

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Lee C. Palms and Nelle S. Palms, as Guardians ad Litem for L.P., .. 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**

APPELLANT'S RETURN TO PETITION FOR REHEARING

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I. INTRODUCTION

On June 12, 2014, Respondents filed a petition for rehearing of this Court's May 30, 2014 Opinion reversing the Circuit Court and superseding the Circuit Court's writ of mandamus and injunction. Appellant hereby timely submits its Return to Respondents' Petition for Rehearing. Respondents have identified no errors or points overlooked or misapprehended by the Court that would warrant a rehearing or reconsideration of the Court's well-reasoned opinion, and for the reasons set forth in Appellant's prior briefs and in this Return, Respondents' Petition should be denied.

II. ARGUMENT

A. This Court Articulated The Proper Standard Of Judicial Review Of A School District's Resolution Of A Grade Transfer Dispute.

Respondents have offered no legal or factual basis for this Court to reconsider its holding that, based on the facts presented to the lower court, this case presented a non-justiciable controversy, the resolution of which was best left to the discretion and judgment of the School District.

This Court's May 30, 2014 opinion properly analogized the case at bar to prior decisions in which the South Carolina appellate courts have refused to interfere with the internal decisions of school districts absent "clear evidence of corruption, bad faith, or a clear abuse of power." *Davis v. Greenwood Sch. Dist.* 50, 365 S.C. 629, 635, 620 S.E.2d 65, 68 (2005); accord *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). This Court's analysis was also consistent with decisions of the U.S. Supreme Court counseling restraint in reviewing academic and operational decisions of schools.

While the underlying facts of the case are unique, permitting judicial review of the School District's decision absent "clear evidence of corruption, bad faith, or abuse of power" would obviously open the door to further judicial challenges to myriad, daily decisions South Carolina school districts must make regarding grades, curriculum, and other academic matters. The policy counseling against judicial involvement in matters committed to school district oversight is not limited to student disciplinary suspensions or employment matters and clearly warranted extension in this case to weighting and calculation of grades and grade point averages.

Respondents further appear to contend that this Court should recognize a "mandamus" exception to its justiciability ruling. This argument is flawed for two reasons. First, the type of relief sought is immaterial; the public policy and other concerns recognized by this Court exist regardless of the mechanism a plaintiff might use to seek judicial interference with matters committed to the school district's sphere of operations. *See Byrd v. Irmo High Sch.*, 321 S.C. 426, 435-36, 468 S.E.2d 861, 866-67 (1996). Second, mandamus is not appropriate in this type of case because grading matters are committed to the discretion of school districts. Therefore, contrary to Respondents' arguments, no settled, ministerial legal duty was or could be enforceable by way of a writ of mandamus. In short, the very reasons the case is non-justiciable make the Circuit Court's writ of mandamus directing a particular action of the School District an abuse of discretion and error of law. *See Charleston Cnty. Sch. Dist. v. Charleston Cnty. Election Comm'n*, 336 S.C. 174, 179-80, 519 S.E.2d 567, 570 (1999) ("An abuse of discretion arises where the trial court was controlled by error of law or where its order is based on factual conclusions without evidentiary support.").

Finally, the mere fact that the Supreme Court denied Respondents' attempt to invoke jurisdiction of the Business Court and assigned the case to Judge Miller does not

somehow constitute a ruling, opinion, or insight on the justiciability of the case or the merits of the case.

B. This Court Properly Accepted The Circuit Court's Findings That L.P. Did Not Allege Or Show Corruption, Bad Faith, Or Abuse Of Power.

In their petition, Respondents argue for the first time that the District's actions in this case rise to the level of corruption, bad faith, or abuse of power. (Respondents' MOL p. 9.) In its decision, this Court correctly noted that the trial court "assign[ed] no blame to anyone" regarding the School District's interpretation of L.P.'s transcript in light of the Uniform Grading Policy. (Court of Appeals Opinion, p. 3.) This Court also properly found "no basis to question the trial court's characterization that the School District acted with a *good-faith* desire to place its students on equal footing academically," much less a basis to believe the School District acted in a corrupt manner, or bad faith, or abused its power. (Court of Appeals Opinion, p. 3) (*emphasis added*).

