

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL OF RICHLAND SCHOOL DISTRICT TWO BOARD OF TRUSTEES
APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2012-02436

Student #1 One John Doe, Redacted Name of Student, Redacted Name of Mother
of Student #1 John Doe, Appellants,

v.

Board of Trustees, Richland School District Two, Richland School District Two
Superintendent, Dr. Katie Brochu, In her official capacity as School
Superintendent, Respondents.

RECORD ON APPEAL VOLUME I

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RECEIVED

JUL 14 2014

SC Court of Appeals

INDEX

Court of Appeals Order of July 7, 2013.....	1
Court of Appeals Order of October 2,2013.....	2
Order of October 8, 2013	3
Order of July 30, 2013	6
Order of February 11, 2013.....	13
Proposed Order of Plaintiff.....	21
Proposed Order of Plaintiff.....	23
Summons and Complaint.....	24
Second Amended Complaint.....	38
Memorandum Pursuant to Order from Court of Appeals.....	57
Motion for Temporary Restraining Order.....	71
Affidavit of Rhonda Meisner as evidence for TRO	76
Letter from Richard Winn Academy.....	78
Plaintiffs Memorandum in Support of Temporary Restraining Order.....	80
Defendants Memorandum in Opposition for Plaintiffs Temporary Restraining Order.....	114
Attachment One to Defendants Memorandum.....	122
Attachment Two to Defendants Memorandum.....	139
Motion to Dismiss Second Amended Complaint.....	152
Plaintiff's Memorandum in Opposition of Motion to Dismiss.....	155
Plaintiff's Objections to language in Temporary Restraining Order	166
Motion to alter and Amend Order in Temporary Restraining Order.....	169
Defendants Memorandum of Law in Support of their Motion to Dismiss.....	175
Motion to Alter and Amend Judgment of February 19, 2013.....	185

Motion to Alter and Amend Judgment of February 26, 2013.....	194
Defendants Memorandum of Law in Opposition for Relief of Judgment	204
EXHIBIT #1.....	209
EXHIBIT #2.....	216
Plaintiffs Reply to Defendants Opposition of Motion for Relief of Judgment.....	219
Notice of Appeal of March 15, 2013.....	238
Motion to Alter and Amend of August 12, 2013.....	240
Appellants Reply to Districts Return to Counsel's Petition to Withdraw as Counsel.....	247
Transcript of TRO hearing.....	251
Roger Lee Wiley Direct by Mother of Student #1.....	263
Roger Lee Wiley Direct by Mr. Glenn Bowens, Esquire.....	267
Fred McDaniel, PhD Direct by Mother of Student #1.....	271
Fred McDaniel, PhD Direct by Kathryn Mahoney, Esquire.....	282
Maria Kratsios, PhD Direct by Mother of Student #1.....	293
Mother of Student #1 Direct by Glenn Bowens, Esquire.....	299
Mother of Student #1 Cross by Kathryn Mahoney, Esquire.....	310
Ralph Schmidt Direct by Mother of Student #1.....	320
Transcript of Motion to Dismiss Hearing.....	324
Motion by Tyler Turner, Esquire.....	327
Response by Mother of Student #1.....	340
Reply by Tyler Turner, Esquire.....	365
Decision by the Court.....	368
South Carolina Gifted and Talented Manual 2006 Excerpts submitted by consent.....	370

Certificate of Appellant

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties. Appellant inadvertently designated a reply to Second Amended Complaint to be included in the record which was never submitted by Respondants, so this designation was eliminated.

July 12, 2014



Rhonda L. Meisner, Appellant
Post Office Box 689
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Appellant
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The South Carolina Court of Appeals

Student #1 John Doe, Redacted, Name of Student,
Redacted Name of Mother of Student #1 John Doe,
Appellants,

v.

Board of Trustees, Richland School District Two,
Richland School District Two Superintendent, Katie
Brochu, in her official capacity as School Superintendent,
Respondents.

Appellate Case No. 2013-000532

ORDER

Glenn Bowens's motion to be relieved as counsel is granted. Our preliminary review of the underlying order "denying temporary injunction," however, indicates it may not be immediately appealable. Accordingly, within ten days, the parties shall serve and file memoranda addressing appealability. Specifically, the parties shall address whether the order is immediately appealable given that (1) the motion for the temporary restraining order did not seek an order prohibiting action, as are injunctions, but sought an order compelling action, and (2) the order, though labeled as an order denying a temporary injunction, actually denies the ultimate relief sought on appeal to the circuit court, even if only temporarily.

This court will consider Respondents' position that Appellants must retain counsel to proceed on appeal after considering appealability.



FOR THE COURT

C.J.

FILED

7/23/13

R1

The South Carolina Court of Appeals

Student #1 One John Doe, Redacted, Name of Student,
Redacted Name of Mother of Student #1 John Doe,
Appellants,

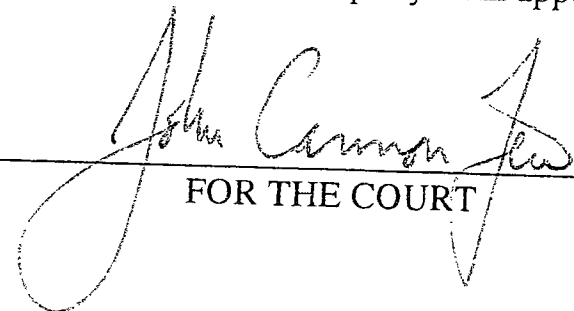
v.

Board of Trustees, Richland School District Two,
Richland School District Two Superintendent, Katie
Brochu, in her official capacity as School Superintendent,
Respondents.


Appellate Case No. 2013-000532

ORDER

Student #1 appealed the circuit court's order of February 13, 2013. This court asked the parties to submit memoranda addressing the immediate appealability of the order. The court specifically asked the parties to address whether the order, which is captioned "Motion for Relief of Judgment: Denial of Motion to Alter or Amend Order in Temporary Restraining Order," is in reality the temporary denial of the ultimate relief sought on appeal, and whether, if so, the order is immediately appealable. In the interim, the circuit court issued a final order dismissing the case. We now find the order on appeal is not immediately appealable. Therefore, this appeal is dismissed. Of course, nothing precludes either party from appealing the subsequent final order.


C.J.
FOR THE COURT

Columbia, South Carolina

FILED
10/2/13


STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4007122

Student Number One John Doe

Board Of Trustees Richland School District TWO

Jane Doe

Calvin Jackson

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC; Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 8 October 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Jane Doe

Glenn E. Bowens

Tyler Ryan Turner

Jane Doe

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Student #1, John Doe, REDACTED)
NAME OF STUDENT,)
REDACTED NAME OF MOTHER)
OF STUDENT #1 JOHN DOE,)

CASE NO. 2012-CP-40-07122

Plaintiff,)

vs.)

ORDER

Richland School District Two Board)
of Trustees; Richland School)
District Two, Superintendent, in her)
Official capacity, Katie Brochu, PhD,)

Defendant.)

JEANETTE W. McBRIDE
C.C.P. & G.S.

2013 OCT - 8 AM 11:19

RICHLAND COUNTY
FILED


After careful consideration of the record in this case and the submissions of counsel, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered.

Plaintiff also argues the Court did not address her argument that Defendant's answer was untimely. Plaintiff noted that the Board did not mail her a copy of the order but simply "emailed" the decision to her. Plaintiff subsequently filed and emailed her Summons and Complaint. Subsequently she served several persons by email and one by U.S. Mail. Plaintiff amended her complaint prior to the time period for Defendants to respond pursuant to Section 59-19-560. The complaint was subsequently amended a second time. By filing an amended complaint before the time period expired for Defendants to respond, additional time to respond is permitted under Rule 15 of the South Carolina Rules of Civil Procedure. Under Rule 15, when a pleading is amended before a responsive pleading is required, a party shall plead in response to an amended pleading within the time period remaining or within 15 days after the service of the amended pleading whichever period may be longer. The responses filed by Defendants were timely.

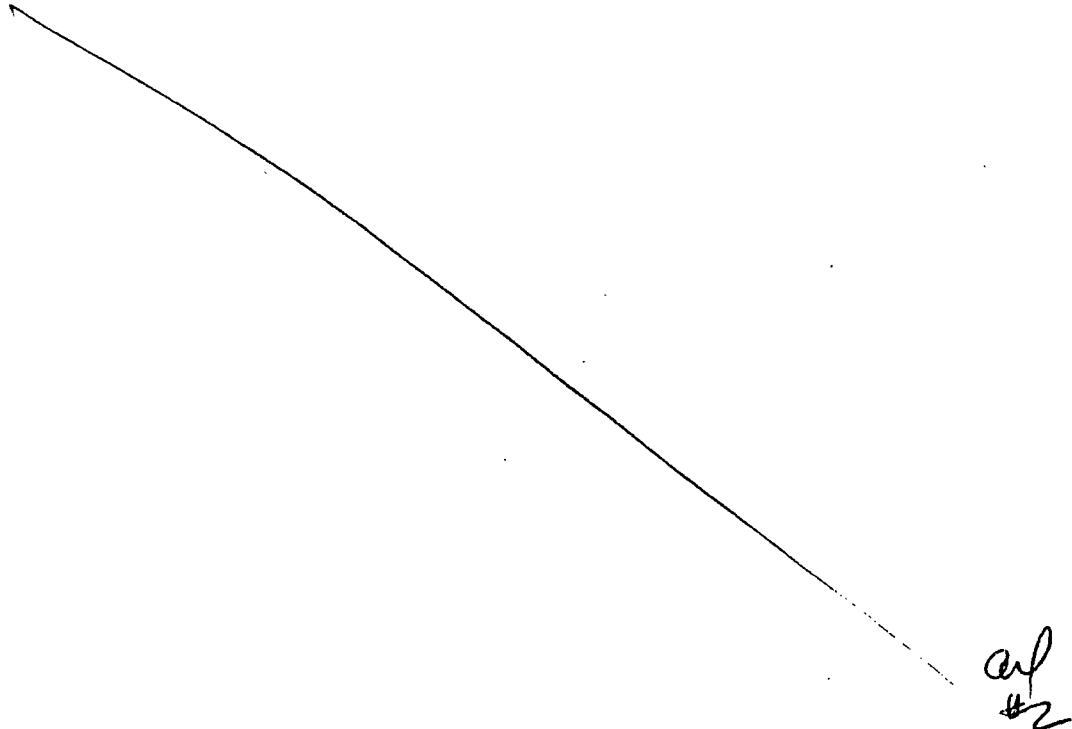
Handwritten initials and mark

Accordingly, this Court hereby **DENIES** Plaintiff's Motion to Alter or Amend Judgment Pursuant to Rule 59-e SCRPC submitted on or about August 12, 2013. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

October 2, 2013
Columbia, South Carolina



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: **2012CP4007122**

Student Number One John Doe

Board Of Trustees Richland School District TWO

Jane Doe

Calvin Jackson

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award. Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court

ORDER INFORMATION

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Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 30 day of July, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Jane Doe

Tyler Ryan Turner

Jane Doe

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
)

Student #1 John Doe, REDACTED NAME
OF STUDENT, REDACTED NAME OF
MOTHER OF STUDENT #1 JOHN DOE,

) Docket No. 2012-CP-40-07122
)

Plaintiff,

vs.

) **ORDER GRANTING DEFENDANT'S**
) **MOTION TO DISMISS**
)

Richland School District Two Board of
Trustees; Richland School District Two
Superintendent, in her official capacity,
Katie Brochu, Ph.D.,

Defendant.

RICHLAND COUNTY
FILED
2013 JUL 30 PM 4:22
JENNIFER W. McBRIDE
C.C.P. & G.S.

This matter came before the Court on January 30, 2013 on a Motion to Dismiss filed by the Defendant. Present at the hearing were Tyler Ryan Turner, counsel for Richland County School District Two, and Rhonda Meisner, who appeared pro se. After considering the law, the briefs filed by both parties, the arguments, and all matters submitted, the Motion to Dismiss is **GRANTED**.

FACTS

Plaintiff John Doe is a high school student, who attends Westwood High School in Richland School District Two. Westwood High School opened as a new school in 2012 to relieve overcrowding at Blythewood High School. Plaintiff was zoned to attend Westwood High School based on his residence, but applied for a transfer to Blythewood High School in the summer of 2012. The transfer request was denied by the District's administration due to high demand to attend Blythewood High School and the limited space available there.

Plaintiff appealed the District administration's denial of transfer request to the School Board. On October 9, 2012 the School Board heard the Plaintiff's appeal and upheld the District administration's denial of the transfer request. On October 19, 2012 Plaintiff appealed the School Board's decision to this Court, pursuant to S.C. Code Ann. § 59-5-560.

and #1

STANDARD OF REVIEW

In ruling on a motion to dismiss a cause of action under Rule 12(b)(6), the court must look only to the allegations of the Plaintiff's complaint. *State Board of Medical Examiners v. Fenwick Hall, Inc.*, 300 S.C. 274, 387 S.E.2d 458 (1990). The court must deny the motion if the facts and inferences, when viewed in the light most favorable to the Plaintiff, show that the Plaintiff could prevail under any theory. *Murrow Crane Co v. T.R. Trucker Construction Co.*, 296 S.C. 427, 373 S.E.2d 701 (Ct. App. 1988).

DISCUSSION

The Defendant raises the following issues to support the motion:

A. GIFTED AND TALENTED STATUTE AND REGULATION

Plaintiff John Doe seeks a declaratory judgment indicating that Defendant's denial of his transfer request from Westwood High School to Blythewood High School violated South Carolina's gifted and talented statute and regulation, codified in S.C. Code Ann. § 59-20-170 and S.C. Code Ann. Regs. 43-220, respectively. Section 59-20-170 establishes programs for talented students in public school districts and S.C. Code Ann. Regs. 43-220 explains the framework of the program in more extensive detail. Defendant asserts Plaintiff's action is barred because no private cause of action exists under the statute or regulation.

To determine if the gifted and talented laws create a private cause of action for Plaintiff the Court follows the reasoning of *Abbeville County Sch. Dist. v. State*. In *Abbeville*, the South Carolina Supreme Court used a six part test to examine whether the Education Finance Act created a private cause of action. 335 S.C. 58, 515 S.E.2d 353 (1999). The test determines whether the legislature identified a duty of a public officer to a particular class of persons, thereby creating a private cause of action. The six part test requires consideration of the following factors:

- (1) is an essential purpose of the statute to protect against a particular kind of harm;
 - (2) the statute, either directly or indirectly, imposes on a specific public officer a duty to guard against or not cause harm;
 - (3) the class of persons the statute intends to protect is identifiable before the fact;
 - (4) the plaintiff is within the protected class;
 - (5) the public officer knows or has reason to know the likelihood of harm to member of the class if he fails to do his duty;
 - and (6) the officer is given sufficient authority to act in the circumstances or he undertakes to act in the exercise of his office.
- Id.* at 539.

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In *Abbeville*, the Court found a private cause of action did not exist because the statute created no special duty to individuals by the public officer. "[T]he purpose of providing a public education is to benefit not just the individual receiving it, but also the public at large. Since [the statute in question] was not created for the special benefit of a private party, no private cause of action is implied." *Id.* at 66.

The essential purpose of the law in *Abbeville* mirrors the purpose of the laws at issue in this case. The purpose of providing a public education is not for the benefit of a private party; it is to benefit the public at large. Because the gifted and talented laws were not created for the special benefit of a private party, no private cause of action exists. In addition, there is no specified public officer charged with carrying out any duty established in the laws. Therefore, Plaintiff's claim fails to pass the six part analysis, and the Plaintiff does not possess a private cause of action under S.C. Code Ann. § 59-20-170 or S.C. Code Ann. Regs. 43-220.

B. EQUAL PROTECTION CLAUSE

Plaintiff claims that Defendants violated the Equal Protection Clause of the United States Constitution's Fourteenth Amendment by segregating Blythewood's high school system. Plaintiff alleges that Westwood High School enrolls more African American students while Blythewood High School enrolls more white students. Defendants argue that Plaintiff's complaint fails to state facts sufficient to constitute an equal protection claim because the relief requested would not remedy the alleged constitutional violation.

When a constitutional violation is proven, the remedy must be designed to redress the difference. *Dayton Bd. of Educ. v. Brinkman*, 433 U.S. 406, 420, 97 S.Ct. 2766 (1977); *Freeman v. Pitts*, 503 U.S. 467, 1445, 112 S.Ct. 1430, (1992) ("A remedy is justifiable only insofar as it advances the ultimate objective of alleviating the initial constitutional violation."). Plaintiff's requested relief would require Defendant to grant Plaintiff's transfer request to move from Westwood High School to Blythewood High School. Because Plaintiff John Doe is a white student, a transfer to Blythewood High School would not provide a remedy to the alleged Equal Protection Clause violation. Instead, a transfer to Blythewood High School would exacerbate the alleged violation while adding to the alleged racial imbalance. Since Plaintiff's request as stated in the complaint would intensify the alleged constitutional violation, Plaintiff's equal protection claim fails.

and
#3

C. DUE PROCESS CLAUSE

Plaintiff's third claim involves the Fourteenth Amendment's Due Process Clause. "The Fourteenth Amendment's procedural protection of property is a safeguard of the security interests that a person has already acquired in specific benefits." *Bd. of Regents of State Coll. v. Roth*, 408 U.S. 564, 92 S.Ct. 2701 (1972). A student has a legitimate entitlement to a public education as a property interest, secured by the Due Process Clause. *Goss v. Lopez*, 419 U.S. 565, 582, 95 S.Ct. 729, (1975). Due process of law is required when an institution deprives a student of the property interest, amounting to a "total exclusion from the educational process for more than a trivial period." *Id.* at 576.

Plaintiff alleges that the denial of the transfer request to Blythewood High School constituted a violation of due process. (Compl. ¶¶ 43.) Based on the complaint, Defendant changed the location of Plaintiff's assigned public high school, but the Defendant did not deny Plaintiff a public education that constituted a "total exclusion" from receiving an education. Despite the changes to the zoning policy, Plaintiff was free to receive an education at Westwood High School. Because Plaintiff's access to education was never restricted, Plaintiff's due process rights have not been violated by Defendant's actions.

Furthermore, Plaintiff lacks the individual right to choose the location of her child's school within the public education system. "The local autonomy of school districts is a vital national tradition." *Dayton Bd. Of Education v. Brinkman*, 433 U.S. 406, 410, 97 S.Ct. 2766 (1977). In South Carolina, "[the] law grants a child of school age the right to a free education but does not confer a right upon pupils to attend a specific school." *Wharton v. Abbeville Sch. Dist. No. 60*, 608 F. Supp. 70 (D.S.C. 1984). Moreover, the Defendant controls the placement of students and shall "transfer any pupil from one school to another so as to promote the best interests of education, and determine the school within its district in which any pupil shall enroll." S.C. Code Ann. § 59-19-90(9). Therefore, Defendant maintains authority over student placement.

Based on the facts included in Plaintiff's complaint and South Carolina case law, Defendant did not violate Plaintiff's property interest. Plaintiff's due process argument is barred.

D. NEXT FRIEND

Defendants argue Plaintiff John Doe's mother is not a licensed attorney and cannot legally represent him pro se. "No person may either practice law or solicit the legal cause of

another person or entity in this State unless he is enrolled as a member of the South Carolina Bar..." S.C. Code Ann. § 40-5-310. Plaintiff's mother argues that she may represent her child in the present case, pursuant to Rule 17(c), SCRPC, which states, "If a minor or incompetent person does not have a duly appointed representative he may sue by his next friend or by guardian ad litem."

Although the state courts have been silent as to this particular issue, the federal courts have shown the limitations of next friend representation. The Fourth Circuit held that a non-attorney parent of minor children is not authorized to litigate pro se the claim of his minor children. *Myers v. Loudoun County Pub. Sch.*, 418 F.3d 395, 400 (4th Cir. 2005). "The right to litigate for *oneself*... does not create a coordinate right to litigate for others." *Id.* at 401. In this decision, the *Myers* Court aligned itself with the majority of federal circuits that disallow non-attorney representation of children by their parents. See *Shepherd v. Wellman*, 313 F.3d 963, 970 (6th Cir.2002); *Navin v. Park Ridge Sch. Dist.*, 270 F.3d 1147, 1149 (7th Cir.2001); *Devine v. Indian River County Sch. Bd.*, 121 F.3d 576, 581 (11th Cir.1997); *Johns v. County of San Diego*, 114 F.3d 874, 877 (9th Cir.1997); *Osei-Afryie v. Med. Coll.*, 937 F.2d 876, 882-83 (3d Cir.1991); *Cheung*, 906 F.2d at 61; *Meeker v. Kercher*, 782 F.2d 153, 154 (10th Cir.1986). The South Carolina District Court has also held that parents may not litigate the claims of their children pro se. See *Nelson v. AVX Corporation*, No. 4:11-01598-RBH-TER, 2011 WL 4904440; *Booker v. Sullivan*, No. 8:11-1131-HMH-JDA, 2011 WL 3555718 (D.S.C. July 21, 2011); *Foley v. Town of Nichols*, No. 4:09-1217-TLW-TER, 2010 WL 424142 (D.S.C. Feb. 1, 2010); *Bardes v. Magera*, No. 2:08-CV-487-PMD-RSC, 2009 WL 3163547 (D.S.C. Sept. 30, 2009). (D.S.C. Aug. 12, 2011.) In *Nelson*, the District Court dismissed the pro se litigant's claims on behalf of her children, and repeated the *Myers* policy that "children should not be prejudiced by their well-meaning, but legally untrained parents." *Nelson* at 1.

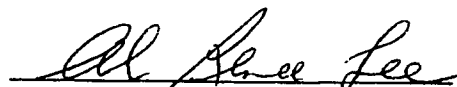
This Court follows the federal court's reasoning. A parent may assert claims on behalf of their minor child as next friend, pursuant to Rule 17(c), SCRPC, but a parent cannot litigate a minor child's claim without legal counsel. As her son's next friend, Plaintiff's mother may bring claims to sue Defendant on behalf of her minor child; however, Plaintiff's mother may not litigate her son's legal claims because she is not a licensed attorney.

ad
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ORDER

For the reasons set forth above, it is **ORDERED** that the Defendant's Motion to Dismiss is **GRANTED** and the complaint is **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.



ALISON RENEE LEE
Presiding Judge

July 30, 2013
Columbia, South Carolina



anj
#16

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2012-CP-40-7122

Student #1 John Doe, Redacted Name of
Mother
PLAINTIFF(S)

Board of Trustees, Richland School District Two et al
DEFENDANT(S)

Submitted by: _____	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41, SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

RICHLAND COUNTY
 FILED
 13 FEB 13 AM 10:37
 JANE TTE W. MCBRIDE
 C.C.P. & G.

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: This Motion to Alter and Amend Order is denied without oral argument. In addition, the motion was not served within 10 days of entry of the order.

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
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If applicable, describe the property, including tax map information and address, referenced in the order: _____ _____		

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Jane T. Dawlf
Circuit Court Judge

2110
Judge Code

2/11/13
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 13 day of Feb, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
Jeanette W. Hilde
CLERK OF COURT

Court Reporter: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Student # 1 One John Doe, REDACTED,)
NAME OF STUDENT, REDACTED)
NAME OF MOTHER OF STUDENT #1)
JOHN DOE,)

C.A. No. 2012-CP-40-07122

**ORDER DENYING TEMPORARY
INJUNCTION**

Plaintiff,)

vs.)

Board of Trustees, Richland School)
District Two, Richland School District)
Two Superintendent, Dr. Katie Brochu, In)
her official capacity as School)
Superintendent,)

Defendant.)

2012 DEC 28 AM 11:07

This matter is before the Court on Plaintiffs' motion for a temporary injunction pursuant to Rule 65, SCRPC. On Monday, November 26, 2012, Plaintiffs filed a motion for a temporary restraining order compelling Defendants to transfer John Doe from Westwood High School (WHS) and immediately enroll him in the ninth grade at Blythewood High School (BHS). Following a brief telephone conference with Plaintiff, Mother of Student #1 John Doe ("Mother"), and counsel for Defendants on November 26, 2012, the Court scheduled a follow-up conference in chambers with the parties for 9:30 a.m., Tuesday, November, 27, 2012. Plaintiff Mother was representing herself and her minor son, Plaintiff John Doe at both conferences. The Court then set Plaintiffs' request for interim injunctive relief for hearing at 9:30 a.m. on November 28, 2012. At the hearing, Plaintiff Mother appeared pro se and Plaintiff John Doe was represented by Attorney Glenn Bowen, who entered his appearance on behalf of John Doe that morning. The parties submitted memoranda of law, supporting affidavits, and presented witnesses at the hearing. Specifically, Mr. Ralph Schmidt, Principal of Westwood High School,

Dr. Fred McDaniel, II, Chief Planning Officer for Richland School District Two, Dr. Maria Kratsios, Senior Research Associate for Advanced Programs for Richland School District Two, Mr. Roger Wiley, Registrar for Richland School District Two, and Plaintiff Mother, all testified at the hearing. Based on the evidence presented at the hearing and through the affidavits the Court hereby denies the Plaintiffs' requested temporary injunctive relief.

I. BACKGROUND

Plaintiff John Doe is currently enrolled and attending the ninth grade at WHS. John Doe is zoned to attend WHS based on his residence. The 2012-13 school year is WHS's first year of operation, and its attendance zone was not established by the Richland School District Two Board of Trustees ("School Board") until December 2011. Plaintiffs allege that they were not properly notified of WHS's attendance zone and that they initially understood John Doe was zoned to attend BHS. The Defendants assert Plaintiffs were notified by a variety of methods, including direct mail, of the WHS attendance zone in December 2011.

Plaintiffs applied for John Doe's intra-District transfer to BHS in the summer of 2012. The District administration denied the requested transfer primarily on the grounds that BHS has a wait list of approximately 100 students, some of whom had previously been enrolled in and attended BHS, but were zoned into other schools as a result of the re-zoning of Richland Two's schools in 2011.

Plaintiffs appealed the District administration's denial of their transfer request to the School Board. On October 9, 2012, the School Board heard Plaintiffs' appeal and upheld the administration's denial of the transfer request. Ten days later, or October 19, 2012, Plaintiffs appealed the School Boards' decision to this Court, pursuant to S.C. Code Ann. § 59-19-560. Plaintiffs' appeal appears to be based on grounds of alleged violations of the Gifted and Talented

Program Statute, § 59-29-170, negligence and violation of Equal Protection guarantees under the Fourteenth Amendment to the United States Constitution.

In response to Plaintiffs' complaint, Defendant filed a motion to dismiss under Rule 12(b), SCRPC. Plaintiffs subsequently filed on November 13, 2012, an amended complaint styled "Second Amended Complaint Appeal Of Decision of Richland County School District Two and Board of Trustees, District Two." Defendants have filed a motion to dismiss this complaint as well.

Plaintiffs' motion for a temporary injunction is chiefly based on the contention that unless John Doe is immediately transferred to BHS he will suffer irreparable injury and the School Board did not comply with state law in considering Plaintiffs' transfer request, particularly with respect to John Doe's status as a gifted and talented student.

II. ANALYSIS

Plaintiffs have moved the Court for a temporary injunction requiring the Defendants to immediately transfer John Doe from WHS to BHS while their appeal from the School Board's denial of their requested transfer is pending before the Court. Such temporary injunctive relief is an extraordinary equitable remedy within the discretion of the Court. Generally, interim injunctive relief is granted for the purpose of preserving the status quo during litigation to prevent irreparable harm to a plaintiff. *Scratch Golf Co. v. Dune W. Residential Golf Prop., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004) ("An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff."); *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 601, 553 S.E.2d 110, 121 (2001) ("The sole purpose of a temporary injunction is to preserve the status quo and thus avoid possible irreparable injury to a party pending litigation."). Accordingly, to obtain a temporary injunction, a party must show he would suffer irreparable harm if the status quo is not preserved and a temporary injunction not granted.

MailSource, LLC. v. M.A. Bailey & Assocs., 356 S.C. 363, 368, 588 S.E. 2d 635, 638 (Ct. App. 2003).

Here, the status quo is John Doe's enrollment at WHS. John Doe was zoned to attend WHS in December 2011, while he was still in the 8th grade at Muller Road Middle School. His status in the gifted and talented program was not a factor in his zoning. John Doe has at all times been enrolled in and attending high school at WHS. Plaintiffs sought a transfer to BHS from Richland Two administration and School Board, and both denied the requested transfer. Consequently, the status quo is John Doe's enrollment at WHS.

Plaintiffs' requested injunction seeks not to preserve the status quo during their appeal, but rather to alter the current status of his school attendance. Plaintiffs contend that such affirmative injunctive relief is necessary to avoid irreparable harm to John Doe. Plaintiffs assert John Doe is suffering harm at WHS because, due to his gifted and talented academic status and recent traumatic events in his life, he needs to attend BHS where his friends attend school. The Plaintiff Mother testified she has observed John Doe exhibit recent signs of possible depression that she attributes to his attendance at WHS.

At this stage of the proceedings, the Defendants have not disputed that John Doe is a gifted and talented student, that he suffered from recent traumatic events, or that his friends attend BHS. However, Defendants contend and presented evidence to the Court establishing that WHS offers comparable gifted and talented educational programs with those at BHS, WHS has and can offer guidance and counseling services to John Doe, and opportunities for developing new friendships among gifted and talented students exist at WHS and developing new friendships is a meaningful and constructive experience for gifted and talented students, such as John Doe. The evidence at the hearing further established that John Doe's academic performance at WHS is consistent with his previous academic achievement, though he has required the assistance of his parents with studying in order to maintain his grades.

Importantly, Plaintiffs presented no evidence from a psychological or medical professional that John Doe is being harmed educationally, psychologically, or academically by attending WHS instead of BHS or that by attending BHS his educational or mental health status would improve. Indeed, Plaintiff Mother testified that John Doe has not been formally diagnosed with any mental or physical condition and has not received any formal professional counseling for the effects of trauma or depression. Likewise, no evidence shows John Doe's education has suffered as a result of attending WHS or not attending BHS. Accordingly, Plaintiffs have not established at this point that John Doe will likely suffer irreparable harm if he continues to attend WHS and not BHS.

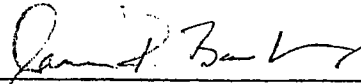
Finally, Plaintiffs' appeal from the School Board's decision to deny John Doe's transfer to BHS is made under § 59-19-560. The General Assembly has expressly made school boards responsible for the assignment of students to schools § 59-19-90(9). See also *Wharton v. Abbeville School District No. 60*, 608 F.Supp 70, 75 (D.S.C. 1984) ("South Carolina law grants a child of school age the right to a free education but does not confer a right upon pupils to attend a specific school."). The General Assembly has further provided with regard to appeals under § 59-19-560 that "[u]ntil the matter in controversy has been finally disposed of, no appeal shall act as a supercedeas or suspension of the order of the board having original jurisdiction of the cause." § 59-19-570. Accordingly, the General Assembly has clearly vested the power to assign students to schools in local school boards and instructed and declared its intent that school boards' decisions in such matters remain in effect pending judicial review.

Plaintiffs' requested temporary injunction seeks precisely what the General Assembly has discouraged, i.e., the suspension of the School Board's decision to deny their transfer request. Moreover, the proposed injunction asks the Court to invade the discretionary authority of the School Board under § 59-19-90(9) to assign students to schools. On the record before the Court,

the Court cannot find the equities of Plaintiffs' claim justify the granting of extraordinary temporary injunctive relief.¹

Plaintiffs' motion for a temporary injunction is hereby denied.

IT IS SO ORDERED.



The Honorable James R. Barber, III
Circuit Court Judge Presidency

December 28, 2012
Columbia, South Carolina

¹ Because Plaintiffs have failed to establish a temporary injunction is necessary to prevent possible irreparable injury, the Court does not reach the issues of whether Plaintiffs have alleged a prima facie claim for relief or whether Plaintiff Mother has stated a claim on her own behalf on which she can properly proceed pro se.

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Student #1 John Doe, Plaintiff;
REDACTED NAME OF STUDENT;
REDACTED NAME OF MOTHER
OF
STUDENT #1 JOHN DOE, Plaintiff

C.A. No. 2012-CP-40-07122

Vs

PROPOSED ORDER

Board of Trustees, Richland School
District two
Richland School District Two
Superintendent, Dr. Katie Brochu,
In her official capacity as School
Superintendent.

The Court finds S. C. Code Ann §59-19-570 dispositive of the Motion for Temporary Restraining Order. The Statute S. C. Code Ann §59-19-570 Appeal Shall Not Act as Supersedeas. [Until the matter in controversy has been finally disposed of, no appeal should act as Supersedeas or suspension of the order of the board having original jurisdiction of the cause]. This appeal is based on a School Board Decision, therefore the request for a temporary restraining order to allow the immediate transfer of student #1 John Doe from Westwood High School to Blythewood High School is **denied**. This court does not make any other findings of fact or conclusions of law as to the merits of the appeal or as to whether or not the mother of student #1 John Doe can represent her son in court as a continuation of the administrative appeals process.

Signed _____

James R. Barber, III, Chief Administrative Judge

at _____ December ____, 2012

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Student #1 John Doe, Plaintiff;
REDACTED NAME OF STUDENT;
REDACTED NAME OF MOTHER
OF
STUDENT #1 JOHN DOE, Plaintiff

C.A. No. 2012-CP-40-07122

Proposed
ORDER

Vs

Board of Trustees, Richland School
District two
Richland School District Two
Superintendent, Dr. Katie Brochu,
In her official capacity as School
Superintendent.

