

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
Opinion No. 5237

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

RESPONDENTS' MEMORANDUM OF LAW IN SUPPORT OF
PETITION FOR REHEARING

CARL F. MULLER, ATTORNEY AT LAW,
P.A.

Carl F. Muller, Esq., SC Bar No. 4131
607 Pendleton Street, Suite 201
Greenville, SC 29601
864-991-8905
carl@carlmullerlaw.com

Attorney for Respondents

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JUN 13 2014

SC Court of Appeals

Respondents file this Memorandum of Law in support of their Petition for Rehearing. Respondents seek rehearing because they believe the Court of Appeals overlooked or misapprehended their arguments, the law, the facts and the posture of this case.

The Court's Ruling

The Court of Appeals reversed the trial court's order granting Respondents a writ of mandamus to compel the School District to transfer their son's grades in accordance with a bright line objective standard mandated by a South Carolina statute, the official South Carolina Uniform Grading Policy adopted by the South Carolina State Department of Education in compliance with that statute, and the School District's own official Grading System likewise adopted to comply with the law. The Court stated, "We find the trial court should not have reached the merits of the issues raised in this case because these issues are not appropriate for judicial determination. Our supreme court has refused to interfere with the internal decisions of school administrators and school districts 'unless there is clear evidence of corruption, bad faith, or a clear abuse of power.'" The Court then stated that there was no evidence that the School District acted corruptly or in bad faith, or abused its power. The Court did not reach the merits.

I. **A Writ Of Mandamus Is the Appropriate Remedy To Compel a School District to Perform a Ministerial Act According to a Bright Line Objective Standard Mandated by a South Carolina Statute and Official State and Local Government Rules.**

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

Respondents ask the Court of Appeals to rehear this matter because they believe the Court misapprehended the boundaries of the South Carolina Supreme Court's reluctance to interfere with school decisions. That reluctance applies only to cases that involve subjective judgments. It does not apply to a case that involves the performance of a ministerial act according to a bright line objective standard mandated by a South Carolina statute and official State and local government rules, as is the case here. It does not apply to violations of the law. When this happens, redress must be available. Without redress, the law and official government rules have no meaning. Parents and students must comply with the law and rules. School districts must also comply with the law and rules. In this case, a South Carolina statute, the Uniform Grading Policy of the South Carolina State Department of Education and the School District's own Grading Systems, both of which were adopted to comply with the statute, all mandate that the School District *must* transfer the numerical averages provided to it in an official transcript from an accredited school.¹ There is no discretion. There is no case-by-case review. The State Board of Education itself determined that a transfer student's grades would transfer in this uniform, non-discretionary manner. Before passage of the statute and adoption of the statewide uniform grading policy, school districts did have discretion in transferring grades. That discretion was specifically removed. The discretionary approach that the Court of Appeals opinion now invites is not the law. Looking behind the grades is exactly what the statute and uniform policy forbid. In this

¹ SC Code Ann. § 59-5-68 directs the South Carolina State Board of Education to adopt a uniform grading policy. The South Carolina State Board of Education adopted a policy and directed 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 official Grading Systems, as required by S. C. Code Ann. § 59-5-68.

case, the law and both the state and local government grade transfer rules based on the law were violated, and mandamus is the appropriate remedy.

The Complaint in this case is not a challenge to a teacher's grade on a student's papers or tests. It is not a challenge about something that happened in the classroom. It is about the transfer from one school to another of grades that already exist. That is a purely ministerial function that does not involve student/teacher interaction.

