THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Edward W. Miller, Circuit Court Judge

C.A. No.: 2013-CP-23-03447

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.

FINAL BRIEF OF APPELLANT

CHILDS & HALLIGAN, P.A.

Kenneth L. Childs, S.C. Bar No. 1217
kchilds@childs-halligan.net
Thomas K. Barlow, S.C. Bar No. 8995
tbarlow@childs-halligan.net
P.O. Box 11367
Columbia, South Carolina 29211
(803) 254-4035

R. Douglas Webb, S.C. Bar No. 74747
General Counsel
Greenville County Schools
P.O. Box 2848
Greenville, SC 29602

Attorneys for Appellant

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R Douglas Webb, S.C. Bar No. 74747
General Counsel
Greenville County Schools
P.O Box 2848
Greenville, SC 29602

Attorneys for Appellant

TABLE OF CONTENTS

PAGES

TABLE OF AUTHORITIES

PAGES

CASE LAW.

STATUTES.

OTHER AUTHORITIES:

STATEMENT OF ISSUES ON APPEAL

1) Did the Circuit Court err in exercising subject matter jurisdiction over this matter?

2) Did the Circuit Court err in interpreting the Uniform Grading Policy to require Greenville County Schools to accept a student's enhanced numerical grades from an out-of-state school even if a student's transcript from that school denoted and identified the grade enhancement?

3) Did the Circuit Court err in issuing a writ of mandamus to compel the School District to apply L.P.'s enhanced numerical grades from Riverside Military Academy to his Southside High School transcript per the Circuit Court's interpretation of the Uniform Grading Policy?

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 the Appellant, the Greenville County Schools (the "School District"), to restore the grades and class rank of the minor Respondent, L.P. ("Student"), to the levels first determined by his current school, Southside High School ("SHS"), at the beginning of his junior year, (before his grades from his prior school were reviewed and his grade point average (GPA) corrected by the School District). (Am R p. 10) The Complaint also sought an injunction prohibiting the alteration of Student's grades and rank in a manner inconsistent with the Writ of Mandamus.

The School District answered on August 6, 2013. On August 8, 2013, Student moved for expedited trial in the Business Court, with the consent of the School District, on the ground that Student was a rising senior and would be applying to college in the Fall of 2013. On September 9, 2013, the Honorable 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 Honorable Edward W. Miller, Circuit Judge (Am. R. p. 1.) Justice Toal 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 " (*Id*.) The case was scheduled for hearing on September 30, 2013, and tried to the Circuit Court without a jury on October 4, 2013. (Am. R. p. 18.) By Order dated October 7, 2013, the Circuit Court issued a writ of mandamus requiring the School District to restore Student's grades and rank as originally determined by Southside High School on October 3, 2012 (Am. R p. 4.) The Circuit Court also granted an injunction prohibiting the School District from altering the Student's grades and rank in a manner inconsistent with the Writ of Mandamus. (Am R p 4)

The School District timely filed a notice of appeal on October 7, 2013, and an amended notice of appeal on October 10, 2013. By Order of October 28, 2013, Judge Geathers of the Court of Appeals granted Appellant's motion to expedite resolution of the appeal.

STATEMENT OF FACTS

Student is currently a senior at SHS. (Compl. ¶ 3 at Am. R p. 9.) SHS operates under the direction and control of the School District. (Compl. ¶ 2 at Am R p 9) Student transferred to SHS from Riverside Military Academy ("RMA") in Gainesville, Georgia at the beginning of his junior year (the 2012-2013 school year). (Compl ¶ 3 at Am R. p. 9.) Student's RMA transcript was forwarded to SHS on October 3, 2012, his reported transcript grades were transferred and his GPA and class rank calculated pursuant to the South Carolina Uniform Grading Policy ("UGP") adopted by SHS and the School District. (Am. R. p. 77; Compl ¶¶ 4-5 at Am. R. pp. 9-10.) SHS did not originally observe that Student's transcript showed enhanced numerical grades in Advanced Placement ("AP") and honors courses. (Am. R. p. 122)

Soon thereafter, the School District learned that Student's final grades in honors AP and classes taken at RMA included extra points that students at SMS and the School District's other high schools do not receive for directly comparable classes (Am. R. p 65, line 17 – p. 69, line 23.) RMA's grading policy for honors and AP classes, as shown on the face of Student's transcript, is to award five extra points to the student's numerical grade average for each honors or AP class. (Am. R p. 76.) In addition, during the 2010-2011 school year only, RMA awarded ten extra points for AP classes (five points for honors classes). (Am. R. pp. 76.) For example, Student's final numerical grade average for Fall 2010 in AP World History at RMA was 93. (Am R pp 128-130.) Pursuant to its grading policy, RMA awarded Student 10 extra points for the AP course, making his RMA transcript grade 100 for AP World History (Am R p 76.)