Significantly, the Circuit Court judge specifically rejected the idea of bad faith, and Respondents did not appeal that determination. (Am. R. p. 73, lines 10-20; Am. R. p. 3.) Contrary to Respondents' arguments, there is simply nothing sinister or unusual about an employee and her supervisor within a particular school or other governmental agency having different opinions about the interpretation and application of a broad, legally untested policy to a unique situation. Similarly, it is not unusual for school employees to follow up on concerns raised by parents, and there is absolutely no evidence in the record to support Respondents' imagined conspiracy between school officials and parents to cause L.P. harm.

As the Circuit Court found, the School District's decision was motivated only by the need to reconcile L.P.'s nonconforming RMA grades with those of other SHS

students under the UGP. This Court properly accepted the Circuit Court's factual findings as they related to the lack of "corruption, bad faith, or abuse of power."

**C. L.P. Made No Showing Supporting A Writ Of Mandamus
And The Circuit Court's Issuance Of The Writ Was An
Error Of Law.**

Even assuming *arguendo* that a different standard could apply to a request for a writ of mandamus, L.P. did not make any showing that would support the writ. "[M]andamus is '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). Respondents failed to establish, as they must, the elements required for writ of mandamus to issue: "(1) a duty of the [District] to perform the act, (2) the ministerial nature of the act, (3) [the student's] specific legal right for which discharge of the duty is necessary, and (4) a lack of any other legal remedy." *Riverwoods, LLC v. Cnty. of Charleston*, 349 S.C. 378, 388, 563 S.E.2d 651, 657 (2002). Ultimately, even without reference to the standard of deference and limited review recognized by this Court, Respondents could not show that the Uniform Grading Policy set forth a clear ministerial duty associated with a definite, certain, and admitted right for which inquiry or adjudication would be unnecessary.

First, the UGP does not carry the legal weight of a statute or even a regulation. Second, the School District's interpretation of the term "numerical average" was

consistent with its common and usual meaning. 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).

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 L.P. transferred from RMA were “numerical,” but they did not represent “numerical averages.” 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. The UGP does not purport to resolve every possible grading issue, and the School District’s decision to exclude additional weighting or bonus points from L.P.’s Riverside Military Academy (“RMA”) grades and obtain final numerical averages for honors and AP courses from RMA was imminently reasonable and well within its discretion in implementing the UGP.

Nothing in the UGP or other law compels the mere ministerial transposition of grades that Respondents urge. 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)). 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 issues L.P.'s RMA transcript presented.

In summary, the UGP does not provide a sufficiently clear, nondiscretionary legal duty to merely transpose grades from an out-of-state transfer student's transcript when the face of the transcript reveals grading practices inconsistent with the UGP. This is not simply a ministerial duty that can be enforced through a writ of mandamus. This Court's opinion properly takes those principles into account.

D. This Court Properly Rejected L.P.'s Estoppel Argument.

Respondents again argue the School District should be estopped from using the class averages rather than weighted grades from RMA. However, to prove estoppel against the School District, Respondents would have had to show:

(1) the lack of knowledge and of the means of knowledge of the truth of the facts in question; (2) justifiable reliance upon the government's conduct; and (3) a prejudicial change in position.

S. Carolina Dep't of Transp. v. Horry Cnty., 391 S.C. 76, 83, 705 S.E.2d 21, 25 (2011).

In this case, Respondents cannot show any reliance on the October 3, 2012, initial calculation of L.P.'s GPA, let alone "justifiable reliance." L.P. enrolled at SHS and had attended for almost two months before his initial GPA and class rank at SHS were even calculated and provided to him. There is nothing in the record that would remotely suggest that L.P. chose to transfer from RMA to SHS because of any anticipated class standing at SHS upon arrival. Likewise, there is no evidence in the record that L.P. would have returned to RMA prior to the end of the 2012-13 school year if his GPA or class rank were lower than initially reported in October 2012.