The Court finds it is necessary in the best interest of Student #1 John Doe (REDACTED) to order the transfer from Westwood High School to Blythewood High School immediately. Under the Gifted and Talented Statutes 59-19-560 Blythewood High School is the the school “most appropriate” for his gifts and talents according to R43-220 and The SC Best Practices for Gifted and Talented Education Guide 2006.

State law requires parents and legal guardians to actively provide such intervention when required elements of education are not met. State Statute requires parents to intervene when their child is lacking and gives legal recourse to their inaction via state statute §63-7-20(c) fails to supply the child with adequate food, clothing, shelter, or education as required under Article 1 of

Chapter 65 of Title 59, supervision appropriate to the child's age and development, or health care though financially able to do so or offered financial or other reasonable means to do so and the failure to do so has caused or presents a substantial risk of causing physical or mental injury". However, a child's absences from school may not be considered abuse or neglect unless the school has made efforts to bring about the child's attendance, and those efforts were unsuccessful because of the parents' refusal to cooperate. For the purpose of this chapter "adequate health care" includes any medical or nonmedical remedial health care permitted or authorized under state law." Because this is a legal requirement of parenting a Temporary Restraining Order is appropriate until this issue can be resolved.

- 1) Any procedure that the district develops to review the student's placement must incorporate a "child's study" approach involving the gifted and talented coordinator, student, **parent/guardian** and teacher. 24 S.C Code Ann. Regs 43-220 (B)(8)(c). Placement should have as the **primary consideration the best instructional setting for the individual student.**

Based on the language in the R43-220 (B)(8)(c) I issue this order: Further an order for a hearing to decide to extend this TRO into a Temporary or Permanent Injunction will be scheduled on _____ at _____ pursuant to this order.

Signed _____

This order to become effective on my signature:

At _____ on _____

COUNTY OF Richland

Student # 7 John Doe

Plaintiff(s)

CIVIL ACTION COVERSHEET

vs.
Board of Trustees Richland School District Two, Katie Brochu

2012 CP 400 1122

Superintendent Official copy Defendant(s)

(Please Print)

Submitted By: Jane Doe, next friend

Address: PO Box 1087
Blythwood, SC 29016

SC Bar #: N/A

Telephone #: 503 318-6123

Fax #: _____

Other: PO Box 1087 Blythwood, SC 29016

E-mail: regasw@navon.net

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- JURY TRIAL** demanded in complaint. **NON-JURY TRIAL** demanded in complaint.
- This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts**
- Constructions (100)
 - Debt Collection (110)
 - Employment (120)
 - General (130)
 - Breach of Contract (140)
 - Other (199)

- Torts - Professional Malpractice**
- Dental Malpractice (200)
 - Legal Malpractice (210)
 - Medical Malpractice (220)
 - Previous Notice of Intent Case # 20-CP-
 - Notice/ File Med Mal (230)
 - Other (299)

- Torts - Personal Injury**
- Assault/Slander/Libel (300)
 - Conversion (310)
 - Motor Vehicle Accident (320)
 - Premises Liability (330)
 - Products Liability (340)
 - Personal Injury (350)
 - Wrongful Death (360)
 - Other (399)

- Real Property**
- Claim & Delivery (400)
 - Condemnation (410)
 - Foreclosure (420)
 - Mechanic's Lien (430)
 - Partition (440)
 - Possession (450)
 - Building Code Violation (460)
 - Other (499)

- Inmate Petitions**
- PCR (500)
 - Mandamus (520)
 - Habeas Corpus (530)
 - Other (599)

- Administrative Law/Relief**
- Reinstate Drv. License (800)
 - Judicial Review (810)
 - Relief (820)
 - Permanent Injunction (830)
 - Forfeiture-Petition (840)
 - Forfeiture-Consent Order (850)
 - Other (899)

- Judgments/Settlements**
- Death Settlement (700)
 - Foreign Judgment (710)
 - Magistrate's Judgment (720)
 - Minor Settlement (730)
 - Transcript of Judgment (740)
 - Lis Pendens (750)
 - Transfer of Structured Settlement Payment Rights Application (760)
 - Confession of Judgment (770)
 - Petition for Workers Compensation Settlement Approval (780)
 - Other (799)

- Appeals**
- Arbitration (900)
 - Magistrate-Civil (910)
 - Magistrate-Criminal (920)
 - Municipal (930)
 - Probate Court (940)
 - SCDOT (950)
 - Worker's Comp (960)
 - Zoning Board (970)
 - Public Service Commission (990)
 - Employment Security Commission (991)

- Special/Complex /Other**
- Environmental (600)
 - Automobile Arb. (610)
 - Medical (620)
 - Other (699)
 - Sexual Predator (510)

- Pharmaceuticals (630)
- Unfair Trade Practices (640)
- Out-of State Depositions
- Motion to Quash Subpoena in Out-of-County Action (660)

Other (999) School Board

Submitting Party Signature: Jane Doe

Date: 10-19-12

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA,)
COUNTY OF Richland)

IN THE COURT OF COMMON PLEAS

Student #1, John Doe)
Plaintiff,)

SUMMONS

Richland School District Two)
vs. Board of Trustees)
Richland School District Two Superintendent)
Dr. Katie Brochu, in her official)
Defendant.) Capacity

FILE NO. _____ -CP- _____

2012 OCT 19 PM 3:42
JEANETTE W. HEBBARD
C.C.P. & G.S.
RICHLAND COUNTY
FILED

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Columbia, South Carolina

Dated: 10/19/2012

Jane Doe
Plaintiff/Attorney for Plaintiff
next friend

Address: PO Box 689 Blythewood, SC
29016

(803) 318-0123

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Student #1 John Doe, Plaintiff

Vs

Board of Trustees; Richland School
District TWO Calvin Jackson, Chair
Richland School District Two
Superintendent, Dr. Katie Brochu,
In her official capacity as School
Superintendent.

COMPLAINT

JEANETTE W. McBRIDE
C.C.P. & G.S.

2012 OCT 19 PM 3:12

RICHLAND COUNTY
FILED

TO THE DEFENDANTS NAMED ABOVE:

The Plaintiff by and through his Next Friend Jane Doe; mother of Plaintiff John Doe would request unto this Honorable Court a review of the Decision of the Richland County School Board and The Richland County School Board of Trustees, Richland School District Two: The Approval/Denial of the intra-district transfer of student John Doe from Westwood High School to Blythewood High School pursuant to South Carolina Statute 59-19-560.

JURISDICTION AND VENUE:

The Plaintiff Student #1 John Doe is a citizen of the United States of America and a resident of Blythewood, South Carolina. By nature of the fact that John Doe is a minor and the court system is unavailable to him this appeal is submitted by his mother, Jane Doe as his next friend. Jane Doe's next friend Status meets the criteria set in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004)

The defendants are the Richland School District Two Board of Trustees and the Richland School District Two Superintendent in her official capacity as Superintendent of School District Two.

This action arises out of the denial for intra-district transfer of a “Gifted and Talented” Student in violation of *Brown v. Board of Education*, 347 U.S. 483 (1954); The Educational Improvement Act of 1984; South Carolina Code of Laws 59-29-170 Establishment of a Gifted and Talented Education and Section 59-29-172; Regulation 43-220 Guidelines for serving the Gifted and Talented.

This court has subject matter jurisdiction over defendant pursuant to SC jurisdiction for appeals of decisions of the school board under 59-19-560

FACTS OF CASE AND APPEAL:

1. Richland School District Two is one of the fastest growing districts in the State of South Carolina.
2. The Northeast Area is an area of significant growth and as such has added several new schools in the last year.
3. The legislature enacted R43-220 “A Gifted and Talented Mandate” under 59-29-170; 59-29-172 South Carolina Gifted Programs Mandate under the 1984 South Carolina Educational Improvement Act.
4. Student #1 John Doe was designated “highly gifted” in the second grade via national ranking tests placing him in the 99 percentile nationally in math on standardized tests. He was subsequently identified by DUKE University as “highly gifted” and joined the DUKE talent identification program (TIPS) in the fifth grade. S. C Code Ann. Regs 43-220.2 (B)(7)(b).

5. In Seventh Grade, Student #1 John Doe re-qualified for DUKE Tips and scored 99% in math and 96% in reading. Indicating that only 1% of the students nationally scored better than him in math.
6. The Greater Blythewood High School Students (zip code 29016) all attended Blythewood High School prior to the addition of Westwood High School.
7. Westwood High School is the newest High School and is considered a “Luxury High School” with a complete stadium media center and gymnasium of college quality construction.
8. The Blythewood community generally and Student #1 John Doe specifically was under the impression based on public comments of the Richland District Two Employees and School Officials from Blythewood Middle School and Muller Road Middle School that the purpose of the opening of Westwood High School was to “relieve the overcrowding” at Blythewood High School.
9. With the addition of Westwood High School, The Richland School District Two Board was charged with “Changing the School Attendance Lines” to accommodate the growth in the Blythewood Area.
10. The District adopted new high school attendance lines on December 6, 2012.
11. The Blythewood High School Student Community was split in two by the addition of Westwood High School.
12. The re-zoning of Westwood and Blythewood Schools resulted in the creation of a de-facto Segregated High School System.
13. The split of the 29016 area code into two different high schools coupled with the improper application of “school choice” as administered by the district resulted in a

“de-facto” segregated school system for the high School Students. Blythewood High School being a majority White High School and Westwood High School being approximately 81% African American High School. The immediate surrounding population of Blythewood in zip-code 29016 is 56% White with 44% African American. (Blythewood Published Census information for zip code 29016). This violates the 20 percentage rule as outlined *Green v. County School Board of New Kent, 1968*.

14. The Middle Schools computers for the fall term of 2012-2013 had all 29016 high school students assigned to Blythewood High School until at least April 16, 2012 which was well after the “school choice” deadline.
15. School Choice is administered by the district Registrar, Roger Wiley and supervised by the planning department chief, Fred McDaniel, PhD. Both positions are supervised by the District Superintendant, Katie Brochu, PhD. The ultimate authority in approving or not approving student transfers rests in the Richland School District Two Board of Education Trustees, the same board that administered the School Attendance Lines for the new High School.
16. The district Registrar Roger Wiley allowed any and all students to “choice into” Blythewood High School simply by applying during the choice period. However, Preference was given to siblings of current attendees at Blythewood High School, Children of Teachers employed by any school in the district and students that had previously attended Blythewood High School.
17. As a result of the significant numbers of students requesting to matriculate at Blythewood High School, Richland county planning department effectively

eliminated all requests for transfer based on “over-crowding” to Blythewood High School even when such transfer is endorsed by the state “Gifted and Talented” statute

For a First Cause of Action
Declaratory Judgment

Plaintiff re-alleges and incorporates by reference each and every allegation in each and every aforementioned paragraph as if fully set forth herein.

1. Did the rezoning of High School Students in the Blythewood Zip Code 29016 result in a “De-facto Segregated High School Choice” for the Residents of 29016 thereby violating the equal protection clause of the 14th amendment to the constitution?
2. Did the Richland County School District and Richland County School Board adequately take into account the Statutory protections of the “Gifted and Talented Students” as a sub group of the Student population of 29016 as required under the “Gifted and Talented Legislation” 59-29-170;172;174 and regulation R43-220 in the denial for transfer of Student #1 John Doe
3. Did the school District have a duty to update the computers at the Middle School to provide effective notice for student’s high school assignments prior to closing “school choice” and refusing to transfer student #1 John Doe based on this lack of notice?
4. The board denied the appeal of Student #1 John Doe in part based on a statement made by a member of the school board that it was illegal for a physician to treat a member of his own family, and therefore that the physician father’s evaluation was invalid. Was the board members statement regarding the illegality of a physician treating his family incorrect, making the Boards premise for denial invalid?

18. Upon information and belief the Plaintiff is entitled to a Declaratory judgment pursuant to S.C.R.C.P 57 and South Carolina Code 15-53-10 through 15-50-140 to determine a question of actual controversy regarding the interpretation of statutes 59-29-170;59-29-172 and R43-220 regarding the transfer request of a “Gifted and Talented” Student.
19. Discriminatory Denial of Transfer of Student #1 John Doe based on violations of the Equal protection clause under the law of the 14th Amendment to the Constitution, Regulation 43-220 and Statutes 59-29-170; 59-29-172-174.
20. The Richland County Superintendant did not adequately monitor the “Student Choice” program or those employees responsible for administering the program resulting in the lack of policies and procedures being in place to adequately protect the “Gifted and Talented” population.
21. There were also no programs in place that evaluated the affect on the “Gifted and Talented” pool of students in the change in high school attendance zones as recommended by the “Best Practices Manual of May 2006 Second Edition” as outlined for guidance under the state statute of 59-29-170 and 59-29-172 and regulation R 43-220.
22. Regulation 43-220 is a SC Gifted and Talented Mandate Regulation which provides for the “acceleration” of the Gifted and Talented Students in South Carolina and categorizes the “Gifted and Talented Students” as a special class of students worthy of, in some instances, special consideration.
23. Code of Laws 59-29-170; 59-29-172 ensures that “students in the gifted and talented program have access to the curriculum and instruction **most appropriate** to their gifts

and talents. Regulation 43-220 gives guidance to the school board to rely on “SC Best Practices for Gifted and Talented Education” for guidance in decisions affecting this group of students.

24. There was no program in place that effectively evaluated the change in schools and peer groups of the “Gifted and Talented” population effectively re-zoned to Westwood and displaced from their “peer group” and “group of support friends”. While this has been harmful for the general population of affected students. This violated statute 59-29-172 “AS TO PROVIDE THAT THE OFFICE OF GIFTED AND TALENTED EDUCATION MUST REVIEW REGULATIONS AND PROGRAM GUIDELINES AND DISTRICTS MUST ADOPT POLICIES FOR ENROLLMENT PRACTICES.”

25. 59-29-174 Section 1. The General Assembly of the State of South Carolina finds that:
1) the academic achievement of South Carolina’s strongest students must be nurtured and accelerated....

26. The District Two School Board held several public meetings regarding the new school lines and disseminated the school lines via various sources including their internal online TV as well as internal district television channels and local papers. However, upon information and belief they did not direct the District to update the data-bases in the middle school computers to reflect the new high school designated for the middle school to attend.

27. The District did not make any efforts to update their own internal computers housed at the Middle School to make sure that correct information was available to the middle school and disseminated to the middle school students. Instead they elected to

disseminate information in the public domain via mass media forums. They made no plans to inform parents of the “Gifted and Talented” students of changes in the school environment in violation of Section 59-29-1702 (C) Schools and Districts are encouraged to implement intradistrict and interdistrict enrollment practices to ensure that the students in the gifted and talented program have access to curriculum and instruction **most appropriate** to their gifts and talents. R43-220 references the South Carolina Best Practices for Gifted and Talented Education, 2006.

28. Parents that called the middle school to confirm the high school assignment for their rising 9th grader were told that the High school designated was the high school from the previous year’s assignment (2011 and not 2012) and was in fact “stale information.”
29. In an effort to assist in the transition of the new school assignments, the School Board initiated an application for “school choice” if the rising 9th graders preferred a different school than their assigned school.
30. The “school choice” program ended on January 28, 2012. The middle school computers were not updated until April 16, 2012 which was well after the close of choice including the extended “choice” deadline.
31. The fact that the computers were not updated to reflect the correct High School Assignment prior to the end of choice was a duty breached by the School District. Parents and citizens who may move to the district and who currently live in the district have a right to accurate information being “stored” and “disseminated” from the school computers as accurate. Regardless of information disseminated in the public domain as the middle schools is the primary source of information for parents.

32. John Doe requested transfer to Blythewood High School based on his status as a “Gifted and Talented” student who was severely affected by the change in school and the loss of his peer group and support network of friends.
33. During the previous months, Student # 1 was intimately involved in two very tragic and traumatic traffic deaths that in one instance left #1 in charge of his three younger siblings on the side of a U.S. Highway.
34. Regulation R43-220 Gifted and Talented: The State Board of Education recognizes the need to provide services for the Gifted and Talented students....all regulations must be followed in order to qualify for State funding. Under regulation 2 (B) Guidance must be derived from the SC Gifted and Talented Best Practices Manual.
35. South Carolina Gifted and Talented Best Practices Manual, 2006 P. 31 “Also, schools must form collaborative relationships with parents to ensure that the educational services provide the **particular needs** of gifted and talented students. “Our Gifted and Talented students are far too important to be “left behind” or to “fall through the cracks of our educational system.”
36. South Carolina Gifted and Talented Best Practices Manual , 2006 Chapter 5
“Evaluation should always be directed toward **Bold Action** that hopefully will be directed at the services for the Gifted and Talented through the continuation, modification or elimination of conditions which affect learning.” Joseph Renzulli
37. The Plaintiff prays that the court fully investigate the legislative intent in evaluating the transfer request of Student #1 John Doe and issue its ruling on whether to allow Student #1 John Doe to transfer.

For a Second Cause of Action: Violation of the 14th Amendment Equal Protection Clause as outlined in Brown v. Board of Education.

38. The Plaintiff re-alleges and incorporates by reference each and every allegation in each and every aforementioned paragraph as if fully set forth herein.

39. The Richland District Two School Board created a “De-facto Segregated High School System for the Blythewood 29016 zip code by favoring African American students for the Westwood High School Campus and Caucasian Students for the Blythewood High School Campus violating the student’s constitutional rights at each of the de-facto segregated schools. Brown v. Board of Education, 347 U.S. 483 (1954)

40. This Segregation of School Campuses into “Majority White” for Blythewood and “Majority African American” for Westwood was further exacerbated by the implementation of a discriminatory “school choice” program effectively creating a Segregated High School population for Blythewood Students **which is not reflected in any other of the Blythewood zip code 29016 schools.**

Discriminatory Denial of Transfer in Violation of State Statute 59-29-170; 59-29-172 and Regulation R43-220

41. The Richland District Two Registrar and The Richland District Two Board of Trustees failed to set- up programs to accommodate and plan for the “Gifted and Talented” sub group of students as mandated by state law.

42. The Plaintiff re-alleges and incorporates by reference each and every allegation of each and every paragraph aforementioned as if fully set forth herein.

43. The Richland District Two Registrars and the Richland District Two Board of Trustees denied student #1 John Doe intra-district transfer from Westwood High School to Blythewood High School with the knowledge that the Middle School Computers had not been updated thereby violating his due process rights.
44. The Richland District Two School Board of Trustees and the Richland District Two Superintendent failed to create a program to accommodate the “Gifted and Talented” sub group of students as mandated by state law thereby violating their due process rights as outlined in the 14th amendment to the Constitution of the United States.
45. The “Board” could have and should have directed the “District” to evaluate the changes in the school zoning affect on the group of “Gifted and Talented” students but did not do so. Chapter 10 of SC Best Practices for Gifted and Talented Education, 2006

Roles and Responsibilities of School Boards and Administrative and Instructional Staffs:

Local School Board: Establishes policy based on law and R43-220 to provide for gifted and talented services to identified students in grades 1-12

Superintendent: Assigns responsibility for ensuring the R43-220 and guidelines are met

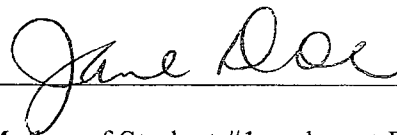
46. The Richland District Two School Board of Trustees and the Richland School District Registrar failed to follow South Carolina State law and evaluate Student #1 John Doe on an individual basis as directed in the “Gifted and Talented” legislation and R43-220. Instead referencing a waitlist of over 100 students trying to get “choiced into” Blythewood High School. Thereby violating the equal protection clause under the 14th Amendment to the Constitution of the United States.

47. The Richland County School Board discriminated against Student #1 John Doe by “lumping him into the general population” in direct conflict with R43-220 thereby violating the equal protection clause of the 14th amendment to the constitution.

WHEREFORE, The Plaintiff prays the court to find against the Defendants and allow Student #1 John Doe to transfer immediately to Blythewood High School or the school that houses his peer support group and the costs associated with this complaint.

Respectfully submitted,

Jane Doe,

A handwritten signature in cursive script that reads "Jane Doe". The signature is written in black ink and is positioned above a horizontal line.

Mother of Student #1 and next Friend
Post Office Box 689
Blythewood, SC 29016
(803)318-0123c

STATE OF SOUTH CAROLINA

COUNTY OF Richland

IN THE COURT OF COMMON PLEAS

Student #1 John Doe of Student; Plaintiff(s)

Mother of Student #1 John Doe; Redacted Name of Mother

Board of Trustees, Richland Co School District Two; Dr. Katie Brochu; In her official capacity; Defendant(s)

Submitted By: Rhonda Mersaw, School Superintendent; Address: PO Box 689, Blythewood, SC 29016; 803-960-3696, 1 Chester Rd, Blythewood, SC 29016

Amended

CIVIL ACTION COVERSHEET

2012 -CP- 40 - 7/22

SC Bar #: N/A; Telephone #: (803) 960-3696 / 803-318-0123; Fax #: (803) 318-0123; Other: pegasus@nuvox.net; E-mail: pegasus@nuvox.net

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint. This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules. This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules. This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Construction (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20 -CP-
Torts - Personal Injury: Assault/Slander/Label (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Habeas Corpus (530), Other (599)
Administrative Law/Relief: Reinstatement License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript of Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Confession of Judgment (770), Petition for Workers Compensation Settlement Approval (780), Other (799)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOF (950), Worker's Comp (960), Zoning Board (970), Public Service Commission (990), Employment Security Commission (991)
Special/Complex /Other: Environmental (600), Automobile Arb (610), Medical (620), Other (699), Sexual Predator (510), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions, Motion to Quash Subpoena in Out-of-County Action (560), Other (999)

2012 NOV 13 PM 2:35

Richland School District Two School Board Decs

Submitting Party Signature: Rhonda Mersaw Date: 11/13/2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Student #1 John Doe. Plaintiff;
REDACTED NAME OF STUDENT;
REDACTED NAME OF MOTHER
OF
STUDENT #1 JOHN DOE, Plaintiff

Vs

SECOND AMENDED COMPLAINT

APPEAL OF DECISION OF
RICHLAND COUNTY SCHOOL
DISTRICT TWO AND BOARD OF
TRUSTEE'S, DISTRICT TWO

Board of Trustees, Richland School
District two
Richland School District Two
Superintendent, Dr. Katie Brochu,
In her official capacity as School
Superintendent.

JEANETTE W. ANDERSON
C. C. H. & G. S.
2012 NOV 13 PM 12:35

TO THE DEFENDANTS NAMED ABOVE:

The Plaintiff, Student #1 John Doe and the Plaintiff Student #1 John Doe's mother. is initiating this action by and through his mother and Next Friend (REDACTED NAME OF MOTHER).

John Doe Student #1 and Mother would request unto this Honorable Court a review of the Decision of the Richland School District Two Planning Department and The Richland County School Board of Trustees, Richland School District Two: The Denial of the intra-district transfer of a "Gifted and Talented" Student #1 John Doe from Westwood High School to Blythewood High School pursuant to South Carolina Statute §59-19-560.

JURISDICTION AND VENUE:

of a “Gifted and Talented” Student #1 John Doe from Westwood High School to Blythewood High School pursuant to South Carolina Statute §59-19-560.

JURISDICTION AND VENUE:

The Plaintiff Student #1 John Doe is a citizen of the United States of America and a resident of Blythewood, South Carolina. The Plaintiff, Student #1’s Mother, is a citizen of the United States and resident of Blythewood SC and Isle of Palms SC. By nature of the fact that John Doe is a minor and the court system is unavailable to him this appeal is submitted by his mother, (NAME REDACTED) as his legal guardian, as his advocate and as his next friend. (REDACTED MOTHERS NAME) next friend Status meets the criteria set in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004). Furthermore, Student #1’s (REDACTED NAME OF MOTHER) has standing to initiate proceedings for child under §63-3-550 and §63-7-20 (c) and 10 (b). Furthermore, the Supreme Court of the United States of America, in the *Winkelman vs. Parma City School Dist* (No5-983) 2007 Supreme Court Opinion gives parents independent rights under IDEA and FAPE and therefore enables them to represent their children as a continuation of the “administrative remedies” available under state statute law. The federal law is consistent with the language in South Carolina’s statutory construct of the “Gifted and Talented” legislation R43-220.

The defendants are the Richland School District Two Board of Trustees and the Richland School District Two Superintendent, in her official capacity, as Superintendant of School District Two.

This action arises out the Equal Protection Clause and the Due Process Clause of the 14th Amendment of the Constitution of The United States of America and the interpretation of a state statute for “Gifted and Talented Students” regarding the denial for intra-district transfer of a

“Gifted and Talented” Student. The actions of the School Board violate the holdings found in *Brown v. Board of Education*, 347 U.S. 483 (1954). The denial of transfer of Student #1 John Doe does not comply with The Educational Improvement Act of 1984; South Carolina Code of Laws §59-29-170 Establishment of a Gifted and Talented Education and Section §59-29-172; §59-29-174 and; Regulation 43-220 Guidelines for serving the Gifted and Talented.

This Action is to remedy deprivation, under color of law, of individual rights secured to both Plaintiffs, John Doe Student #1 and John Doe Student #1’s mother, by the aforementioned constitutional provisions and state statutes governing “Gifted and Talented” education. This court has jurisdiction over the defendant pursuant to S.C.R.C.P. 57 §15-53-10 through §15-53-140 and SC jurisdiction for appeals of decisions of the school board under §59-19-560. Further this court has authority to award costs under §15-53-100. This is an action for declaratory judgment regarding the interpretation of a state statute and the resulting denial of intra-district transfer to Student #1 John Doe. A jury trial is demanded if available by law.

FACTS OF CASE AND APPEAL:

1. Richland School District Two is one of the fastest growing districts in the State of South Carolina. The Northeast Area is an area of significant growth and as such has added several new schools in the last year.
2. The legislature enacted R43-220 “A Gifted and Talented Mandate” under §59-29-170; § 59-29-172 THROUGH 174 South Carolina Gifted Programs Mandate under the 1984 South Carolina Educational Improvement Act.
3. Student #1 John Doe was designated “highly gifted” in the second grade via national ranking tests placing him in the 99 percentile nationally in math on standardized tests.

He was subsequently identified by DUKE University as “highly gifted” and joined the DUKE talent identification program (TIPS) in the fifth grade. S. C Code Ann. Regs 43-220.2 (B)(7)(b).

4. In Seventh Grade, Student #1 John Doe re-qualified for DUKE Tips and scored 99% in math and 96% in reading. Indicating that only 1% of the students nationally scored better than him in math.
5. The Greater Blythewood High School Students (zip code 29016) all attended Blythewood High School prior to the addition of Westwood High School.
6. Westwood High School is the newest High School and is considered a “Luxury High School” with a complete stadium, media center and gymnasium of college quality construction.
7. The Blythewood community generally and Student #1 John Doe specifically was under the impression based on public comments of the Richland District Two Employees and School Officials from Blythewood Middle School and Muller Road Middle School that the purpose of the opening of Westwood High School was to “relieve the overcrowding” at Blythewood High School.
8. With the addition of Westwood High School, The Richland School District Two Board was charged with “Changing the School Attendance Lines” to accommodate the growth in the Blythewood Area.
9. The District adopted new high school attendance lines on December 6, 2012.
10. The Blythewood High School Student Community was split in two by the addition of Westwood High School.

11. The re-zoning of Westwood and Blythewood Schools resulted in the creation of a de-facto Segregated High School System.
12. The split of the 29016 area code into two different high schools coupled with the improper application of “school choice” as administered by the district resulted in a “de-facto” segregated school system for the high School Students. Blythewood High School being a majority White High School and Westwood High School being approximately 81% African American High School. The immediate surrounding population of Blythewood in zip-code 29016 is 56% White with 44% African American. (Blythewood Published Census information for zip code 29016). This violates the 20 percentage rule as outlined *Green v. County School Board of New Kent County*, 391 U.S. 430 (1968).
13. The Middle Schools computers for the fall term of 2012-2013 had all 29016 high school students assigned to Blythewood High School until at least April 16, 2012 which was well after the “school choice” deadline. EXHIBIT # 1 REDACTED EMAIL FROM PARENT TO FRED MC DANIEL, PhD
14. School Choice is administered by the district Registrar, Roger Wiley and supervised by the planning department chief, Fred McDaniel, PhD. Both positions are supervised by the District Superintendent, Katie Brochu, PhD. The ultimate authority in approving or not approving student transfers rests in the Richland School District Two Board of Education Trustees, the same board that administered the School Attendance Lines for the new High School.
15. The planning department under direction of Fred McDaniel, PhD did not evaluate the new lines submitted to the Board of Trustees to ensure that the lines complied with

the law. Fred McDaniel was not adequately supervised by Katie Brochu, PhD and the actions of the planning department were not adequately analyzed by the Board of Trustees when evaluating the final school district lines for attendance with regard to the high school students. *Brown v. Board of Education*, 347 U.S. 483(1954).

16. The district Registrar Roger Wiley allowed any and all students to “choice into” Blythewood High School simply by applying during the choice period. However, Preference was given to siblings of current attendees at Blythewood High School, Children of Teachers employed by any school in the district and students that had previously attended Blythewood High School but no consideration was given to the “Gifted and Talented” group of students that were protected by State Statute. SEE EXHIBIT # 3 South Carolina Code of Laws as amended 1976 59-29-170 Establishment of a Gifted and Talented Education
17. As a result of the significant numbers of students requesting to matriculate at Blythewood High School, Richland county planning department effectively eliminated all requests for transfer based on “over-crowding” to Blythewood High School even when such transfer is endorsed by the state “Gifted and Talented” statute. SEE EXHIBIT #4 R 43-220

For a First Cause of Action
Declaratory Judgment

Plaintiff re-alleges and incorporates by reference each and every allegation in each and every aforementioned paragraph as if fully set forth herein.

1. Did the rezoning of High School Students in the Blythewood Zip Code 29016 result in a “De-facto Segregated High School Choice” for the Residents of 29016 thereby

violating the equal protection clause of the 14th amendment to the United States constitution for Student #1 John Doe?

2. Did the Richland County School District and Richland County School Board adequately take into account the Statutory protections of the “Gifted and Talented Students” as a sub group of the Student population of 29016 as required under the “Gifted and Talented Legislation” §59-29-170;172;174 and regulation R43-220 in the denial for transfer of Student #1 John Doe?
3. Did the school District have a duty to update the computers at the Middle School to provide effective notice for student #1 John Doe’s high school assignment prior to closing “school choice” and if so did refusing to transfer student #1 John Doe based on the fact that he did not apply for transfer during the notice period violate the equal protection or due process clause of the 14th Amendment to the U.S. Constitution?
4. The board denied the appeal of Student #1 John Doe in part based on a statement made by a member of the school board that it was “ illegal for a physician to treat a member of his own family”, and therefore that the physician father’s evaluation was invalid and eliminated from consideration. Was the board members statement regarding the illegality of a physician treating his family incorrect, making the Boards premise for denial invalid?

18. Upon information and belief the Plaintiff is entitled to a Declaratory judgment pursuant to S.C.R.C.P 57 and South Carolina Code 15-53-10 through 15-50-140 to

determine a question of actual controversy regarding the interpretation of statutes 59-29-170; 59-29-172 and R43-220 and the transfer request of a “Gifted and Talented” Student.

19. Discriminatory Denial of Transfer of Student #1 John Doe based on violations of the Equal protection clause of the 14th Amendment to the Constitution, Regulation 43-220 and Statutes 59-29-170; 59-29-172 through 174.
20. The Richland County Superintendent did not adequately monitor the “Student Choice” program or those employees responsible for administering the program resulting in the lack of policies and procedures being in place to adequately protect the “Gifted and Talented” population and specifically Transfer Student #1 John Doe.
21. There were also no programs in place that evaluated the affect on the “Gifted and Talented” pool of students in the change in high school attendance zones as recommended by the “Best Practices Manual of May 2006 Second Edition” as outlined for guidance under the state statute of §59-29-170 and §59-29-172 and regulation R 43-220.
22. Regulation 43-220 is a SC Gifted and Talented Mandate Regulation which provides for the “acceleration” of the Gifted and Talented Students in South Carolina and categorizes the “Gifted and Talented Students” as a special class of students worthy of special consideration due to a South Carolina State Initiative of contributing to the advancement of education via support of the State’s most “Gifted” Students.
23. Code of Laws §59-29-170; §59-29-172 ensures that “students in the gifted and talented program have access to the curriculum and instruction **most appropriate** to their gifts and talents. Regulation 43-220 gives guidance to the school board to rely

on “SC Best Practices for Gifted and Talented Education” for guidance in decisions affecting this group of students.