Unlike RMA's policy, the UGP provides that students receive GPA quality points for honors and AP courses, rather than extra points added to final grade averages. (Am R pp 104-108.) Under the UGP, students receive extra GPA points for AP, Honors, and International Baccalaureate/Dual Credit courses in accordance with the "Grade Point Conversion Chart." (Am. R p 104) For example, a 97 in a college preparatory class would receive 4.5 grade points on the conversion chart. (*Id*) A final grade average of 97 in an AP course would receive 5 5 grade points on the conversion chart (*Id*) Grade points earned in each class are then averaged to determine a student's overall GPA and class rank. (Am. R. p. 107.)

Accordingly, when the School District initially calculated Student's GPA and class rank in October 2012, Student had inadvertently received a "double bump." (Am R. pp. 124-125.) Specifically, as denoted by an asterisk and explanation on Student's RMA transcript, honors and AP final course grades from RMA received an initial five to ten point numerical course grade bump from RMA. In addition, Student received a

second bump when his RMA final transcript grades were converted to grade points via the UGP chart. (Am R. pp. 122, 124-125) No other student at SHS received a 5 or 10 point numerical grade bump to his or her final grades in honors or AP courses like Student. (Am. R. p. 122.) Likewise, RMA students received only the 5 to 10 point final course grade bump, as described above, and not a second GPA bump. The following illustrates the mechanics of the "double bump" to Student's advantage.

- Student's final numerical average for Fall 2010 in AP World History at RMA was 93. RMA awarded him 10 extra points for the AP course, making his RMA transcript grade 100.

- The difference between the Student's numerical average in the RMA course and his RMA transcript grade, after the UGP was applied upon transfer to the School District, would be:

  93 (unweighted average) = 5.00 Grade Points
  100 (weighted grade) = 5.875 Grade Points

(Am. R pp 76; 128-130)

When the School District realized that Student received a double bump for honors and AP courses he took at RMA upon transfer, the School District communicated with RMA's guidance office to determine Student's actual numerical course averages prior to the five to ten point weighting. (Am. R. pp. 128-130.) The School District then recalculated Student's grades and class rank under South Carolina's UGP using grade averages without the RMA honors/AP weighting. (Am R. p. 122.) From the School District's perspective, this change placed the Student in equal standing with all other students at SHS. (Am. R. p. 65, line 17 – p 69, line 25.) The recalculation changed Student's class rank at SHS from first to sixth. (Am. R. p 123.) Counsel for Student and counsel for the School District were unable to resolve the matter. (Am. R. pp. 124-125) Student then filed this action in Circuit Court.

The Court's October 7, 2013 Order restored Student's ranking to first in his class, thereby reducing the class ranks of students one through five as of the date of the Order. The Circuit Court specifically "assigned no blame to anyone for the change," and found that, the School District made the change in a well-intentioned effort at what it considered to be fairness and equality in translating Student's RMA grades to SHS. (Am. R. p. 3; p 73, lines 9-20.)

ARGUMENTS

A. The Circuit Court Erred In Exercising Subject Matter Jurisdiction Over This Case.

South Carolina Appellate Courts have not decided the precise issue of whether, in the absence of a statute conferring a right of action or appeal, courts have subject matter jurisdiction over cases involving students' grade calculations. However, a federal district court recently held that courts cannot grant relief in purely academic matters such as grade calculations *See Zachary M v Bd of Educ of Evanston Twp High School Dist No 202*, 829 F. Supp. 2d 649, 661 (N D. Ill 2011)

Additionally, South Carolina appellate courts have consistently declined to intervene in educational matters unless there is clear evidence that a school district acted corruptly, in bad faith, or in clear abuse of its powers. *See Davis v Greenwood Sch Dist 50*, 365 S.C. 629, 635, 620 S.E 2d 65, 68 (2005) ("[C]ourts 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 ") (citing *Singleton v Horry Cnty. Sch Dist* , 289 S.C. 223, 227-28, 345 S E.2d 751,753-54 (Ct. App. 1986)); *Laws v Richland Cnty Sch Dist No 1*, 270 S.C. 492, 495, 243 S.E.2d 192, 193 (1978) ("An appellate court will not substitute its judgment for that of school boards 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 v Horry Cnty Sch Dist* , 289 S C. 223, 227-28, 345 S E 2d 751, 753-