The cases uniformly counsel against allowing outside intervention to supplant the judgment of a student's classroom teachers and his or her own school. Even the cases cited by the Appellant School District and Amici say this. The decisions are based on the sensible proposition that the persons in the best position to judge a student's performance are his own teachers. The Court of Appeals misapplied these decisions because it did not respect the judgment of Riverside Military Academy and its teachers. Riverside was L.P.'s own school, its teachers were his own teachers, and they gave him the grades that he deserved. Those grades were entered on an official Riverside transcript. The Court of Appeals decision has allowed the School District to intervene from the outside – even across state lines – to ignore Riverside's teachers and their grades and substitute its own judgment for L.P.'s performance. That is the exact opposite of what the cases uniformly stand for.² (Respondents' Brief p. 15)

This same proposition is behind S. C. Code Ann. § 59-5-68, the South Carolina State Department of Education Uniform Grading Policy mandated by that statute, and the School District's own Grading Systems mandated by that statute and that state policy. Grades from one school are to be transferred to another school without adjustment, period. That is

² L.P.'s Riverside Military Academy teachers did not miss the mark when they gave L.P. high marks. In fact, the Southside teachers gave him even higher marks and his GPA increased while at Southside. As of February 14, 2014, after three full semesters at Southside, L.P. remained first in the class, as Amici confirmed. (Respondents' Brief, p. 18, fn 5).

because the persons in the best position to judge a student's performance are his own teachers. They are the persons who gave him the grades. The grades that they gave him *must* stand.

The Court of Appeals misunderstands the effect of affirming the writ of mandamus. Because it is based upon a bright line objective standard, it will not encourage litigation. Under the writ, grades are transferred exactly as they are received. That is simple. There is nothing to litigate. By undermining this bright line objective standard and giving in to pushy parents, the Court of Appeals has encouraged endless complaints to schools about so called "unfairness", and also set the stage for litigation, which will surely follow. Moreover, the School District has said that this case is unique. It is not worried about a floodtide of similar situations. (Respondents Brief, p. 20, fn 6).

The Amici misquoted *Epperson v. Arkansas*, 393 U.S. 97 (1968), thereby leading the Court of Appeals astray. (Amici Brief p. 4). What the Amici left out were the following two sentences:

a) "Our courts, however, have not failed to apply the First Amendment's mandate in our educational system where essential to safeguard the fundamental values of freedom of speech and inquiry and of belief."

b) "On the other hand, '[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools'."

The United States Supreme Court will most certainly intervene in school matters.

The United States Supreme Court's cases quoted by the Court of Appeals all involve subjective judgments; none involves the performance of a ministerial act according to a bright line objective standard mandated by statute and official state and local government rules. Also, in those cases, except for *Epperson v. Arkansas*, *supra*, neither laws nor official

rules or policies were violated; and in *Epperson*, the United States Supreme Court accepted jurisdiction and ruled against the government. That is exactly what the Respondents requested in this case, and it is what the trial judge correctly did. For the reasons previously stated, the other cases do not share the special -- and perhaps unique -- posture of the pending case.

In this case – unlike the South Carolina Supreme Court cases cited by the Court of Appeals – there is a legislative mandate and two administrative mandates creating an *objective* standard that *must* be followed. All require that the School District *must* transfer the grades exactly as provided to it in an official transcript from an accredited school. That was not done here. Because this case involves an objective statutorily based mandate, the trial judge *did have* jurisdiction. Because he did not abuse his discretion, his writ of mandamus should not be reversed. Because the School District was required to transfer the numerical averages provided to it, the School District disobeyed the law, the State rule and policy, and its own rule and policy, when it refused to do so.

A writ of mandamus is the proper remedy when a public official disobeys the law. It requires no additional proof of bad faith, corruption, or clear abuse of power. *See e.g., Lovell v. Tinsley*, 236 S.W. 2d 24, 29 (Mo. App. 1951) (“Where a public officer disobeys the law, no exercise of discretion in good faith is involved. His wrongful act constitutes an abuse of discretion, which is controllable by mandamus.”); *Parents Against Abuse in Schools v. Williamsport Area School District*, 594 A.2d 796, 802 (Pa.Cmwlt.1991) (“a mandamus action is proper to enforce a mandatory legal duty imposed on school authorities” without requiring any additional burden on a student to also show bad faith, corruption, or clear abuse of power). When a school district adopts policies, it must strictly adhere to those policies;

otherwise a writ of mandamus is the appropriate remedy. *See, Richie v. Board of Education of Lead Hill School District*, 933 S.W.2d 375 (Ark. 1996)