24. There was no program in place that effectively evaluated the change in schools and peer groups of the “Gifted and Talented” population effectively re-zoned to Westwood and displaced from their “peer group” and “group of support friends”. While this has been harmful for the general population of affected students. This lack of planning by the “planning department” violated statute §59-29-172 “AS TO PROVIDE THAT THE OFFICE OF GIFTED AND TALENTED EDUCATION MUST REVIEW REGULATIONS AND PROGRAM GUIDELINES AND DISTRICTS MUST ADOPT POLICIES FOR ENROLLMENT PRACTICES.” SEE EXHIBIT #5 SOUTH CAROLINA BEST PRACTICES MANUAL FOR GIFTED EDUCATION.,2006
25. § 59-29-174 Section 1. The General Assembly of the State of South Carolina finds that: 1) the academic achievement of South Carolina’s strongest students must be nurtured and accelerated....
26. The District Two School Board held several public meetings regarding the new school lines and disseminated the school lines via various sources including their internal online TV as well as internal district television channels and local papers. However, upon information and belief they did not direct the District to update the data-bases in the middle school computers to reflect the new high school designated for the middle school to attend nor did they consider the “Gifted and Talented” population of students.

27. The District did not make any efforts to update their own internal computers housed at the Middle Schools to make sure that correct information was available to the middle schools and disseminated to the middle school students and parents. Instead they elected to disseminate information in the public domain via mass media forums. They made no plans to inform individual parents of the “Gifted and Talented” students of changes in the school environment in violation of Section 59-29-1702 (C) Schools and Districts are encouraged to implement intradistrict and interdistrict enrollment practices to ensure that the students in the gifted and talented program have access to curriculum and instruction **most appropriate** to their gifts and talents. R43-220 references the South Carolina Best Practices for Gifted and Talented Education, 2006.
28. Parents that called the middle school to confirm the high school assignment for their rising 9th grader were told that the High school designated was the high school from the previous year’s assignment (2011 and not 2012) and was in fact “stale information.”
29. In an effort to assist in the transition of the new school assignments, the School Board initiated an application for “school choice” if the rising 9th graders preferred a different school than their assigned school.
30. The “school choice” program ended on January 28, 2012. The middle school computers were not updated until April 16, 2012 which was well after the close of choice including the extended “choice” deadline.
31. The fact that the computers were not updated to reflect the correct High School Assignment prior to the end of choice was a duty breached by the School District.

Parents and citizens who may move to the district and who currently live in the district have a right to accurate information being “stored” and “disseminated” from the school computers as accurate. Regardless of information disseminated in the public domain, the middle schools are the primary source of information for parents.

32. John Doe requested transfer to Blythewood High School based on his status as a “Gifted and Talented” student who was severely affected by the “lack of notice”, the change in high school assignment and the loss of his peer group and support network of friends.
33. During the previous months, Student # 1 John Doe was intimately involved in two very tragic and traumatic traffic deaths that in one instance left Student #1 John Doe in charge of his three younger siblings on the side of a U.S. Highway. Part of overcoming these tragedies was the support of his school peer group. SEE EXHIBIT # 6 ARTICLE FROM DAVIDSON GIFTED INSTITUTE BY Dr. Eileen Pfeidler, *Foundations for Understanding the Social-Emotional Needs of the Highly Gifted*.
34. Regulation R43-220 Gifted and Talented: The State Board of Education recognizes the need to provide services for the Gifted and Talented students....all regulations must be followed in order to qualify for State funding. Under regulation 2 (B) Guidance must be derived from the SC Gifted and Talented Best Practices Manual.
35. South Carolina Gifted and Talented Best Practices Manual, 2006 P. 31 “Also, schools must form collaborative relationships with parents to ensure that the educational services provide the **particular needs** of gifted and talented students. “Our Gifted and Talented students are far too important to be “left behind” or to “fall through the

cracks of our educational system.”SEE EXHIBIT # 7 REDACTED LETTER FROM FATHER OF STUDENT #1 JOHN DOE.

36. South Carolina Gifted and Talented Best Practices Manual , 2006 Chapter 5

“Evaluation should always be directed toward **Bold Action** that hopefully will be directed at the services for the Gifted and Talented through the continuation, modification or elimination of conditions which affect learning.” Joseph Renzulli

37. The Plaintiff prays that the court fully investigate the legislative intent in referencing the South Carolina Gifted and Talented Best Practices Manual, 2006 several times in regulation R43-220 in order to evaluate compliance with the “Gifted and Talented Students”. In view of this reference to “the Manual”, did the planning department and the Board of Trustees evaluate the transfer request of Student #1 John Doe and issue its ruling on whether to allow Student #1 John Doe to transfer with adequate reference to the South Carolina Gifted and Talented Best Practices Manual, 2006.

For a Second Cause of Action: Violation of the 14th Amendment Equal Protection Clause as outlined in Brown v. Board of Education.

38. The Plaintiff re-alleges and incorporates by reference each and every allegation in each and every aforementioned paragraph as if fully set forth herein.

39. The Richland District Two School Board created a “De-facto Segregated High School System for the Blythewood 29016 zip code by favoring African American students for the Westwood High School Campus and Caucasian Students for the Blythewood High School Campus violating the student’s constitutional rights at each of the de-facto segregated schools. Brown v. Board of Education, 347 U.S. 483 (1954). While the student population was affected generally, Student#1’s John Doe

status as “Gifted and Talented” student’s rights were violated a special sub-class with a state supported advocacy mission of “accelerating the states’ Gifted Students”.

40. This Segregation of High School Campuses into “Majority White” for Blythewood and “Majority African American” for Westwood was further exacerbated by the implementation of a discriminatory “school choice” program effectively creating a Segregated High School population for Blythewood Students **which is not reflected in any other of the Blythewood zip code 29016 schools.**

For a Third Cause of Action: Violation of the Due Process Clause of the 14th Amendment to the United States Constitution.

Discriminatory Denial of Transfer in Violation of State Statute §59-29-170; § 59-29-172 and Regulation R43-220

41. The Richland District Two Registrar and The Richland District Two Board of Trustees failed to set- up programs to accommodate and plan for the “Gifted and Talented” sub group of students as mandated by state law.
42. The Plaintiff re-alleges and incorporates by reference each and every allegation of each and every paragraph aforementioned as if fully set forth herein.
43. The Richland District Two Registrars and the Richland District Two Board of Trustees denied student #1 John Doe intra-district transfer from Westwood High School to Blythewood High School with the knowledge that the Middle School Computers had not been updated and that they “orchestrated a predominately an African American High School” thereby violating his due process and equal protection rights.

44. The Richland District Two School Board of Trustees and the Richland District Two Superintendent failed to create a program to accommodate the “Gifted and Talented” sub group of students as mandated by state law thereby violating their due process rights as outlined in the 14th amendment to the Constitution of the United States.
45. The “Board” could have and should have directed the “District” to evaluate the changes in the school zoning affect on the group of “Gifted and Talented” students but did not do so. Chapter 10 of SC Best Practices for Gifted and Talented Education, 2006

Roles and Responsibilities of School Boards and Administrative and Instructional Staffs:

Local School Board: Establishes policy based on law and R43-220 to provide for gifted and talented services to identified students in grades 1-12

Superintendent: Assigns responsibility for ensuring the R43-220 and guidelines are met.

46. The Richland District Two School Board of Trustees and the Richland School District Registrar failed to follow South Carolina State law as well as Federal law and evaluate Student #1 John Doe on an individual basis as directed in the “Gifted and Talented” legislation and R43-220. Instead, they referenced a waitlist of over 100 students trying to get “choiced into” Blythewood High School. Thereby violating the equal protection clause under the 14th Amendment to the Constitution of the United States.
47. The Richland County School Board discriminated against Student #1 John Doe by “lumping him into the general population” in direct conflict with R43-220 thereby

violating the equal protection clause and the due process clause of the 14th amendment to the constitution. The Legislature has stated the “Gifted and Talented” students are far too important to be “left behind” or to fall through the cracks of the educational system thereby placing them in a special category of students.

48. The Richland County School Board and Richland County District Two Officials knew or should have known the Segregated High School System they were creating was unconstitutional; therefore, their actions were willful, wanton and reckless to proceed with re-districting that violated the constitutional rights of the students including Student #1 John Doe or negligent in their evaluation of the creation of the “de-facto segregated” schools.
49. The Richland County School Board and the Richland County District Two Officials were negligent in not following the recommendations of the South Carolina Best Practices Manual for Gifted and Talented Education as required by R43-220. This action was intentional and resulted in harm to Student #1 John Doe. Furthermore, even if the “Board” and The “District” were only initially negligent during the planning stage, the student appeals process gave them the opportunity to correct their errors when they were informed, therefore their actions violated the law. They did not correct the errors therefore their actions were willful and wanton with blatant disregard for the constitutional rights and state legislated rights of Student #1 John Doe as outlined by R43-220 and **The South Carolina Best Practices Manual for Gifted and Talented Education.,2006.**

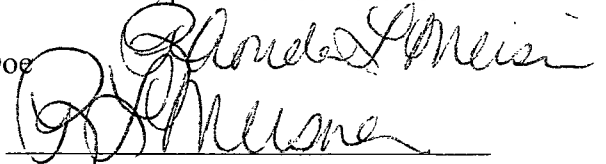
Confidential

WHEREFORE, The Plaintiff prays the court to find against the Defendants and allow Student #1 John Doe to transfer immediately to Blythewood High School or the school that houses his peer support group; Set up Policies and Procedures for "Gifted and Talented Students" so that when a change in their school environment is imminent the board is required to create policies and procedures regarding Gifted and Talented students. This would ensure that parents and students are notified in advance of the changes to protect Student #1 John Doe in the future; as well as advocate attorney fees not listed as counselors in the case but provided significant help with the appeal in this matter along with the costs associated with this complaint that this honorable court may determine and any amounts to deter the Richland School Board District Two from further illegal "re-districting" and denial of future transfers of Student #1 John Doe. The Plaintiff demands a Jury Trial if available under the law in this de-novo review of the Richland School District Board of Trustees decision.

Respectfully submitted,

Rhonda L Meisner, parent of Student #1

John Doe



The image shows two handwritten signatures. The top signature is in cursive and reads "Rhonda L Meisner". The bottom signature is also in cursive and appears to be "R. Meisner". Both signatures are written over a horizontal line.

Natural guardian and next friend of Plaintiff John Doe

PO Box 689 Blythewood South Carolina 29016

Telephone 803-318-0123 and (803)960-3696

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF Richland, REDACTED NAME

John Doe Student #1
Mother of John Doe Student #1
REDACTED NAME OF MOTHER Plaintiff,

PROOF OF ADR OR EXEMPTION

⊗ 2012-CP-40-7122

FILE NO.:

vs. Richland District Two School
Board of Trustees; Dr. Katie Brockie,
Superintendent, in her official
Defendant. Capacity)

(An original and copy of this form is to be completed and filed with the Office of the Clerk of Court and a copy forwarded to the attorneys for the parties within 10 days of the conclusion of ADR, or within 300 days of the filing date of the action, whichever is earlier.)

PURSUANT to the Court's Standing Order for Alternative Dispute Resolution dated _____

A. I certify that this case is exempt from ADR for the following reason and the parties wish to exercise that exemption:

Appeal of School Board Decision

Rhonda L. Meisner Rhonda L. Meisner
Plaintiff/Attorney for Plaintiff Defendant/Attorney for Defendant

Rhonda L. Meisner _____
Print Name Print Name

(803) 960-3696 _____
Phone/Fax Phone/Fax
Date: 11/13/2012

B. _____ 1. Alternative Dispute Resolution (ADR) was conducted in the form of:

(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator):

3. The ADR was conducted on _____, 200 _____

4. As a result of ADR, this case should be considered (please check one);

() Fully Settled.

() by Consent Judgment, to be filed by _____

or () Voluntary Dismissal to be filed by _____

() Partially Settled.

() At an Impasse.

() In need of further ADR I am am not willing to continue as a neutral. I recommend that ADR resume as of _____

5. Plaintiff was present was not present
Defendant was present was not present

6. Other participants were:

_____ Lawyer for Defendant _____
_____ Lawyer for Plaintiff _____
_____ Representative for Insurance Carrier _____
_____ Guardian *ad Litem* _____
_____ Experts _____
_____ Others _____

7. Choice of the neutral was by:

_____ Stipulation
_____ Court Order

8. The total number of hours spent in ADR was: _____ hours.

9. Further comments of the neutral: _____

Neutral's Signature

Date: _____

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND SCHOOL DISTRICT TWO BOARD
Court of Common Pleas

James R. Barber III, Circuit Court Judge

Case No. 2013-000532

STUDENT #1, JOHN
DOE, REDACTED, NAME
OF STUDENT, REDACTED
NAME OF MOTHER OF
STUDENT #1 JOHN DOE

Appellants,

v.

BOARD OF TRUSTEES,
RICHLAND SCHOOL
DISTRICT TWO,
RICHLAND SCHOOL
DISTRICT TWO
SUPERINTENDANT,
KATIE BROCHU, IN HER
OFFICIAL CAPACITY AS
SCHOOL
SUPERINTENDANT

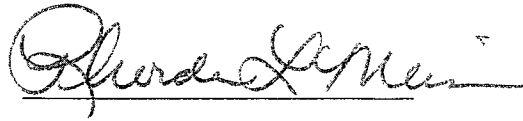
Respondents.

RECEIVED
AUG 8 2013
SC Court of Appeals

MEMORANDUM PURSUANT TO COURT ORDER OF JULY 30, 2013

Appellants submit this memorandum pursuant to Court Order of July 30, 2013 received
on August 1, 2013.

August 9, 2013


Rhonda Meisner
Post Office Box 689
Blythewood, South Carolina 29016
(803) 960-3696
Appellant

Counsel of Record:
John Marshall Reagle, Esquire

Kathryn Long Mahoney, Esquire
Tyler Turner, Esquire
Childs and Halligan, P.A.
Post office Box 11367
1301 Gervais Street Suite 500
Columbia, SC 29211
(803) 254-4035

Appellant, Mother of Student #1 John Doe (hereinafter "Mother") and Student #1 John Doe (hereinafter Student #1) (collectively Appellants) respectfully submits this memorandum in answer to the questions posed by the South Carolina Court of Appeals Order filed July 30, 2013 and received August 1, 2013. The order instructs the parties to further brief their position as to why this matter is immediately appealable. In the Order, the Court asked the parties to address two issues which relate to the appealability of the Temporary Restraining Order given:

(1) the motion for the temporary restraining order did not seek an order prohibiting action, as are injunctions, but sought an order compelling action

Background

The original action precipitating the need for issuance of a Temporary Restraining Order is an appeal of an adverse education decision by the Richland School District Two (hereinafter "District") and the affirmation of the decision by the Richland School District Two Board ("Board") under S.C. Code Ann. §59-19-560. The statute outlines the appeal process and directs "any party aggrieved to a review of the decision of the Board via an appeal to the Circuit Court for a judge alone de-novo review". The statute provides for a judge alone review in the same manner of all equity appeals. The Appellants argue the District violated Student #1's procedural due process rights by negligently maintaining the information stored in their middle school computers.¹ The right to a free education is provided to all of South Carolina Students via the S.C. Const. art XI§3. The Board offered the opportunity for students to "choose" the school of their

¹ Second Amended Complaint

choice via an "expanded choice" lottery process. Students who were not satisfied with their assigned school could request the school of their choice via the "expanded choice" process. The main source of information that is dissemination students is from the school the student's currently attend. The Richland School District Two Board approved the change in attendance lines for the new High School opening in Blythewood in December of 2011. The Choice program ran from Jan1-31, 2012. The middle school computers were not updated to reflect the new attendance lines until April of 2012, which was after the choice deadline.

Parents, like the Mother that called the school for the assignment of their child were given stale and erroneous information. Had the information stored in the school computers been accurate, Student #1 could have participated in the choice lottery. There is no need to participate in the lottery if their child was assigned to the appropriate school which was the information received by Mother. Student #1 was assigned to Blythewood High School, the appropriate school for his gifts and talents until at least the April counseling sessions. Upon learning the information supplied by the school regarding assignment of Student #1 was erroneous, Mother requested his assignment be returned to Blythewood High School, the most appropriate school for his gifts and talents. Mother notified the District of both her and Student #1's request. She also notified the district that Student #1 was a member of the Gifted and Talented group of students and it was her opinion that his gifts would best be served at Blythewood High School due to a series of recent traumatic events requiring the comfort of his support group of friends. The District denied the request without considering Student #1's status as an individual member of the Gifted and Talented sub-group of students and recommended

his transfer request be denied to the Board without informing the Board the District did not consider his status in the Gifted and Talented program prior to the denial. Mother appealed the denial pursuant to 59-19-560 and requested a TRO to return him to the school that he was assigned prior to the controversy. This appeal follows:

Argument:

The Court has rightly characterized the confusion surrounding the "Order to Deny Temporary Restraining Order" ("hereinafter Order") as well as the finality of the Order, even if only temporarily. This is primarily due to three things : 1) the lengthy process of school board appeals 2) the fluid nature of the appeal of school board decisions and 3) the inability of parents to legally enroll their child in any school "not authorized" by the school district, creating a dynamic "status quo". While the Order tends to read like a mandatory injunction; it is in fact, a motion to restrain the compelled matriculation at a newly opened High School. Defendants argue the point in time the "status quo" begins is the time immediately preceding entry into the Circuit Court phase of the appeal and not "the last peaceable position" prior to the commencement of the transfer request. Appellants argue the "status quo" is Student #1's assignment to Blythewood High School.

Status Quo

To clarify Appellants position, it is first important to explain the "status quo" and the due process violations by the District from the Appellants position. The Status quo has been defined as the last peaceable uncontested status that proceeded the pending controversy. The last peaceable status was Student #1's assignment to Blythewood High

School. Student #1 was reassigned to Westwood High School and compelled to attend. Appellants claim the notice for the change in High School zoning was defective in that the middle school computers, the primary source of information for parents had Student #1 still assigned to Blythewood High School until well after April of 2012 which prevented his ability to apply for expanded school choice. Appellants argue that once the District developed a process for "choosing" a high school they should have in place a mechanism to ensure the correct information is available so students have the opportunity to participate in "choice", in this case Student#1.

This defective notice violated Student #1's procedural due process rights. Choice was available to all students; however, providing inaccurate information to Mother prevented Student #1's participation. Even though Student #1 was not guaranteed success in his participation he at least would have had the opportunity to participate with adequate notice; a central concept of due process violations.

Parental Rights/Substantive Rights

Additionally, Appellants claim the South Carolina Gifted and Talented Statutes creates a property interest in additional education benefits and therefore invokes a due process analysis which was not followed or even recognized by the District. All school age South Carolina residents have a right to a free education under S.C. Const. art XI § 3; those students who individually qualify and are accepted into the pool of gifted and talented students gain additional rights and services under S.C. Code Ann. § 59-29-170 and Regulation 43-220. The South Carolina legislature has made clear the ability of parents to participate in the their children's education via the enactment of the State

Statute S.C. Code Ann §59-28-100 entitled "Parents involvement in their children's education act" additionally, S.C. Code Ann. §59-29-170 also gives parents independent rights separate from S.C. Code Ann. § 59-28-100. The participation in choice required both the Mother's involvement along with the Student #1's "choice" as students, without their parent could not apply for choice since the parents would be required to provide the transportation to the choice school. Here, like in the appeal of a Board decision; Mother and Student #1's rights are intertwined and cannot be separated.

The U.S. Supreme Court has cited a long history of their decisions upholding parental rights as fundamental.

The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." We have long recognized that the Amendment's Due Process Clause, like its Fifth Amendment counterpart, "guarantees more than fair process." *Washington v. Gluck berg*, 521 U.S. 702, 719, 138 L. Ed. 2d 772, 117 S. Ct. 2258 (1997). The Clause also includes a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests." 521 U.S. at 720; see also *Reno v. Flores*, 507 U.S. 292, 301-302, 123 L. Ed. 2d 1, 113 S. Ct. 1439 (1993).

The liberty interest at issue in this case--the interest of parents in the care, custody, and control of their children--is perhaps the oldest of the fundamental liberty interests recognized by this Court. More than 75 years ago, in *Meyer v. Nebraska*, 262 U.S. 390, 399, 401, 67 L. Ed. 1042, 43 S. Ct. 625 (1923), we held that the "liberty" protected by the Due Process Clause includes the right of parents to "establish a home and bring up children" and "to control the education of their own." Two years later, in *Pierce v. Society of Sisters*, 268 U.S. 510, 534-535, 69 L. Ed. 1070, 45 S. Ct. 571 (1925), we again held that the "liberty of parents and guardians" includes the right "to direct the

upbringing and education of children under their control." We explained in *Pierce* that "the child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." 268 U.S. at 535. We returned to the subject in *Prince v. Massachusetts*, 321 U.S. 158, 88 L. Ed. 645, 64 S. Ct. 438 (1944), and again confirmed that there is a constitutional dimension to the right of parents to direct the upbringing of their children. "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." 321 U.S. at 166.

De-facto Segregated High Schools in Blythewood

The Second Amended Complaint alleges that the Richland School District Two Board created a de-facto segregated school system for the Blythewood High School students which is not allowed under the South Carolina State Constitution.² During the TRO hearing, Ralph Schmidt, principal at Westwood High School testified as follows:

Q. Mr. Schmidt, when you first got the opportunity to open Westwood High School, were you surprised at the attendance of the students there?

A. You know, I started working with this over a year ago, with Dr. McDaniel, as we started planning this, so as I watched the attendance lines, I kind of knew where we were going to be.

Q. When you say you watched the attendance lines, what do you mean by that?

A. Well, I mean, I attended all of the school board meetings and so I got to see the discussions and what was going through the school board.

Q. So you knew the student population would be approximately 81% African Americans?

A. That is correct.

Q. And is that the same ratios in the other schools?

² Second Amended Complaint/Appeal ¶ #12 violating the holdings of *Green v. County School Board of New Kent County*, 391 U.S. 430 (1968).

A. No. I mean, there are some differences.

The Second Amended Complaint also alleges that the School District by redrawing the attendance lines coupled with the misapplication of choice created a de-facto segregated student population not allowed under the laws of this state.

S.C. Code Ann. 59-63-40 (2008). Discrimination on account of race, creed, color or national origin prohibited.

(1) No person shall be refused admission into or be excluded from any public school in the State on account of race, creed, color or national origin.

(2) Except with the express approval of a board having jurisdiction, no student shall be assigned or compelled to attend any school on account of race, creed, color or national origin, or for the purpose of achieving equality in attendance or increased attendance or reduced attendance, at any school, of persons of one or more particular races, creeds, colors, or national origins; **and no school district or attendance area, by whatever name known, shall be established, reorganized or maintained for any such purpose**, provided that nothing contained in this section shall prevent the assignment of a pupil in the manner requested or authorized by his parents or guardian, and further provided that nothing in this section shall be deemed to affect, in any way, the right of a religious or denominational educational institution to select its pupils exclusively or primarily from members of such religion or denomination or from giving preference to such selection to such members or to make such selection to its pupils as is calculated to promote the religious principle for which it is established. (emphasis added)

The District and Board has created a De-facto Segregated High School System via the redrawing of attendance lines and the inappropriate use of "expanded choice" in Blythewood not allowed under the laws of this state. Additionally ;after learning Student #1 was a member of the Gifted and Talented population they did not follow the Board of Education recommendations as outlined in 2 S.C. Regs. 43-220 (2011) referencing SC Best Practices for Gifted Education, 2006 (hereinafter "Board of Educ.") regarding

treatment of the Gifted and Talented Students as individuals and review his placement due to his "particular needs".

Gifted and Talented Statute: Property rights

Additionally, Appellants claim the South Carolina Gifted and Talented Statute creates a property interest in additional educational benefits and therefore invokes a due process analysis which was not followed or even recognized by the District. All school age South Carolina residents have a right to a free education under S.C. Const. art XI § 3; those students who individually qualify and are accepted into the pool of gifted and talented students gain additional rights and services under S.C. Code Ann. § 59-29-170 and 2 S. C. Regs 43-220 (2011)

The Gifted and Talented Statute S.C. Code Ann. §59-29-170 gives students participating in the program individual rights and therefore property interests in the furtherance of their education.

SECTION §59-29-170. Programs for talented students.

Not later than August 15, 1987, gifted and talented students at the elementary and secondary levels must be provided programs during the regular school year or during summer school **to develop their unique talents in the manner the State Board of Education must specify** and to the extent state funds are provided. The Education Oversight Committee shall study the implementation of this section and report its findings to the General Assembly by July 1, 1986. By August 15, 1984, **the State Board of Education shall promulgate regulations establishing the criteria for student eligibility in Gifted and Talented Programs.** The funds appropriated for Gifted and Talented Programs under the Education Improvement Act of 1984 must be allocated to the school districts of the State on the basis that the number of gifted and talented students served in each

district bears to the total of all those students in the State. However, districts unable to identify more than forty students using the selection criteria established by regulations of the State Board of Education shall receive fifteen thousand dollars annually. Provided, further, school districts shall serve gifted and talented students according to the following order of priority: (1) grades 3-12 academically identified gifted and talented students not included in the state-funded Advanced Placement Program for eleventh and twelfth grade students; (2) after all students eligible under priority one are served, students in grades 3-12 identified in one of the following visual and performing arts areas: dance, drama, music, and visual arts must be served; and (3) after all students eligible under priorities one and two are served, students in grades 1 and 2 identified as academically or artistically gifted and talented must be served. All categories of students identified and served shall be funded at a weight of .30 for the base student cost as provided in Chapter 20 of this title. Where funds are insufficient to serve all students in a given category, the district may determine which students within the category shall be served. Provided, further, no district shall be prohibited from using local funds to serve additional students above those for whom state funds are provided. (emphasis added).

In the Gifted and Talented Statute, the Legislature provides funds specifically to "develop" gifted and talented student's "unique" talents. The operative words in the statute are "unique" and "develop". Here the legislature provides additional funds for the individual students that qualify. The wording in the statute coupled with the "individual" qualifications required to participate and receive services creates a property interest and therefore the right to object when the District does not follow the regulations as outlined by the Statute. The word develop as defined by Merriam-Webster's online dictionary is "to make active or promote the growth of".

The South Carolina Supreme Court stated in several cases :

Where a statute does not specifically create a private cause of action, one can be implied **only if the legislation was enacted for the special benefit of a private party.** Citizens for Lee County v. Lee County, 308 S.C. 23, 416 S.E.2d 641 (1992) (emphasis supplied by the Court referencing this holding).

Here, the use of unique (meaning like no other; individual) and the use of the word "develop" refers to an individual right and the development of that right. Unlike the State Financing Act, a general statute; the Gifted and Talented Statute refers to individual Students by using the word unique. Respondents would like to "group" these students, once identified into a unidentified sub- group of the general student population; however, the statute directs the Board of Educ. to create a process to specifically identify the individual students in the group via testing. By using the Respondents method, the students if left unidentified, could not be provided the services the statute dictates. Respondents seem to argue that even though students qualify individually via test scores and are accepted into the program individually; once in the program, they are morphed into a creature like the fictional "Borg" operating as an " individual collective" and unable to be separated from the other members of their group. The analogy of the "borg" suggests that as individuals they cease to exist and only exist as a group of gifted and talented subjects.

Conclusion and Response to Court's First Question:

This appeal, while interlocutory due to the fact the main appeal was not ruled on; affects several substantial rights and therefore is immediately appealable. The Order is also the final determination of the issue of interrelated rights shared by Mother and Student #1

making the Order immediately appealable. The Order separates the rights of Mother from Student #1 thereby extinguishing some rights held by both Mother and Student #1 making the Order immediately appealable. Appellants argue the creation of the new high school violates the law by creating a de-facto segregated school system making the Order immediately appealable. The Order relied on S.C. Code Ann. §59-19-570 (2012) which States:

"Until the matter in controversy has been finally disposed of, no appeal shall act as a supersedeas or suspension of the order of the board having original jurisdiction of the cause."

Reliance on this statute further violates the due process arguments Appellants make in the appeal itself. It is axiomatic that if creation of the school student population violates the law, delaying the appeal via the reliance on a Statute in conflict with the facts further perpetuates the injury to Appellants. For the reasons stated above, the Appellants contend the Order is immediately appealable.

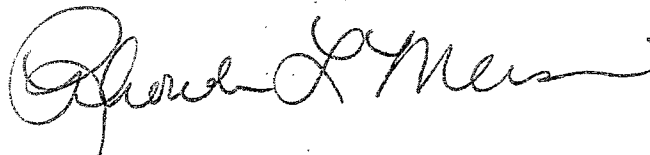
(2) the order, though labeled as an order denying a temporary injunction, actually denies the ultimate relief sought on appeal to the circuit court, even if only temporarily.

Appellants agree with the Court that the denial of the Temporary Restraining Order actually makes a conclusion on the merits of the appeal while never holding a "merits hearing". The Order does not reflect the evidence provided during the hearing and as such it was legal error to rely on S. C. Code Ann. 59-29-570 when substantial rights were affected. Judicial review of adverse education decisions that affect substantial rights

is critical to ensure that Boards do not overstep the authority the law conveys to them. Here, Appellants question both the legality of the school created, the system of notice to Mother and Student #1 and the District and Boards treatment of Student #1 as a member of the gifted and talented group of students. While Boards are given the exclusive authority to create schools and assign pupils; they are not given the right to violate the laws of the State of South Carolina and the rights of Student #1 and Mother. For the above reasons, Appellants suggest the Order from the TRO hearing is a final order and therefore ripe for Appellate review.

For the above reasons Appellants Respectfully submit the Denial of the TRO is immediately appealable.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Rhonda L. Meisner". The signature is fluid and cursive, with a large initial "R" and "M".

Rhonda Meisner, Appellant
Post Office Box 689
Blythewood, SC 29016
pegasus @nuvox.net
(803)960-3696

August 9, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

COUNTY OF Richland

STUDENT #1 JOHN DOE, Plaintiff
~~REDACTED NAME OF MOTHER OF STUDENT #1~~
John Doe, Plaintiff
Plaintiff,

CASE NO.: 2012-CP-40-07122

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

vs.
Board of Trustees, Richland School District Inc; Richland School District Superintendent, Dr. Katie Brooks
Defendant.
In her official Capacity

Plaintiff's Attorney:
Rhonda Weisner, Bar No. N/A
Address:
One Chester Rd Blythewood, SC 29016
Phone: 803-960-3696 Fax
E-mail: pegasus@nway.net Other:

Defendant's Attorney:
_____, Bar No. _____
Address: _____
Phone: _____ Fax: _____
E-mail: _____ Other: _____

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and II)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information
Nature of Motion: Temporary Restraining Order
Estimated Time Needed: 15 min Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type
 Written motion attached
 Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Rhonda Weisner
Signature of Attorney for Plaintiff / Defendant Date submitted 11/26, 2012

SECTION III: Motion Fee
 PAID - AMOUNT: \$ 55.00
 EXEMPT: (check reason)
 Rule to Show Cause in Child or Spousal Support
 Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRPC)
 Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
 Other: _____

JUDGE'S SECTION
 Motion Fee to be paid upon filing of the attached order.
 Other: _____

JUDGE CODE _____
Date: _____, 20____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____, 20____

MOTION FEE COLLECTED: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____

FILED
2012 NOV 26 PM 4:55
RICHLAND COUNTY

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Student #1 John Doe, Plaintiff;
REDACTED NAME OF STUDENT;
REDACTED NAME OF MOTHER
OF
STUDENT #1 JOHN DOE, Plaintiff

C.A. No. 2012-CP-40,07122

2012 NOV 26 PM 4:30
JANETTE R. MORRIS
C.C.P. & C.S.
RICHLAND COUNTY
FILED

Vs

**MOTION FOR
TEMPORARY
RESTRAINING ORDER**

Board of Trustees, Richland School
District TWO
Richland School District Two
Superintendent, Dr. Katie Brochu,
In her official capacity as School
Superintendent.

Plaintiffs Student #1 John Doe and Plaintiff Mother of Student #1 John Doe request the court to issue a Temporary Restraining Order and respectfully request a hearing on a Preliminary Injunction allowing Student #1 John Doe to immediately transfer to Blythewood High School, the school “most appropriate” for his gifts and talents under 59-19-560, R43-220 and The SC Best Practices for Gifted and Talented Education Guide 2006.

Defendants Dr. Katie Brochu, and the Richland School District Two Board of Education denied the transfer Student #1 John Doe to Blythewood High School in violation of his rights under 59-19-560 and R43-220. They failed to hold a “student study” with the gifted and talented

coordinator guidance counselor and parent as required under R43-220 and SC Gifted and Talented Best Practice Manual prior to their decision to refuse to transfer Student #1 John Doe.

In fact, State law **requires parents** and legal guardians to actively **provide such intervention** when required elements of education are not met. State Statute requires parents to intervene when their child is lacking and gives legal recourse to their inaction via state statute §63-7-20(c) fails to supply the child with adequate food, clothing, shelter, or education as required under Article 1 of Chapter 65 of Title 59, supervision **appropriate to the child's age and development**, or health care though financially able to do so or offered financial or other reasonable means to do so and the failure to do so has caused or **presents a substantial risk of causing physical or mental injury**".

However, a child's absences from school may not be considered abuse or neglect unless the school has made efforts to bring about the child's attendance, and those efforts were unsuccessful because of the parents' refusal to cooperate. For the purpose of this chapter "adequate health care" includes any medical or **nonmedical remedial health care** permitted or authorized under state law."

- 1) Any procedure that the district develops to review the student's placement must incorporate a "child's study" approach involving the gifted and talented coordinator, student, **parent/guardian** and teacher. 24 S.C Code Ann. Regs 43-220 (B)(8)(c). Placement should have as the **primary consideration the best instructional setting for the individual student.**

It is obvious from the legislation for Gifted and Talented students that parents as well as students enjoy independent and substantive rights which should allow access and representation of their interest to the circuit court for review as ruled in the recent Supreme Court decision of Winkelman v. Parma City School District. 2007.

