While the School District attempted to attribute it to L.P.'s parents telling Susan S., there is no basis or evidence in the record to support that assertion.

discussion in any way and we would prefer that we remain anonymous as well. Please keep this communication in utmost confidentiality." Plf. Exh. 6 at R. p. __.

Southside's Principal, Carlos Brooks, immediately sent an email to the School District stating that he had reservations about the methods Susan S. had used. Plf. Exh. 7 at R. p. __.[3] His concerns are not surprising. The Federal Family Education Rights and Privacy Act protects a student's right of privacy.

Both Brooks and a Southside guidance counselor, Dyamond Henderson, promptly sought and received confirmation from the School District that Southside had correctly transferred L.P.'s grades. Ms. Henderson sent an email to Rob Rhodes, Director of School Counseling Services at the School District, as follows:

> "A student transferred from another school and this parent is upset because the school he transferred from weights honors and AP courses and doesn't feel this is fair. I explained to our IB Coordinator that we can't alter transcripts, we only enter what we receive. I called Dr. Childs to see how they would handle this and he agreed. He also stated that other students information is confidential and shouldn't be discussed with other parents. Mr. Brooks asked that I e-mail you to verify what the district policy is before he responds to the parent."

Plf. Exh. 8 at R. p. __. The next morning, Principal Brooks wrote to Susan S. via an email that "our guidance department has followed the uniform grading policy as outlined by the State Department of Education and the District." Plf. Exh. 9 at R. p. __.

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[3] Respondents received the emails and other information referenced herein only after filing a request for the records in this matter pursuant to the South Carolina Freedom of Information Act on January 30, 2013. Plf. Exh. 15 at R. P. __.

As of October, 5, 2012, two days after L.P. received his grades and the day after Susan S.'s complaint, the Southside principal and guidance counselor, Dr. Childs, and Mr. Rhodes at the School District, all confirmed that the Southside transcript issued to L.P. on October 3, 2012 was correctly prepared. They had taken account of Susan S.'s argument about the so-called "extra points" and dismissed it.

Susan S. would not take "No" for an answer, continued to apply pressure to Southside and the School District, and now she and her husband have inserted themselves into this appeal. Who are they? Russell S. is serving a two-year term as *President* of the Southside PTSA and Susan S. served a two-year term as President before him. Russell S.'s email address on Southside's website directs one to an organization called "Greenville Forward", which he founded and serves as executive director. His biography on its website portrays him as a part of the local power structure and says that "his wife, Susan, is even more awesome". R. p.____.

Perhaps this explains why all of the transcript changing activities persisted for months *even after* Susan S. was advised by Southside on October 5, 2012, that L.P.'s grades were properly converted, and why neither L.P. nor his parents were informed of what was occurring. Perhaps, also, this explains why the School District is using scarce education resources to pursue this appeal.

More than one month after Principal Brooks' October 5, 2012 email to Susan S. advising her that the transcript had been properly prepared, on November 8, 2012, Ms. Henderson, the Southside guidance counselor, received a phone message from a "Pat" at Riverside. Although we do not know exactly what transpired from October 5th to November 8th because the School District has not provided anything for that time period in response to L.P.'s Freedom of Information Request, we do know that <u>something</u> was being

done without L.P.'s knowledge or consent because Ms. Henderson received a call from Riverside in response to a request she had made to that school. The transcript of the voice message left by Pat makes it clear that Riverside had been asked to change L.P.'s transcript. Ms. Henderson had registered her disagreement with the efforts to change L.P.'s grades and was just following orders in her communication about this with Riverside. She and Riverside's academic dean saw eye-to-eye on the matter. He said, no, he is "not comfortable changing our transcripts." Plf. Exh. 10 at R. p. __.

Why did the School District go to the trouble of asking Riverside to change L.P.'s official transcript? There are two answers. First, it is a crime in South Carolina to change a transcript; S.C. Code Ann. § 16-13-15. Second, the School District knew that the Uniform Grading Policy required it to accept the official transcript as given by Riverside. The School District was stymied.

