THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Lee C. Palms and Nelle S. Palms, 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' REPLY MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR REHEARING

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TABLE OF CONTENTS

Table of Authorities ii

Arguments

A. The Case Is Not Moot..... 1

B. The Court of Appeals Should Stay Its Decision 2

C. Respondents Request That Their Other Arguments In Favor Of Upholding The Trial Court's Decision Also Be Considered 3

D. Appellant's Argument That Courts May Not Review A School District's Violation of the Law Misapplies South Carolina Law 4

E. 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 5

F. 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 7

TABLE OF AUTHORITIES

CASE LAW:

Byrd v. Irmo High School, 468 S.E. 2d 861, 321 S.C. 426 (S.C. 1996)..... 1

Lovell v. Tinsley, 236 S.W. 2d 24, 29 (Mo. App. 1951)..... 6

Parents Against Abuse in Schools v. Williamsport Area School District, 594 A.2d 796, 802 (Pa.Cmwlth.1991)..... 6

Richie v. Board of Education of Lead Hill School District, 933 S.W.2d 375 (Ark. 1996)..... 6

Jolly v. Marion Nat'l Bank, 267 S.C. 681, 685-86, 231 S.E.2d 206, 208 (1976)..... 6

Respondents file this Reply Memorandum of Law in support of their Petition for Rehearing and in response to Appellant's Return.

A. The Case is Not Moot.

This case is not moot. L.P. needs his correct grades soon to send his final transcript to the college to which he hopes to matriculate this fall. Also, he will need his correct grades if his admission or financial aid to college this fall is jeopardized by the School District's action, 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).

Appellants' argument that L.P.'s case is moot misunderstands when a case is moot. A case is not moot simply because a student graduates. When the harm continues, is capable of being remedied by continuing proceedings in the case - even if only partially remedied - or is capable of repetition, the case is not moot. In this case, graduation did nothing to diminish L.P.'s needs for his grades.[1] Appellant relies upon *Cole v. Oroville Union High Sch. Dist.*, 228 F.3d 1092, 1098 (9th Cir. 2000), *cert. denied*, 532 U.S. 905. However, that case focused solely on whether a student's graduation speech could include religious speech. *Cole v. Oroville* did not include any continuing harm to the plaintiff after graduation, unlike the present case in which L.P. will continue to be harmed every time he needs his grades for colleges, graduate and professional schools, and for future jobs. This case is not moot.

[1] Appellants attempt to characterize this case as only about graduation accolades or class rank. That has never been L.P.'s focus. That was the sole focus of Amici and the School District. L.P. brought this action to retain the grades he earned at Riverside Military Academy. L.P. worked for those grades and should have the benefit of those grades for the remainder of his life.

B. The Court of Appeals Should Stay Its Decision.

Respondents have asked the Court to stay its Order. The School District's objection to the stay is disturbing and calls into question its sense of fairness to L.P., who is the only one who will be harmed if the Order is not stayed pending the final outcome of the case. L.P. may lose his college acceptance or financial assistance. That would result in terrible and irreparable harm to a South Carolina student who achieved a solid "A" average throughout his high school career. If the Order is stayed, *absolutely nothing happens to any other student or the School District.* Every other student has the grades that he or she earned. No other students suffered their grades being lowered.[2]

The School District's suggestion that the Respondents were required to provide the Court an affidavit in order to seek a stay is not supported by any case law or the Appellate Rules. The harm that the Respondents seek to avoid is self-evident.

L.P. will be irreparably harmed if this Court's Order is not stayed pending the final outcome of the appeal because he will be required to send the revised transcript to the college to which he hopes to matriculate this fall. That college will see that his grades are different for most of his classes and may take adverse action against him. No one will be harmed if the stay is granted.

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[2] The School District attempts to characterize L.P. as a villain in this case when it asserts that L.P. "attempt[ed] to relegate the interests of the Southside High School students originally displaced by the Circuit Court's ruling to mere 'graduation accolades.'" (Appellant Return, p. 8). The other students graduated with their grades intact, and would have done so under the trial court's order as well. The two Southside High School Amici students graduated as valedictorian and salutatorian and both spoke at graduation. No Southside High School student will be harmed if the stay is granted and L.P. retains his grades during the remainder of the appeal.

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

On August 1, 2012, Riverside Military Academy provided Southside High School with L.P.'s official transcript. (Plf. Exh. 1 at R. p. 76). This was prior to his registering for classes at Southside High School. From the day school started in mid-August 2012 through January 22, 2013, L.P.'s transferred grades were continuously available to Respondents to view online through the School District's "parent portal". The "parent portal" allows parents and students to view a student's past and current grades simply by logging into their online account. From August 2012 through January 22, 2013, Respondents relied on the grades as they were initially transferred consistent with the Riverside Military Academy transcript and as those grades continued to be reported in the parent portal until the School District changed L.P.'s grades after January 23, 2013. The School District's description of the timeline is incorrect.

On October 3, 2012, every Southside High School student was provided a *paper* or hard copy of his or her transcript, which included their class rank. Southside High School delivers hard copy student transcripts twice during the school year, (October and February) and at the end of the school year. The October 3, 2012 hard copy transcript is the transcript in the Record on Appeal at page 77. (Plf. Exh. 2 at R.p.77). Grades are available continually in electronic form.

Had L.P. been told in August 2012 that his transfer to Southside High School would result in his grades being lowered, he could have returned to Riverside Military Academy. Indeed, had he been told even in October 2012 that his grades were being lowered – or even challenged -- he could have returned to Riverside. Instead, the School District deliberately kept him and the Respondents in the dark about everything until after his final grades for the

first half of the year were entered on his transcript. At that point, it was too late for L.P. to return to Riverside Military Academy with his grades intact and unchanged.