It is obvious from the legislation that parents of Gifted Students enjoy an independent and substantive right with regard to the education of their “Gifted” children and should therefore meet the “any aggrieved party” in appealing the decisions of the school board. The language in the School Board decision appeals process, which includes access to the court system as well as the ability to represent their interest in court, suggests the circuit court is the appropriate conduit for appeals.

Section 59-29-174. (A) There is created a Board of Centers of Excellence in Gifted and Talented Education for Elementary-Secondary Students.

Facts:

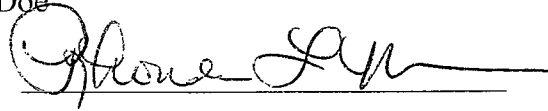
- 1) John Doe Student #1 was in fact a member of the protected class of “Gifted and Talented” students.
- 2) John Doe Student #1 and his mother appealed for transfer to a more appropriate school for his individual needs as outlined in the 59-19-560 and R43-220 SC Best Practices for Gifted Education Manual,
- 3) John Doe Student #1 and his mother was denied transfer by the Richland School District Two board and the denial did not comply with State law.
- 4) The reason for denial was referencing a “waitlist of over 100 students” of the general population which is not included in the subclass of “Gifted and Talented.”
- 5) The denial did not follow policy and procedure for the “Gifted and Talented” student analysis.
- 6) The denial did not take into account the notices and the individual circumstances required under the “Gifted and Talented Mandate”.

As a result of the denial Student #1 John Doe will suffer irreparable harm as his current class load and “block scheduling” is unavailable until next year at alternative private institutions. He has a right to the “most appropriate” school as a member of the “Highly Gifted and Talented” group of students identified by the legislature and will no doubt be transferred once the appeal is reviewed by the court. This injunction is required to protect his rights and is in the “best interest of the student”. The school Board and the District will not be harmed with implementation of this transfer as there is adequate space in his advanced classes available at Blythewood High School. Without the immediate intervention of this court Student #1 John Doe will be irreparably harmed.

Respectfully submitted,

Rhonda L Meisner, parent of Student #1

John Doe

A handwritten signature in cursive script, appearing to read "Rhonda L Meisner", written over a horizontal line.

Natural guardian and next friend of Plaintiff John Doe

PO Box 689 Blythewood South Carolina 29016

One Chester Road Blythewood South Carolina 29016

Telephone 803-318-0123 and (803)960-3696

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Student #1 John Doe, Plaintiff;
REDACTED NAME OF STUDENT;
REDACTED NAME OF MOTHER OF
STUDENT #1 John Doe, Plaintiff

Civil Action No. 2012-CP-40-07122

v.

AFFIDAVIT OF RHONDA MEISNER

Board of Trustees, Richland School District
Two; Richland School District Two
Superintendent, Dr. Katie Brochu, in her
official capacity as School Superintendent

Defendants

Rhonda Meisner, PERSONALLY APPEARED BEFORE ME

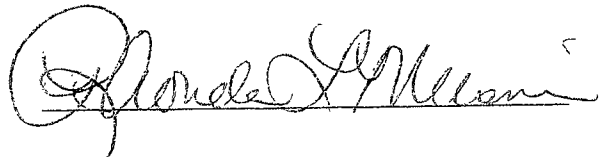
2012 NOV 26 PM 4:50
JEANETTE W. McBRIDE
C.C.P. & G.S.
KIDDER COUNTY
FILED

Who after being sworn deposes and says:

1. My name is Rhonda Lewis Meisner
2. I am the mother of [REDACTED], a Gifted and Talented Student as identified under the state standards for Gifted Education.
3. I applied for transfer of [REDACTED] from Westwood to Blythewood based on his status as a Gifted and Talented Student that had lost his support network of classmates with the "re-districting" of high school attendance lines.
4. Our family suffered a tragedy in that on January 20, 2012 our Nanny was killed while taking the children to school and [REDACTED] continues to suffer from this event. He has been further traumatized by his separation from his school support systems eg; his colleagues that were in place last year .

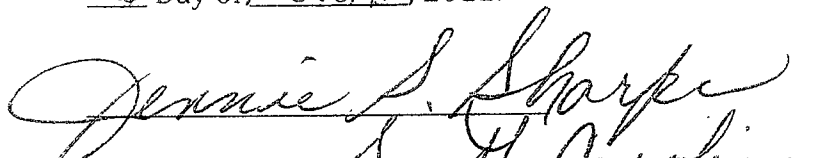
5. I have inquired about transferring to a private school which is unavailable mid- year due to "block scheduling" at Westwood High School and Blythewood High School.
6. I am personally concerned about ~~XXXX~~'s well being and his "acceleration" at Westwood and think he needs to be immediately transferred from Westwood to Blythewood in his best interest.
7. The motion roster is several weeks out which would not afford the opportunity to be heard absent this intervention by the court and ~~XXXX~~ would lose the opportunity to transfer at all.
8. The "Gifted and Talented" legislation currently in place requires that each individual child in the "Gifted and Talented" class of students has a "student Study" performed to review the placement of the child SC Code Ann Regs 43-220(B) (8)(c) this was not done for ~~XXXX~~ and has violated his rights under the Equal Protection Clause of the 14th Amendment to the Constitution.

FURTHER AFFIANT SAYETH NOT.

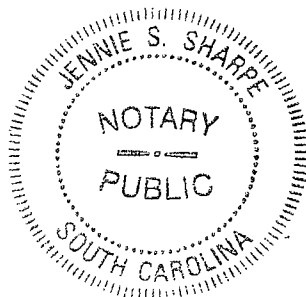


Sworn to before me this

26 Day of November 2012.


Notary Public for South Carolina

My Commission Expires 7-23-2017





November 20, 2012

[REDACTED]
[REDACTED]
Blythewood, SC 29016

Dear Mrs. [REDACTED]

I have mailed this packet of information to you at the request of Christa Bellomy, Director of Student Services. She said, that because Westwood High School offers block scheduling, we could not consider your son for enrollment in January. If you would like to consider enrolling him at Richard Winn Academy next year, I would be more than happy to give you a tour of the school and talk with you about what we have to offer.

For over forty-six years, Richard Winn has served area students by providing the knowledge and skills needed to excel in college and all future endeavors.

Richard Winn is an established college-preparatory institution, holding advanced accreditation by the South Carolina Independent School Association. It offers a comprehensive educational experience for students in three-year-old kindergarten through grade twelve, and currently serves students from Chester, Fairfield and Richland counties.

I have enclosed an admissions packet. In our packet we have provided you with all of the information you will need to apply for admission to the school.

Please note that tuition rates enclosed are this year's rates. Rates for next year will be determined in February. Occasionally, our tuition rises 2% to 3% due to inflation. We did not raise tuition last year.

If you have additional questions about the admissions process or would like a tour of the school, please contact me by telephone at 635-5494, ext. 206 or by email at development@richardwinn.org.

Kind regards,

Lanna McMeekin

Director of Admission & Development

1796 Old Chester Road
Post Office Box 390
Winnsboro, SC 29180

803-635-5494
803-635-4310 fax
richardwinn.org



Undergraduate Admission
2197 S. University Blvd.
Denver, CO 80208-9401

November 12, 2012

Discover your college type today.

Take our online quiz at:

www.uofdenver.org/quiz

User Name: meisner4

Password: 21673093

[Redacted]

Blythewood, SC 29016-8555



Dear [Redacted],

I want to give you an early advantage in your search for the right college.

That's why I invite you to take the University of Denver's interactive quiz, **Know NOW: Discover Your College Type Today!** Reserved for talented, motivated students like you, this quick and fun quiz will help you identify what kind of student you are ... and match you with the type of schools that reflect your interests and goals.

To start **Know NOW**, log on to www.uofdenver.org/quiz. Spend only a few minutes answering 7 questions, and you will receive your personal college-type profile! Plus, as soon as you log on to the web address above, you'll also receive **Campus Confidential**, an insider's guide on what to do (and what NOT to do) on campus visits.

Your online quiz and special guide will also tell you more about the University of Denver and all that we have to offer successful students like you. Whether you're looking for big-city sophistication, high-country or urban adventure, our campus has it all. Pair that with our outstanding academic programs and meaningful interactions with faculty members, and the University of Denver is a college worth checking out!

Start your quiz right now to determine your college type today! You can begin by going to www.uofdenver.org/quiz and entering your User Name: [Redacted] and Password: 21673093. Remember, when you take this online-only quiz, you'll also receive **Campus Confidential** - your own private guide to visiting campuses.

I hope to hear from you soon.

Best wishes,

Todd Rinehart
Associate Vice Chancellor for Enrollment
and Director of Admission

P.S. Receive your personal college-type profile when you take **Know NOW** today at www.uofdenver.org/quiz! Log in with your User Name: [Redacted] and your Password: 21673093 to access your quiz.

STATE OF SOUTH CAROLINA
PLEAS
COUNTY OF RICHLAND
CIRCUIT

IN THE COURT OF COMMON
FOR THE FIFTH JUDICIAL

Student #1 John Doe, Plaintiff;
REDACTED NAME OF STUDENT;
REDACTED NAME OF MOTHER
OF
STUDENT #1 JOHN DOE, Plaintiff

C.A. No. 2012-CP-40-07122

Vs

Board of Trustees, Richland School
DISTRICT TWO;
Richland School District Two
Superintendent, Dr. Katie Brochu,
In her official capacity as School
Superintendent.

PLAINTIFFS
MEMORANDUM
SUPPORT OF
TEMPORARY
RESTRAINING ORDER

JEANETTE W. BRIDGER
C.C.P. & G.
2012 NOV 28 AM 9:01

RICHLAND COUNTY
FILED

Defendants, Richland School District Two Board of Education and Dr. Katie Brochu, Superintendent, in her official capacity, request this Court to deny Plaintiff's motion because " a temporary restraining order is neither necessary to preserve the status quo nor to prevent immediate, irreparable injury, and because Plaintiff John Doe is not properly represented by counsel." The defendants previously represented that the Circuit Court lacks jurisdiction over the subject matter and that the filed appeal C.A. No 2012-

CP-40-07122 failed to state facts sufficient to constitute a cause of action. The defendants state numerous cases where courts have found that parents may not represent their child's interest in court but failed to cite *Winkelman v. Parma City School Dist. (No5-983) 2007* where the Supreme Court opinion gives parents independent rights under the IDEA and FAPE and therefore enables them to represent their children as a continuation of the "administrative remedies" available under the law. Here, like in *Winkelman* under the state statutes 59-29-170; R43-220 and *SC Gifted and Talented Best Practices Guide* for Gifted and Talented education the parent's rights are inseparable from the student's rights and parent's are therefore able to represent both the student's and parent's interests in Court.

In the interest of the student, it is necessary for the court to intervene when there is an immediate pending irreparable injury to the student particularly when the school "Board" has not complied with state law during their procedure or analysis. The employees for Richland District Two who were responsible for the initial review did not follow state law and therefore the reviewing body's decision was flawed as a matter of law. The court therefore must perform a critical function of stepping in when logic dictates the necessity of the intervention.

Background

The South Carolina Circuit Court offers its judgment in the case of School Board Appeals and functions as the Appellate Court for "aggrieved parties" pursuant to South Carolina Statute §59-19-560 which states that "Any party aggrieved by the order of the county board of education shall have the right to appeal to the court of common pleas of

the county by serving a written verified petition upon the chairman of the county board of education and upon the adverse party within ten days from the date upon which copy of the order of the county board of education was **mailed** to the petitioner.” (*emphasis added*). While the School Board did not send a “mailed” letter to the aggrieved student plaintiff or the aggrieved parent plaintiff, the Board via Roger Wiley, the district registrar, sent an email stating this was “the official decision of the board”. **EXHIBIT #2 E-MAIL FROM ROGER WILEY.**

The appeal is based on a flaw in the notice for the change of school designation for a Gifted and Talented Student and the failure of the “District” to reference SC Gifted and Talented Best Practices Manual as required in State Statute 59-19-170. The Muller Road computers had Student #1 John Doe assigned to Blythewood High School until April 18, 2012. School Choice and Expanded School Choice was over before the April 18, 2012 timeframe. Since Student #1 was registered to Blythewood High School (according to the middle school computers and employees) there was no reason to request a different school since Blythewood High School was the appropriate school for Student #1 John Doe.

Once student #1 John Doe was referred and qualified for “Gifted Status” he became a statutorily protected member of the student population and as a result should have been given the protections available under the SC State Constitution and the United States Constitution by legislation regarding the sub-group of “Gifted and Talented” students under the Educational Improvement Act “Act”, The Gifted and Talented State Statute 59-29-170 and R43-220. The transfer request of Student #1 John Doe never

included a “child study” as recommended in the “Manual”. Therefore the assumption the “District” was using to make their transfer decision regarding Student #1 John Doe was flawed. Defendants argue, “School boards are specifically entrusted by statute with decisions concerning the transfer of any student from one school to another and the determination within the district in which any student shall enroll. (59-19-09(9).)” However, defendants fail to acknowledge that we are not discussing the “general student population” and that there are specific instructions and processes as outlined in the “Regulation 43-220 and it’s reference to the “Manual” required for placement e.g.: “child study” for “Gifted and Talented Students”. School Boards are also entrusted with implementing policies and procedures and analysis for the “gifted and talented” group of students within the (general population of students) which they did not do prior to denying the request for transfer for Student #1 John Doe. Regulation 43-220 the Gifted and Talented Mandate states under Program “ To provide curriculum, instruction and assessment that maximize the potential of the identified students, educational programs for academically gifted and talented students must reflect the following characteristics: c) Instructional strategies that **accommodate the unique needs**(emphasis added) of gifted learners; 3.Districts should reference the *South Carolina Gifted and Talented Best Practices Manual* for program models and curriculum requirements. In fact, the legislature thought this group of students so significant they took the bold step of not only implementing legislation to support and fund the students they also made references to the best practices manual in order to achieve the goals and the “intent of the legislature.” In R43-220 the SCGifted Education Best Practices Manual, 2006, there are specific

processes with regard to placement that were not followed.

A temporary restraining order is appropriate when (1) Substantial likelihood of success on the merits of the case (2) Irreparable harm will occur without the requested relief (3)Equity tips in the favor of plaintiff (4) The public interest in issuing should be weighed.

Merits of the Case

The notice that Student #1 John Doe was to be re-assigned to a new school was defective in that the Muller Road Middle School computers were not updated to reflect his new assigned school(April 18, 2012) until well after the close of choice (January 28, 2012). This prevented The Plaintiff Student #1 John Doe from “applying to choice” within the designated choice time frame. The Plaintiff Student #1 John Doe is a member of “The Gifted and Talented” Group of Students that the *SC Best Practices for Gifted Education 2006* says the Curriculum for gifted and talented learners must be founded on South Carolina academic standards and must allow for both acceleration and enrichment. The School Board is entrusted by statute in the implementation of the “Gifted and Talented Mandate” 59-29-170. As well as R43-220 as it pertains to Gifted and Talented Students. The district did not do a “child study” as required by R43-220 and SC Gifted and Talented Best Practices Manual when evaluating the placement of Student #1 John Doe. Parent of John Doe Student #1 requested a transfer of John Doe Student #1 to the school most appropriate for his Gifts and Talents, Blythewood High School. In the initial request via email, Parent of Student #1 John Doe referred to Student #1 John Doe

(EXHIBIT #1) as “Gifted.” This should have alerted the district that Student #1 John Doe was a member of the protected class of “Gifted and Talented” and that according to the *SC Gifted and Talented Best Practices Manual* a “Child Study” should be completed to review his placement. Furthermore, I specifically requested the “Gifted and Talented” district coordinator review the request for transfer.

Chapter Three SC Gifted and Talented Best Practices 3.13

Best practices in Gifted and Talented education **require** that the individual student and his/her academic and intellectual development be the focus of all placement discussions, including the possible removal of a student. **Any procedures that a district develops for reviewing a student’s placement must incorporate a “Childs study”** approach involving the gifted and talented program coordinator, student, parent/guardian and teachers)...(24 SC Code Ann. Regs. 43-220.2 (B)(8)(c).) *emphasis added*

“Placement decisions resulting from the child study should have as their **primary** consideration the best instructional setting for the **individual** student.”

This review was never done. The Equal protection and Due process clause of the fourteenth amendment requires that members of the “same class of citizens” e.g.: “gifted and talented” students have equal protection under the law. The “Board” actually gave more consideration to arbitrary students that did not have statutory protections such as siblings of current attendees at Blythewood High School, the culinary students and children of teachers in the district without any consideration or mention to the “Gifted and Talented” group of students, although this group falls under S. C. Code Ann. 59-5-60 State Board Regulation 43-220 Gifted and Talented

Irreparable Harm

Irreparable harm occurs when there is no monetary compensation available to right the wrong in an equitable case. Regulation 43-220 states throughout the regulation that Districts should reference the SC Gifted and Talented Best Practices Manual "manual" with regard to Gifted children in that the "Manual" was prepared by the South Carolina Department of Education. The "Manual" in Chapter 7 In this case, Student #1 John Doe has experienced witnessing two very tragic automobile deaths in a short amount of time. In both cases the accidents involved the passenger outside the car. In one case, his nanny and caretaker was hit and killed in front of him. Student #1 John Doe was left to take care of his 3 younger siblings on the side of the road. He desperately needs the comfort and reassurance that no one other than his friends and colleagues can give him. He cannot reclaim one day of camaraderie and comfort that he has lost since he has been separated from his support network of colleagues. He cannot transfer to another private school where he also knows several of the students due to the "block scheduling" at both Blythewood and Westwood. The statute 59-29-170 requires that "gifted and talented students at the elementary and secondary levels must be provided programs during the regular school year or during summer school to develop their **unique** (emphasis added) talents in the manner the State Board of Education must specify and to the extent state funds are provided." R43-220 states districts should refer to the comprehensive *SC Gifted and Talented Best Practices Manual*. All students should have access to support services, but gifted

and talented students by their nature have unique needs requiring specialized services (24 S.C Code Ann. Reg 43-220.2(A) (1)(b). Here Student #1 John Doe's unique needs are to be reunited with his support network of colleagues so that he can heal as quickly as possible from these tragic events. Money cannot reclaim even one day for Student #1 John Doe. As defense notes, we could label Student #1 John Doe as in need of mental health intervention then under the IDEA the district would work to alleviate his stress. It is my contention that his status as a Gifted and Talented Student and protections under 59-19-170 and R43-220 are enough to require the district to intervene on his school placement and if the district will not then the court should. The legislature has placed an emphasis on supporting this group of students and the defendants have offered no other reason than 100 students in the general population have also requested transfer. Gifted and Talented focus has to begin with the individual student. We request the court to intervene and do what the school board should have done and that is evaluate Student #1 John Doe as an individual member of a protected class of students and allow him to immediately transfer to Blythewood High School.

Equity tips in Favor of Plaintiff

In the instant case issuing the Temporary Restraining Order or preliminary Injunction does not harm the defendants and significantly helps the Plaintiff avoid irreparable harm. The only possible inconvenience is the transfer paperwork which the School would have in the event of any student transferring into the district. There is space in the Classes Student #1 John Doe would need to enroll

in. There is no additional cost to the district. We expect to be successful on appeal however the only change which would need to occur should we not prevail is that Student #1 John Doe would be sent back to Westwood High School or a private school for next year. In January he could apply for School Choice under the Gifted and Talented Statutes for next year at Blythewood High School and in the interim his potential harm will be eliminated.

Public Policy Considerations

There are no public policy considerations as "Appeals from the School Board Decisions" are individual with individual considerations and individual facts. While defendants contend this would allow access to all students to appeal placement decisions. This is hyperbole at best. Parents of students can currently appeal school board decisions "as an aggrieved party". The student population of "Gifted and Talented" students is small relative to the general population of students and the "choice" process is usually not coupled with the opening of a new school like in the current case. There simply is no policy concern that would be contrary to the Public good. In contrast, when the "Board" makes a decision without proper information and an individual student suffers the intervention of the court relieves the suffering of the individual student. It also offers the School the opportunity to review their policies in light of warranted correction by the court. Furthermore, the Supreme Court of the United States of America, in the case of Winkelman vs. Parma City School Dist (No5-983) 2007 gives parents independent rights under IDEA and FAPE and therefore enables them to represent

their children as a continuation of the “administrative remedies” available under Federal law. In the Opinion of the Supreme Court of the United States, “since the IDEA gives parent’s enforceable rights in the administrative stage of disputes over the Free Appropriate Public Education, it would be inconsistent if they could not exercise their rights in Federal Court.” The court reasoned that some rights inhere in both the parents and the students and some rights were only available to the student. It would be unnecessarily confusing and was not indicated in the text and the structure of the IDEA to separate those rights. The Court ruled, “therefore the Winkelman’s (parents) could be a party aggrieved under the statute and the rights afforded the student need not exclude the parent.”

The language in South Carolina’s statutory construct of appeals of decisions of the school board , and of the “Gifted and Talented” legislation 59-29-170 and R43-220 and it’s reference to *SC Best Practices for Gifted Education* mirrors the Federal Statutes for disabled students in that parents are 1) “highly involved” in the process 2) have certain rights and responsibilities independent of the student e.g.: the right to a) request transfer of student under the b) object if the student is “to be removed from the Gifted and Talented program” c) request special magnet school transfers that the student has qualified to attend d) counseling and informational rights upon their child being identified as “Gifted and Talented”. Also, R43-220 gives additional substantive rights and benefits to parents in the following way: d) 2. “Each school district shall offer a range of mentoring opportunities for students beginning no later than the seventh grade.

Students participating in any of the work-based programs **shall have the written permission of their parents or legal guardians** in order to engage in such experiences. Adult supervision shall be provided for mentoring opportunities.”

5.) In Grade 7, **students and their parents and/or legal guardians in collaboration** with appropriate school personnel shall revise career planning records in which the student has an interest. 6.) In Grade 8, “**students and their parents and/or legal guardians in collaboration** with appropriate school personnel shall review and revise the career planning record. The record shall include a high school course of study based on a major plan and an alternate plan for career options in which the student has an interest and the postsecondary programs of study related to achieving a career goal” 5.) Each school must comply with the **Family Educational Rights and Privacy Act** regarding student records (20 U.S.C. Section 1232(g)). The Family Educational Rights and Privacy Act gives rights and privileges to both student and parent. The referencing of this Act further bolsters the fact that both Students and Parents have rights and privileges under R43-220 and the “Gifted and Talented Legislation”.

The South Carolina Legislature further has expressed a State interest in advancing and **nurturing** education of the “State’s Brightest Student’s.” Indeed, by referencing the **South Carolina Best Practices Manual for Gifted Education, 2006** throughout the legislation for Gifted and Talented as well as R43-220, the Legislature has given special consideration and rights to this group of students and **parents**.(emphasis added) Throughout the **S.C. Best Practices**

Manual, the State Board of Education requires the involvement of parents in the following ways: (*Subsequent bolded words are not emphasized in the original text, only to indicate parental involvement.*)

- R43-220 references the SC Best Practices Manual for Gifted Education throughout the legislation.
- P 31, “Also schools **must form collaborative relationships with parents** to ensure educational needs address the **particular** needs of the “Gifted and Talented” learner.
- P36 School Districts must design a curriculum to support their unique characteristics and needs.
- P39 Research has shown not “one size” will “fit all” and equal opportunity does not and should not mean identical content and activity for all students.
- P40 “Give students
- P56 2. Students that may have been mismatched may have their placement adjusted to meet their needs.
- Any procedure that the district develops to review the student’s placement must incorporate a “child’s study” approach involving the gifted and talented coordinator, student, **parent/guardian** and teacher. 24 S.C Code Ann. Regs 43-220 (B)(8)(c). Placement should have as the **primary consideration the best instructional setting for the individual student.**
- P60 ...Performance has not been acceptable to both **parents** and teachers.2) regular conferences with students and **parents.** 3) Specific strategies... students, **parents** and teachers.8) the student and the **parent** are advised... If a **parent** wishes to....the **parent** should....will conduct a meeting of the placement team, the student, the **parent** and teacher present.
- P71 grade 2 Special training and services for **parents.**
- P75 Gifted education must....develop and nurture the unique socio-emotional development of the gifted learner.
- P77 these procedures should be articulated to teachers...and **parents.**
- P78 Appropriate counseling sessions with students as well as conferences with student’s **parents/guardians** and teachers must precede....
- P80**parent** survey.
- P84 references all aspects of notifications to parents and input via parent surveys in graph model.
- P93 access information through **parent** surveys....by incorporatingand parental **involvement.**
- P100 Teachers, **parents**, support personnel and mentors are critical to the development of the whole (gifted and talented) child.
- P105 **parents** must understand...
- P107 Counselors can make **parents** aware. Communication between **parents**

- and teachers. Managing the expectations of **parents**, teachers, peers etc.
- P108 often perfectionism can be seen **more often at home** than at school.
- P111 Technology offers support services to gifted and talented students educators and **parents**....students, teachers and **parents** need to become familiar....
- P112 Technology for Teachers Students and **Parents**.
- P113 of particular interest to **parents**... **Parents** are the most significant influence on the lives of their children.
- P114 Similarly Bloom noted the important role of **parents, family support** and sacrifice on the achievement of the "Gifted and Talented "students. Education programs for **parents** must address....**Parent** Education Delivery Models...
- P115 many districts serve **parents** through....
- P123 district referral procedures must allow referrals through administrators, **parents**, teachers or students...

It is obvious from the legislation and from the Best Practices for Gifted and Talented students that parents as well as students enjoy independent and substantive rights which should allow access and representation of their interest to the circuit court for review as ruled in the recent Supreme Court decision of Winkelman v. Parma City School District, 2007.

Also it should be noted that the parent of Student #1 John Doe is the one that requested the transfer of Student #1 John Doe to the registrar Roger Wiley, requested the "Gifted and Talented" review from the District coordinator and Dr. Katie Brochu, requested the appeal to the school board, appeared on behalf of Student #1 John Doe and herself before the school board and is now submitting this appeal on behalf of Student #1 John Doe and herself.

The United States Supreme Court in Turner v. Rogers et al NO10-10 Decided June 20, 2011 387 S.C. 142,691 S.E. 2d 470 stated, "We attach an

important caveat, namely that the state must nonetheless have in place alternative procedures that assume a foreseeable fair determination of issues.” The court was addressing the fact that in civil cases a “court appointed attorney” is unavailable. The school board is the final determination of issues unless the Appellants are allowed to enter and advocate to the circuit court. To deny access for a parent and child “aggrieved” by the Board of Education decision would unfairly require parents to “pay” for a Free education which is available to student #1 John Doe as a citizen of the state of South Carolina and would deprive he and his mother of rights afforded to them both under legislation for the “Gifted and Talented” section of students and R43-220.

It is obvious from the legislation that parents of Gifted Students enjoy an independent and substantive right with regard to the education of their “Gifted” children and should therefore meet the “any aggrieved party” in appealing the decisions of the school board. The language in the School Board decision appeals process, which includes access to the court system as well as the ability to represent their interest in court, suggests the circuit court is the appropriate conduit for appeals.

Furthermore, the Circuit Court of South Carolina would be the most appropriate court due to the “state rights” issues with regard to the funding and the oversight of education. The legislation involving “Gifted and Talented” students in addition to being a state supported objective of improving education, also

involves multiple layers of state government.

The state interest in this group of students is without question based on the effort and funding provided by the State Legislature. To “stop or attempt to interfere with the appeals of education” for this group of students and their parents would undermine the efforts of so many in government. Accordingly, since Free Public Education is a well established right to all South Carolina students, to prevent parents from representing themselves and their children under the “Gifted and Talented” mandate **throughout** the “administrative appeals” would be contrary to the Supreme Court holdings in Winkelman v Parma County School District.2007.

Drawing on the Courts judicial experience, in an appeal of a school board decision, the Court reviews the appeal “DeNovo” and as such, the issue at hand is whether the transfer decision of student #1 John Doe was made in accordance with the “Gifted and Talented” mandates and state law. The fact that Student #1 John Doe was denied transfer to the most “appropriate school” for his gifts and talents is a question for the court. This DeNovo review includes statutory interpretation, evidence and intention of the Legislature and should not be summarily dismissed in the interest of justice. Furthermore, It is evident from the pleadings that

- 1) John Doe Student #1 was in fact a member of the protected class of “Gifted and Talented” students.
- 2) John Doe Student #1 and his mother appealed for transfer to a more appropriate school for his individual needs as outlined in the SC Best

Practices for Gifted Education Manual,

3) John Doe Student #1 and his mother was denied transfer by the Richland School District Two board and the denial did not comply with State law.

4) The reason for denial was referencing a "waitlist of over 100 students" of the general population which is not included in the subclass of "Gifted and Talented."

5) The denial did not follow policy and procedure for the "Gifted and Talented" student analysis.

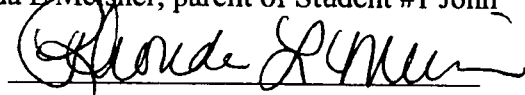
6) The denial did not take into account the notices and the individual circumstances required under the "Gifted and Talented Mandate".

For these reasons I request the court to issue a temporary injunction and schedule a hearing in the next 10 days to evaluate the need to convert to a preliminary injunction pending the outcome of the case.

Respectfully submitted,

Rhonda L. Meisner, parent of Student #1 John

Doe



Natural guardian and next friend of Plaintiff John

Doe

PO Box 689 Blythewood South Carolina 29016

One Chester Road Blythewood South Carolina
29016

Telephone 803-318-0123 and (803)960-3696

STATE OF SOUTH CAROLINA
PLEAS
COUNTY OF RICHLAND
CIRCUIT

IN THE COURT OF COMMON
FOR THE FIFTH JUDICIAL

Student #1 John Doe, Plaintiff;
REDACTED NAME OF STUDENT;
REDACTED NAME OF MOTHER
OF
STUDENT #1 JOHN DOE, Plaintiff

C.A. No. 2012-CP-40-07122

Vs

PLAINTIFFS
MEMORANDUM IN
SUPPORT OF
TEMPORARY
RESTRAINING ORDER

RECEIVED
C.D.P. & O.S.
2012 NOV 23 AM 9:01
RICHLAND COUNTY

Board of Trustees, Richland School
DISTRICT TWO;
Richland School District Two
Superintendent, Dr. Katie Brochu,
In her official capacity as School
Superintendent.

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The South Carolina Circuit Court offers its judgment in the case of School Board Appeals and functions as the Appellate Court for "aggrieved parties" pursuant to South Carolina Statute §59-19-560 which states that "Any party aggrieved by the order of the county board of education shall have the right to appeal to the court of common pleas of

the county by serving a written verified petition upon the chairman of the county board of education and upon the adverse party within ten days from the date upon which copy of the order of the county board of education was **mailed** to the petitioner.” (*emphasis added*). While the School Board did not send a “mailed” letter to the aggrieved student plaintiff or the aggrieved parent plaintiff, the Board via Roger Wiley, the district registrar, sent an email stating this was “the official decision of the board”. **EXHIBIT #2 E-MAIL FROM ROGER WILEY.**

The appeal is based on a flaw in the notice for the change of school designation for a Gifted and Talented Student and the failure of the “District” to reference SC Gifted and Talented Best Practices Manual as required in State Statute 59-19-170. The Muller Road computers had Student #1 John Doe assigned to Blythewood High School until April 18, 2012. School Choice and Expanded School Choice was over before the April 18, 2012 timeframe. Since Student #1 was registered to Blythewood High School (according to the middle school computers and employees) there was no reason to request a different school since Blythewood High School was the appropriate school for Student #1 John Doe.

Once student #1 John Doe was referred and qualified for “Gifted Status” he became a statutorily protected member of the student population and as a result should have been given the protections available under the SC State Constitution and the United States Constitution by legislation regarding the sub-group of “Gifted and Talented” students under the Educational Improvement Act “Act”, The Gifted and Talented State Statute 59-29-170 and R43-220. The transfer request of Student #1 John Doe never

included a “child study” as recommended in the “Manual”. Therefore the assumption the “District” was using to make their transfer decision regarding Student #1 John Doe was flawed. Defendants argue, “School boards are specifically entrusted by statute with decisions concerning the transfer of any student from one school to another and the determination within the district in which any student shall enroll. (59-19-09(9).)”

However, defendants fail to acknowledge that we are not discussing the “general student population” and that there are specific instructions and processes as outlined in the “Regulation 43-220 and it’s reference to the “Manual” required for placement e.g.: “child study” for “Gifted and Talented Students”. School Boards are also entrusted with implementing policies and procedures and analysis for the “gifted and talented” group of students within the (general population of students) which they did not do prior to denying the request for transfer for Student #1 John Doe. Regulation 43-220 the Gifted and Talented Mandate states under Program “ To provide curriculum, instruction and assessment that maximize the potential of the identified students, educational programs for academically gifted and talented students must reflect the following characteristics: c) Instructional strategies that **accommodate the unique needs**(emphasis added) of gifted learners; 3.Districts should reference the *South Carolina Gifted and Talented Best Practices Manual* for program models and curriculum requirements. In fact, the legislature thought this group of students so significant they took the bold step of not only implementing legislation to support and fund the students they also made references to the best practices manual in order to achieve the goals and the “intent of the legislature.”