54 (Ct. App 1986) (explaining that courts do not interfere with the exercise of discretion by school boards in selecting and employing teachers unless there is clear evidence that the board acted corruptly, in bad faith, or in clear abuse of its powers)

Further, in holding that courts do not have subject matter jurisdiction over school district decisions involving student suspensions, the Supreme Court of South Carolina extensively discussed the public policy supporting its holding:

> [B]rief disciplinary suspensions are almost countless If students and parents were allowed to appeal every short-term suspension, then circuit courts could be flooded potentially with thousands of such cases. Not only would this place a severe strain on an already overburdened judicial system, but perhaps more importantly, the limited financial and human resources of schools and school districts would be deleteriously affected if every student suspension had to be defended through the court system. Imposing even truncated trial-type procedures might well overwhelm administrative facilities in many places and, by diverting resources, cost more than it would save in educational effectiveness.

Byrd v Irmo High Sch , 321 S.C. 426, 435-36, 468 S.E.2d 861, 866-67 (1996) (quoting *Goss v Lopez*, 419 U.S. 565 (1975)) (internal quotations and citations omitted).

Here, the four corners of Student's RMA transcript, at a minimum, created an ambiguity. Neither South Carolina law nor the UGP directly addresses which grades (actual or bumped) the School District should use in calculating Student's GPA under the UGP. The School District, rather than the Circuit Court, clearly was in the best position to determine the fairest way to achieve the UGP's goal of uniformity in grading among the students attending SHS. There is no evidence that the School District acted corruptly, in bad faith, or in clear abuse of its powers under State law, State regulations, or the UGP. Instead, the evidence showed, and the Circuit Court found, that the School District acted in good faith in attempting to deal with a unique situation in a manner equitable to all students at SHS. If the School District's exercise of discretion in this matter is subject to court intervention, a flood of grade challenges can be expected to follow

Accordingly, the Circuit Court erred in exercising subject matter jurisdiction over Student's grade calculation claim.

B. The Circuit Court's Interpretation and Application of the Uniform Grading Policy Was Erroneous.

The School District properly applied the UGP to the transfer of Plaintiff's grades from RMA. The legislative basis and purpose of the UGP is set forth in S.C. Code Ann. § 59-5-68, which provides as follows:

> **Uniform grading scale.**
>
> The General Assembly finds that given the fact the State provides substantial financial academic assistance to students of 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.

S.C. Code Ann. § 59-5-68 (2010). Thus, the goal of the UGP is to put students competing for scholarships and financial aid on equal footing by ensuring that schools in this State use the same grading scale. Nothing in the statute requires or suggests that schools using the UGP should conform to or adopt the grading scheme of a school from another state that does not apply or follow the UGP

The School District has adopted the current (2007) version of the South Carolina Department of Education's UGP. (Am. R. pp 81-87.) As applied to transfer students, the UGP provides the following:

> 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*) (Am. R. p. 108.)

Nothing in the above-quoted language in the UGP requires the School District to accept the final grades from Plaintiff's RMA transcript without considering RMA's built-in grade enhancement for honors or AP classes noted on the face of that transcript The face of Student's transcript shows that, depending upon the academic year, RMA awarded five or ten extra points to each actual "numerical grade average" for honors and AP courses. The UGP requires the School District to accept "numerical averages" when they are provided – it does not require the School District to accept "final weighted grades" which include bonus points reflected on the transcript itself. An "average" is defined as "the arithmetic mean, the value arrived at by adding the quantities in a series and dividing the total by their number, the average of 20, 18, and 4 is 14." New Webster's Dictionary & Thesaurus, 66 (2d Ed. 1992). Under that definition, the honors/AP transcript grades from RMA may be "numerical," but they do not represent "numerical averages." The School District's decision to exclude additional weighting or bonus points from Student's RMA grades and obtain final numerical averages for honors and AP courses from RMA was thus imminently reasonable and well within its discretion.