When Riverside refused to change L.P.'s official transcript from its end, the School District decided to change his transcript from the Southside end. It did this by a directive from Rob Rhodes of the School District to Ms. Henderson, instructing her to go behind the official final Riverside transcript to get unofficial preliminary uncorrected grades. These unofficial preliminary grades would have been lower because, among other reasons, some teachers artificially lowered preliminary grades in anticipation of later adjustment in the final official transcript. In an email to Principal Brooks on November 27, 2012, Ms. Henderson advises him that she has done as requested. Plf. Exh. 11 at R. P. __. Also, she expresses her concern about what she is being asked to do:

> "I received the grades that Rob Rhodes asked that I request from Riverside Military. Now that we have the grades I am not sure of how to proceed. As I explained I am very uncomfortable with this situation. This is

a sensitive issue and I am certain [name redacted] L.P.'s parents will have questions regarding this situation. I would like to speak with you when you are available for instructions on how to proceed. If at all possible, I would like your intervention because this issue has gone above my head. *I don't have the authority nor am I comfortable changing a schools final grades regardless of their policy."*

Id. (emphasis added).

Two days later, on November 29, 2012, Ms. Henderson sent another email to the Southside Principal and again expressed her concern about the situation and what she had been asked to do. Plf. Exh. 12 at R. p. __

"I would like to note my concern as I foresee this as a future issue. The voice mail I received and forwarded stated that the school was not comfortable changing grades on their transcript. I was then instructed to ask them to send grades without changing their transcript. As you are aware the SC Uniform Grading Policy states when receiving grades from an out of district school and numerical grades are provided, those averages must be used in transferring the grades to the student record (attached). Of course I will do as I have been directed, however I would like to get clarification on the recommendation. I know this is an unusual situation, but this contradicts everything I've been taught and would like to be clear of the request before I made the changes.

Also, is there a plan in place for dealing with the student this affects? He has already been given a copy of his transcript and I anticipate his parents questioning the change. Who will notify the student and his parents?"

Id. These emails confirm that initially, the School District wanted Riverside to change its official transcript. When Riverside said "No", the School District required the Southside guidance counselor to do something that violated everything she had been taught, everything she had done in other transfer situations, official policy and the law. She again expressed her deep concern. The latter email also confirms that as of the end of November, almost two months after the School District started this secret process, L.P. and his parents were still completely unaware of what was being done to him. He continued to attend Southside relying on the October 3, 2012 transcript provided to him by Southside and approved by the School District.

The next disturbing email is dated December 4th. Plf. Exh. 13 at R ___. In that email, Guidance Counselor Henderson writes once again to Principal Brooks about what is happening:

> "When we spoke yesterday you instructed that I enter the grades and notify the parents. I sent an email on 11/29 to Riverside Military Academy requesting grades from the 8th grade. I have not contacted L.P.'s parents yet because I don't have his complete record. If you would like me to contact them to make them aware now, just let me know."

Id. This is further confirmation that Ms. Henderson has been following orders, that she has been told to change L.P.'s grades, that she has been contacting Riverside without L.P.'s knowledge or consent, in violation of his right to privacy, and that all information about this behind-the-scenes process continues to be kept from him and his parents.

Not until January 22, 2013, in a voice-mail message, were L.P. or his parents provided notice that the school had any issue whatsoever with his official Riverside transcript. The next day Ms. Henderson advised Principal Brooks that she "spoke with

L.P.'s mother and that she would like to meet with us tomorrow." Plf. Exh. 14 at R. __. The decision to change L.P.'s grades had been made at least as far back as November 9, 2012 when the School District asked Riverside to change L.P.'s original transcript. Plf. Exh. 10-13 at R. p. __. The meeting with L.P's mother was merely to inform her of a decision long ago made. L.P.'s altered Southside transcript of grades is dated February 8, 2013, but that is not when the decision was made. Plf. Exh. 16 at R. P. __.

Principal Brooks sent a letter to L.P.'s parents on February 6, 2013 in an attempt to justify the changes to L.P.'s transcript. Plf. Exh. 17 at R. p. __. The letter says in essence that the school wanted to level the playing field. Tr. p 18, lines 15-17, R. p.___. It did no such thing. It looked at only one of many factors in Riverside's grading practices. The only factor that the School District considered was the one that Susan S. wanted it to consider, the one that benefitted her son. As mentioned previously, some Riverside teachers deliberately gave L.P. only a 90 or 95 for perfect answers, so that he would not get above 100, even after weighting for course difficulty. (R. p.___) There was no unlevel playing field or "double dipping." Southside and the School District missed this because they excluded L.P. and his parents from the process and made their decisions in secret before ever alerting them that there was even an issue.