“To protect due process, the courts, in matters pertaining to a governmental entity’s observance and implementation of self-prescribed procedures, must be particularly vigilant and must hold such entities to a strict adherence to both the letter and the spirit of their own rules and regulations. In this case, the district failed to adhere to its own expressly enunciated procedures for punishing infractions of its school bus rules. . . .A writ of mandamus will issue whenever the directors of a school district fail or refuse to do an act which is plainly their duty to do.”

Id. at 379. *See also*, the discussion of mandamus in Respondents’ Brief. When school districts violate the law, rules, or policies of superior governmental departments, or their own rules and policies, courts are not reluctant to provide justice.

The standard to determine if a petitioner has met its burden to obtain a writ 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. Respondents demonstrated in their brief that they met each of the writ of mandamus criteria. *See* Respondents’ Brief. There is no additional burden upon Respondents to show other instances of bad faith, corruption, or abuse of power beyond what is inherent when a governmental authority or school district violates the law, or official rules or policies governing its behavior. The violation itself suffices. That was alleged and proven.

What L.P. asked the School District to do was simple, required by law, and not discretionary: transfer his numerical averages from his former school to his current school in compliance with the law. The trial court agreed with Respondents that the School District was required to transfer the numerical grades from L.P.'s official transcript.³ The trial court did not abuse its discretion. Absent an abuse of discretion, the trial court's decision *must* be affirmed. *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.

³ A student's final grade in a course is the *numerical average* of all points awarded to the student for all purposes: test grades, quizzes, papers, projects, participation, bonus or extra credit points awarded for a plethora of reasons. The State requires that the numerical averages *must* be transferred, without discretion or inquiry as to what comprises the numerical average when the official transcript is from an accredited school. The State does not allow school districts to pick and choose which grades to accept or exclude. Such discretion is not included in the policy for the very reason this case is before the Court. Transfer students are always the newcomer to a school and need the protection of a nondiscretionary rule. Numerical averages were provided in an official transcript from Riverside Military Academy to Southside High School on August 1, 2012 and L.P.'s courses and grades were transferred at that time.

Grades that are *not* numerical averages exist and are accounted for within the State policy: letter grades in the form of "A", "B", etc., are not in the form of "numerical averages." In the case of non-numerical averages, the State policy requires that a school district must assign numerical averages for those letter grades equal to those prescribed by the State policy. (R. p. 108) For example, an "A" would be assigned the numerical average of "96." This would be true even if the student had in fact earned only a "90," which is the lowest "A" in most grading scales outside of South Carolina. In such a case, a student would benefit from a 6-point increase in his actual grade by virtue of transferring with only letter grades. A student with a 90 in every course would receive substantial benefit from the State policy. The S.C. State Board of Education considered the myriad possible outcomes of its policy before passing it and mandating all school districts comply with it. A blue ribbon committee of educators at all levels participated in the process of devising the policy.

L.P.'s transcript contained numerical averages, which the School District then improperly lowered. We know that this action was arbitrary and capricious because the School District said it did this only to L.P. out of all the transfer students it has ever admitted into the Greenville County School District since 2007, when the State decided that numerical averages *must* transfer.

II. A Writ of Mandamus Does Not Require A Showing of Bad Faith, Corruption or Abuse of Power, But the School District's Actions Demonstrated Months of Bad Faith, Abuse of Power, and Corruption.

In this case, the School District acted for months in deliberate secrecy and at the behest and pressure of a powerful family at the school, the current and former presidents of the PTA for the direct benefit of their own son. A writ of mandamus does not require a separate showing of bad faith, corruption, or abuse of power, but the School District's behavior in this case rises to those levels nonetheless.