The School District claims L.P. could have returned to Riverside Military Academy for his senior year, but that misses the point. Had L.P. attempted to transfer anywhere after his grades were lowered, he would have had to transfer with lowered grades. He was stuck.

D. Appellant's Argument That Courts May Not Review A School District's Violation of the Law Misapplies South Carolina Law

The School District's basic argument is that school districts may violate the law with impunity. That is not and has never been the law in South Carolina. If that were the law, then no student would ever have any recourse should the Greenville County School District diminish every current and future transfer students' grades while deliberately also keeping that a secret from the students and their parents for many months. If it would shock our conscience when done to every transfer student, it should also shock our conscience when one student is singled out for such ill treatment and months of secrecy.

There is a bright line objective standard to protect transfer students so that the grades their former schools gave them are retained after transfer. The School District says that "internal school" decisions should be respected. The "internal school" decision here is the one made by Riverside Military Academy; that is the school that evaluated L.P.'s performance. That bright line objective standard is 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.

School districts may not violate the law with impunity. Redress must be available to protect our most vulnerable citizens, our children. *Not a single one of Appellant's cases stands for the proposition that school districts may violate the law whenever, however, or as often as they choose to do so*

unless said violations rise to the level of corruption, bad faith or abuse of power. That is what the School District wrongly argues in this case and what Respondents respectfully believe the Court misapprehended when it issued its ruling. Violating the law itself warrants judicial review and a remedy.

E. 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.

This case involves the School District's refusal 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. That purely ministerial function does not involve discretion.[3] If the Court condones the School District's actions in this case, then it should expect that lack of regard for the law, uneven treatment, and secret machinations will become routine. Lawsuits will follow.

Because the trial judge did not abuse his discretion, the 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. Just because the School District does not prefer the way Riverside Military Academy assigns its numerical averages does not mean the School District can violate the law and change a student's grades.[4] The School District treated L.P. unfairly and differently from every other School District student and every other transfer

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[3] The School District changed only L.P.'s grades. It did not review the grades of every other student at Southside High School to remove from those grades all so-called "bonus" points. According to the School District's own admission, only L.P. suffered this treatment. Based on the School District's theory of "numerical averages" it should have scrubbed every student's transcript for every extra credit bonus point. It did not. Fairness to L.P., a transfer student, was the not the School District's goal.

[4] Actually, Riverside Military Academy more strenuously graded L.P.'s performance. We know this because his GPA for courses taken at Southside High School is higher than his GPA from Riverside Military Academy.

student when it unilaterally lowered his grades from those that his "internal school" had given him.

The School District resorts to sophistry to escape its dilemma, making a strained argument about the definition of "numerical averages". It knows full well that an average includes everything. One cannot pick and choose what to average. Yet, that is what the School District did. That defies the plain meaning of the word, common sense and the intent of the statute, policy and grading system at issue here.

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); *Parents Against Abuse in Schools v. Williamsport Area School District*, 594 A.2d 796, 802 (Pa.Cmwlth.1991); *Richie v. Board of Education of Lead Hill School District*, 933 S.W.2d 375 (Ark. 1996).

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 the Respondents that the School District was required to transfer the numerical grades from L.P.'s official transcript. It 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).

F. 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. [5]

The Court may uphold the trial court's Order for any reason. The Respondents were not required to appeal the trial court's decision in order to rely on this tenet of the law. Indeed, there was no reason to appeal; they won.

The Court may review the School District's pattern of behavior, its months of deliberate secrecy made clear from the e-mails between and among school officials, the failure of the School District to timely inform L.P. and his parents about its intentions in time for L.P. to change schools before the end of a marking period, and the fact that many students have transferred into the School District since 2007, yet L.P.'s transcript is the only one changed – ever. Bad faith, abuse of power, and corruption are words not too strong for what the School District did to this student.

If the School District had believed it was acting in good faith, within its powers, and not corruptly, it would not have deliberately hidden its actions for half the school year.

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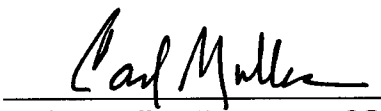
[5] Even during a lawsuit with it, the School District is supposed to act to protect one of its students' best interests as much as it would any other student. However, the School District continues to harm L.P. even when doing so does not aid or benefit any other student. Its refusal to agree to a stay of this Court's Order while the appeal process continues shows the School District's determination to abuse its power. Because L.P. challenged the School District's treatment of him, the School District wants this Court to refuse to stay its Order knowing that doing so will harm L.P. immediately, because he, like other matriculating freshman, must provide a final transcript for his college to review. A school district acting in good faith and using the powers vested in it for the benefit of all students would not intentionally harm any one of them, especially, when not harming this one also does not harm the district or any other student. All the other graduated students already have their correct final grades to send to the colleges to which they hope to matriculate in the fall. The stay would do nothing to them.

For the foregoing reasons, the Respondents respectfully request that the Court of Appeals stay and reconsider its Order.

Respectfully submitted,



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PROOF OF SERVICE

I certify that I have served Respondents' Reply Memorandum Of Law In Support Of Petition For Rehearing by depositing a copy of it in the U.S. Mail, postage prepaid, on June 30, 2014, addressed to:

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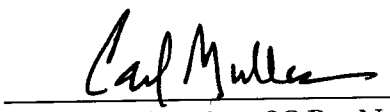

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