There are all kinds of factors that go into grades. For example, some schools are harder than others. Some teachers are harder than others. Some courses are harder than others. Some teachers give extra credit. Some do not. Some give extra credit for some things and not for others. The list is endless. South Carolina's law and policy for converting grades upon transfer is designed to avoid looking at these factors. That is why one is to take the grades from the official transcript, period.

The changes to L.P.'s transcript were in violation of state law, the grading policy of the South Carolina Department of Education, and the School District's own grading policy. SC Code Section 59-5-68 directs the South Carolina State Board of Education to adopt a uniform grading policy. It further directs the school districts of the state to use that policy. That policy is as follows:

> "When transcripts are received from accredited out-of-state schools (or in state from accredited sources other than the public schools) and numerical averages are provided, those averages ***must*** be used in transferring the grades to the student's record." [Emphasis added.]

That state policy is repeated verbatim in the School District's own grading policy, as required by S. C. Code Ann. § 59-5-68. L.P. provided to Southside an official Riverside transcript with numerical averages for each class taken. Southside initially performed its ministerial act of transferring L.P.'s grades from Riverside as required by law. That was correct.

STANDARD OF REVIEW

The Circuit Court granted L.P.'s request for a Writ of Mandamus. Whether to issue a writ of mandamus lies within the sound discretion of the trial court. An appellate court will not overturn that decision unless the trial court abused its discretion. *Jolly v. Marion Nat'l Bank*, 267 S.C. 681, 685-86, 231 S.E.2d 206, 208 (1976). An abuse of discretion arises where the trial court was controlled by an error of law or where its order is based on factual conclusions that are without evidentiary support. *Tri-County Ice and Fuel Co., v. Palmetto Ice Co., 303 S.C. 237, 242, 399 S.E.2d 779,782 (1990).* The Circuit Court did not abuse its discretion.

A. DID THE CIRCUIT COURT LACK SUBJECT MATTER JURISDICTION TO CORRECT THE SCHOOL DISTRICT'S REFUSAL TO FOLLOW STATE LAW?

Appellant argues that the Court does not have subject matter jurisdiction to hear this case. Appellant's argument in simple terms is that no court may hear this case, that L.P. simply has to accept whatever the School District chooses to do to him regardless of the laws they fail to follow. Taken to its logical end, Appellant's position would mean that the School District could alter the Riverside transcript and issue L.P. a Southside transcript with all C's on it, or any other grades they chose to use. Appellant argues that L.P. would just have to live with that despite all the effort he put into his education and the grades he earned because the School District may do whatever it chooses to do even if that means it violates the law, the South Carolina Department of Education policies and their own policies. That is simply wrong and we know it is wrong for several reasons.

First, Chief Justice Toal reviewed the case and put her stamp of approval on its justiciability when she entered an Order expediting it.

Second, it has to be justiciable because otherwise L.P. would have absolutely no remedy at all. The First Amendment to the United States Constitution grants every citizen the right to petition his government for a redress of grievances. L.P. is here petitioning his government for a redress of the wrong done him by the School District, a governmental entity.

Third, L.P. is entitled to due process. This case is fundamentally different from one in which a litigant seeks to create a private right of action against a third party. This is a direct action against the School District for disobeying the law. The state requires L.P. to attend school. The law requires the School District to obey the law regarding the transfer of his grades. That is why L.P. sought a Writ of Mandamus.

Fourth, the State of South Carolina has made it a crime to alter a school transcript. S.C. Code Ann. § 16-13-15. School transcripts shall not be changed by anyone. Guidance Counselor Henderson knew this and she repeatedly expressed her concern that the School District and Southside were requiring her to do something to this young man's transcript that she knew was wrong, unlike anything she had done before and contrary to what she had been taught and understood to be the law.

The School District has stated that this case is "novel and unique." App. Brief p. 11, R. p. ___. The only thing that is "novel and unique" is the way L.P. was treated. The underlying facts are not unusual. All students have all sorts of factors go into their grades. It is clear from Appellant's position and handling throughout this matter that the School District does not ever look behind a transfer student's transcript to evaluate how that student was taught and graded. Tr. p. 44, lines 13-16, R. p.___, lines _____. But that is exactly what it did in this case. L.P. was singled out by the School District because an influential parent became upset and he was thereafter treated differently than any other transfer student. L.P. is not the first student ever to transfer from an out-of-state school to a South Carolina school or to a Greenville County School District school. He is simply the one the School District chose to single out and alter his transcript in violation of South Carolina law, due process, and equal protection.