Contrary to the Court of Appeal's Opinion, the Respondents respectfully state that they did allege and present evidence that the School District acted in bad faith and corruptly, and abused its power. That is one of the central themes in this case. If the School District had been acting in good faith, without corruption, within the boundaries of its power and in fairness to L.P., then why did the School District deliberately hide what it was doing from L.P. and L.P.'s parents? Why did the School District not contact L.P. or his parents the same day that the School District took its first action regarding L.P.'s transcript? Why did the mother of another student know more about what was happening to L.P. than L.P. or his parents? When one acts in good faith, without corruption, and within the limits of one's power, one does not secretly behave in the manner the School District behaved in this case.

The School District acted in bad faith, corruptly, and abused its powers as follows, all of which were included in the Respondents' presentation before the trial court and in its brief and oral argument in the Court of Appeals. (Respondents' Brief pp. 5-12,14,17-18, 22 fn. 7, and 23).

- a) From October 5, 2012 through January 23, 2013, almost four months, the School District worked in secret to change L.P.'s grades. The emails

irrefutably show that the School District knew throughout this time-period that neither L.P. nor his parents were aware that this was happening behind their backs. (*See e.g.*, December 4, 2012 email from Ms. Henderson to Principal Brooks that L.P.'s parents had not been notified and stated that "[I]f you would like me to contact them to make them aware now, just let me know.") (Respondents' Brief p. 10). The record is replete with evidence that the School District deliberately kept the parents and L.P. completely in the dark.

- b) Only after the School District had already lowered L.P.'s grades, were the Respondents told. (Respondents' Brief p. 11).
- c) The School District required a Southside guidance counselor -- over her objection -- to convince a clerk at Riverside Military Academy to send unofficial and unverified grades in an email after Riverside Military Academy's Dean had already refused to change the transcript. (Respondent's Brief p. 9). School Districts should not be in the business of violating a student's privacy rights or pressuring other schools to change an official transcript, yet this is exactly what the Appellant School District did. The trial court expressed legitimate concern: "we don't know the accuracy of what's reported in these unofficial e-mails. You've got the official transcript. . . . that's what we go by." (R. p. 77, lines 1-4).
- d) The School District changed L.P.'s grades in violation of the law, the official South Carolina Department of Education Uniform Grading Policy and its own Grading Systems mandated by the law and statewide policy. The trial court agreed with L.P. that the school district wrongfully "interpreted" his

transcript in violation of the law and stated that, “the law is clear, the regulations are clear about you must take the numerical number.” (R. p. 69, lines 15-17).

- e) The School District initially transferred L.P.’s grades correctly. Moreover, it told Mrs. S. that the transfer was correct even *after* reviewing the official transcript in light of Mrs. S.’s complaining. The Southside principal, Mr. Carlos Brooks, Dr. Childs, and Mr. Rhodes at the School District all reviewed the Riverside transcript and considered Mrs. S.’s complaint. Each and every one of them confirmed that the October 4, 2012 Southside transcript was correct. (Respondents’ Brief p. 7). Only after continued pressure from Mr. and Mrs. S, the current and past presidents of the school’s PTA, did the School District embark on a means to appease them. (Respondents’ Brief p. 7).
- f) The School District waited until after an entire semester had passed and final grades for that semester were entered and the next semester was started before first telling Respondents that they were changing L.P.’s grades. From August 2012 until January 23, 2013, L.P. had no idea that anything was amiss. (Respondents’ Brief p. 10).
- g) The School District acted deliberately, secretly, in concert with and at the behest of a powerful family who held the PTA presidency for the past four years, and violated the law, the official State Department of Education Uniform Grading Policy, and its own official Grading Systems. (Respondents’ Brief p. 11). While there may be a more egregious set of facts

in some other case, the Respondents find it difficult to imagine what that would entail.