Second, Respondents did not show any prejudicial change of position based on the initial interpretation of Ms. Henderson, the guidance counselor, regarding the

application of the UGP to L.P.'s RMA grades. Respondents were clearly aware that SHS had reevaluated L.P.'s transcript in light of RMA's 5-10 point course bumps by the end of January 2013. (Am. R. p. 122.) Through counsel, Respondents attempted to convince the School District to change the decision and were informed in the Spring of 2013 of the School District's final position. (Am. R. pp. 124-125.) L.P. would have had ample time to re-enroll at RMA for his entire senior year at that point. Instead, he chose to challenge the School District's interpretation of the UGP via this case and remain at SHS for his senior year. As such, Respondents did not establish any reliance or prejudicial change of position as a result of the School District's ultimate interpretation of the UGP as applied to his bumped RMA grades. Moreover, recognizing an estoppel claim based on these facts would frustrate the public policy expressed in the UGP. Accordingly, the Court properly rejected Respondents' belated attempt to recast their prior arguments as an estoppel claims.

E. Respondents' Request For A Stay Of This Court's Ruling Superseding The Circuit Court's Writ Of Mandamus And Injunction Should Be Denied.

In its Opinion, this Court directly superseded the Circuit Court's writ of mandamus and injunction and specifically permitted the School District to immediately recalculate grades in reliance upon the opinion. As such, remittitur was not a necessary predicate to the School District's grade recalculation.

Respondents now seek a stay of this Court's supersedeas of the Circuit Court's order. A supersedeas is within the discretion of the Court. *See In re Decker*, 322 S.C. 212, 214, 471 S.E.2d 459, 460 (1995).

While Respondents understandably prefer the Circuit Court's original ruling, they have offered no affidavit testimony or any other evidentiary basis to support a need to stay this Court's decision to supersede the Circuit Court's order. Absent such evidence,

the potential harm Respondents allege is merely theoretical or abstract. Respondents have made no showing of any irrevocable, irreparable harm to L.P. that cannot be rectified if he ultimately prevails in this appeal.

Moreover, it is inconsistent for Respondents to broadly claim that L.P.'s ultimate grades and class standing are of crucial importance to his own academic future while attempting to relegate the interests of the Southside High School students originally displaced by the Circuit Court's ruling to mere "graduation accolades." (Resp. Mem. of Law, p. 14, fn. 4.) Accordingly, this Court should not stay or supersede its May 30, 2014 opinion reversing and superseding the Circuit Court's writ of mandamus and injunction.

F. L.P.'s Graduation Has Mooted This Appeal.

Following this Court's May 30 opinion and prior to the filing of Respondents' Petition, L.P. graduated from Southside High School. "It is well-settled that once a student graduates, he no longer has a live case or controversy justifying declaratory and injunctive relief against a school's action or policy." *Cole v. Oroville Union High Sch. Dist.*, 228 F.3d 1092, 1098 (9th Cir. 2000), *cert. denied*, 532 U.S. 905. In *Byrd v. Irmo*, the South Carolina Supreme Court broadly stated:

This Court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy. A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief.

Byrd v. Irmo High Sch., 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996) (internal citations omitted).

The *Byrd* Court recognized a "capable of repetition but evading review" mootness exception based on short-term student suspensions impossible to fully litigate due to their brief nature. However, there is no basis to extend the exception in the instant case. L.P.

had time to fully litigate this case, he will not be subject to the same action by Southside High School or Greenville County School District officials again, and there is no “recurring dilemma” presented by the facts of this case that this Court needs to address. As such, L.P.’s graduation has rendered Respondents’ Petition and any further appeal moot.

III. CONCLUSION

For all of the foregoing reasons, Respondents’ Petition for Rehearing and request for stay should be denied.

Respectfully submitted,

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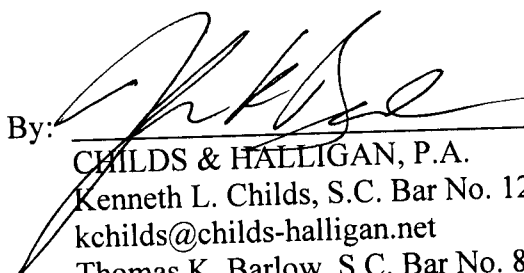
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PROOF OF SERVICE

I certify that I have served RETURN TO PETITION FOR REHEARING on counsel for Respondents, by depositing a copy of it in the U.S. Mail, postage prepaid, on June 23, 2014, addressed to Carl F. Muller, Esq., 607 Pendleton Street, Suite 201, Greenville, SC 29601.

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