The School District and Amici argue that courts are reluctant to enter the realm of discretionary school decision-making. This case is not in that realm. They cite to cases that discuss the reluctance of courts to intrude into the areas of teacher performance evaluations and dismissals.[4] *See e.g. Singleton v. Horry County School District,* 345 S.E.2d 751 (S.C.App.

[4] Amici argue that parents and students should not have to litigate school issues and that grades should be decided by schools; yet it was Amici's interference and insistence that L.P.'s grades be lowered that led to this action. Amici caused this lawsuit.

1986). They also cite to cases in which Courts decline to substitute their judgment for a teacher's judgment of a student's work. Those cases are different because they involve a high degree of subjectivity. South Carolina law and policy concerning the transfer of grades, on the other hand, are entirely objective. Indeed, the transfer calculation is purely mechanical. Moreover, even in the areas cited by the School District and Amici, Courts will overturn a school's judgment when it includes an illegal or improper purpose, such as discrimination or a claimed violation of a constitutional right. *See e.g., Hardwick ex rel. Heyward,* 711 F.3d 426 (4th Cir. 2002).

The School District and Susan S. and Russell S. cite in support of their position, *Regents of the University of Michigan v. Ewing,* 474 U.S. 214 (1985), but completely misunderstand and misapply that case. It is precisely because of that case - - because the student's teachers and school are in the best position to judge a student's work - - that the School District should have left Riverside alone and not tried to look behind its final official transcript. The School District and Amici argue that courts should not interfere with the judgment of schools, yet inconsistently argue that they should be allowed to interfere with the judgment of Riverside. L.P. engaged in the coursework at Riverside based on the grading policies there and he was evaluated based on that. The School District cannot substitute its judgment for Riverside's judgment. South Carolina law and State Department of Education and School District policy all confirm that the School District is prohibited from doing so.

Finally, the cases Appellants and Amici cite do not stand for the proposition that the Courts lack subject jurisdiction in any case involving schools or school districts. *See e.g., Hardwick ex rel. Heyward,* 711 F.3d 426 (4th Cir. 2002). Every high school U.S. History student would raise his hand to point out that some of the most famous cases in the United States have involved school districts. *See e.g., Brown v. Board of Education, 348 U.S. 483 (1954).* The

cases Appellants and Amici cite merely advise courts to enter the school realm with caution in areas in which discretion has been properly exercised. The standard in this case is not one of discretion. Even if it were, School District acted arbitrarily and capriciously and with clear abuse of power in treating L.P.'s transfer differently from every other student's transfer, and differently from every student at Southside who received any extra credit points for any class. The Uniform Grading Policy was enacted to provide uniformity in grading and grade transfers so that no student has to justify his grades to a transferee school or suffer a diminishment of his accomplishments.

The cases cited by both Appellant and Amici regarding subject matter jurisdiction in school cases and regarding courts giving school decisions deference *all* involve a school applying discretion in a subjective evaluation of a student or teacher's behavior or performance. That is not this case. This case is about not allowing one school to pass judgment on the grades given to a student by another school. This is a case about an objective standard mandated by state law.

B. DID THE CIRCUIT COURT ERR IN INTERPRETING THE UNIFORM GRADING POLICY AND CONVERSION PROCESS, MANDATED BY STATE LAW, TO REQUIRE THE SCHOOL DISTRICT TO USE THE NUMERICAL AVERAGES ON L.P.'S OFFICIAL TRANSCRIPT FROM RIVERSIDE MILITARY ACADEMY?

The Court did not err in interpreting the Uniform Grading Policy and Conversion Process. The Circuit Court entered a written Order on October 7, 2013, granting L.P.'s requested Writ of Mandamus and prohibitive injunction, as follows:

> "What the Plaintiff seeks is that his grades and rank be restored as originally determined by Southside High School on October 3, 2012. I hereby grant his request and issue this Writ of Mandamus requiring the Defendant to do so immediately. In addition, the Plaintiff has requested an injunction

prohibiting the alteration of his grades and rank in a manner inconsistent with this Writ of Mandamus. I hereby grant that injunction."

Writ of Mandamus at R. p.___.

The changes to L.P.'s transcript were in violation of state law, the grading policy of the South Carolina Department of Education, and the School District's own grading policy. SC Code Section 59-5-68 directs the South Carolina State Board of Education to adopt a uniform grading policy. It further directs the school districts of the state to use that policy. That policy is as follows:

> "When transcripts are received from accredited out-of-state schools (or in state from accredited sources other than the public schools) and numerical averages are provided, those averages ***must*** be used in transferring the grades to the student's record." [Emphasis added.]