III. Respondents Request That Their Other Arguments in Favor of Upholding the Trial Court's Decision Also Be Considered.

Pursuant to Rule 220(c), SCACR, the Court of Appeals may affirm the circuit court decision on any ground appearing in the Record on Appeal; L.P. and the Respondents request that the Court affirm on any ground available to the Court. Respondents made this request in their brief, as well. (Respondents' Brief pp. 24-25).

At a minimum, the School District should be estopped from changing L.P.'s grades almost six months after the School District received his August 1, 2012 Riverside transcript and initially provided L.P. his Southside transcript. That is simply unfair and not what South Carolina students have a right to expect from their governmental leaders.

The School District and Amici have couched this matter as one about class rank and accolades at graduation. Perhaps it is for them. Had L.P.'s transfer grades placed him in the middle of the class ranking, it is doubtful any of this would have occurred. The School District has called this a unique situation, thereby admitting that since 2007 only L.P. has suffered this treatment. Because one mother was obsessed with her son's class rank as second in the class, all of this was done to another student behind his back. It shocks the conscience that the School District, which is entrusted with our children's futures, and to teach them fairness and justice, would engage in such secret maneuvers against a new student to appease a PTA president. Class rank has never been the issue to L.P. or his parents. This case is about the fundamental right to keep what one has earned, and for L. P. to have the use of the grades he earned as he applies for higher education, employment, and

governmental positions. L.P. earned his grades and he should have those grades available to him. That is why this Petition for Rehearing is being filed even after he has graduated.

Because the School District hid its actions and intent from L.P. until after he had enrolled in Southside, selected his junior year courses based on his Riverside Military Academy grades having transferred, completed and earned grades for the first full semester and attended more than half the school year at Southside, the School District deprived L.P. of the opportunity to return to Riverside Military Academy with his grades intact. When L.P. received his initial transcript from Southside – which was correctly determined -- he relied on it. His grades were transferred as they had been provided by Riverside Military Academy. That is what every transcript and all information he received from the School District confirmed until late January 2013 when he learned for the first time that his 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 him to simply return to Riverside. L.P. justifiably relied on the Southside transcript he was initially 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. *See also* Respondents Brief on this issue.

IV. The Case is Not Moot.

This case is not moot. L.P. must provide the college to which he hopes to matriculate in the fall his final grades this summer. His acceptance and scholarships at that college may be put in jeopardy because of his grades being lowered. Also, he will need his grades for any future application, to other colleges if his admission is revoked, to transfer later to another college, for graduate and professional schools, and for future jobs.

Additionally, the issues raised in this case are capable of repetition yet evading review. *Byrd v. Irmo High School*, 468 S.E. 2d 861, 321 S.C. 426 (S.C. 1996).

V. The Court of Appeals Should Stay Its Decision.


The Court of Appeals' Opinion was issued on Friday, May 30, 2014. The very next day, a Saturday, the School District notified the Respondents that it would immediately strip L.P. of his grades during the weekend. The School District did this despite the Respondents having advised it that a petition for rehearing and, if necessary, a writ of certiorari to the South Carolina Supreme Court would be filed.

The parties to this action are the School District and the Respondents. There is no party whose relief would be rendered moot or who would be harmed in the event the Court of Appeals' Order is stayed pending the final outcome of this appeal. The School District will not be harmed, as it does not have a stake in L.P.'s transfer grades.⁴ L.P. will be harmed, however, if the Court's Order is not stayed pending the final outcome of this matter because he must submit his final grades to the college he hopes to attend. Respondents request that the automatic stay of court orders typically in effect during appeals be applied in this case for the duration of the appeal. L.P. requests that the Court of Appeals specifically stay its Order pending this request for rehearing, the time period for remittitur, the time period for petitioning to the South Carolina Supreme Court for a writ of certiorari and the time period for appeal in the South Carolina Supreme Court should the writ of certiorari be accepted. The Respondents urge the Court to stay its order so that L.P.'s future is not irrevocably harmed before this case is fully and finally resolved.