In R43-220 the SCGifted Education Best Practices Manual, 2006, there are specific

processes with regard to placement that were not followed.

A temporary restraining order is appropriate when (1) Substantial likelihood of success on the merits of the case (2) Irreparable harm will occur without the requested relief (3)Equity tips in the favor of plaintiff (4) The public interest in issuing should be weighed.

Merits of the Case

The notice that Student #1 John Doe was to be re-assigned to a new school was defective in that the Muller Road Middle School computers were not updated to reflect his new assigned school(April 18, 2012) until well after the close of choice (January 28, 2012). This prevented The Plaintiff Student #1 John Doe from “applying to choice” within the designated choice time frame. The Plaintiff Student #1 John Doe is a member of “The Gifted and Talented” Group of Students that the *SC Best Practices for Gifted Education2006* says the Curriculum for gifted and talented learners must be founded on South Carolina academic standards and must allow for both acceleration and enrichment. The School Board is entrusted by statute in the implementation of the “Gifted and Talented Mandate” 59-29-170. As well as R43-220 as it pertains to Gifted and Talented Students. The district did not do a “child study” as required by R43-220 and SC Gifted and Talented Best Practices Manual when evaluating the placement of Student #1 John Doe. Parent of John Doe Student #1 requested a transfer of John Doe Student #1 to the school most appropriate for his Gifts and Talents, Blythewood High School. In the initial request via email, Parent of Student #1 John Doe referred to Student #1 John Doe

(EXHIBIT #1) as “Gifted.” This should have alerted the district that Student #1 John Doe was a member of the protected class of “Gifted and Talented” and that according to the *SC Gifted and Talented Best Practices Manual* a “Child Study” should be completed to review his placement. Furthermore, I specifically requested the “Gifted and Talented” district coordinator review the request for transfer.

Chapter Three SC Gifted and Talented Best Practices 3.13

Best practices in Gifted and Talented education **require** that the individual student and his/her academic and intellectual development be the focus of all placement discussions, including the possible removal of a student. **Any procedures that a district develops for reviewing a student’s placement must incorporate a “Childs study”** approach involving the gifted and talented program coordinator, student, parent/guardian and teachers)...(24 SC Code Ann. Regs. 43-220.2 (B)(8)(c).) *emphasis added*

“Placement decisions resulting from the child study should have as their **primary** consideration the best instructional setting for the **individual** student.”

This review was never done. The Equal protection and Due process clause of the fourteenth amendment requires that members of the “same class of citizens” e.g.: “gifted and talented” students have equal protection under the law. The “Board” actually gave more consideration to arbitrary students that did not have statutory protections such as siblings of current attendees at Blythewood High School, the culinary students and children of teachers in the district without any consideration or mention to the “Gifted and Talented” group of students, although this group falls under S. C. Code Ann. 59-5-60 State Board Regulation 43-220 Gifted and Talented

Irreparable Harm

Irreparable harm occurs when there is no monetary compensation available to right the wrong in an equitable case. Regulation 43-220 states throughout the regulation that Districts should reference the SC Gifted and Talented Best Practices Manual “manual” with regard to Gifted children in that the “Manual” was prepared by the South Carolina Department of Education. The “Manual” in Chapter 7 In this case, Student #1 John Doe has experienced witnessing two very tragic automobile deaths in a short amount of time. In both cases the accidents involved the passenger outside the car. In one case, his nanny and caretaker was hit and killed in front of him. Student #1 John Doe was left to take care of his 3 younger siblings on the side of the road. He desperately needs the comfort and reassurance that no one other than his friends and colleagues can give him. He cannot reclaim one day of camaraderie and comfort that he has lost since he has been separated from his support network of colleagues. He cannot transfer to another private school where he also knows several of the students due to the “block scheduling” at both Blythewood and Westwood. The statute 59-29-170 requires that “gifted and talented students at the elementary and secondary levels must be provided programs during the regular school year or during summer school to develop their **unique** (emphasis added) talents in the manner the State Board of Education must specify and to the extent state funds are provided.” R43-220 states districts should refer to the comprehensive *SC Gifted and Talented Best Practices Manual*. All students should have access to support services, but gifted

and talented students by their nature have unique needs requiring specialized services (24 S.C Code Ann. Reg 43-220.2(A) (1)(b). Here Student #1 John Doe's unique needs are to be reunited with his support network of colleagues so that he can heal as quickly as possible from these tragic events. Money cannot reclaim even one day for Student #1 John Doe. As defense notes, we could label Student #1 John Doe as in need of mental health intervention then under the IDEA the district would work to alleviate his stress. It is my contention that his status as a Gifted and Talented Student and protections under 59-19-170 and R43-220 are enough to require the district to intervene on his school placement and if the district will not then the court should. The legislature has placed an emphasis on supporting this group of students and the defendants have offered no other reason than 100 students in the general population have also requested transfer. Gifted and Talented focus has to begin with the individual student. We request the court to intervene and do what the school board should have done and that is evaluate Student #1 John Doe as an individual member of a protected class of students and allow him to immediately transfer to Blythewood High School.

Equity tips in Favor of Plaintiff

In the instant case issuing the Temporary Restraining Order or preliminary Injunction does not harm the defendants and significantly helps the Plaintiff avoid irreparable harm. The only possible inconvenience is the transfer paperwork which the School would have in the event of any student transferring into the district. There is space in the Classes Student #1 John Doe would need to enroll

in. There is no additional cost to the district. We expect to be successful on appeal however the only change which would need to occur should we not prevail is that Student #1 John Doe would be sent back to Westwood High School or a private school for next year. In January he could apply for School Choice under the Gifted and Talented Statutes for next year at Blythewood High School and in the interim his potential harm will be eliminated.

Public Policy Considerations

There are no public policy considerations as “Appeals from the School Board Decisions” are individual with individual considerations and individual facts. While defendants contend this would allow access to all students to appeal placement decisions. This is hyperbole at best. Parents of students can currently appeal school board decisions “as an aggrieved party”. The student population of “Gifted and Talented” students is small relative to the general population of students and the “choice” process is usually not coupled with the opening of a new school like in the current case. There simply is no policy concern that would be contrary to the Public good. In contrast, when the “Board” makes a decision without proper information and an individual student suffers the intervention of the court relieves the suffering of the individual student. It also offers the School the opportunity to review their policies in light of warranted correction by the court. Furthermore, the Supreme Court of the United States of America, in the case of Winkelman vs. Parma City School Dist (No5-983) 2007 gives parents independent rights under IDEA and FAPE and therefore enables them to represent

their children as a continuation of the “administrative remedies” available under Federal law. In the Opinion of the Supreme Court of the United States, “since the IDEA gives parent’s enforceable rights in the administrative stage of disputes over the Free Appropriate Public Education, it would be inconsistent if they could not exercise their rights in Federal Court.” The court reasoned that some rights inhere in both the parents and the students and some rights were only available to the student. It would be unnecessarily confusing and was not indicated in the text and the structure of the IDEA to separate those rights. The Court ruled, “therefore the Winkelman’s (parents) could be a party aggrieved under the statute and the rights afforded the student need not exclude the parent.”

The language in South Carolina’s statutory construct of appeals of decisions of the school board , and of the “Gifted and Talented” legislation 59-29-170 and R43-220 and it’s reference to *SC Best Practices for Gifted Education* mirrors the Federal Statutes for disabled students in that parents are 1) “highly involved” in the process 2) have certain rights and responsibilities independent of the student e.g.: the right to a) request transfer of student under the b) object if the student is “to be removed from the Gifted and Talented program” c) request special magnet school transfers that the student has qualified to attend d) counseling and informational rights upon their child being identified as “Gifted and Talented”. Also, R43-220 gives additional substantive rights and benefits to parents in the following way: d) 2. “Each school district shall offer a range of mentoring opportunities for students beginning no later than the seventh grade.

Students participating in any of the work-based programs **shall have the written permission of their parents or legal guardians** in order to engage in such experiences. Adult supervision shall be provided for mentoring opportunities.”

5.) In Grade 7, **students and their parents and/or legal guardians in collaboration** with appropriate school personnel shall revise career planning records in which the student has an interest. 6.) In Grade 8, “**students and their parents and/or legal guardians in collaboration** with appropriate school personnel shall review and revise the career planning record. The record shall include a high school course of study based on a major plan and an alternate plan for career options in which the student has an interest and the postsecondary programs of study related to achieving a career goal” 5.) Each school must comply with the **Family Educational Rights and Privacy Act** regarding student records (20 U.S.C. Section 1232(g)). The Family Educational Rights and Privacy Act gives rights and privileges to both student and parent. The referencing of this Act further bolsters the fact that both Students and Parents have rights and privileges under R43-220 and the “Gifted and Talented Legislation”.

The South Carolina Legislature further has expressed a State interest in advancing and **nurturing** education of the “State’s Brightest Student’s.” Indeed, by referencing the **South Carolina Best Practices Manual for Gifted Education, 2006** throughout the legislation for Gifted and Talented as well as R43-220, the Legislature has given special consideration and rights to this group of students and **parents**.(emphasis added) Throughout the **S.C. Best Practices**

Manual, the State Board of Education requires the involvement of parents in the following ways: (*Subsequent bolded words are not emphasized in the original text, only to indicate parental involvement.*)

- R43-220 references the SC Best Practices Manual for Gifted Education throughout the legislation.
- P 31, “Also schools **must form collaborative relationships with parents** to ensure educational needs address the **particular** needs of the “Gifted and Talented” learner.
- P36 School Districts must design a curriculum to support their unique characteristics and needs.
- P39 Research has shown not “one size” will “fit all” and equal opportunity does not and should not mean identical content and activity for all students.
- P40 “Give students
- P56 2. Students that may have been mismatched may have their placement adjusted to meet their needs.
- Any procedure that the district develops to review the student’s placement must incorporate a “child’s study” approach involving the gifted and talented coordinator, student, **parent/guardian** and teacher. 24 S.C Code Ann. Regs 43-220 (B)(8)(c). Placement should have as the **primary consideration the best instructional setting for the individual student.**
- P60 ...Performance has not been acceptable to both **parents** and teachers.2) regular conferences with students and **parents.** 3) Specific strategies... students, **parents** and teachers.8) the student and the **parent** are advised... If a **parent** wishes to....the **parent** should....will conduct a meeting of the placement team, the student, the **parent** and teacher present.
- P71 grade 2 Special training and services for **parents.**
- P75 Gifted education must....develop and nurture the unique socio-emotional development of the gifted learner.
- P77 these procedures should be articulated to teachers...and **parents.**
- P78 Appropriate counseling sessions with students as well as conferences with student’s **parents/guardians** and teachers must precede....
- P80**parent** survey.
- P84 references all aspects of notifications to parents and input via parent surveys in graph model.
- P93 access information through **parent** surveys....by incorporatingand parental **involvement.**
- P100 Teachers, **parents**, support personnel and mentors are critical to the development of the whole (gifted and talented) child.
- P105 **parents** must understand...
- P107 Counselors can make **parents** aware. Communication between **parents**

- and teachers. Managing the expectations of **parents**, teachers, peers etc.
- P108 often perfectionism can be seen **more often at home** than at school.
 - P111 Technology offers support services to gifted and talented students educators and **parents**....students, teachers and **parents** need to become familiar....
 - P112 Technology for Teachers Students and **Parents**.
 - P113 of particular interest to **parents**... **Parents** are the most significant influence on the lives of their children.
 - P114 Similarly Bloom noted the important role of **parents, family support** and sacrifice on the achievement of the “Gifted and Talented “students. Education programs for **parents** must address....**Parent** Education Delivery Models...
 - P115 many districts serve **parents** through....
 - P123 district referral procedures must allow referrals through administrators, **parents**, teachers or students...

It is obvious from the legislation and from the Best Practices for Gifted and Talented students that parents as well as students enjoy independent and substantive rights which should allow access and representation of their interest to the circuit court for review as ruled in the recent Supreme Court decision of Winkelman v. Parma City School District. 2007.

Also it should be noted that the parent of Student #1 John Doe is the one that requested the transfer of Student #1 John Doe to the registrar Roger Wiley, requested the “Gifted and Talented” review from the District coordinator and Dr. Katie Brochu, requested the appeal to the school board, appeared on behalf of Student #1 John Doe and herself before the school board and is now submitting this appeal on behalf of Student #1 John Doe and herself.

The United States Supreme Court in Turner v. Rogers et al NO10-10 Decided June 20, 2011 387 S.C. 142,691 S.E. 2d 470 stated, “We attach an

important caveat, namely that the state must nonetheless have in place alternative procedures that assume a foreseeable fair determination of issues.” The court was addressing the fact that in civil cases a “court appointed attorney” is unavailable. The school board is the final determination of issues unless the Appellants are allowed to enter and advocate to the circuit court. To deny access for a parent and child “aggrieved” by the Board of Education decision would unfairly require parents to “pay” for a Free education which is available to student #1 John Doe as a citizen of the state of South Carolina and would deprive he and his mother of rights afforded to them both under legislation for the “Gifted and Talented” section of students and R43-220.

It is obvious from the legislation that parents of Gifted Students enjoy an independent and substantive right with regard to the education of their “Gifted” children and should therefore meet the “any aggrieved party” in appealing the decisions of the school board. The language in the School Board decision appeals process, which includes access to the court system as well as the ability to represent their interest in court, suggests the circuit court is the appropriate conduit for appeals.

Furthermore, the Circuit Court of South Carolina would be the most appropriate court due to the “state rights” issues with regard to the funding and the oversight of education. The legislation involving “Gifted and Talented” students in addition to being a state supported objective of improving education, also

involves multiple layers of state government.

The state interest in this group of students is without question based on the effort and funding provided by the State Legislature. To “stop or attempt to interfere with the appeals of education” for this group of students and their parents would undermine the efforts of so many in government. Accordingly, since Free Public Education is a well established right to all South Carolina students, to prevent parents from representing themselves and their children under the “Gifted and Talented” mandate **throughout** the “administrative appeals” would be contrary to the Supreme Court holdings in Winkelman v Parma County School District.2007.

Drawing on the Courts judicial experience, in an appeal of a school board decision, the Court reviews the appeal “DeNovo” and as such, the issue at hand is whether the transfer decision of student #1 John Doe was made in accordance with the “Gifted and Talented” mandates and state law. The fact that Student #1 John Doe was denied transfer to the most “appropriate school” for his gifts and talents is a question for the court. This DeNovo review includes statutory interpretation, evidence and intention of the Legislature and should not be summarily dismissed in the interest of justice. Furthermore, It is evident from the pleadings that

- 1) John Doe Student #1 was in fact a member of the protected class of “Gifted and Talented” students.
- 2) John Doe Student #1 and his mother appealed for transfer to a more appropriate school for his individual needs as outlined in the SC Best

Practices for Gifted Education Manual,

3) John Doe Student #1 and his mother was denied transfer by the Richland School District Two board and the denial did not comply with State law.

4) The reason for denial was referencing a “waitlist of over 100 students” of the general population which is not included in the subclass of “Gifted and Talented.”

5) The denial did not follow policy and procedure for the “Gifted and Talented” student analysis.

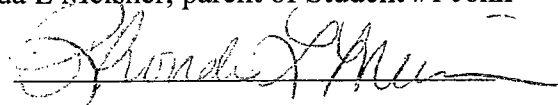
6) The denial did not take into account the notices and the individual circumstances required under the “Gifted and Talented Mandate”.

For these reasons I request the court to issue a temporary injunction and schedule a hearing in the next 10 days to evaluate the need to convert to a preliminary injunction pending the outcome of the case.

Respectfully submitted,

Rhonda L Meisner, parent of Student #1 John

Doe

A handwritten signature in cursive script, appearing to read "Rhonda L Meisner", written over a horizontal line.

Natural guardian and next friend of Plaintiff John

Doe

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29016

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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Student #1 John Doe,)
)
Plaintiff,)

C.A. No. 2012-CP-40-07122

vs.)

**DEFENDANTS' MEMORANDUM OF LAW
IN OPPOSITION OF PLAINTIFFS
REQUEST FOR TEMPORARY
RESTRAINING ORDER**

Richland School District Two Board of)
Trustees; Richland School District Two)
Superintendent, in her official capacity,)
Katie Brochu, PhD,)
)
Defendant.)

2012 NOV 27 AM 10:01
FILED
RICHLAND COUNTY
C.F. & G.S.

The Defendants respectfully submit this memorandum in opposition to Plaintiff's motion for a temporary restraining order. The Defendants assert herein that the Court should deny Plaintiff's motion because a temporary restraining order is neither necessary to preserve the status quo nor to prevent immediate, irreparable injury, and because Plaintiff John Doe is not properly represented by legal counsel.

I. Background

Plaintiff John Doe is currently enrolled in and attending the ninth grade in Richland School District Two's ("District") Westwood High School ("WHS"). Plaintiff is zoned to attend WHS based on his residence. Plaintiff had applied for an intra-District school transfer to Blythewood High School ("BHS"), but the transfer was denied. The transfer denial was appealed to the District's Board of Trustees ("Board"). The Board heard Plaintiff's appeal on October 9, 2012. (Attachment One.) Following the hearing, the Board affirmed the District's denial of Plaintiff's transfer request. On October 19, 2012, Plaintiff appealed the Board's denial pursuant to S.C. Code § 59-19-560 to this Court, and also appears to have asserted additional

claims against Defendants.¹ Defendants filed a motion to dismiss the complaint on November 14, 2012. On November 13, 2012, Plaintiff filed an amended complaint that was not served on Defendants until November 15, 2012. Now, Plaintiff's motion for a temporary restraining order is before the Court.

II. Argument

School boards are specifically entrusted by statute with decisions concerning the transfer of any student from one school to another and the determination of the school within the district in which any student shall enroll. (§59-19-90(9).) Further, the General Assembly has expressly provided that "[u]ntil the matter in controversy has been finally disposed of, no appeal shall act as a supersedes or suspension of the order of the board having original jurisdiction of the case." (§59-19-570.) Here, Plaintiff's requested temporary restraining order seeks to have the Court divest the District's Board of its authority under §59-19-90(9) and to effectively grant a supersedes of the Board's denial of Plaintiff's transfer request. The Court should decline Plaintiff's invitation to do so.

"The sole purpose of a temporary injunction is to preserve the status quo and thus avoid possible irreparable injury to a party pending litigation." *Zabinski v. Bright Acres Associates*, 346 S.C. 580, 601, 553 S.E.2d 110, 121 (2001); *FOC Lawshe Ltd. Partnership v. International Paper Co.*, 352 S.C. 408, 413, 574 S.E.2d 228, 231 (Ct. App. 2002). A temporary injunction serves to "preserve the subject of controversy in the condition which it is at the time of the order until opportunity is offered for full and deliberate investigation and to preserve the existing status during litigation." *Mailsorce, LLC v. M.A. Bailey & Associates*, 356 S.C. 363, 368, 588 S.E.2d

¹ The specific claims alleged in the complaint are unclear. However, the complaint appears to allege: 1) violation of the Gifted and Talented Program statute, § 56-29-170, for which there is no private cause of action. *See, e.g., Abbeville County School District v. State of South Carolina*, 515 S.E. 2d 535 (Sup. Ct. 1999). 2) Educational malpractice, which is not recognized as a cause of action in South Carolina. *See, e.g., Hendricks v. Clemson Univ.*, 578 S.E.2d 711 (Sup. Ct. 2003); *Cockrell v. Lexington County School District*, 2011 WL 5554811 (D.S.C.). 3) Violation of Equal Protection, however, Plaintiff does not allege he has been treated any differently than any other student in the WHS attendance zone or similarly situated student. *See, e.g., Lindsley v. Girard School District*, 213 F.Supp.2d 523 (W.D Pa. 2002); *Wharton v. Abbeville School District No. 60*, 608 F.Supp. 70 (D.S.C. 1984).

635, 638 (Ct. App. 2003). To obtain a temporary restraining order, a party must show it would suffer immediate and irreparable harm if the temporary restraining order is not granted. *Id.* at 367-68, 588 S.E.2d at 638. In this case, the temporary restraining order that Plaintiff seeks would not serve the intended purpose of a temporary restraining order, and Plaintiff would not suffer immediate or irreparable harm in the absence of a temporary restraining order.

Initially and significantly, the status quo of Plaintiff's education is his enrollment and attendance at WHS. Plaintiff has attended WHS since the beginning of this school year where he is performing academically commensurately with his previous academic performance. Accordingly, the status quo for the Plaintiff is his enrollment and attendance at WHS. Therefore, the purpose of a temporary restraining order, preserving the status quo, and preventing immediate and irreparable harm could not be served by ordering Plaintiff to attend BHS during the pendency of this litigation.

Additionally, Plaintiff cannot show he would suffer immediate and irreparable harm by continuing his education at WHS. In *Wharton v. Abbeville Sch. Dist. No. 60*, 608 F. Supp. 70 (D.S.C. 1984), Judge G. Ross Anderson, Jr. held that "South Carolina law grants a child of school age the right to a free education but does not confer a right upon pupils to attend a specific school." *Id.* Similarly, in *Washington v. Ladue Sch. Dist. Bd. of Educ.*, 564 F. Supp. 2d 1054 (E.D. Mo. 2008), a civil rights case, the U.S. District Court declined to grant an injunction to a student who was removed from the student rolls at a school district on the grounds that he was not a resident of the school district. In holding that the plaintiff would not suffer irreparable harm if he did not get to attend the school of his choice, the court found that "[n]owhere has it been presented that the Plaintiff has attempted to, and has been refused free public education in the district in which he actually resides." *Id.* at 1058.

The *Washington*, court went on to note:

It is obvious that the harm to Defendant greatly outweighs any injury its actions have caused Plaintiff. Were the Court to issue a

Temporary Restraining Order and Preliminary Injunction, Defendant would likely experience a flood of applications for enrollment based on dubious grounds of having resided in the district at any given time in the past or, for that matter, an intent to reside therein at some point in the future . . . While the Court is mindful that every child is entitled to a free public education, nowhere in the Constitution nor any statute in the State of Missouri is a child entitled to choose, at whim, the location of that education . . . were each child entitled to choose where to go to school, regardless of where that child lives, the structure of the free public school system would collapse into chaos, thereby resulting in an actual deprivation of the right to a free public education . . . Plaintiff seeks more than a free public education. He seeks a free public education at the school of his choice, regardless of where he may live.

Id. See also G.C. III v. Owensboro Pub. Sch., No. 4:09CV-102-JHM, 2009 WL 3834096 (W.D. Ky. Nov. 16, 2009) (finding no irreparable harm where student is eligible to enroll in his home school district). Consequently, there is no basis for Plaintiff's claim that he would suffer irreparable harm by continuing his education at WHS.

To the extent Plaintiff's parent asserts medical or psychological harm will occur to Plaintiff if he is unable to immediately attend BHS, federal and State laws under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. 1400, et seq., and State Regulation R43-243 provide the necessary and exclusive procedures for school transfers due to disability conditions such as Post Traumatic Stress Disorder. *See, e.g., E.M. v. Rock Hill Sch. Dist. 3*, No. 0:08-cv-2097-CMC (S.C. Ct. Common Pleas, Jan. 13, 2009). (Attachment Two.) *See also M.M. v. Sch. Dist. of Greenville County*, 303 F.3d 523 (4th Cir. 2002).

Plaintiff's parent has not pursued any avenues available for disabled student school transfers, although upon parent request, the District would promptly initiate evaluation procedures for Plaintiff for eligibility under the IDEA. However, Plaintiff's parent's concerns relative to the transfer to BHS appear to involve avoiding the status quo and the optimizing of his educational opportunities instead of the necessity to avoid irreparable harm.

Moreover, Plaintiff's parent, Jane Doe, who is purporting to represent her son in this

matter, is not a licensed attorney and is not authorized to represent her child *pro se* before the Court. Under South Carolina law, a person may prosecute or defend "his own cause, if he so desires." S.C. Code Ann. § 40-5-80. However, no "person may either practice law or solicit the legal cause of another person or entity in this State unless he is enrolled as a member of the South Carolina Bar." S.C. Code Ann. § 40-5-310.

Under these statutes, the Supreme Court of South Carolina has held that a non-lawyer cannot represent a corporation in circuit or appellate courts. *Renaissance Enters., Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 515 S.E.2d 257 (1999) (holding that non-lawyer president and shareholder of corporation cannot represent the corporation *pro se* in circuit or appellate courts). The Supreme Court has also held that a non-lawyer executor or personal representative cannot represent an estate in legal matters. *Brown v. Coe*, 365 S.C. 137, 616 S.E.2d 705 (2005). The Supreme Court explained that the "goal of the prohibition against the authorized practice of law is to protect the public from incompetent, unethical, or irresponsible representation." *Renaissance Enters, Inc.* at 652, 515 S.E.2d at 258. Specifically, the prohibition against the unauthorized practice of law protects the public "from the potentially severe economic and emotional consequences which may flow from the erroneous preparation of legal documents or the inaccurate legal advice given by persons untrained in the law." *Brown* at 139, 616 S.E.2d at 707.

While a parent may assert claims on a child's behalf as next friend, Rule 17(c), SCRCPP, a non-lawyer parent serving as next friend cannot litigate a minor's claim without legal counsel. *Meyers v. Loudoun County Pub. Sch.*, 418 F.3d 395, 400 (4th Cir. 2005); *Blue v. People*, 585 N.E.2d 625, 626 (Ill. Ct. App. 1992) ("A next friend is not a party to a suit but represents the real party, who, as a minor, lacks the capacity to sue in his own name"); *Yulin Li v. Rizzio*, 801 N.W.2d 351, 360 (Iowa Ct. App. 2011) (Rule authorizing father "to bring suit on behalf of his son as next friend, did not authorize [father] to advocate his son's claim before the district court

without the aid of counsel"). Courts have repeatedly held that a non-lawyer parent or guardian cannot sue on behalf of his or her child without securing counsel. *Meyers v. Loudoun County Pub. Sch.*, 418 F.3d 395, 399-401 (4th Cir. 2005); *Booker v. Sullivan*, No. 8:11-1131-HMH-JDA, 2011 WL 3555718 (D.S.C. July 21, 2011); *Foley v. Town of Nichols*, No. 4:09-1217-TLW-TER, 2010 WL 424142 (D.S.C. Feb. 1, 2010); *Bardes v. Magera*, No. 2:08-CV-487-PMD-RSC, 2009 WL 3163547 (D.S.C. Sept. 30, 2009); *Cheung v. Youth Orchestra Found. of Buffalo, Inc.*, 906 F.2d 59 (2d Cir. 1990); *Osei-Afriyie v. Med. Coll. of Pa.*, 937 F.2d 876 (3d Cir. 1991); *Shepherd v. Wellman*, 313 F.3d 963 (6th Cir. 2002); *Navin v. Park Ridge Sch. Dist. 64*, 270 F.3d 1147 (7th Cir. 2001); *Johns v. County of San Diego*, 114 F. 3d 874 (9th Cir. 1997); *Meeker v. Kercher*, 782 F.2d 153 (10th Cir. 1986); *Gallo v. United States*, 331 F. Supp. 2d 446 (E.D. Va. 2004); *Brown v. Ortho Diagnostic Sys., Inc.*, 868 F. Supp. 168 (E.D. Va. 1994); *A ex rel. F.P.J. v. Davis*, 86 So. 3d 394 (Ala. Ct. App. 2011); *Byers-Watts v. Parker*, 18 P.3d 1265 (Ariz. Ct. App. 2001); *Lowe v. City of Shelton*, 851 A.2d 1183 (Conn. Ct. App. 2004); *Blue v. People*, 585 N.E.2d 625 (Ill. Ct. App. 1992); *Yulin Li v. Rizzio*, 801 N.W.2d 351, 360 (Iowa Ct. App. 2011); *Goodwin v. Hobza*, 762 N.W.2d 623 (Neb. Ct. App. 2009); *Chisholm v. Rueckhaus*, 948 P.2d 707 (N.M. Ct. App. 1997); and *In re D.L.*, 937 N.E.2d 1042 (Ohio Ct. App. 2010).

The purpose of the rule prohibiting non-lawyers from representing others has been explained in detail:

The near uniform proscription on non-lawyers representing others in court is soundly based on two separate, but complementary policy considerations. First, there is a strong and compelling state interest in regulating the practice of law. Regulation that excludes non-lawyers from representing others reflects that the conduct of litigation by a nonlawyer creates unusual burdens not only for the party he represents, but also for his adversaries and the court. The lay litigant frequently files pleadings that are awkwardly drafted, motions that are inarticulately presented, [and] proceedings that are needlessly multiplicative. In addition to lacking the professional skill of a lawyer, the lay litigant lacks many of the

attorney's ethical responsibilities, including, importantly, the duty to avoid litigating unfounded or vexatious claims.

...

The second reason unlicensed laymen are not typically permitted to represent others in court concerns the importance of what is at stake for the litigant, and the final nature of the adjudication of the rights in question. Thus, a party may be bound, or its rights waived, by its legal representative. When that representative is a licensed attorney there are grounds to believe that the representative's character, knowledge, and training are equal to the responsibility. In addition, remedies and sanctions are available against the lawyer that are not available against nonlawyers, including ethical misconduct sanctions and malpractice suits.

Brown v. Ortho Diagnostic Sys., Inc., 868 F. Supp. 168, 171-72 (E.D. Va. 1994) (citations and footnotes omitted).

The reasons for the rule prohibiting non-lawyers from representing others are readily apparent in this case. The Plaintiff's Complaint is misnumbered, contains averments in question form, and quotes statutes that do not exist. Accordingly, for these reasons, the Court should deny the Plaintiff's requested temporary restraining order as not properly brought before the Court.

III. Conclusion

Plaintiff has not shown proper grounds for a temporary restraining order. Further, Plaintiff's claims cannot be prosecuted before this Court by his parent *pro se*. The status quo is Plaintiff's attendance at WHS. Plaintiff has not show imminent or irreparable harm if he is not transferred immediately by BHS. Accordingly, Defendants respectfully ask the Court to deny Plaintiff's requested temporary restraining order and respect the decision of the District's Board to deny such transfer during the pendency of the litigation.

Respectfully submitted,

CHILDS & HALLIGAN, P.A.

By: 

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Columbia, South Carolina 29211

(803) 254-4035

Attorneys for Defendants

November 27, 2012

Columbia, South Carolin

Attachment One

From: Roger Wiley [mailto:rwiley@richland2.org]

Sent: Wednesday, October 10, 2012 3:32 PM

To: [REDACTED]

Subject: Appeal Results for [REDACTED]

Dear Mrs. [REDACTED],

Last night the Board voted 5-2 to deny your appeal for [REDACTED] to transfer to Blythewood High School from his current enrollment at Westwood High School.

I wanted to officially follow up the meeting's results with you. If you have any questions, please do not hesitate to contact me.

Sincerely,

Roger Wiley

--

Roger Wiley
District Registrar
Office Number: 803-738-3314

--

Roger Wiley
District Registrar
Office Number: 803-738-3314

Student: [REDACTED]
Parents: [REDACTED]
Grade: 9, Westwood High School

Summary:

This past year, 2011-2012, [REDACTED] was an eighth grader residing at [REDACTED] in Blythewood. Prior to the high school realignment, his residence was zoned for Blythewood High School. As a result of the opening of Westwood High School, his residence was realigned for Westwood High School for the 2012-2013 school year. Written communication in the form of a letter explaining to the [REDACTED] family about their address being realigned and their son's reassignment to Westwood High School was sent out on December 14, 2011 to the [REDACTED] address of [REDACTED], Blythewood, SC, 29016. The letter also explained to the [REDACTED] family that the Westwood High School guidance team will be coming to the middle school in April 2012 to meet with students to assist them with their schedules. [REDACTED]'s meeting was held by the Westwood team at Muller Road Middle School on Monday, April 30, 2012.

Recommendation:

Deny the request of the [REDACTED] family. The [REDACTED] family was duly notified of their change of school through the same notification process used for notifying all Richland School District Two parents. The address in our mailing database is the same given by the [REDACTED] family to our schools as the means of communicating to them. At no time during the development of the new HS attendance lines were any scenarios presented that had their address assigned to a school other than Westwood. [REDACTED] was sent an email appointment request on April 16 to register for Westwood High School from Mrs. Gardner, guidance counselor at Muller Middle School (copied in information below). Additionally, by submitting a transfer request in July, 2012, the [REDACTED]'s fully acknowledge their understanding that they are residentially assigned to Westwood. We have approximately 100 students that were not accepted to BHS for Expanded Choice (many of whom had already attended BHS for one or two years) and moving this family ahead would not be fair to those students. Denying this family's request would be consistent with previous Board decisions in similar situations. Please note the email from Dr. McDaniel to Mrs. [REDACTED] dated September 25 as this has many details of the case.