That state policy is repeated verbatim in the School District's own grading policy, as required by S. C. Code Ann. § 59-5-68. L.P. provided to Southside an official Riverside transcript with numerical averages for each class taken. Southside initially performed its ministerial act of transferring L.P.'s grades from Riverside as required by law. The law is clear and leaves no room for discretion. Southside and the School District both concurred that the law is clear and was properly applied when Southside issued the original transcript to L.P. on October 3, 2012. At least four professionals reviewed the situation and unanimously agreed.

Then, due to continued pressure by the parents of a student who was moved in class rank from second to third when L.P. transferred to Southside, the School District and Southside back-pedaled and secretly engaged in activities to treat L.P. unfairly and in violation of law. Guidance Counselor Henderson, who has been trained in how to issue

transfer grades from one school to another, never waivered in her commitment to do what was prescribed by law and what was right.

The School District's attempted justification for reversing itself and later lowering L.P.'s grades violates the clear mandate of the law. The law says one does not look behind the grades if the grades were obtained at an accredited school, which Riverside is. The law says one does not look behind the grade, period.

This makes sense. Students and parents need certainty in deciding when and where a student will transfer. L.P. and his parents believed that he had that certainty until they learned months later that everything was changed. Had the School District timely alerted L.P. that it would not follow state law and policy, and that his grades could be diminished, based on its subjective view of Riverside, he might have stayed at Riverside. He was denied a similar opportunity when the School District waited until a full semester passed and another semester was underway before telling him that his grades had been lowered. Discretion in transferring grades can lead to arbitrary and capriciousness and a clear abuse of power on the part of school districts, as was evidenced here.[5] That is why it is forbidden in South Carolina.

Schools in South Carolina are not allowed to look behind a transfer student's grades when that student transfers from an accredited school. Schools often think their classes are the most challenging and their teachers the fairest graders. Students from small high schools are often dismissed as scholars, even with perfect grades, because there is a perception that such a school could not be as rigorous as a large high school. In the past, schools and

[5] Amici's Motion for Leave to File a Brief Amici Curiae confirms that L.P. is ranked first in the class as of February 10, 2014. He was correctly ranked first when he transferred to Southside and his performance there as been such as to continue him to be ranked first. His grades and rank reflect his own efforts. It is a slap in the face to suggest that he obtained them because of a so-called "unlevel playing field".

school districts may have had discretion to look behind a student's grades when considering whether to accept the grades provided by another school. If that was ever allowed in South Carolina, it is no longer allowed here, and has not been allowed since the Uniform Grading Policy was enacted. Schools are not given any basis to exercise discretion in transferring grades when the school has provided numerical averages. That is what occurred here. Riverside prepared L.P.'s official transcript and Southside accepted that transcript. Southside prepared and delivered L.P.'s transcript to him on October 3, 2012, with the exact same numerical averages as those on the Riverside transcript. It did it right the first time. The Writ of Mandamus and injunction should stand.

The School District now attempts ungraciously to blame Guidance Counselor Henderson when it says that she overlooked the notation on L.P.'s Riverside transcript regarding honors and AP courses. There is no basis for that argument. When Susan S. first complained to Southside about L.P.'s grades, she made the argument about points for honors and AP courses. It is in her October 4, 2012 email. The School District received that email twice. It was forwarded to the School District once by Principal Brooks, and once by Ms. Henderson. That was *before* every administrator involved in the decision-making at Southside and the School District confirmed that neither Southside nor the School District could legally do what Susan S. was requesting. It is wrong for the School District to attempt to blame Ms. Henderson.

It is also important to note what School District did not do. The School District did not look into every course and every grade provided to every transfer student and review how their prior schools and teachers graded those students; nor did the School District review every Southside student's transcript and review every course for every student to eliminate any and all "extra credit" points awarded to those students. For all we know, the

son of Susan S. and Russell S. received an unfair increase in his grades. We have all been to school and many of us have children in school and know that teachers award extra credit throughout the year in a variety of ways. Some award points in the form of test corrections so that students earn half or all of the points back on a test if they correct their errors. Some award points for extra work. Some award points for bonus questions on tests. Some award points if one simply shows up to class every day. Every teacher implements his or her own grading policies within a course and awards extra points based on what that teacher thinks is fair and reasonable for the course. Looking into each course and grade is what courts are loath to get involved in; but that is what School District is asking the Court of Appeals to sanction. By looking behind the official transcript, the School District is inviting endless argument about grades. That is exactly what the Uniform Grading Policy is designed to prevent.[6]