In addition, State Board of Education Regulation § 43-273 supports this interpretation and should have guided the Circuit Court's interpretation of the UGP. Section 43-273 provides, in relevant part the following:

> Units earned by a student in an accredited high school of this state or in a school of another state which is accredited under the regulations of the board of education of that state, or the appropriate regional accrediting agency (New England Association of Colleges and Schools, Middle States Association of Colleges and Schools, Southern Association of Colleges and Schools, North Central Association of Colleges and Schools, Western Association of Colleges and Schools, and the Northwest Association of Colleges and Schools), *will be accepted under the same value which would apply to students in the school to which they transferred.*

S.C. Code Regs. § 43-273. (*Emphasis added.*)

Under § 43-273, which is an actual Board of Education regulation and not a policy, the School District is required to accept units earned under the same values which would apply if they had been earned at a school in the School District. Nothing in that section suggests that grades earned in another state should be accepted without question when the four corners of a student's transcript show grades calculated differently than they would be in South Carolina. Since SHS does not automatically apply an increase of five or ten points to its own students' numerical grade averages in honors or AP courses, the School District properly accepted Student's true and original numerical grade averages from RMA "under the same value which would apply" to students taking the same courses at SHS. (*Id.*)

In short, pursuant to the School District's application of the UGP, Student received *exactly the same weight* for the courses that he would have received if he had taken all of his high school courses at SHS The Circuit Court's interpretation would not put Student on the same footing as other SHS students, but instead raise him above his similarly-situated peers The School District's interpretation of the UGP, in light of its authorizing statute and Board of Education regulations, is rational, reasonable, consistent with the plain meaning and purpose of the UGP, and avoids a patently unfair result.

C. The Circuit Court Erred In Issuing A Writ of Mandamus and Injunction in Support of the Writ.

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) (citing *Willimon v City of Greenville*, 243 S.C. 82, 132 S E 2d 169 (1963)). "It is axiomatic that mandamus, 'the highest judicial writ known to the law,' lies only to compel the performance of a ministerial act and 'is limited . . . to the protection of a plain, admitted, and unquestioned legal right that has been arbitrarily or without due warrant of law denied '" *Brackenbrook N Charleston, LP v Cnty of Charleston*, 360 S.C. 390, 602 S.E.2d 39 (2004) (quoting *Gardner v Blackwell*, 167 S.C. 313, 166 S.E. 338, 341 (1932)). Where the duty is not clearly and directly prescribed, the writ of mandamus will not lie. *Pressley v Lancaster Cnty*, 343 S.C 696, 705, 542 S.E.2d 366, 371 (Ct. App. 2001) An applicant seeking a writ of mandamus must establish "(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."[1] *Riverwoods, LLC v. Cnty of Charleston,* 349 S.C. 378, 388, 563 S.E.2d 651, 657 (2002).

To satisfy the first element, Student was required to show an "indisputable and plainly defined" duty to interpret and apply his transferred RMA grades in a manner that would lead to his desired outcome. *See Charleston Cnty Sch Dist v Charleston Cnty Election Comm'n*, 336 S C. 174, 182-83, 519 S.E.2d 567, 572 (1999). Student's evidence did not satisfy this element, as it is not "indisputable and plainly defined" that the School District was required to apply his bumped grades, rather than his actual numerical course averages, from RMA upon his transfer As noted, the UGP itself does not directly confer

[1] The School District does not dispute that Plaintiff can show the fourth mandamus element

any legal rights to Student, and even if it did, such rights are hardly "clearly prescribed." *See Gardner v Blackwell*, 167 S.C. 313, 321, 166 S.E. 338, 341 (1932).

Second, Student did not show that his desired interpretation and application of the UGP to his enhanced RMA grades was merely a "ministerial act" the School District was required to perform. A ministerial act, for purposes of a writ of mandamus, has been defined as "one in respect to which nothing is left to discretion . . [w]here the law prescribes and defines the duties to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment, the act is ministerial." *Blalock v. Johnston,* 180 S.C. 40, 185 S.E. 51, 54 (1936) (quoting *State ex rel Irvine v Brooks*, 84 P 488, 490 (Wyo 1906) (internal citations omitted)). As applied to Student's claims, the UGP term "numerical averages" is not defined and capable of several meanings. The School District was in the best position to decide how to apply the UGP to this situation and nothing in the text of the UGP prevented the School District from exercising its discretion to resolve the novel and unique grade transfer issue Student's RMA transcript presented.