Email to [REDACTED] from Guidance Counselor Terina Gardner. Sent April 16, 2012

From: Terina Gardner <tgardner@richland2.org>

Date: Mon, Apr 16, 2012 at 11:06 AM

Subject: Registration for WHS

To: [REDACTED]

Your appointment is Monday, April 30 @ 9:00am. TRG

Initial Email to Mrs. Lisa Blackwell from Mrs. [REDACTED] on June 29, (7:36 pm)

Ms. Blackwell, I am requesting your assistance with a zoning and school choice issue. My son [REDACTED] was originally enrolled in Blythewood High School up until and after the school choice cut off dates. He has subsequently been re-assigned for Westwood. Please change his school back to Blythewood High School. He is an "all honor's" student and we feel his "gifted" status will be best served at Blythewood High School. Thank you in advance for your assistance! Please contact me as soon as possible at (803) [REDACTED] or (803) [REDACTED] Warm regards, [REDACTED]

Email Response from Mrs. Blackwell to Mrs. [REDACTED] on July 2, (8:03 am) also sent to Registrars Tammy Betz, Lisa Faulkenberry, Lisa Santiago, Angel Coleman and Sharlene Drakeford, Guidance

Good Morning Mrs. [REDACTED], I applaud [REDACTED] for maintaining an "all honors" status; that is very commendable. In terms of zoning, your address, in our student database, is [REDACTED] Blythewood. Your address is zoned to attend Westwood High, and as an eighth grade student, he could not have been enrolled into Blythewood High. Your address was zoned for Blythewood High, but that changed, due to realignments, for the 2012-2013 school year. The school board approved the high school realignments in time for parents to apply for School Choice. I do not see where you applied for [REDACTED] to have a chance to attend Blythewood High. [REDACTED] will have to attend his zoned school, Westwood High. Thank you, Lisa Blackwell

Email to Mrs. Lisa Blackwell from Mrs. [REDACTED] on July 2, (1:48 pm)

Ms. Blackwell, The information provided by the school was that he was zoned for Blythewood...therefore we did not need to apply because we were told by the school that was where is was to attend up and until we met with the Westood team that came to Blythewood. Please call me at 803- [REDACTED] Thank you! [REDACTED]

Email To Roger Wiley from [REDACTED] on July 3, (11:47 am)

Mr. Wiley, My son [REDACTED] was originally assigned to Blythewood High School up to and including the time assigned for counselors. This was in April which was well after the closing of choice January 27,2012. I am requesting an exception to choice based on the following reasons:

- 1) He was zoned for Blythewood before and after the close date for choice.
- 2) Our family suffered a tragedy on January 20th when our nanny was killed in front of our 4 children while taking them to school. [REDACTED] is still recovering from this.
- 3) All of the students in his Geometry class are attending Blythewood High. [REDACTED] is a gifted student but has been affected by Chris' death and I think it would be detrimental to

his development to be separated from his friends. As I mentioned I only want what is best for [REDACTED]. Thank you for your consideration. Warm regards [REDACTED] 803-[REDACTED] or 803-[REDACTED]

Email from R. Wiley to [REDACTED] on July 16, (6:06 pm) also sent to Mr. Craig Tyson, Mrs. Cheryl Guy and Mr. Ralph Schmidt

Mrs. [REDACTED], Your request for your son [REDACTED] to attend Blythewood High School cannot be approved. Blythewood High School is full to its capacity with students zoned there by residence or through Choice. The notification process for realigning schools for students was a process maintained by our school district's office. The process of notifying families began prior to the start of Choice. Our records indicate your family was sent notification by mail that your son [REDACTED] was realigned to Westwood High School. Additionally, all rising 9th graders are sent information about Choice. It is up to each family to take advantage of the Choice process based upon information provided to each household. Our letters detailed all options to parents.

By way of this email, I am making the guidance staff at Westwood High School aware that [REDACTED] is experiencing the issues resulting from the death of his nanny and from his separation from his friends. The Guidance director is Mr. Craig Tyson, 803-691-4049. Please give him a call and he will help [REDACTED] with some of the adjustment concerns you have expressed. Also, I am making Mr. Ralph Schmidt, principal at Westwood High School, aware of your concerns. It is our belief that Westwood High School will be an excellent school right from the start. If you want to look out for [REDACTED]'s best interest, I urge you to start by calling Mr. Tyson and maybe, Principal Schmidt, so that [REDACTED] can move forward and transition to his new school as soon as possible.

Sincerely, Roger Wiley

[REDACTED] Response to R. Wiley on July 16, (4:05 pm) also sent to Mr. Craig Tyson, Mrs. Cheryl Guy and Mr. Ralph Schmidt

Mr. Wiley, I went to the open house at Westwood and tried to reassure [REDACTED] that he would have the opportunity to influence the character and. Set the stage for a great high school experience as he had heard that many of the schools with "gang" problems were re-zoned disproportionately to Westwood and as a result Westwood was nicknamed WestHood. I spoke with Mr. Schmitt earlier in the year and expressed the "rumors" of the disproportionate zoning along with an "immature" honors program. He reassured me that SOAR academy would be a robust program, however I have been informed that the honors at Westwood would resemble advanced classes at Blythewood. To this point, [REDACTED] has received no information on Summer work while the Blythewood High Kids have received several reading. projects etc. [REDACTED] recognized exactly 3 students at the open house. I would like to request all documentation of dates with information sent out PRIOR to the close of choice where [REDACTED] was Zoned for Westwood. Additionally I will

be requesting the school board to monitor both the safety and the Honors programs by "cross checking" Blythewood High with Westwood throughout the year. I understand the desire to give the least privileged of our society a "fighting chance" to succeed however the answer cannot be discriminatory in the approach when it affects the rights of others to get an excellent education. Hopefully, Mr. Schmitt will be able to provide a safe and challenging environment for all of the kids including the honors kids. It is my hope as well that [REDACTED] will not be adversely affected by the zoning. Thank you for your consideration and I would like for both Mr. Schmitt and the counselor to call me at their convenience. [REDACTED] 803-[REDACTED]

Wiley Response to [REDACTED] on July 16, (4:46 pm) also sent to Mr. Craig Tyson, Mrs. Cheryl Guy and Mr. Ralph Schmidt

[REDACTED], As an administrator, parent and community member in the Richland Two, fortunately, I know many of the people who will be attending Westwood High School. Referring to them as "least privileged" and affiliated with "gangs" is the exact opposite of what I would refer to them as. I'm sure Westwood High School will be fine. There are many students who eagerly anticipate taking up the leadership mantle there. I do wish your son success. Thank you.

Cheryl Guy (Westwood High School) Communication to Wiley and Schmidt on July 16, (4:54 pm)

Mr. Wiley, I just got off the phone with Mrs. [REDACTED] and we had a very good conversation about Westwood's Honors programs and other opportunities for her son. I have offered to meet with her and with [REDACTED] and show them around the school.
Cheryl

[REDACTED] Response to R. Wiley on July 16, (6:06 pm) also sent to Mr. Craig Tyson, Mrs. Cheryl Guy and Mr. Ralph Schmidt

Mr. Wiley, I appreciate your support of the students that you know who attend Westwood. The information disseminated in the community is that the school board "selectively" chose those schools with a history of "gang" problems and a disproportionate share of "free or reduced" lunch students which would by definition make them the "least privileged" as free and reduced lunch is based on the income of the household. Additionally, there has been open concern about the quality of the honors program. I spoke with Ms. Guy as well as Ms. Boney regarding my concerns and they have both assured me that the honors program will be very robust and that Mr. Schmidt will not tolerate an unruly school. They have further assured me that the 9th graders will be separated to adjust to high school.

I am hopeful that Westwood becomes an excellent school and I will continue to be involved to make sure the students remain safe and challenged. Ms. Guy has assured me

that Westwood will offer the same robust classes as the other schools in district two.
Thank you again for your consideration. [REDACTED]

Letter from [REDACTED] Dated as September 14, but Received Week of September 17-21, also sent to Katie Brochu, Calvin Jackson, Susan Brill, Melinda Anderson, James Manning, Susan Burgess, Barbara Specter and Fred McDaniel

[REDACTED], Blythewood, South Carolina 29016,
September 14, 2012, Via Facsimile and Hand Delivery

Dear Mr. Wiley, Thank you for the opportunity to speak with you after the Bethel-Hanberry History presentation on Friday September 14, 2012. I appreciate your suggestion of putting our requests in front of the school board due to the special circumstances associated with our re-alignment to Westwood High School.

By way of this letter, we are requesting an audience at the September 21, 2012 School Board Meeting. As you may recall, I reported to you that during the period of "choice" we were told by the school that [REDACTED] would be zoned for Blythewood High School. In fact, the school records up to and including the counseling session in April/May had [REDACTED] registered for Blythewood High School. In fact, the counselors had to manually change [REDACTED] to Westwood. As you know, this was well after the choice deadline of January 31, 2012. We have additional information that we would like for you to consider. On January 20, 2012 our 4 children were involved in a motor vehicle collision on the way to school which resulted in the death of [REDACTED]'s nanny. This event was very traumatic for [REDACTED] and the stress of the event occupied our family's attention for the ensuing months.

P2. As our family continues to recover from this event, [REDACTED] has had the added stress of being separated from his school friends that are currently attending Blythewood High School. We are asking you consider our request to change [REDACTED] from Westwood to Blythewood. [REDACTED] is a bright All-honors student that is still affected by loss of his Nanny and the separation from his friends at Blythewood High School. [REDACTED] is still suffering because of the circumstances as noted above and we would request a transfer to Blythewood High School as soon as practical. Thank you in advance for your consideration. regards, [REDACTED]

Roger Wiley Response to [REDACTED] on September 18, (10:17 am) also sent to Katie Brochu, Calvin Jackson, Susan Brill, Melinda Anderson, James Manning, Susan Burgess, Barbara Specter and Fred McDaniel

[REDACTED], I received your letter asking for your request for a transfer to be considered by the Board of Trustees. I want to clarify our conversation following the Bethel-Hanberry History presentation. I responded to a number of questions you asked including a question asking who could overturn our decisions and approve your request. I responded to you that the School Board has the final decision making authority. I also referenced that a similar case went to the Board recently and was denied. You asked me who were the school board members and I shared with you where you could find a listing of their names and contact information.

You continued to discuss your request by indicating that the school informed you late

about your son's zoning. You indicated that toward the end of the school year, that Blythewood High School's records showed your son as being zoned for Blythewood High for the 2012-2013 school year. I in return relayed to you that I now remembered your situation that I denied during the summer. My records indicated that our school district informed you via writing and that it was not the school's responsibility for informing you that your address was rezoned. However, I did ask you to send the request to me, not the school board, and I would review the information again to see if anything was overlooked.

The appeals procedure for transfer requests in Richland School District Two requires that you would contact me initially with your request. If you think my response is inconsistent with Richland School District Two's policies and procedures, then you would appeal to Dr. Fred McDaniel, the Chief Planning Officer. If you feel that Dr. McDaniel's response is inconsistent with Richland School District Two's policies and procedures, then you have the right to appeal to the Richland Two School Board for a final decision.

You contacted me with your initial request in July, 2012 and you received a response on July 16, 2012 denying your request. Consistent with our appeals procedures, your appeal will now need to be conducted by Dr. McDaniel and not the school board. I will make sure that Dr. McDaniel receives both your current correspondence and your previous email concern with my initial response. He will promptly get back in touch with you.
Respectfully, Roger Wiley

Email Response from Dr. Fred McDaniel to [REDACTED] on September 25, (4:43 pm)

Dear [REDACTED], Thank you for taking the time to attend our Board meeting last night and for introducing yourself to me after the meeting. I understand how difficult it has been for your family in light of the loss of your nanny last January. I am also very sorry to hear about [REDACTED]'s struggles at WWHS -transitioning to high school can be difficult for some students and I hope that over time, [REDACTED] has a better experience during his high school years.

As we discussed last night, I am charged with considering requests relative to state law, Board policy and also applying decisions fairly and consistently across the district when it comes to transfer requests. When reviewing transfer requests I first look at law, policy and administrative practices and then look at any special circumstances. In reviewing your initial request and Mr. Wiley's decision, it is clear to me that he followed all district policies and administrative practices. Your son's situation does not fall under any of the specifically identified programmatic or curricular reasons that would allow a transfer (participation in a program that leads to employment, matriculation agreement, certification, etc.).

You raised several points in your letter dated 9/14 to the Board and also in our conversation last night. I have reviewed these both in the vein of policy/law and also as special circumstances for consideration. Based on your letter and our conversation I believe that the following points are germane to your situation:

--You indicated you were under the impression that your residence was assigned to BHS at some point during the redrawing of attendance lines.

Upon reviewing the scenarios presented to the public, your residence was always assigned to WWHS under all the scenarios discussed and presented - from early on in the process until adoption by the Board in December

--Lines were adopted by the School Board on December 6, 2011 and our records indicate that notification was mailed to your residence on December 14, 2011. This is more than two weeks before the opening of the Expanded Choice application period and a little more than six-weeks before the close of the application period. Additionally, information about attendance lines was included in school newsletters, on our web site, posted in every middle and high school, in the *State* newspaper, and on R2TV. Over a five month period parents were active participants in the development of attendance lines and literally hundreds of parents provided feedback about the lines via surveys, emails, phone calls and public comments.

--You submitted a transfer request for [REDACTED] to Mr. Wiley in July, 2012. As a follow-up to Mr. Wiley's initial denial on July 16, 2012, Dr. Guy called and spoke with you that same day about WWHS offerings and to help make sure that all of your questions and concerns were addressed. I also understand that you spoke with Mr. Schmidt and Mrs. Boney in the summer about concerns you had about the makeup of the school and the honors program.

--You shared with me [REDACTED]'s frustrations with not knowing many students at WWHS and struggling with the adjustment to high school. You also shared with me that you have not sought assistance for [REDACTED] from any guidance counselors or school administrators at WWHS in response to his struggles. Additionally, you shared that your son was struggling relating to the accidental death of your nanny last January. You also communicated that no professional counseling has been sought for him related to this or any other issues. While determining the need for counseling is without question the role and responsibility of the parent, when reviewing special circumstances surrounding transfer requests, I do look for instances where medical or psychological resources have been utilized as an indicator of the longevity or degree of the circumstances.

--Regarding the timing of the request, your original transfer request was made in July and the appeal did not come until after school began. We typically do not approve transfer requests after the start of school unless there are extraordinary circumstances.

Finally, I must consider the fact that we did have approximately 100 students that applied to attend Blythewood High School via our Expanded Choice program that were not accepted. It is difficult to rationalize moving your son ahead of all these students, particularly when many of them already attended BHS for one or two years and [REDACTED] has never attended BHS.

Based on the information noted above I am unable to grant your appeal and must uphold Mr. Wiley's original decision.

In our conversation last night you indicated that, in the event I was unable to grant your appeal, that you would like to appeal my decision to the Board. I am charged with organizing and submitting all appeal documentation to the Board. Please know that I am happy to submit your appeal to the Board and will do so unless I hear from you to the contrary. I will submit the previous correspondence between you and Mr. Wiley, your

appeal letter (dated 9/14) along with this response to the Board for their review. They will review all documentation and then vote in public session on October 9th (your son's name will be anonymous and not identified in public session). If you would like to submit any additional information for the Board's consideration, please send it to me in writing by October 1st and I will ensure that it is included in the packet of information submitted to the Board.

Please know that I am very sorry that [REDACTED] is having difficulty with his transition to high school. Please consider talking with Mr. Tyson, Dr. Guy, and/or Mr. Schmidt in order that they can work to help assist [REDACTED] moving forward.

Sincerely, Fred McDaniel II, Ph.D. Chief Planning Officer Richland District Two
803.738.3227

Email from Dr. Fred McDaniel to [REDACTED] on September 28, (4:34 pm)

Dear Mrs. [REDACTED]. As we discussed earlier this afternoon, you have requested that the Board consider your appeal regarding the school assignment for your child. As you know, your concerns have been addressed through the administrative levels of the District. As a follow-up to our discussion, I want to advise you that your request to appeal to the Board will be submitted to the Board along with all relevant correspondence for their review and consideration at the next Board meeting. I will communicate to the Board your request to appear before the Board. However, the Board will notify you if, after considering the matter at its' next meeting, whether or not they intend to grant your request to appear before the Board and if so, the date and time of your appearance. I'll be back in touch with you once the Board has made a decision.

Sincerely, Fred McDaniel II, Ph.D. Chief Planning Officer Richland District Two
803.738.3227

Letter from Mrs. [REDACTED] to Fred McDaniel. Board copied. Received via email October 1, 2012

Dear Dr. McDaniel,

Thank you for taking the time to speak with me at the Richland School District II Board meeting on September 24, 2012. I appreciate your empathy for our family generally and [REDACTED] specifically. As you might expect it was extremely disappointing that you are unable to help [REDACTED].

I understand your review begins with an analysis of the law, policy and administrative practices and then to special circumstances. In view of this approach, it was surprising to hear of your decision based on South Carolina law and policy initiatives regarding the Gifted and Talented Students relative to the overall Student population. In reply, I will submit the following information for your review. However, prior to doing so and in an attempt to answer all relevant questions, I would like to correct some inaccuracies in your email. I am impressed with your recollection of our conversation after the school board meeting. This said, I think you may have received some inaccurate or incomplete information.

[REDACTED]'s home address [REDACTED] was logged by Muller Road Middle School computers and conveyed to me that we were zoned to Blythewood High School up to and including the counseling sessions in April/May of 2012. As I mentioned to you, we live in the country and have Dish network which does not offer local television stations as part of their Satellite service. Additionally, we do not subscribe to the State Newspaper.

I was advised by the Muller Road Middle that [REDACTED] was zoned to attend Blythewood High School. The publishing of information in the public domain, contrary to the school computer records, is not dispositive in the matter of notice. In fact as I mentioned to you, it would be dangerous for any public institution to allow "public" information to trump "school disseminated information". As of April 2012, well after the choice deadline, we were still informed of [REDACTED]'s assignment to Blythewood. In fact I believe Westwood's computers had Micah zoned for Blythewood up to and including the counseling period which was as late as May of 2012. The transfer request was submitted to Mr. Roger Wiley and was denied within 24/48 hours of submission. At the time of the denial I requested via email, the actual information found in the computer data bases and the date on which the Schools Computers were updated and reflected the Westwood assignment. To date this information has never provided by Mr. Wiley, however after speaking with you on Friday of this week, you informed me the change to the computers occurred on April 18, 2012. On this date not only was choice closed but prior to this we had no reason to request choice since we were zoned for Blythewood according to Blythewood Middle School Officials and computers.

I was waiting for the requested computer key stroke and data information in order to complete my appeal when I spoke with Mr. Wiley at the history of Bethel Hanberry Elementary school celebration. In the interim, my son [REDACTED]'s perception of his school situation worsened and it became necessary to appeal the decision without the requested information.

While there has been much information discussed in the community about Westwood, after a phone call with Ralph Schmidt, principal at Westwood over the summer he suggested there would be **plenty of students** Micah would know based on the "feeding schools" of Blythewood Middle and Muller Road Middle; however this is not the case. A majority of the students in [REDACTED]'s honors classes (categorized as gifted students) have opted into Blythewood High. To clarify the question of whether we have sought outside experts to assist [REDACTED] in his adjustment. This is a question that I can only answer with the following analogy: If you worked as a plumber and had a pipe leaking...you would not call an outside expert, you would evaluate the problem, analyze a solution and work to repair the problem. If you can repair the problem, you do not seek outside experts. In addition to being a medical expert, my husband has the "home court" advantage of being a father of the "patient" and unlike outside experts who are able to review information received from the parent to treat the patient... [REDACTED] is able to evaluate "the patient" in real time with continuously updated information. As I have explained, [REDACTED]'s difficulties with his change to Westwood have only recently occurred i.e.: the beginning of the school year.

After the tragic death of [REDACTED]'s nanny, I personally had to seek medical help to assist in coping with the overwhelming loss to our family. I am in the process of getting an affidavit of the attending physician to document this. How much more traumatic for [REDACTED] to have his "surrogate mother" and the adult responsible for his and his brothers care suddenly killed leaving [REDACTED] "in charge" of his three younger siblings (8 year old twins and a 3 year old) on the side of the highway.

The change of schools, the loss of the companionship and support system of his friends and peers coupled by the death of his nanny, has had a profoundly negative effect on [REDACTED]'s outlook on life. [REDACTED] is not doing well specifically because of the loss of his friends and peer support system.

For the previous reasons noted, I am requesting an immediate transfer of [REDACTED] from Westwood to Blythewood and have supplied per your request the supporting documentation attached to this letter. If you are unable grant the request please consider this letter as my formal request to appeal to the school board. Please also request an audience of the board in their private session to convey the personal and very private information I shared with you after the School Board Meeting.

Documentation and Supporting Evidence of Request for Transfer for [REDACTED]

- 1) Review of Legislation R43-220, 59-29-170 Code of Laws SC Gifted Programs Mandate.
- 2) Best practices Manual for Gifted Programs furnished by the South Carolina Board of Education.
- 3) An article titled "Foundations for understanding the social-emotional needs of the highly gifted." By Ellen Fiedler, PhD.
- 4) Letter of [REDACTED] (father of [REDACTED])
- 5) Affidavit of Dr. William Lawhead.
- 6) Additional information may be provided (due to the short time-frame for response).

[REDACTED] was identified as Highly Gifted in the Second Grade at Heathwood Hall Episcopal School

[REDACTED] was accepted in the DUKE TIP (Talent identification program) in the 5th Grade In The Fall of the 7th Grade [REDACTED] was re qualified for DUKE Tips and Scored 99% in Math and 96% in reading. This Spring he scored in 96% in math and 95% in reading. Review of Mandated Gifted and Talented Legislation R43-220 Code of Laws 59-29-170 Entire Legislation attached I cite relevant parts for [REDACTED]'s Review Process:

In relevant parts....Five year plans must include objectives and strategies to accelerate student learning.

59-29-170 Establishment of a Gifted and Talented Education; by adding: SECTION 59-29-172 AS TO PROVIDE THAT THE OFFICE OF GIFTED AND TALENTED EDUCATION MUST REVIEW REGULATIONS AND PROGRAM GUIDELINES AND THAT DISTRICTS MUST ADOPT POLICIES FOR ENROLLMENT PRACTICES;

With the addition of Westwood High School I am unaware of a policy in place to ensure the "Gifted and Talented Students" were evaluated under the guidelines of the general assembly dictates.

The General assembly of the State of South Carolina finds that:

- 1) The academic achievement of South Carolina's strongest students must be nurtured and accelerated.....

SECTION 59-29-172

(C) Schools and school districts are encouraged to implement intra-district and inter-district enrollment practices to ensure that students in the gifted and talented program have access to the curriculum and instruction **most appropriate to their gifts and talents.** SECTION 59-29-174 There is to be created a Board of Centers of Excellence in Gifted and Talented Education for Elementary-Secondary Students.

Relevant Excerpts from South Carolina's Gifted and Talented Best Practices Manual May 2006 Second Edition

Regulation R43-220 Gifted and Talented

1. The State Board of Education recognizes the need to provide services for Gifted and Talented studentsall regulations must be followed in order to qualify for state funding.

2 (B) Guidance must be derived from the SC Gifted and Talented Best Practices Manual

Chapter 1 SC Gifted and Talented Best Practices Manual

Mission: The mission of Gifted Education is maximize the potential of the gifted and talented students by providing Academic , Artistic programs and Services that match the **unique characteristics and needs of these students.**

P31 “Also, schools must form collaborative relationships with parents to ensure that the educational services provide **the particular needs** of gifted and talented student.” Our Gifted and Talented students are far too important to be “**left behind**” or to “fall through the cracks of our educational system”.

***I believe the statute would be interpreted to encompass a change in schools and separation from peer groups at a critical time such as move to high school.**

P40 Process Recommendations:

Use flexibility in assigning groups and tasks

***I believe the statute interpretation would apply to school transfers**

Learning Environment:

Encourage and model acceptance of the needs of **each** student in the classroom.

P54 regardless of reporting all gifted and talented should go beyond grade reporting to provide more detail relative to student achievement and growth.

Chapter 5 “Evaluation should always be directed toward **Bold Action** that hopefully will be directed at the services for the Gifted and Talented through the continuation, modification or **elimination of conditions which affect learning.**” Joseph Renzulli,

P75 Socio-Emotional Guidance and Counseling

Must develop a plan to recognize and nurture the **unique Socio-Emotional** development of Gifted Learners.

P100 “All students should have access to support services but gifted students by their very nature have **unique needs requiring specialized services.**

P101 the Developmental Counseling Program for Gifted and Talented Students must recognize a group of consistent issues and concerns that can affect this population.

Excerpts germane to **[REDACTED]** situation are noted below. The list was compiled by Strop (1983)

Establishing **and maintaining** positive relationship with Peers.

Developing the ability to relax

Dealing with striving for perfection

P102 Accordingly Silverman (1994) also recognized the special needs of the Gifted

Depression

Feeling overly responsible for others

Lack of true Peers

Chapter 10 Roles and Responsibilities of School Boards and Administrative Staff

The legislative Mandate in South Carolina necessitates that all offices or duties that have an **impact on services for Gifted and Talented** clearly understand and conscientiously execute their roles and responsibilities.

Relevant Facts from The Davidson Institute: Foundations for understanding the Social-emotional needs of the highly gifted by Dr. Ellen Fiedler

Relevant parts of this article related to **[REDACTED]'s review:**

Emotional component of gifted students include: Intensity of feeling; positive feelings negative feelings extremes of emotion, complex emotions and feelings, Identification with others, tense stomach, sinking heart Manaster and Powell (1983). fears and anxieties, feelings of guilt, concern with death, depressive and suicidal moods, emotional ties and attachments , concern for others empathy) sensitivity in relationships difficulty adjusting to new environments, loneliness, self judgment feelings of inadequacy and inferiority. Much of the extensive literature surrounding social –emotional issues for gifted students reflects concern about **conflicts resulting from their being different from the general population**. Manaster and Powell (1983) considered psychological difficulties for gifted adolescents to be based on two theoretical assumptions 1) that people want to belong and 2) that people want to know where or how they fit. Their assumptions are based on Leon Festinger (1957) work regarding cognitive dissonance. At the heart of cognitive dissonance theory is the idea that dissonance leads to pressure that results in action whether to reduce the dissonance or to avoid any increases in it.

Manaster and Powell (1983) connected this with specific conditions that **place gifted adolescents particularly at risk, psycho-socially because they are out of tune with those around them**.

Those who are out of phase are very aware of being different from others and are detached and often alienated. Leroux (1988) commented on the intensity with which gifted adolescents interact with their environment and **noted the impact of situational factors in school and socially** which affect the students levels of motivation and self-acceptance. She stated, “the behaviors of the others are weighed against personal values in the mind of the gifted adolescent and dissonance may result in internal conflicts which can interfere with the adolescents identity.

Adolescent’s acquisition of identity. **Since the environment of schools can be a primary source of dissonance for gifted students** (Cross, Coleman, and Steward, 1993) et al. **Attention needs to be directed toward uncovering dissonance within the educational environment.**

Given the degree to which highly gifted students differ....these theoretical and conceptual issues have major implications for the highly gifted.

I am requesting you review [redacted]’s request for transfer based on his “unique circumstances.” I am also attaching an article by Ellen Fiedler, PhD which will further illuminate the importance of his socio-emotional needs relative to maintaining a group of “peers” and the critical point is that **time is of the essence here.**

Also I will point out in the “A Descriptive Study of South Carolina’s Gifted and Talented Program” there is a significant drop in the number of Gifted students approx. 40% going from 8th grade to 9th grade.

It is my interpretation that this data suggests the district should not only evaluate the importance of the needs of 9th graders but also make this a continued focus for the group of Gifted and Talented Students beginning with my son [redacted]. The many articles I have read to research this issue, all point to the importance of the highly gifted **maintaining peer relationships for their optimal development**. A goal of the Gifted and Talented Office is accelerated learning of the Gifted and Talented and for this reason and the others stated I am requesting an immediate transfer.

Thank you in advance for your consideration.

[redacted] cell (803) [redacted] or (803) [redacted]

Letter from father [redacted], Board copied. Received on October 1.

Dear Dr. McDaniel:

The following is a synopsis of the psychosocial status of [redacted] as it pertains to his request for an in-district school transfer. It is self-evident that I have an intimate knowledge of his personal/medical history over the course of his entire life and am deeply interested in his well-being. As an operating room physician at the major Midlands tertiary care center and

children's hospital for the last thirty years, I have managed the care of children from before birth through adulthood during some of the most traumatic periods of their lives and feel I have an adequate understanding of a child's response to stress.

As background, it may be useful to know that [REDACTED] lives in an isolated rural setting with his nearest neighbor nearly half a mile away, and his nearest peer literally miles away. [REDACTED] is a friendly child who is cautious in his social contacts, meaning he is slow to make friends but has a few close friends that he has kept for a long time. Outside of school, [REDACTED]'s social outlets have been sports and the church which is part of the local Blythewood community. To his disappointment, his friends from school, tennis and church have ended up in a high school other than the one [REDACTED] currently attends.

His mother travels extensively in her job and his father is a full-time physician with night-time in-hospital call responsibilities. [REDACTED] also has three younger siblings, twin 8 year olds and a four year old for which he takes some responsibility. Given his parents' occupations, [REDACTED]'s nanny has obviously played a major role in his care. Unfortunately, on January 20th of this year, [REDACTED] witnessed, from outside the vehicle, while a truck travelling a high velocity first crashed into the car containing his younger brothers, injuring them, and then swerved and ran into his nanny who was also outside the vehicle. She died almost instantly within feet of where he stood. There ensued a few months of domestic disorder while we tried, at first unsuccessfully, to obtain reliable domestic help and had to deal simultaneously with some other major stressors of a confidential nature.

While [REDACTED] has an uncle who has retired this year as Chief of Psychiatry at Kaiser Permanente in San Francisco and an uncle who is a private practice Clinical Child Psychologist, I elected to attend to his post-traumatic needs within the nucleus of our family. His foundational belief system and strong faith have allowed him to adjust with a speed that is truly remarkable. However, [REDACTED]'s intellectual performance throughout his life has always been highly dependent on his stress level. Nevertheless, he recovered rapidly enough last year to earn almost all A's with all honors classes in middle school. Most children demonstrate stress-dependent performance, but [REDACTED]'s is accentuated. His performance on intellectual tasks is diminished by an unfriendly environment and almost nil in a threatening or hostile set of circumstances. That his intelligence is exceptional under normal circumstances can be illustrated by an example of a project he took on without assistance from any source other than the internet. The computer he assembled "from scratch" that he uses in his room can vastly outperform anything on the shelves of the local consumer electronics store, and his computer engineering knowledge is impressive. His cousin, [REDACTED] PhD, recently graduated from a prestigious academic program to become part of Mark Zuckerberg's inner circle. [REDACTED]'s intellect, and sensibilities, mirror his cousin's and, properly nurtured, [REDACTED] could also become one of tomorrow's technological leaders. Objectively, this same quality is exemplified in standardized testing performed in the schools, where he fairly consistently performs around the 95th percentile. Private intelligence testing at home also verifies that he is in the top 1% of his peers nationally.

As noted above, his ability to exceed is highly dependent on his environment. This year, separated from his friends, his first few tests in all honors classes resulted in some failing grades. With a tremendous amount of encouragement (telling him that attempts were being made to transfer back to a school where his friends are), he has achieved perfect scores on his last three tests in school. [REDACTED] has desired to make friends at Westwood, but he is socially reserved and does not want to forcibly break into the large social cliques that are culturally different from the community surrounding Westwood and that, he feels, put up barriers to his entry. Teenage life is awkward for any student, more so for the gifted and talented, and worse yet for post-

traumatic teens who have been isolated from part of their support system. That [REDACTED] has adjusted as well as he has is a testimony to his faith. In my opinion, to optimize his intellectual development, it would greatly benefit him to put him into a more comfortable environment by transferring him to Blythewood High School where his friends attend school. I have great trust in the Richland County public school system and pray that we are all granted wisdom in this matter.

Thank you,

Additional Information submitted by [REDACTED] to Dr. McDaniel on October 1st.

Attached are three separate documents pertaining to gifted and talented students

Attachment Two

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

E.M. and L.M., on behalf of their minor,
son, L.M.
Plaintiffs,
v.
Rock Hill School District 3,
Defendant.

C/A NO. 0:08-CV-2097-CMC

ORDER REGARDING
MOTION FOR JUDGMENT
ON THE RECORD

Through this action, Plaintiffs E.M. and L.M. ("Parents") seek recovery on behalf of their minor son, L.M. ("Student"), against Defendant Rock Hill School District 3 ("Rock Hill District" or "District") for alleged violations of the Individuals with Disabilities Education Improvement Act ("IDEA"). This matter is presently before the court on cross-motions for judgment on the administrative record. That record includes findings of fact and conclusions of law by a Local Hearing Officer ("LHO") and a State Review Officer ("SRO") made pursuant to 20 U.S.C. § 1415 and 24 S.C. Code Ann. Regs. 43-243.

Parents assert that the LHO and SRO erred in finding (1) that the District did not violate the IDEA by failing to consider an alternative private Montessori school (DaySpring) as the least restrictive environment and (2) that the Montessori school was not an appropriate placement for Student. Parents ask the court to overturn these findings and order Rock Hill District to pay (1) Student's tuition at DaySpring in the amount of \$6,700.00; and (2) attorneys' fees and costs for this action, as the prevailing party under the IDEA. Rock Hill District asks the court to sustain the LHO's and SRO's finding that a "free appropriate public education" ("FAPE") was provided.

The parties have submitted motions for judgment on the administrative record, and consequently, neither has presented any new evidence to the district court. The court finds judgment on the administrative record to be appropriate.