The School District also attempts to obfuscate the issue by directing the Court's attention to "units." App. Br. P. 9 at R. p. __. "Units" are not grades. "Units" are simply what some of us might remember as "credits" in college and high school. Each course is awarded a number of units (or credits) based on the number of instructional hours. "Units" have nothing to do with the numerical averages that Southside was required to transfer. "Units" are only a factor when one reviews a student's transcript to verify that he has earned a sufficient number of total units to graduate and a sufficient number of units in each discipline area (science, social studies, math, etc.) to meet State graduation requirements. Units are also a factor in weighting courses to calculate the cumulative grade point average of a student. The Uniform Grading Policy gives an example of how to do that. Plf. Exh. 4

[6] School District also argues that it will be inundated with lawsuits challenging grades if the court affirms the Circuit Court; however, the School District is more likely to receive numerous complaints about transfer grades if the Uniform Grading Policy is not enforced.

at p. 55-03-5 at R. p. ___. In the Student Example, English 1 shows a numerical average of 91 and 1 Unit and quality points of 3.750. Compare English 1 to Physical Education, which receives ½ Unit. The difference is due to English being a class with twice the weight of P.E. To compute the weighted GPA for the courses, one would use the formula at the top of the page: GPA= sum (quality points x units) / sum of units attempted. "Units" have nothing to do with the transfer of the numerical grade averages. S.C. Code Ann. Regs. § 43-273.

C. DID THE CIRCUIT COURT ABUSE ITS DISCRETION IN ISSUING A WRIT OF MANDAMUS TO COMPEL THE SCHOOL DISTRICT TO FOLLOW STATE LAW AND ACCEPT THE TRANSCRIPT OF L.P.'S GRADES ORIGINALLY ISSUED TO HIM BY SOUTHSIDE HIGH SCHOOL ON OCTOBER 3, 2012?

Whether to issue a writ of mandamus lies within the sound discretion of the trial court, and an appellate court will not overturn that decision unless the trial court abused its discretion. *Jolly v. Marion Nat'l Bank*, 267 S.C. 681, 685-86, 231 S.E.2d 206, 208 (1976). An abuse of discretion arises where the trial court was controlled by an error of law or where its order is based on factual conclusions that are without evidentiary support. *Tri-County Ice and Fuel Co., v. Palmetto Ice Co., 303 S.C. 237, 242, 399 S.E.2d 779,782 (1990).* The Circuit Court did not abuse its discretion.

The standard of the Circuit Court to determine if a petitioner has met its burden to obtain a Write of Mandamus is whether the applicant has shown "(1) a duty of the 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." *Riverwoods, LLC v. County of Charleston*, 349 S.C. 378, 388, 563 S.E.2d 651, 657 (2002). Appellant has conceded element number (4). App. Br. P. 10. fn 1.

The Court was provided with sufficient facts and evidence to reach its decision to grant the Writ of Mandamus. In fact, the parties were in substantial agreement with what

the facts were and which documents were admissible into the record with the exception of one document.[7] The Court was also provided the law and S.C. State Department of Education and Greenville County School District policies, which require school districts to adhere to the Uniform Grading Policy, of which the Conversion Process is a part. Because the School District refused to adhere to the Uniform Grading Policy and Conversion Process and required the guidance counselor, Ms. Henderson, to unlawfully alter L.P.'s transcript contrary to everything she had been taught and trained to do, the Circuit Court did not abuse its discretion in issuing the Writ of Mandamus to restore to L.P. the original transcript Southside had issued to him. L.P. showed that the School District had a duty to accept and transfer the Riverside numerical averages on his official Riverside transcript, so he met criteria (1). Even the School District, Principal Brooks, Guidance Counselor Henderson, Dr. Childs and Rob Rhodes all agreed that the initial Southside transcript was correctly prepared in accordance with the law and School District policy and Principal Brooks so informed Susan S.