⁴ Graduation occurred on June 4, 2013. Because graduation has occurred and Amici J.B. and H.S.'s interest in graduation accolades has passed, they will suffer no harm if the Court's Order is stayed pending the duration of this appeal. The only one harmed if a stay is not granted in this case is L.P.

If the Court has already remitted this case to the trial court before the time period for filing for rehearing expired, the Respondents request that the Court reinstate the case.

Respectfully submitted,



Carl F. Muller, Esq. SC Bar No. 4131
Carl F. Muller, Attorney at Law, P.A.
607 Pendleton Street, Suite 201
Greenville, SC 29601
864-991-8905
carl@carlmullerlaw.com

Attorney for Respondents

June 12, 2014

Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
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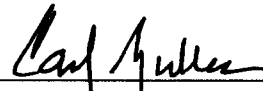
Appeal from Greenville County
Court of Common Pleas
Edward W. Miller, Circuit Court Judge

PROOF OF SERVICE

I certify that I have served Respondents' Petition for Rehearing and accompanying Memorandum by depositing a copy of them in the U.S. Mail, postage prepaid, on June 12, 2014, addressed to:

Kenneth L. Childs, Esq.
Thomas K. Barlow, Esq.
Childs & Halligan, P.A.
PO Box 11367
Columbia, South Carolina, 29211
Counsel for Appellant,
The School District of Greenville County

J. Theodore Gentry, Esq.
Wade S. Kolb, Esq.
Wyche, P.A.
44 East Camperdown Way
Greenville, SC 29601
Counsel for Amici Curiae



Carl F. Muller, Esq., SC Bar No. 4131
Carl F. Muller, Attorney at Law, P.A.
607 Pendleton Street, Suite 201
Greenville, SC 29601
864-991-8905
carl@carlmullerlaw.com

Attorney for Respondents

RECEIVED

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SC Court of Appeals

CARL F. MULLER, ATTORNEY AT LAW, P.A.

607 PENDLETON STREET, SUITE 201
GREENVILLE, SOUTH CAROLINA 29601

POST OFFICE BOX 1717
GREENVILLE, SOUTH CAROLINA 29602-1717

PHONE: 864-991-8904

FAX: 864-751-2831

CARL@CARLMULLERLAW.COM

June 12, 2014

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: The School District of Greenville County vs. Lee C. Palms and
Nelle S. Palms, as Guardians ad Litem for L. Cannon Palms, a minor
CA No.: 2013-CP-23-03447

Dear Ms. Kitchings:

Enclosed please find the original and six copies of the following:

1. Respondents' Petition for Rehearing;
2. Respondents' Memorandum of Law in Support of Petition For Rehearing;
3. Proof of Service; and
4. our firm's check in the amount of \$25.00 representing payment of the filing fee associated therewith.

Please return a file-stamped copy of each to us in the envelope provided for your convenience. By copy of this letter we are serving copies of these filings on all counsel of record.

Thank you for your assistance. If you need anything further, please do not hesitate to contact us.

Very truly yours,



Carl F. Muller

CFM:dph

c: J. Theodore Gentry Esq.
Wade S. Kolb, III, Esq.
Thomas K. Barlow, Esq.
Kenneth L. Childs, Esq.

Enclosures

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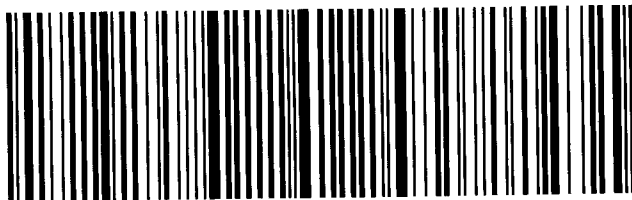
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