STANDARD OF REVIEW

Under the IDEA, states receiving federal funds for education must provide disabled schoolchildren with a FAPE. 20 U.S.C. § 1412 (a)(1)(A) (2006). A FAPE “consists of education instruction specially designed to meet the unique needs of the handicapped child, . . . supported by such services as are necessary to permit the child to benefit from the instruction.” *Board of Educ. v. Rowley*, 458 U.S. 176, 188-89 (1982) (internal quotations omitted). As an adjunct to this requirement, schools must create an individualized education program (“IEP”) for each qualifying child to ensure that the school district is properly discharging this obligation with respect to each disabled student. 20 U.S.C. § 1414 (d)(1)(A). To be appropriate, an IEP “must contain statements concerning a disabled child’s level of functioning, set forth measurable annual achievement goals, describe the services to be provided, and establish objective criteria for evaluating the child’s progress.” *MM v. School Dist.*, 303 F.3d 523, 527 (4th Cir. 2002). An IEP is sufficient if it is “reasonably calculated to enable the child to receive educational benefits.” *Rowley*, 458 U.S. at 207. “Whether an IEP is appropriate for purposes of the IDEA (*i.e.*, whether it meets the relevant statutory definition of a FAPE) is a question of fact in our circuit.” *G v. Fort Bragg Dependent Schs.*, 343 F.3d 295, 303 (4th Cir. 2003). Although most courts focus on the IEP, “the reviewing court should bear in mind that ‘the touchstone of IDEA is the actual provision of a free appropriate public education.’” *CM v. Bd. of Pub. Educ.*, 184 F. Supp. 2d 466, 470 (W.D.N.C. 2002) (quoting *Sellers v. School Bd. of City of Manassas, Va.*, 141 F.3d 524, 527 (4th Cir. 1998)).

Because district courts review state administrative decisions in IDEA cases, they must give deference to the findings of the hearing officers at the administrative level. Described as “modified de novo review,” *MM*, 303 F.3d at 530, the Fourth Circuit requires district courts “to make an independent decision based on a preponderance of the evidence, while giving due weight to state administrative proceedings.” *Doyle v. Arlington County Sch. Bd.*, 953 F.2d 100, 103 (4th Cir. 1991). Findings of fact “must be considered prima facie correct,” and should not be disturbed unless they were not “regularly made,” that is, “if they are reached through a process that is far from the accepted norm of a fact-finding process.” *J.P.*, 516 F.3d at 259 (quoting *County Sch. Bd. v. Z.P.*, 399 F.3d 298, 305 (4th Cir. 2005)). This deference is limited to a hearing officer’s factual findings, and thus a district court must make an independent, de novo determination as to whether the IDEA’s legal requirements were met. *Fitzgerald v. Fairfax County Sch. Bd.*, 556 F. Supp. 2d 543, 550 (E.D. Va. 2008).

“In a two-tier administrative review situation, where a Hearing Officer and a Reviewing Officer have reached the same conclusion, a reviewing court is obliged to accord greater deference to their findings.” *MM*, 303 F.3d at 530 (citing *Combs v. Sch. Bd. of Rockingham County*, 15 F.3d 357, 361 (4th Cir. 1994)).

Finally, in IDEA cases, the party challenging the IEP bears the burden of proof. *See Schaffer v. Weast*, 546 U.S. 49, 62 (2005). Likewise, the party challenging the conclusions of a hearing officer bears the burden of establishing that they were erroneous. *See Spielberg v. Henrico County Pub. Schs.*, 853 F.2d 256, 258 n.2 (4th Cir. 1988).

FINDINGS OF FACT

The LHO's findings of fact (which were adopted by the SRO) were regularly made through the course of a two-day due process hearing, which is the typical fact-finding process in an IDEA case. The factual findings are largely undisputed in this case. Because both the LHO and SRO reached the same conclusion and the parties do not dispute the factual findings, the court, therefore, adopts the factual findings of the LHO and SRO which are summarized below.

Student has been identified as having Asperger's Syndrome ("AS") and his Parents have submitted evidence of a diagnosis of post-traumatic stress disorder ("PTSD"). There is no dispute as to whether Student is a child with a disability eligible for services under the IDEA.

IEP TEAM MEETINGS - Student has not been enrolled in District since the fall of the 2005-2006 school year when he was in elementary school. In May 2007, District convened an IEP Team meeting at Parents' request. Parents were considering re-enrolling Student as a rising sixth grader, which would be Student's first year in middle school. The IEP Team completed a Re-evaluation Review Plan to assess the "present levels of performance and educational needs of the student." The parties were represented by counsel at the IEP Team meetings.

Pete Spiliotis, Ph.D., a school psychologist and member of the IEP Team, conducted a Psycho-Educational Re-evaluation Report as a result of his testing of Student on July 23-24, 2007. The results of those tests indicated that Student was "at risk" to, among other things, "Anxiety" and "Somatization."

Dr. Spiliotis made reference to a Charlotte TEACCH Center evaluation from June 2007 that "confirmed that [Student]'s needs were consistent with high-functioning autism." He concluded, "Based on previous evaluations and the present evaluation, appropriate documentation, consistent with SCDPI guidelines, exists to identify [Student] as a High Functioning Autistic student." Dr.

Spiliotis continued to state that the evaluation “indicated that [Student] could profit from a Middle School Program Model Designed for HFA students.” District also completed an Assistive Technology Re-Assessment and referred Student for an occupational therapy evaluation, which provided additional recommendations to the IEP Team.

After the re-evaluation, the IEP reconvened on August 16, 2007, with counsel present. The IEP Team’s notes indicate that the parties discussed a range of issues from the re-evaluation results, settings, accommodations, and Student’s individual needs. District representatives recommended placement at Student’s home school, Rawlinson Road Middle School (“Rawlinson Road”), in the District’s new high-functioning autism (“HFA”) program for middle-school students. Parents advocated for placement at DaySpring Academy (“DaySpring”), a private Montessori school. An IEP was finalized at the August 16, 2007, meeting. Counsel for Parents noted an objection to the placement at Rawlinson Road, contending that “historical data should be considered” and that “PTSD should be addressed directly” by the IEP Team.

The IEP noted Student’s “difficulty dealing with anxiety,” as well as his scores in the intrapersonal/interpersonal skills area. Direct special education services were prescribed in this area.

RAWLINSON ROAD HFA PROGRAM - Student’s IEP provided that he would attend the Rawlinson Road HFA Program. Students in the Rawlinson Road HFA program enter the building through a separate wing than that used by most students upon arrival. HFA students begin their day in a separate classroom that is designed and structured for them. Students are scheduled to attend regular education classes across the hall from the HFA room. They do, however, have social skills training in the HFA room and eat lunch there as well, during which time they also work on social skills. HFA students arrive at their regular education classes late and may leave early so as to

provide a tranquil transition in the halls. The students attend classes with their own "team" of regular education students. As a result, they attend their classes with the same students throughout the day. If HFA students experience anxiety or upset during class, they can be temporarily pulled out or taken to the HFA room. Students return to the HFA room at the end of the day to prepare to go home.

As of January 2008, the program was staffed with one teacher and one aide, but another aide was expected to be added in the upcoming school year, presumably 2008-2009. At the same time, there were five students in the HFA program, with another student anticipated to join. All of the students in the program are identified as HFA/AS and all have IEPs. The regular education teachers at Rawlinson Road receive training on dealing with HFA/AS students.

The teacher of the HFA program, Stacy Larham, has ten years of special education experience. Either she or an aide works in the classroom. Larham works with the regular education teachers on preparing lesson plans for the HFA students and in identifying any needed accommodations. In the classroom, Larham and her aide work to keep the HFA students on task and look for signs of stress.

DAYSRING ACADEMY - Parents did not enroll Student at Rawlinson Road but placed Student at DaySpring Academy for the 2007-2008 school year. DaySpring Academy is a private Montessori school with ten students in a small house. The school is under the leadership of Kierstin Byrd, a former principal of Rock Hill District's Montessori Elementary School. Byrd taught nine other regular education students of mixed grade levels while providing some special education accommodations for L.M., although the record indicates that DaySpring was unable to provide all of the services in Student's IEP.

DUE PROCESS HEARING - On October 22, 2007, Parents commenced a due process hearing under the IDEA by submitting a hearing request to the District. In response, the District assigned state-approved hearing officer Brian Murphy, Esq., to serve as the local hearing officer (“LHO”) and filed a response to Parents’ request for a due process hearing on November 1, 2007. On December 17-18, 2007, the LHO conducted a hearing on Parents’ complaint and, following the submission of written post-hearing arguments, the LHO issued his written decision on January 7, 2008. The LHO concluded:

- (1) The District complied with the IDEA by developing an IEP that “addresses the legitimate and known concerns and is therefore reasonably calculated to provide meaningful educational benefits” to Student;
- (2) The IEP was reasonably calculated to provide Student a FAPE in the least restrictive environment;
- (3) Any failure by the District to consider information about DaySpring Academy does not establish a substantive violation under the IDEA; and
- (4) The program offered and provided to Student at DaySpring Academy is not reasonably calculated to provide meaning educational benefits to Student, and Parents are, therefore, not entitled to reimbursement of tuition for private placement of Student at DaySpring.

Parents appealed the LHO’s decision and the South Carolina Department of Education assigned the appeal to Peter Them, Esq., an approved state-level review officer (“SRO”). After reviewing the hearing record and briefs submitted by the parties, the SRO issued his decision on March 6, 2008, affirming the LHO’s decision. The only notable distinction between the LHO’s and SRO’s conclusions is that the SRO found that the IEP Team considered, but did not consider

favorably or adopt, Parents' request that Student be placed at DaySpring, whereas the LHO stated that "the IEP Team did not consider information about DaySpring Academy." DPR 1378. Both the LHO and SRO denied Parents' request for reimbursement of tuition for private placement.

Parents commenced this civil action on June 3, 2008, challenging the LHO's and SRO's decisions. On November 14, 2008, the parties submitted cross-motions for judgment on the administrative record.

DISCUSSION

Through this action, Parents seek reversal of the LHO's and SRO's determination that Rock Hill District complied with the IDEA by providing Student with a FAPE in the least restrictive environment. Specifically, Parents argue that Rock Hill District failed to consider DaySpring Academy as an appropriate placement constituting the least restrictive environment for Student, and that such failure constitutes a denial of FAPE.

Rock Hill District responds that the LHO's and SRO's conclusions that FAPE was provided should be upheld. Alternatively, if the court finds that the IEP offered to Student did not provide a FAPE, then Rock Hill District contends that Parents' proposed placement at DaySpring was not appropriate for Student.

Parents seek reimbursement for Student's tuition at DaySpring. The Supreme Court has established criteria for a court to award reimbursement for tuition of a private school when parents have unilaterally removed their child from a public school based on the public school's failure to provide an appropriate education. *See Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993); *Sch. Comm. of Burlington v. Dept. of Educ. of Massachusetts*, 471 U.S. 359 (1985). Under *Carter-Burlington*, Parents must prove that (1) FAPE was denied at the Rawlinson Road HFA

program, and (2) the desired placement at DaySpring is appropriate under the IDEA. *See id.* As discussed below, Parents have not met their burden of proof under *Carter-Burlington*. The LHO, SRO, and the court conclude that the suggested IEP did not deny Student a FAPE and that DaySpring was not an appropriate placement for Student.

Carter-Burlington requires the court to first consider whether Student was denied a FAPE by District. In *Rowley*, 458 U.S. at 206-07, the Supreme Court developed a two-part test to evaluate whether a school district has provided a FAPE: (1) whether the State complied with the procedures set forth in the IDEA; and (2) whether the IEP developed through the IDEA's procedures was reasonably calculated to enable a child to receive educational benefits.

The first prong of the *Rowley* test involves adherence to the procedural requirements of the IDEA. In this action, Parents allege that the IEP Team failed to consider DaySpring as the least restrictive environment.¹ Parents argue that the failure to consider their suggested alternative private school constitutes a procedural violation of the IDEA. The LHO found that "the IEP Team did not consider information about DaySpring Academy." DPR 1378. Contrastingly, the SRO found that "[Parents' proposed private placement at DaySpring] was considered but not considered favorably

¹ The least restrictive environment presumption requires the following:

[A] disabled child be placed in the least restrictive environment that will provide him with a meaningful benefit. The least restrictive environment is one that, to the greatest extent possible, satisfactorily educates disabled children together with children who are not disabled, in the same school the disabled child would attend if the child were not disabled.

T.R. v. Kingwood Township Bd. of Educ., 205 F.3d 572, 578 (3d Cir. 2000). Moreover, 34 C.F.R. 300.116(c) requires that, "Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school he or she would attend if not disabled." When creating a student's IEP, the least restrictive environment presumption requires that a school district consider the use of supplementary aids and services to enable disabled students to stay in the regular education classroom as much as possible.

or adopted.” DPR 1391. After reviewing the minutes from the August 16, 2007, IEP Team meeting, the court adopts the SRO’s finding that the IEP Team considered the proposed private placement but did not agree with Parents that it would be the better environment for Student. DPR 702-09.

Furthermore, Parents have failed to provide the court with authority that a school district is obligated to consider private placements when it has already established that the student can receive a FAPE in a public school.²

Finally, even if the IEP Team did not fully consider DaySpring, there is no evidence of a substantive harm resulting from the alleged procedural violation.³ As the Supreme Court has

² Neither party has submitted any Fourth Circuit precedent that requires school districts to consider private placements after determining that a Student could succeed under an IEP in public school. Rather, Parents rely on *T.R. v. Kingwood Township Bd. of Educ.*, 205 F.3d 572, 578 (3d Cir. 2000), for the proposition that a school district is required to place a student at a private school if the private school is a less restrictive environment than the public school. However, in that case, the student was placed in a preschool classroom where half of the students were disabled and half were not disabled. There was no evidence that the student could not progress in a regular education classroom. The school district did not offer a regular education preschool class and the court, therefore, held that the school district was required to consider private placement alternatives that were potentially less restrictive. In this case, the school considered the less restrictive alternative of placing Student in a regular education classroom, but approved placement in the HFA program based on the Student’s history of not succeeding without the use of supplemental aids and services.

Parents’ contention that a school district must place a student at a private school simply because it is less restrictive than the public school is not supported by the law. *See T.T. v. District of Columbia*, 2007 U.S. Dist. LEXIS 52547 (D.D.C. July 23, 2007), *9; S.C. State Bd. of Educ. Regs. § 43-243, K, 1.a.(2) (2006 Supplement) (“After determination has been made that neither the public schools nor another governmental agency of the State can adequately provide special education and related services, then private programs within the State (the third alternative) must be considered.”).

³ Although a procedural violation may be grounds for an IDEA violation, “a violation of a procedural requirement of the IDEA (or one of its implementing regulations) must actually interfere with the provision of a FAPE before the child and/or his parents would be entitled to reimbursement relief.” *DiBuo v. Bd. of Educ. of Worcester County*, 309 F.3d 184 (4th Cir. 2002). *See also Weiss v. Sch. Bd.*, 141 F.3d 990, 994 (11th Cir. 1998) (“In evaluating whether a procedural defect has deprived a student of a FAPE, the Court must consider the impact of the procedural defect, and not

explained, to recover for a procedural defect, plaintiff must establish that the procedural defect had one of three effects: (1) it compromised the student's right to an appropriate education; (2) it seriously hampered the parents' opportunity to participate in the formulation process; or (3) it caused a deprivation of educational benefits. *Winkelman v. Parma City Sch. Dist.*, 127 S. Ct. 1994, 2001 (2007). *See also* 20 U.S.C. § 1415(f)(3)(E)(ii). District did not interfere with Student's right to an appropriate education because the IEP Team developed an IEP that provided Student with a FAPE.⁴ Parents were never denied the opportunity to participate in the formulation of Student's IEP. Parents' voices were heard at every IEP meeting. Finally, the IEP that was created, but never implemented due to Parents' placement of Student at DaySpring, did not deprive Student of educational benefits. Any procedural violation in this case did not lead to substantive harm, and therefore, the first prong of the *Rowley* test is satisfied.

The second prong of the *Rowley* test is also satisfied. To satisfy the second prong of the test, a school district must provide a disabled child with meaningful access to the educational process, which is met when instruction is reasonably calculated to confer "some educational benefit" on the child. *Rowley*, 458 U.S. at 200. The "some educational benefit" standard is not overly rigorous and certainly does not require that a school provide every special service

merely the defect *per se*.").

⁴ The IEP Team was not presented with any materials from DaySpring Academy or any documentation about the suggested educational benefits provided by the Montessori education. Even if Parents had provided that information, the District contends that they would not have altered the IEP or placed Student at DaySpring. The District contends, and introduced testimony at the administrative hearing, that in addition to being a more restrictive environment, Student was not progressing at DaySpring as much as the IEP Team anticipated he would in Rawlinson Road's HFA program.

necessary to maximize each disabled child's potential. *County Board of Henrico County v. Z.P.*, 399 F.3d 298, 300 (4th Cir. 2005).

The LHO concluded that the IEP finalized on August 16, 2007, providing that Student would be placed in the Rawlinson Road HFA program for his sixth-grade year, was reasonably calculated to confer educational benefit on Student. After reviewing the record from the local hearing, the SRO also concluded that Student's IEP was reasonably calculated to provide Student a FAPE in the least restrictive environment. There is nothing in Parents' briefs or the administrative record that convinces this court otherwise. The IEP Team considered Student's history and Parents have not argued to this court that the IEP was not reasonably calculated to confer some educational benefit on the child. The court concludes that Student's IEP was reasonably calculated to enable Student to receive educational benefits. Parents have not met their burden of establishing that District denied Student a FAPE and Parents, therefore, have not satisfied the first prong of *Carter-Burlington*.

Moreover, Parents have not met their burden under the second prong of *Carter-Burlington*, which requires that Parents establish that the private placement was appropriate for Student. The LHO and SRO concluded that the education at DaySpring is not appropriate for Student. After reviewing the administrative record and the parties' briefs, the court has no basis to find otherwise, and the court, therefore, finds that Parents have failed to establish that such a conclusion was erroneous. The court thus finds that Parents are unable to establish either prong of the *Carter-Burlington* test, and therefore, finds that Parents are not entitled to reimbursement for tuition at DaySpring.

CONCLUSION

For the reasons set forth above, the court concludes that Rock Hill District offered Student a FAPE and met its obligations under the IDEA. Therefore, Parents are not entitled to reimbursement for tuition for Student's placement at DaySpring, or for attorney's fees and costs.

The court grants District's motion for judgment on the administrative record and denies Parents' motion for judgment on the administrative record.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
January 13, 2009

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Student # 1 One John Doe, REDACTED)
NAME OF STUDENT, REDACTED)
NAME OF MOTHER OF STUDENT #1)
JOHN DOE,)

C.A. No. 2012-CP-40-07122

**MOTION TO DISMISS
"SECOND" AMENDED COMPLAINT**

Plaintiff,)

vs.)

Board of Trustees, Richland School)
District Two, Richland School District)
Two Superintendent, Dr. Katie Brochu, In)
her official capacity as School)
Superintendent,)

Defendants.)

Defendants, Richland Two School District Two Board of Trustees and Richland School District Two Superintendent, in her official capacity, Katie Brochu, PhD, by and through their undersigned counsel, hereby move this Court, pursuant to Rules 12(b)(1) and 12(b)(6), SCRCPP, for an order dismissing the Plaintiff's Complaint against Defendants on the grounds that:

- (1) Jane Doe, who is not a licensed attorney, is not authorized to represent her child pro se in the Circuit Court; and
- (2) The Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against Defendants.

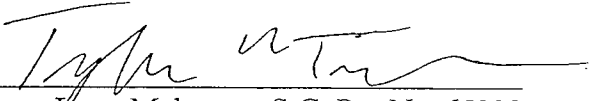
In support of its motion, Defendants will rely on the pleadings on file in this case, the applicable statutory and case law, and a memorandum of law that will be filed with the Court prior to a hearing on this motion.

FILED
2012 NOV 27 PM 4:15
CLERK OF COURT
C. BROCHU

Respectfully submitted,

CHILDS & HALLIGAN, P.A.

By:


Kathryn Long Mahoney, S.C. Bar No. 65332
John M. Reagle, S.C. Bar No. 14185
Tyler R. Turner, S.C. Bar No. 78447

kmahoney@childs-halligan.net
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P.O. Box 11367
Columbia, South Carolina 29211
(803) 254-4035

Attorneys for Defendants

November 27, 2012

Columbia, South Carolina

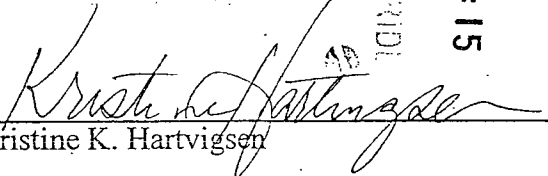
CERTIFICATE OF SERVICE BY MAIL

The undersigned of Childs & Halligan, P.A., hereby certifies that she has served the following pro se Plaintiff with the foregoing **MOTION TO DISMISS "SECOND" AMENDED COMPLAINT** by mailing a copy of same, postage prepaid and return address clearly indicated, to the following on this 27th day of November, 2012:

Jane Doe, next friend
PO Box 689
Blythewood, SC 29016

2012 NOV 27 PM 4:15
C.C.P. & G.S.

FILED



Kristine K. Hartvigsen

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Student #1 John Doe, Plaintiff;
REDACTED NAME OF STUDENT;
REDACTED NAME OF MOTHER
OF
STUDENT #1 JOHN DOE, Plaintiff

C.A. No. 2012-CP-40-07122

Vs

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION of
MOTION TO DISMISS**

Board of Trustees, Richland School
District TWO
Richland School District Two
Superintendent, Dr. Katie Brochu,
In her official capacity as School
Superintendent.

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COPIES FILED
COURT CLERK

Defendants, Richland School District Two Board of Education and Dr. Katie Brochu, Superintendent, in her official capacity, request this Court to dismiss the Appeal of Student #1 John Doe (NAME REDACTED) and Student #1 John Does Mother (NAME REDACTED) based on Rule 12(b) (1) and 12(b) (6), SCR on the grounds that the Circuit Court lacks jurisdiction over the subject matter and that the filed appeal C.A. No 2012-CP-40-07122 failed to state facts sufficient to constitute a cause of action. This request is an attempt to silence the appeal of the student and the parent affected by the school and school board decisions. The defendants attempt to dismiss the appeal without providing an alternate forum which excludes

the Richland School District Two Superintendant and the Richland School District Two Board the two entities responsible for the decisions upon which this appeal is based.

The South Carolina Circuit Court offers its judgment in the case of School Board Appeals and functions as the Appellate Court for “aggrieved parties” pursuant to South Carolina Statute §59-19-560 which states that “Any party aggrieved by the order of the county board of education shall have the right to appeal to the court of common pleas of the county by serving a written verified petition upon the chairman of the county board of education and upon the adverse party within ten days from the date upon which copy of the order of the county board of education was **mailed** to the petitioner.” (*emphasis added*). While the School Board did not send a “mailed” letter to the aggrieved student plaintiff or the aggrieved parent plaintiff, the Board via Roger Wiley, the district registrar, sent an email stating this was “the official decision of the board”. **EXHIBIT #1 EMAIL FROM ROGER WILEY**. The nature of the appeal is time sensitive in that it involves the education of a “Gifted and Talented” Student and his High School Experience. Parent of Student #1 filed this appeal to ensure compliance within the timeframe required in the statute in the event the “emailed notice” was deemed sufficient. Technically, the district used “email” as opposed to the required “mailed” method as contemplated in the statute.

Furthermore, this Court regularly resolves cases involving State Statutory Construction and Interpretation. This is a service the Court performs in its normal course of administration and function.

The Plaintiff Student #1 John Doe is a citizen of the United States of America and a resident of Blythewood, South Carolina. The Plaintiff, Student #1’s Mother, is a citizen of the United States, a resident of Blythewood SC and a resident of Isle of Palms SC. By

nature of the fact that John Doe is a minor and the court system is unavailable to him this appeal is submitted by his mother, (NAME REDACTED) as his legal guardian, as his advocate and as his next friend. (REDACTED MOTHERS NAME) next friend Status meets the criteria set in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004). She also submits this appeal on behalf of herself as an “aggrieved party”. Furthermore, Student #1’s (REDACTED NAME OF MOTHER) has standing to initiate proceedings for children currently in the South Carolina Family Courts under §63-3-550 and §63-7-20 (c) and 10 (b).

In fact, State law **requires parents** and legal guardians to actively **provide such intervention** when required elements of education are not met. State Statute requires parents to intervene when their child is lacking and gives legal recourse to their inaction via state statute §63-7-20(c) fails to supply the child with adequate food, clothing, shelter, or education as required under Article 1 of Chapter 65 of Title 59, supervision **appropriate to the child's age and development**, or health care though financially able to do so or offered financial or other reasonable means to do so and the failure to do so has caused or **presents a substantial risk of causing physical or mental injury**”. However, a child's absences from school may not be considered abuse or neglect unless the school has made efforts to bring about the child's attendance, and those efforts were unsuccessful because of the parents' refusal to cooperate. For the purpose of this chapter "adequate health care" includes any medical or **nonmedical remedial health care** permitted or authorized under state law.”

Furthermore, the Supreme Court of the United States of America, in the case of Winkelman vs. Parma City School Dist (No5-983) 2007 gives parents independent rights

under IDEA and FAPE and therefore enables them to represent their children as a continuation of the “administrative remedies” available under Federal law. In the Opinion of the Supreme Court of the United States, “since the IDEA gives parent’s enforceable rights in the administrative stage of disputes over the Free Appropriate Public Education, it would be inconsistent if they could not exercise their rights in Federal Court.” The court reasoned that some rights inhere in both the parents and the students and some rights were only available to the student. It would be unnecessarily confusing and was not indicated in the text and the structure of the IDEA to separate those rights. The Court ruled, “therefore the Winkelman’s (parents) could be a party aggrieved under the statute and the rights afforded the student need not exclude the parent.”

The language in South Carolina’s statutory construct of the “Gifted and Talented” legislation and R43-220 mirrors the Federal Statutes for disabled students in that parents are 1) “highly involved” in the process 2) have certain rights and responsibilities independent of the student e.g.: the right to a) request transfer of student under the Free Appropriate Education mandate b) object if the student is “to be removed from the Gifted and Talented program” c) request special magnet school transfers that the student has qualified to attend d) counseling and informational rights upon their child being identified as “Gifted and Talented”. Also, R43-220 gives additional substantive rights and benefits to parents in the following way: d) 2. “Each school district shall offer a range of mentoring opportunities for students beginning no later than the seventh grade. Students participating in any of the work-based programs **shall have the written permission of their parents or legal guardians** in order to engage in such experiences. Adult supervision shall be provided for mentoring opportunities.”

5.) In Grade 7, **students and their parents and/or legal guardians in collaboration** with appropriate school personnel shall revise career planning records in which the student has an interest. 6.) In Grade 8, “**students and their parents and/or legal guardians in collaboration** with appropriate school personnel shall review and revise the career planning record. The record shall include a high school course of study based on a major plan and an alternate plan for career options in which the student has an interest and the postsecondary programs of study related to achieving a career goal” 5.) Each school must comply with the **Family Educational Rights and Privacy Act** regarding student records (20 U.S.C. Section 1232(g)). The Family Educational Rights and Privacy Act gives rights and privileges to both student and parent. The referencing of this Act further bolsters the fact that both Students and Parents have rights and privileges under R43-220 and the “Gifted and Talented Legislation”.

The South Carolina Legislature further has expressed a State interest in advancing and **nurturing** education of the “State’s Brightest Student’s.” Indeed, by referencing the **South Carolina Best Practices Manual for Gifted Education, 2006** throughout the legislation for Gifted and Talented as well as R43-220, the Legislature has given special consideration and rights to this group of students and **parents**.(emphasis added) Throughout the **S.C. Best Practices Manual**, the State Board of Education requires the involvement of parents in the following ways: (*Subsequent bolded words are not emphasized in the original text, only to indicate parental involvement.*)

- 1) R43-220 references the **SC Best Practices Manual for Gifted Education** throughout the legislation.
- 2) P 31, “Also schools **must form collaborative relationships with parents** to ensure educational needs address the **particular** needs of the “Gifted and Talented” learner.

- 3) P36 School Districts must design a curriculum to support their unique characteristics and needs.
- 4) P39 Research has shown not “one size” will “fit all” and equal opportunity does not and should not mean identical content and activity for all students.
- 5) P40 “Give students
- 6) P56 2. Students that may have been mismatched may have their placement adjusted to meet their needs.
- 7) Any procedure that the district develops to review the student’s placement must incorporate a “child’s study” approach involving the gifted and talented coordinator, student, **parent/guardian** and teacher. 24 S.C Code Ann. Regs 43-220 (B)(8)(c). Placement should have as the **primary consideration the best instructional setting for the individual student.**
- 8) P60 ...Performance has not been acceptable to both **parents** and teachers. 2) regular conferences with students and **parents.** 3) Specific strategies... students, **parents** and teachers. 8) the student and the **parent** are advised... If a **parent** wishes to....the **parent** should....will conduct a meeting of the placement team, the student, the **parent** and teacher present.
- 9) P71 grade 2 Special training and services for **parents.**
- 10) P75 Gifted education must....develop and nurture the unique socio-emotional development of the gifted learner.
- 11) P77 these procedures should be articulated to teachers...and **parents.**
- 12) P78 Appropriate counseling sessions with students as well as conferences with student’s **parents/guardians** and teachers must precede....
- 13) P80**parent** survey.
- 14) P84 references all aspects of notifications to parents and input via parent surveys in graph model.
- 15) P93 access information through **parent** surveys....by incorporatingand parental **involvement.**
- 16) P100 Teachers, **parents**, support personnel and mentors are critical to the development of the whole (gifted and talented) child.
- 17) P105 **parents** must understand...
- 18) P107 Counselors can make **parents** aware. Communication between **parents** and teachers. Managing the expectations of **parents**, teachers, peers etc.
- 19) P108 often perfectionism can be seen **more often at home** than at school.
- 20) P111 Technology offers support services to gifted and talented students educators and **parents**....students, teachers and **parents** need to become familiar....
- 21) P112 Technology for Teachers Students and **Parents.**
- 22) P113 of particular interest to **parents**... **Parents** are the most significant influence on the lives of their children..
- 23) P114 Similarly Bloom noted the important role of **parents, family support** and sacrifice on the achievement of the “Gifted and Talented “students. Education programs for **parents** must address....**Parent** Education Delivery Models...
- 24) P115 many districts serve **parents** through....
- 25) P123 district referral procedures must allow referrals through administrators, **parents**, teachers or students...

It is obvious from the legislation for Gifted and Talented students that parents as well as students enjoy independent and substantive rights which should allow access and representation of their interest to the circuit court for review as ruled in the recent Supreme Court decision of Winkelman v. Parma City School District, 2007.

Also it should be noted that the parent of Student #1 John Doe is the one that requested the transfer of Student #1 John Doe to the registrar Roger Wiley, requested the “Gifted and Talented” review from the District coordinator and Dr. Katie Brochu, requested the appeal to the school board, appeared on behalf of Student #1 John Doe and herself before the school board and is now submitting this appeal on behalf of Student #1 John Doe and herself.

The United States Supreme Court in Turner v. Rogers et al NO10-10 Decided June 20, 2011 387 S.C. 142,691 S.E. 2d 470 stated, “We attach an important caveat, namely that the state must nonetheless have in place alternative procedures that assume a foreseeable fair determination of issues.” The court was addressing the fact that in civil cases a “court appointed attorney” is unavailable. The school board is the final determination of issues unless the Appellants are allowed to enter and advocate to the circuit court. To deny access for a parent and child “aggrieved” by the Board of Education decision would unfairly require parents to “pay” for a Free and Appropriate Public Education (FAPE) which is available to student #1 John Doe as a citizen and would deprive he and his mother of rights afforded to them both under legislation for the “Gifted and Talented” section of students and R43-220.

It is obvious from the legislation that parents of Gifted Students enjoy an independent and substantive right with regard to the education of their “Gifted” children and should therefore meet the “any aggrieved party” in appealing the decisions of the school board. The language in the School Board decision appeals process, which includes access to the court system as well as the ability to represent their interest in court, suggests the circuit court is the appropriate conduit for appeals.

Furthermore, the Circuit Court of South Carolina would be the most appropriate court due to the “state rights” issues with regard to the funding and the oversight of education. The legislation involving “Gifted and Talented” students in addition to being a state supported objective of improving education, also involves multiple layers of state government. This is most evident in the designation of those involved in the board which is as follows:

Section 59-29-174. (A) There is created a Board of Centers of Excellence in Gifted and Talented Education for Elementary-Secondary Students. The Board is composed of:

- (1) A member to be appointed by the Governor;
- (2) A member to be appointed by the President Pro Tempore of the Senate;
- (3) A member to be appointed by the Speaker of the House;
- (4) A member to be appointed by the Commission on Higher Education;
- (5) A member to be appointed by the Council of Presidents of South Carolina Higher Education Institutions;
- (6) A member to be appointed by the South Carolina Association of Colleges of Teacher Education;
- (7) A member to be appointed by the State Superintendent of Education;
- (8) A member to be appointed by the State Board of Education;
- (9) A member to be appointed by the South Carolina Consortium for Gifted Education;

(10) A school district or consortia coordinator of programs for academically gifted and talented students to be appointed by the chairman of the Senate Education Committee;

(11) a school district or consortia coordinator of programs for artistically gifted and talented students to be appointed by the chairman of the House Education and Public Works Committee;

(12) An elementary classroom teacher of gifted and talented students to be appointed by the chairman of the Senate Education Committee;

(13) A secondary classroom teacher of gifted and talented students to be appointed by the chairman of the House Education and Public Works Committee; and

(14) Two national advisors in education of gifted and talented students to be appointed by the State Superintendent of Education.