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[7] L.P. objected to admission of Appellant's Exhibit 1, tab 3, which purports to be an unofficial list of grades for courses taken at Riverside. The document is not an official transcript nor was it signed by anyone at Riverside and the grades on that document are not the grades on L.P.'s official Riverside transcript. It is unclear where that document came from, who prepared it, how it was generated or what it shows. In fact, Riverside's academic dean refused School District's request for an unofficial preliminary uncorrected transcript. Plf. Exh. 20, p. 2, R.__ p.__. Additionally, if those grades were provided to School District, they were provided in violation of L.P.'s federal right to privacy regarding his education records, which Plaintiff's Exhibit 20 confirms. *Id.* The records are private and 34 CFR Subtitle A, Subpart D, § 99.30 (a) prohibits disclosure of educational records without a parent's consent except in limited circumstances *not present in this case.* Neither L.P. nor his parents consented. Neither L.P. nor his parents were even aware this unofficial preliminary uncorrected transcript was demanded by School District or that Riverside (if Riverside provided that document) had been pressured to provide that document after declining to do so. The Circuit Court also expressed concern as to the accuracy of the grades on that unofficial list of grades. Tr. p. 55, R. p.____. School District replied it lacked sufficient time to provide verified grades. Tr. p. 55, R. p.__; however, the School District had four months to obtain official grades to provide the Court. Instead, School Districted based L.P.'s grades and future success on college applications on unverified and unofficial preliminary uncorrected grades.

Transferring grades from one transcript to another when the former school provides numerical averages is ministerial. Likewise, had Riverside provided "letter grades" there is a process set forth for transferring those grades, as well. For example, the Conversion Policy requires the transferee school to assign a numerical grade for each letter grade, such as a 96 numerical average for an A being transferred. The Conversion Policy removes discretion from the schools and School District in the matter of transferring grades from one school to another. The blue ribbon committee commissioned to examine the question of grading and transferring grades studied the issues, debated them, and provided a solution that *must* be used in all situations. No exceptions were listed. There is no discretion to treat one student differently from another student.

Removing discretion from the schools and school districts as to transferring grades makes sense. Doing otherwise opens the door to abuse. This case is a perfect example of abuse. The School District in this case is attempting to use the concept of "discretion" to excuse months of secret emails, phone calls, and meetings all designed to lower a student's grades in violation of official policy and law, without his or his parents' knowledge. Yielding to power and influence, the School District arbitrarily and capriciously singled L.P. out for "novel and unique" treatment and surreptitiously lowered his grades and class rank.

The third criteria requires a showing that petitioner has a specific legal right for which the discharge of the duty is necessary. L.P. has a specific legal right to have the School District follow the law regarding his grades. Every student needs a transcript to graduate from high school and to apply to college. L.P. is a senior and his transcript being in flux is what compelled him to seek the Court's assistance because it hindered him from applying to college. The School District is legally obligated to provide him an accurate

transcript prepared in accordance with the law and due process. The School District's legal obligation is not doubtful; nor is L.P.'s need for the transcript in dispute.

The School District and Amici have attempted to portray this entire issue as one of fairness to other students who did not attend Riverside. In fairness, L.P. should not have been singled out for mistreatment. L.P. has not asked the School District to lower the grades of any other students. Almost no other students are affected by L. P.'s grades anyway, and even then it is only one class rank. L.P. simply wants to receive what he deserves and what he worked hard to achieve.

L.P. is asking the Court simply to require School District to follow the law of South Carolina that requires the School District to transfer his courses and grades as it did on October 3, 2012. A Writ of Mandamus was and remains entirely appropriate to compel the School District to do what it already did when it issued the original Southside transcript. The injunction was also entirely appropriate to prohibit the School District from engaging in any further illegal actions regarding his transcript and class standing.

D. SHOULD THE COURT AFFIRM THE CIRCUIT COURT PURSUANT TO RULE 220(C), SCACR, UPON ANY GROUNDS APPEARING IN THE RECORD ON APPEAL, INCLUDING L.P.'S ARGUMENT THAT THE SCHOOL DISTRICT IS ESTOPPED FROM CHANGING HIS GRADES?

Pursuant to Rule 220(c), SCACR, the Court may affirm the Circuit Court decision on any ground appearing in the Record on Appeal; L.P. requests that the Court affirm on any ground available to the Court. In particular, L.P. presented substantial evidence that the School District is estopped from altering the initial Southside transcript issued to him on October 3, 2012 because the School District denied him due process and equal protection of

the law while he relied upon that transcript.[8] L.P. and his parents relied upon the October 3, 2012 Southside transcript and did not learn until after more than a full semester of coursework was completed and graded at Southside, that the transcript would be adversely changed. At the time Southside finally informed L.P. of the changes more than half the school year was over and it was too late for L.P. to simply return to Riverside. L.P. justifiably relied on the Southside transcript he was issued and the School District's failure to advise him that there was any issue at all with his transcript prejudiced him because it denied him the opportunity to timely return to Riverside where his grades were not subject to diminishment.