Third, Student did not show a specific legal right that could be enforced by mandamus. If the specific legal right a plaintiff seeks to enforce is doubtful, the writ cannot be issued. *See Charleston Cnty Sch Dist* , 336 S.C. at 182-83, 519 S.E.2d at 572. "[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 School Dist v Election Comm'n*, 336

S.C. at 182-83, 519 S.E 2d at 572 (citations and internal quotation marks omitted). "The 'principal function' of mandamus is to command and execute, and not to inquire and adjudicate; therefore, it is not the purpose of the writ to establish a legal right, but to enforce one which has already been established." *Sanford v S C State Ethics Comm'n,* 385 S C. 483, 493-94, 685 S.E.2d 600 (2009), *opinion clarified*, 386 S.C. 274, 688 S.E.2d 120 (2009) (quoting *Willimon v. City of Greenville*, 243 S C. 82, 86-87, 132 S E.2d 169, 171 (1963)).

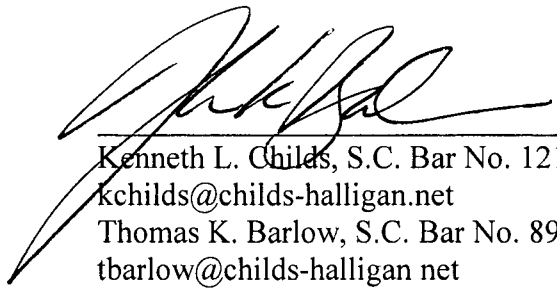
Student's action was not to enforce a definite, certain, and admitted right, but rather, to "inquire and adjudicate" as to whether Student had a unique and special right to double-bumped grades unavailable to either his former peers at RMA or his current peers at SHS. The Student's desired interpretation of the UGP, in light of S.C. Code Ann. § 1-23-10(4) S.C. Code Ann § 59-5-68 and Board of Education Regulation § 43-273, requires inquiry and adjudication. In no way do these provisions create a specific and obvious legal duty for the School District to refrain from reviewing, interpreting, and applying its discretion in resolving discrepancies in Student's grades that were obvious from the four corners of his RMA transcript. As such, the Circuit Court's issuance of a writ of mandamus and supporting injunction was erroneous

CONCLUSION

The School District had discretion to apply the Uniform Grading Policy to Student's transferred grades in a manner equitable to Student and all of his classmates at SHS. The Circuit Court erred by entertaining judicial review over that decision, by its contrary interpretation of the available guidance for the School District's application of the UGP, and in using a writ of mandamus as a vehicle to inquire, adjudicate, and compel

a doubtful and highly disputed, discretionary act of the School District. For all of these reasons, the Circuit Court's order should be reversed.

CHILDS & HALLIGAN, P.A.



Kenneth L. Childs, S.C. Bar No. 1217
kchilds@childs-halligan.net
Thomas K. Barlow, S.C. Bar No. 8995
tbarlow@childs-halligan net
P.O Box 11367
Columbia, South Carolina 29211
(803) 254-4035

R. Douglas Webb, S.C. Bar No. 74747
General Counsel
Greenville County Schools
P O Box 2848
Greenville, SC 29602

Attorneys for Appellant

April 4, 2014

Other Counsel of Record:

Carl F. Muller, Esq.
Carl F. Muller, Attorney at Law, P.A.
607 Pendleton Street, Suite 201
Greenville, SC 29601
(864) 991-8904

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CERTIFICATE OF COUNSEL

The undersigned certifies that Appellant's Final Brief complies with Rule 211(b), SCACR.

Respectfully submitted,

By: _____

CHILDS & HALLIGAN, P.A.
Kenneth L. Childs, S.C. Bar No. 1217
kchilds@childs-halligan.net
Thomas K. Barlow, S.C Bar No. 8995
tbarlow@childs-halligan.net
P O. Box 11367
Columbia, South Carolina 29211
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R. Douglas Webb, S.C. Bar No. 74747
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PROOF OF SERVICE

I certify that I have served FINAL BRIEF OF APPELLANT on counsel for Respondents, by depositing a copy of it in the U.S. Mail, postage prepaid, on April 4, 2014, addressed to Carl F. Muller, Esq , 607 Pendleton Street, Suite 201, Greenville, SC 29601.

Respectfully submitted,

By: _____

CHILDS & HALLIGAN, P.A.
Kenneth L. Childs, S.C. Bar No. 1217
kchilds@childs-halligan net
Thomas K. Barlow, S.C. Bar No 8995
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