AMICI MADE ARGUMENTS APPELLANTS DID NOT PRESERVE FOR APPEAL

Amici have made several arguments that were not argued in the Circuit Court and that Appellant did not preserve for appeal. Amici argues that (i) the Uniform Grading Policy is only a guidepost. Amici Br., page 8, fn 1., R. p. ____.; the School District is free to prescribe rules and regulations not inconsistent with South Carolina statute law. Amici Br. p. 8-9, R. p. ____.; the Family Education Rights and Privacy Act, 20 U.S.C. § 1232g has no bearing on this case. Amici Br. p. 11, fn. 2, R. p. ____.; and they make a lengthy argument about class rank and about students and families having an interest in having academic decisions being made by their teachers and principals and not in the courts culminating in their assertion that "*students and parents are* entitled *to have their grades and class ranks determined, without having to go to court* . . .. Amici Br. pp. 4-8, R. p. ____.

[8] The School District acknowledged that L.P. made an estoppel argument in the Circuit Court when School District's Attorney Webb asserted "[e]ssentially, what's being made here is an estoppel argument. Tr. P. 57, lines 8-9, R. p. ____, lines ____.

Appellant did not make any of the foregoing arguments in the Circuit Court nor did Appellant preserve those issues for appeal. It is improper for Amici to make such arguments and the Court should not consider them.

CONCLUSION

When she made her initial complaint to Southside, on October 4, 2012, Susan S. wrote that if her son found out what she was doing he would be "horrified". He is not the only one. She should not have embarked on her regrettable quest to lower another student's grades behind his back. He was not the only one harmed by her actions. She and her family have been harmed. Southside has been harmed. The School District has been harmed. When Southside and the School District first told her "No", she should have stopped. She should not have continued to apply pressure, and she and her husband, Russell S., should not have inserted themselves into this appeal. It is time for this matter, which never should have begun, to come to an end. The order of the Trial Judge should be affirmed.

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March 6, 2014

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

v.

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

Appellate Case No. 2013-002232

Appeal from Greenville County
Court of Common Pleas
Edward W. Miller, Circuit Court Judge
Case No. 2013-CP-23-03447

RESPONDENTS' DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

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Respondents propose the following be included in the Record on Appeal:

(1) Complaint

(2) Answer

(3) Plaintiff's Exhibit 1 – Riverside Military Academy Official Transcript, dated August 1, 2012

(4) Plaintiff's Exhibit 2 – Southside High School Official Transcript dated October 3, 2012

(5) Plaintiff's Exhibit 3 – Greenville County Schools Grading

(6) Plaintiff's Exhibit 4 – South Carolina Uniform Grading Policy, including State Board of Education Synopsis Agenda/Executive Summary

(7) Plaintiff's Exhibit 6 – Email from Susan S. to Brooks, et al, dated October 4, 2012, 8:45 a.m.

(8) Plaintiff's Exhibit 7 – Email from Brooks to Washington, dated October 4, 2012 at 3:40 p.m.

(9) Plaintiff's Exhibit 8 – Email form Henderson to Rhodes, dated October 4, 2012 at 11:33 a.m.

(10) Plaintiff's Exhibit 9 – Email from Brooks to Susan S., dated October 5, 2102 at 8:05 a.m.

(11) Plaintiff's Exhibit 10 – Email from Henderson to Rhodes, dated November 9, 2012 at 10:10 a.m.

(12) Plaintiff's Exhibit 11 – Email from Henderson to Brooks, dated November 27, 2012 at 2:03 p.m.

(13) Plaintiff's Exhibit 12 – Email from Henderson to Brooks, dated November 29, 2012 at 1:32 p.m.

(14) Plaintiff's Exhibit 13 – Email from Henderson to Brooks, dated December 4, 2012 at 1:24 p.m.

(15) Plaintiff's Exhibit 14 – Email from Henderson to Brooks, dated January 23, 2013 at 2:03 p.m.

(16) Plaintiff's Exhibit 15 – Freedom of Information Request dated January 30, 2013

(17) Plaintiff's Exhibit 16 – Revised Southside High School Transcript, dated February 8, 2013