The state interest in this group of students is without question based on the effort and funding provided by the State Legislature. To “stop or attempt to interfere with the appeals of education” for this group of students and their parents would undermine the efforts of so many in government. Accordingly, since Free Appropriate Public Education (FAPE) is a well established right, to prevent parents from representing themselves and their children under the “Gifted and Talented” mandate **throughout** the “administrative appeals” would be contrary to the Supreme Court holdings in Winkelman v Parma County School District.2007.

The defendants further state the appeal does not state facts sufficient to constitute a “cause of action.” Quite obviously, this is an appeal of “an action” or “lack of action” by the school board and their refusal to transfer a “Gifted and Talented” Student. The Supreme Court of the United States of America in Ashcroft v. Iqbal, 556 U.S.662 (2009) noted:

Determining whether a complaint states a plausible claim for relief will, as the Court of Appeals observed be a context specific task which requires the reviewing court to draw on its judicial experience and common sense.

Drawing on the Courts judicial experience, in an appeal of a school board decision, the Court reviews the appeal “DeNovo” and as such, the issue at hand is whether the transfer decision of student #1 John Doe was made in accordance with the “Gifted and Talented” mandates and state law. The fact that Student #1 John Doe was denied transfer to the most “appropriate school” for his gifts and talents is a question for the court. This DeNovo review includes statutory interpretation, evidence and intention of the Legislature and should not be summarily dismissed in the interest of justice. Furthermore, It is evident from the pleadings that

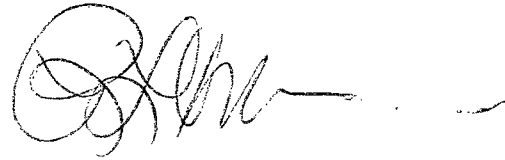
- 1) John Doe Student #1 was in fact a member of the protected class of “Gifted and Talented” students.
- 2) John Doe Student #1 and his mother appealed for transfer to a more appropriate school for his individual needs as outlined in the SC Best Practices for Gifted Education Manual,
- 3) John Doe Student #1 and his mother was denied transfer by the Richland School District Two board and the denial did not comply with State law.
- 4) The reason for denial was referencing a “waitlist of over 100 students” of the general population which is not included in the subclass of “Gifted and Talented.”
- 5) The denial did not follow policy and procedure for the “Gifted and Talented” student analysis.
- 6) The denial did not take into account the notices and the individual circumstances required under the “Gifted and Talented Mandate”.

Jonas Salk, the inventor of the polio vaccine shared his gift with society without compensation. In one great offering, he helped the disabled, the enabled the privilege.

CONFIDENTIAL

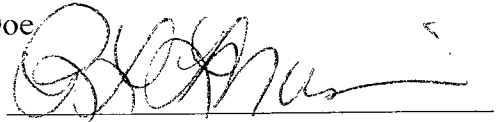
ged, the underprivileged the just and the unjust. The South Carolina Legislature has said that we as a state should nurture and accelerate the education of the most "Gifted" students. Can we as a state, silence, in some situations their only advocate...their parent? I request now to allow me to proceed Pro-se and on behalf of the mutual interest my son and I share not because I am the best advocate but I am the only advocate available to him. I request this based on the aforementioned holdings in Winkelman v. Parma. In the alternative, please grant me leave to find an affordable attorney to represent our interests.

Respectfully submitted,



Rhonda L Meisner, parent of Student #1

John Doe



Natural guardian and next friend of Plaintiff John Doe

PO Box 689 Blythewood South Carolina 29016

One Chester Road Blythewood South Carolina 29016

Telephone 803-318-0123 and (803)960-3696

Parent of Student #1 John Doe
Post Office Box 689
Blythewood, SC 29016
(803)960-3696

December 19, 2012

The Honorable James Barber III
Circuit Court Judge Presidency
Post Office Box 2766
Room 223
Columbia, South Carolina
29202-2766

VIA FACSIMILE

Dear Judge Barber,

Thank you very much for the opportunity to present my request for a TRO. I really do appreciate the opportunity to be heard.

Below are some concerns that I have as it relates to the order presented by the defendants for you to sign, I would appreciate your review prior to signing the order.

Plaintiffs objection to language in TRO ORDER provided by Defendants

Parent of Student #1 John Doe respectfully disagrees with the proposed order by Defendants in the above mentioned case. The proposed order acts as a means of advocating the position of the defendants in future proceedings instead of a simple denial based on the state statute §59-19-560 governing appeals of the School Board. Parent of Student #1 John Doe respectfully requests the court to consider that there was significant evidence that the district employees were unaware of the laws and regulations regarding the Gifted and Talented students placement and that they never considered these laws and regulations in the denial prior to sending their denial to the school board. Furthermore the legislature based §59-19-560 on the premise the board received

specifically denies the testimony of mother of Student #1 John Doe regarding his educational and emotional needs relative to his education. In South Carolina, the State Statutes give parents independent parental rights under statute §59-28-100 “Parental Involvement in the education of their children throughout their schooling:” Regulation R43-220 a Gifted and Talented Mandate with references to the South Carolina Best Practices Manual for Guidance and §59-19-560 appeal of School Board Decisions. South Carolina parents, like the Winkelman’s in the Supreme Court case Winkelman v. Parma City School Dist (No5-983) , 2007 should have the rights to continue their School board Appeals and represent their interest as well as their children’s interest in court as a continuation of the administrative appeals process.

I am grateful for the time and energy the court has taken to allow me to appeal this important issue. Our children are our most precious resource for the future success of our society. A judge’s signature has tremendous power over those viewing it and would respectfully request the order indicate a more balanced approach.

Sincerely,

Parent of Student #1 John Doe

Cc: Kathryn Long Mahoney, Esquire via Facsimile, regular mail, and email address Kmahoney@childs-halligan.net

John M. Reagle via Facsimile, regular mail and email

Rhonda Lewis Meisner
Post Office Box 689
Blythewood, SC 29016
Cellular phone (803)960-3696

April 16, 2013

Ms. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Dear Ms. Kitchings,

Please accept the following documents in case #2013-000532

- 1) the acknowledgement of the receipt of Transcript and the certificate of service.
- 2) communication with the court reporter

Please date stamp both documents and include one copy in your original file on appeal.

Additionally if you could please date stamp the additional copy of each of the documents and return to me in the self addressed stamped envelope I would certainly appreciate it.

Warm regards,

Rhonda Lewis Meisner

(a) The parent or legal guardian (plaintiff) has the legal right to advocate and represent the child's best interest in the court system. Plaintiff "Mother" expressively indicated these rights deal with issues being reviewed in the administrative appeals process before a judge. Consequently, in order for the courts to properly rule on the findings of fact, the Court must consider all testimony or evidence given (submitted) to avoid depriving any party of the opportunity to be heard and ruling rendered. The Court's written Order did not address the arguments brought by the Plaintiffs.

Plaintiff Question Posed:

(b) Is it possible in an appeal of a School Board Decision to separate the rights of the parents from the rights of the child? In the statutory construct of the Gifted and Talented education, some rights inhere to the parent and some rights inhere to the child. This issue was raised during the hearing but the written order did not contain a ruling on this issue. Consequently, the Plaintiffs are without guidance as to whether the Judicial Door is closed to them without hiring an attorney to represent them in continuation of the appeal of a School Board decision in the Courts of Richland County.

3. Plaintiff John Doe and Mother respectfully request unto this Honorable Court a review of the "Order Denying the Temporary Restraining Order", and amend the ORDER to address these two arguments, due to the presumed mistake and or oversight depriving the Plaintiffs of an order on these two critical issues.

Legal References:

A. Federal Law:

1. No Child Left Behind Act of 2001, P.L. 107-11--Sections 1111-1120B.

B. S.C. Code of Law, 1976 as Amended:

1. Sections 59-28-100 through 59-28-220-Parental Involvement in their Children's Education Act.

2. Section 59-139-90- Strategic plans to include stated goals and objectives for parent involvement.
3. Section 59-59-160-South Carolina Education and Economic Development Act parental participation, annual parent counseling conferences.
4. Sections 59-29-10 through 59-29-170-The Gifted and Talented Statute S.C. Code Ann. Regulation 43-220, Gifted and Talented Education

Background:

4. The Plaintiff, John Doe, is a citizen of the United States of America and a resident of Blythewood, South Carolina. The Plaintiff, Mother, is a citizen of the United States and resident of Blythewood SC and Isle of Palms SC.
5. John Doe is a minor and as such any requests for an intra-district transfer of his assigned school is only considered when accompanied by a Parent or legal guardian request. The decision of the Registrar and the School Board likewise can only be appealed by a parent or legal guardian pursuant to the South Carolina Board of Education policies and guidelines.
6. In this case, the parent or legal guardian is the party requesting this transfer. Subsequently, the true party of interest is requesting the transfer and appeal. Appeals of the school board decision statutorily must request a Judicial review from the Circuit Court of Richland County as the Appellate Court.
7. Since the intra-district school transfer and current Judicial Appeal are unavailable to minors, this appeal is submitted by and through his mother, (NAME REDACTED) as his legal guardian, as his advocate and as his next friend and as the true party of interest in these proceedings.

Support of Motion:

8. Pursuant to the Statutes and Regulations governing Gifted and Talented Students, the Plaintiffs respectfully request a ruling in favor of John Doe's Mother. Correspondingly, The United States Supreme Court case, *Turner v. Rogers et al* NO10-10 Decided June 20, 2011 387 S.C. 142,691 S.E. 2d 470, opinion delivered:

“We attach an important caveat, namely that the state must nonetheless have in place alternative procedures that assume a foreseeable fair determination of issues.” The Supreme Court was addressing the fact that in civil cases they ruled against the state being required giving defendants a “court appointed attorney” but attached the above important caveat.

9. See, *Winkelman v. Parma City School District*, 550 U.S. 516 (2007), No. 05.983. Argued February 27, 2007. Decided May 21, 2007, opinion delivered:

These various provisions accord parents independent, enforceable rights. Parents have enforceable rights at the administrative stage, and it would be inconsistent with the statutory scheme to bar them from continuing to assert those rights in federal court at the adjudication stage of the Appeal

10. Furthermore, In the Appeal of the School Board Decision the ability of a parent to represent their child in some cases could be their only “*alternative procedure that assume a foreseeable fair determination of the issues,*” As noted by the Supreme Court in *Turner v. Rogers*. The school board is the final determination of issues; unless the Appellants (Plaintiff’s) are allowed to enter and advocate on behalf of themselves and their minor children to the circuit court as one of the steps in the Administrative Appeals Process. Consequently, to deny access to a parent representing her interest and her child’s interest s that was “aggrieved” by the Board of Education decision; would unfairly require parents to “pay” for a free education and therefore violate their due process rights under the 14th amendment to the US Constitution. This free education is available under Article X of the South Carolina State Constitution and is available to student #1 John Doe as a citizen of the state of South Carolina. John Doe and Mother would also be deprived of rights afforded to them both under legislation for the “*Gifted and Talented*” mentioned in section S.C. Code Ann. 59-29-170 and Regulation 43-220, Gifted and Talented legislation.

Conclusion:

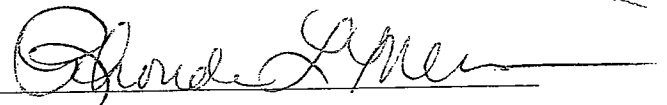
11. It is obvious, legislators intended for parents of Gifted Students to enjoy an independent and substantive right with regard to the education of their “Gifted” children. In the event these rights were violated, the parents of the child would be considered the “*aggrieved party*,” according to the definition given in the statute for Appeals of a Decision by the School Board.
12. Parents have rights at the administrative level of Appeals and should not be denied those rights at the adjudication phase of the Appeal. The legislature, by setting the Gifted and Talented Students apart from the general population and including the parents rights in the legislation has given both the student and the parent enforceable rights. Therefore, the Appeal of unfavorable decisions of the School Board not in accordance with S.C. Code Ann. 59-29-170, *Gifted and Talented* and Regulation 43-220, Gifted and Talented gives additional independent and enforceable rights to the parents. Consequently, the parent can further their appeal through the judicial proceedings on behalf of the child if the school board does not remedy the issues raised in the best interest of the child.
13. S.C. Code §59-28-100 referred to as the *Parental Involvement in their Children’s Education Act*, clearly defines the “importance of parental involvement in middle school and high school in their child’s education and the legislature has specifically noted the importance of these grades.”
14. The U.S. Supreme Court case, *Winkelman vs. Parma City School*, (No5-983) 2007, irrefutably gives parents independent rights under Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”) and The Families and Advocates Partnership for Education (FAPE) project, enabling them (parents) to represent their children as a continuation of the “*administrative remedies*.”
15. In comparison, the language that exists in S.C. Code § 59-28-100, S.C. Code §59-29-170 and Regulation 43-220 with references to the SC Best Practices for Gifted Education Manual, 2006 mirrors the American Disability Act law for disabled children. Above all, the laws mentioned promotes parental involvement and satisfies any doubt to whether a parent has the authority or may act on behalf of a child in administrative hearings to represent their child in matters determined to be in the best interest of the child.

For the foregoing reasons, Plaintiff's respectfully submit that they have given good cause to amend or alter the Motion "*Order Denying the Temporary Restraining Order.*"

Therefore, Plaintiff's pray this Court to enter an Order granting the Motion. In the same manner, granting Student #1 John Doe's ("John Doe") Mother (REDACTED NAME OF MOTHER) to act on his behalf and proceed in this appeal as *Pro Se* Litigants pursuant to S.C. Code Ann. § 1-23-380(A)(2), § 1-23-600 (G)(5), and Rule 241(b)(6 & 9), SCACR) and to enter an order stating the rights of the Parent and the Student are so inter-related they cannot be separated in Appeals of the school board concerning the education of Gifted and Talented Students. Furthermore, we request a hearing to fully argue these points or conversely an order deferring both issues until such time as the main appeal is heard.

Sir John Dalberg-Acton noted "Power corrupts and Absolute Power corrupts absolutely" as a Society we cannot allow any board or agency to escape Judicial review.

RESPECTFULLY SUBMITTED,



Mother (REDACTED NAME OF MOTHER)

Columbia, South Carolina

18, day of January, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Student #1 John Doe, REDACTED)
NAME OF STUDENT, REDACTED)
NAME OF MOTHER OF STUDENT #1)
JOHN DOE,)

C.A. No. 2012-CP-40-07122

Plaintiff,)

**DEFENDANTS' MEMORANDUM OF LAW
IN SUPPORT OF THEIR MOTION TO
DISMISS "SECOND" AMENDED
COMPLAINT**

vs.)

Richland School District Two Board of)
Trustees; Richland School District Two)
Superintendent, in her official capacity,)
Katie Brochu, PhD,)

Defendant.)

2013 JAN 22 PM 4:23
C.C.P. & G.S.

I. Introduction

Defendants respectfully submit this memorandum of law in support of their motion to dismiss Plaintiff's "Second" Amended Complaint.¹

Plaintiff John Doe is currently enrolled as a ninth grade student and attending Westwood High School ("WHS") in Richland School District Two (the "District"). Westwood High School opened as a new school in the Fall of 2012 and is a state of the art school facility. (Compl. ¶¶ 6.) The District opened Westwood High School to relieve overcrowding at Blythewood High School. (Compl. ¶¶ 7.)

Plaintiff John Doe is zoned to attend Westwood High School based on his residence. Plaintiff John Doe applied for a transfer to Blythewood High School, which the District denied, in part, because of the high demand to attend Blythewood High School and the limited space available. (Compl. ¶¶ 17, 46.) Plaintiff filed this lawsuit in response to the District's denial of

¹ Plaintiff has filed only one amended complaint.

Plaintiff John Doe's transfer request.

II. Standard of Review

In deciding a motion to dismiss, the court must consider whether the complaint, viewed in the light most favorable to the Plaintiff, states any valid claim for relief." *Cricket Cove Ventures, LLC v. Gilland*, 390 SC 312, 321, 701 S.E.2d 39, 44 (Ct. App. 2010). The Court must presume all well pled facts to be true. *Id.* Pleadings "should be construed liberally so that substantial justice is done between the parties." *Id.* Further, "[t]he trial court must base its ruling solely upon the allegations set forth in the Complaint." *Id.*

III. Argument

A. There is no private cause of action for a violation of South Carolina's gifted and talented statute or regulation.

Plaintiff John Doe seeks a declaratory judgment that the denial of his transfer request to Blythewood High School violated South Carolina's gifted and talented statute and regulation.

Initially, it is important to clarify the laws applicable to Plaintiff's alleged claim. S.C. Code Ann. § 59-29-170 sets forth the establishment of gifted and talented programs in South Carolina. S.C. Code Ann. Regs. 43-220 provides a more detailed framework for the provision of gifted and talented programs in public school districts. The Plaintiff's "Second" Amended Complaint continuously cites and quotes other "laws" (e.g. § 59-29-172, § 59-29-174, § 59-29-1702) that simply do not exist and therefore have no influence on this case. (Compl. ¶¶ 2, 18-19, 21, 23-25, 27.)

With respect to S.C. Code Ann. § 59-29-170 and S.C. Code Ann. Regs. 43-220, neither gives an individual student a private cause of action, much less a right to attend any particular school. In *Abbeville County Sch. Dist v. State*, the Supreme Court the South Carolina Supreme Court held that the Education Finance Act did not create a private cause of action. *Abbeville v. County Sch. Dist. v. State*, 335 S.C. 58, 515 S.E.2d 535 (1999). In that case, the plaintiff/appellant argued that the following statutory language created a private cause of action:

It is the purpose of the General Assembly in this chapter: To guarantee to each student in the public schools of South Carolina the availability of at least minimum education programs and services appropriate to his needs, and which are substantially equal to those available to those students with similar needs and reasonably comparable from a program standpoint to those students of all other classifications, notwithstanding geographic differences and varying local economic factors."

The Supreme Court held that the statute did not specifically create a private cause of action and that a private cause of action was not implied because the legislation was not enacted for the special benefit of a private party (*e.g.* individual students). *Id* at 65, 515 S.E.2d 539 ("The purpose of providing a public education is to benefit not just the individual receiving it, but also the public at large. Since the EFA was not created for the special benefit of a private party, no private cause of action is implied.") The Supreme Court affirmed the dismissal of the plaintiffs/appellants alleged claim under the EFA. *Id*.

In this case, neither South Carolina's gifted and talented statute nor its regulation gives a student a private cause of action, much less a right to attend any particular school. S.C. Code Ann. § 59-29-170, S.C. Code Ann. Regs. 43-220. Rather, the State Board of Education is explicitly given the authority to enforce the gifted and talented statute and regulation. S.C. Code Ann. § 59-29-170 (gifted and talented programs must be provided "in the manner the State Board of Education must specify"); S.C. Code Ann. Regs. 43-220 ("All regulations must be followed in order to qualify for state funding.") Neither the gifted and talented statute nor the regulation even mentions an individual student's attendance at any particular school or student transfers on the basis of gifted and talented programs. S.C. Code Ann. § 59-29-170, S.C. Code Ann. Regs. 43-220. Similar to the EFA, the purpose of gifted and talented programs is to benefit not just the individual students in such programs, but the public at large. Neither the language of South Carolina gifted and talented laws nor their purpose creates a private cause of action for individual students, and no court has recognized such a cause of action. Accordingly, the

Plaintiff's alleged claim under South Carolina gifted and talented laws should be dismissed.²

B. Plaintiff's complaint fails to state facts sufficient to constitute an equal protection claim because the relief requested by the Plaintiff would exacerbate the violation alleged by the Plaintiff.

The Plaintiff's "Second" Amended Complaint appears to allege that the Defendants violated the Equal Protection Clause of the United States Constitution by creating "a de-facto segregated high school system" between Blythewood High School and Westwood High School and by failing to protect a class of gifted and talented students. (Compl. ¶¶ 19, 38-40, 43, 46.)

Even assuming that allegations in the Plaintiff's "Second" Amended Complaint are true, and that the Defendants violated the Equal Protection Clause in assigning students to Blythewood High School and Westwood High School, a Court cannot grant Plaintiff John Doe the relief requested in the "Second" Amended Complaint because the requested relief would not remedy the alleged violation. When a constitutional violation is proven, the Court must narrowly tailor the relief to remedy the violation. See *Dayton Bd. of Educ. v. Brinkman*, 433 U.S. 406, 420 (1977) ("Once a constitutional violation is found, a federal court is required to tailor the scope of the remedy to fit the nature and extent of the constitutional violation.") *Gibson v. Firestone*, 741 F.2d 1268, 1273 (11th Cir. 1984) ("Although federal courts have broad equitable powers to remedy proven constitutional violations, injunctive relief must be tailored to fit the nature and extent of the established violation."); *Haitian Refugee Ctr. v. Smith*, 676 F.2d 1023, 1041 (5th Cir. 1982) ("Although a federal court has broad equitable powers to remedy constitutional violations, it must tailor the scope of injunctive relief to fit the nature and extent of the constitutional violation established.") *Resident Advisory Bd. v. Rizzo*, 564 F.2d 126, 149 (3d Cir. 1977) ("[I]n equal protection cases ... relief must be carefully tailored ... to remedy proved constitutional violations.")

² Plaintiff's alleged claim under the gifted and talented laws should also be dismissed as an impermissible educational malpractice claim because it appears to allege that Plaintiff John Doe received an inadequate education. *Hendricks v. Clemson Univ.*, 353 S.C. 449, 457, 578 S.E.2d 711, 715 (2003).

In this case, Plaintiff John Doe, who is white, seeks an immediate transfer from the Westwood High School, which he alleges has a majority of African-American students, to Blythewood High School, which he alleges has a majority of white students. (Compl. ¶¶ 12, 38-40, Wherefore.) Oddly, the relief requested in the Plaintiff's "Second" Amended Complaint would exacerbate the alleged Equal Protection Clause violation. Therefore, even if the Plaintiff proved an Equal Protection violation, a Court could not grant Plaintiff John Doe the relief requested in the "Second" Amended Complaint. Consequently, the Plaintiff's Equal Protection claim should be dismissed.

Additionally, Defendants do not believe that Plaintiff John Doe has or could state an Equal Protection claim based on his status as a gifted and talented student. Defendant is not aware of any legal authority supporting such a claim. Further, even if such a claim were viable, Plaintiff's "Second" Amended Complaint does not allege that Plaintiff John Doe was treated differently than other gifted and talented students or that a class of gifted and talented students were treated differently than other students in a manner that could violate the Equal Protection Clause. (Compl. ¶¶ 19, 38-40, 43, 46.) *Lindsley v. Girard Sch. Dist.*, 213 F. Supp. 2d 523, 530 (W.D. Pa. 2002) ("[I]t is fundamental that in order to maintain an equal protection claim, a plaintiff must allege that he or she received different treatment from other similarly situated individuals or groups.") If anything, it appears the Plaintiff is attempting to state a private cause of action for violation of South Carolina's gifted and talented statutes under the guise of an Equal Protection claim. (Compl. ¶¶ 41, 44-49.) Accordingly, this Court should dismiss the Plaintiff's Equal Protection claim.

C. Plaintiff's complaint fails to state facts sufficient to constitute a due process claim because Plaintiff John Doe does not have a property interest in attending Blythewood High School.

The Plaintiff's "Second" Amended Complaint alleges that the Defendants violated Plaintiff John Doe's Due Process rights by denying his request for a transfer to Blythewood High

School. (Compl. ¶¶ 41-49.)

To state a claim for a violation of procedural due process, Plaintiff John Doe must show that (1) he has a constitutional property interest in attending Blythewood High School, (2) the Defendants deprived the Plaintiff of his property interest, (3) without due process of law (i.e. without notice and an opportunity to be heard). *Sunrise Corp. of Myrtle Beach v. City of Myrtle Beach*, 420 F.3d 322, 328 (4th Cir. 2005). To state a claim for a violation of substantive due process, Plaintiff John Doe must show that (1) he had a constitutional property interest in attending Blythewood High School, (2) the state deprived him of his property interest, and (3) the state's action falls so far beyond the outer limits of legitimate governmental authority that no process could cure the deficiency. *Id. See also Dunes West Golf Club, LLC v. Town of Mount Pleasant*, No. 27208, 2013 WL 90419, at *10 (S.C. Sup. Ct. Jan. 9, 2013) (noting that a party must show a cognizable property interest as the first step under either type of due process claim).

To "have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it." *Henry-Davenport v. Sch. Dist. of Fairfield County*, 832 F. Supp. 2d 602, 610 (D.S.C. 2011) (quoting *Bd. of Regents of State Coll. v. Roth*, 408 U.S. 564, 577 (1972)). "He must have more than a unilateral expectation of it." *Id.* "He must instead have a legitimate claim of entitlement to it." *Id.* Here, Plaintiff must show a legitimate claim of entitlement under South Carolina law to attend Blythewood High School. *See Henry-Davenport* at 610.

The Plaintiff's "Second" Amended Complaint alleges that Plaintiff John Doe has a property interest in attending Blythewood High School under South Carolina's gifted and talented statute and regulation. (Compl. ¶¶ 41-49.) However, neither South Carolina's gifted and talented statute nor its regulation gives a student a private right of action, much less a right to attend any particular school. S.C. Code Ann. § 59-29-170, S.C. Code Ann. Regs. 43-220. In fact, neither the gifted and talented statute nor the regulation discusses or even mentions an individual student's attendance at any particular school or student transfers. S.C. Code Ann. §

59-29-170, S.C. Code Ann. Regs. 43-220. Thus, Plaintiff John Doe does not have a constitutional property interest in attending Blythewood High School under the South Carolina gifted and talented statute or regulation.

Additionally, in *Wharton v. Abbeville Sch. Dist. No. 60*, 608 F. Supp. 70 (D.S.C. 1984), Judge G. Ross Anderson, Jr. held that "South Carolina law grants a child of school age the right to a free education but does not confer a right upon pupils to attend a specific school." *Id.* Rather, South Carolina statutory law specifically gives the Defendants the authority and duty to "transfer any pupil from one school to another so as to promote the best interests of education, and determine the school within its district in which any pupil shall enroll." S.C. Code Ann. § 59-19-90(9). Therefore, Plaintiff John Doe cannot establish a constitutional property interest in attending Blythewood High School. Accordingly, this Court should dismiss the Plaintiff's Due Process claim.

D. Plaintiff John Doe's mother is not a licensed attorney and cannot represent Plaintiff John Doe pro se with respect to his claims.

This Court should dismiss the Plaintiff's "Second" Amended Complaint, without prejudice, to the extent that legal counsel licensed to practice law in South Carolina is not representing Plaintiff John Doe or has not adopted the "Second" Amended Complaint, which was prepared and signed by Plaintiff John Doe's mother.

Under South Carolina law, a person may prosecute or defend "his own cause, if he so desires." S.C. Code Ann. § 40-5-80. However, no "person may either practice law or solicit the legal cause of another person or entity in this State unless he is enrolled as a member of the South Carolina Bar." S.C. Code Ann. § 40-5-310.

Under these statutes, the Supreme Court of South Carolina has held that a non-lawyer cannot represent a corporation in circuit or appellate courts. *Renaissance Enters., Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 515 S.E.2d 257 (1999) (holding that non-lawyer president and shareholder of corporation cannot represent the corporation *pro se* in circuit or appellate courts).

The Supreme Court has also held that a non-lawyer executor or personal representative cannot represent an estate in legal matters. *Brown v. Coe*, 365 S.C. 137, 616 S.E.2d 705 (2005). The Supreme Court explained that the "goal of the prohibition against the authorized practice of law is to protect the public from incompetent, unethical, or irresponsible representation." *Renaissance Enters, Inc.* at 652, 515 S.E.2d at 258. Specifically, the prohibition against the unauthorized practice of law protects the public "from the potentially severe economic and emotional consequences which may flow from the erroneous preparation of legal documents or the inaccurate legal advice given by persons untrained in the law." *Brown* at 139, 616 S.E.2d at 707.

While a parent may assert claims on behalf of his or her minor child as next friend, Rule 17(c), SCRCF, a non-lawyer parent serving as next friend cannot litigate a minor child's claim without legal counsel. *Meyers v. Loudoun County Pub. Sch.*, 418 F.3d 395, 400 (4th Cir. 2005) (non-attorney parent of minor children not authorized to litigate pro se the claim of his minor children); *Blue v. People*, 585 N.E.2d 625, 626 (Ill. Ct. App. 1992) ("A next friend is not a party to a suit but represents the real party, who, as a minor, lacks the capacity to sue in his own name"); *Yulin Li v. Rizzio*, 801 N.W.2d 351, 360 (Iowa Ct. App. 2011) (Rule authorizing father "to bring suit on behalf of his son as next friend, did not authorize [father] to advocate his son's claim before the district court without the aid of counsel."). Courts have repeatedly held that a non-lawyer parent or guardian cannot sue on behalf of his or her minor child without securing legal counsel. *Meyers v. Loudoun County Pub. Sch.*, 418 F.3d 395, 399-401 (4th Cir. 2005); *Booker v. Sullivan*, No. 8:11-1131-HMH-JDA, 2011 WL 3555718 (D.S.C. July 21, 2011); *Foley v. Town of Nichols*, No. 4:09-1217-TLW-TER, 2010 WL 424142 (D.S.C. Feb. 1, 2010); *Bardes v. Magera*, No. 2:08-CV-487-PMD-RSC, 2009 WL 3163547 (D.S.C. Sept. 30, 2009); *Cheung v. Youth Orchestra Found. of Buffalo, Inc.*, 906 F.2d 59 (2d Cir. 1990); *Osei-Afriyie v. Med. Coll. of Pa.*, 937 F.2d 876 (3d Cir. 1991); *Shepherd v. Wellman*, 313 F.3d 963 (6th Cir. 2002); *Navin*

v. Park Ridge Sch. Dist. 64, 270 F.3d 1147 (7th Cir. 2001); *Johns v. County of San Diego*, 114 F.3d 874 (9th Cir. 1997); *Meeker v. Kercher*, 782 F.2d 153 (10th Cir. 1986); *Gallo v. United States*, 331 F. Supp. 2d 446 (E.D. Va. 2004); *Brown v. Ortho Diagnostic Sys., Inc.*, 868 F. Supp. 168 (E.D. Va. 1994); *A ex rel. F.P.J. v. Davis*, 86 So. 3d 394 (Ala. Ct. App. 2011); *Byers-Watts v. Parker*, 18 P.3d 1265 (Ariz. Ct. App. 2001); *Lowe v. City of Shelton*, 851 A.2d 1183 (Conn. Ct. App. 2004); *Blue v. People*, 585 N.E.2d 625 (Ill. Ct. App. 1992); *Yulin Li v. Rizzio*, 801 N.W.2d 351, 360 (Iowa Ct. App. 2011); *Goodwin v. Hobza*, 762 N.W.2d 623 (Neb. Ct. App. 2009); *Chisholm v. Rueckhaus*, 948 P.2d 707 (N.M. Ct. App. 1997); and *In re D.L.*, 937 N.E.2d 1042 (Ohio Ct. App. 2010).

The purpose of the rule prohibiting non-lawyers from representing others has been explained in detail:

The near uniform proscription on non-lawyers representing others in court is soundly based on two separate, but complementary policy considerations. First, there is a strong and compelling state interest in regulating the practice of law. Regulation that excludes non-lawyers from representing others reflects that the conduct of litigation by a nonlawyer creates unusual burdens not only for the party he represents, but also for his adversaries and the court. The lay litigant frequently files pleadings that are awkwardly drafted, motions that are inarticulately presented, [and] proceedings that are needlessly multiplicative. In addition to lacking the professional skill of a lawyer, the lay litigant lacks many of the attorney's ethical responsibilities, including, importantly, the duty to avoid litigating unfounded or vexatious claims.

...

The second reason unlicensed laymen are not typically permitted to represent others in court concerns the importance of what is at stake for the litigant, and the final nature of the adjudication of the rights in question. Thus, a party may be bound, or its rights waived, by its legal representative. When that representative is a licensed attorney there are grounds to believe that the representative's character, knowledge, and training are equal to the responsibility. In addition, remedies and sanctions are available against the lawyer that are not available against nonlawyers, including ethical misconduct sanctions and malpractice suits.

Brown v. Ortho Diagnostic Sys., Inc., 868 F. Supp. 168, 171-72 (E.D. Va. 1994)

(citations and footnotes omitted).

The reasons for the rule prohibiting non-lawyers from representing others are readily-apparent in the present case. The Plaintiff's "Second" Amended Complaint, which was prepared and signed by Plaintiff John Doe's mother, is incorrectly titled and numbered, contains averments in question form, and quotes statutes that were never enacted. To the extent that legal counsel authorized to practice law in South Carolina is not representing Plaintiff John Doe or has not adopted Plaintiff's "Second" Amended Complaint, this Court should dismiss the Plaintiff's "Second" Amended Complaint without prejudice.

IV. Conclusion

For the reasons set forth above, this Court should dismiss the Plaintiff's "Second" Amended Complaint. To the extent that the Court decides to not dismiss any part of the Plaintiff's "Second" Amended Complaint, Defendants respectfully ask the Court to order the Plaintiff to more definitely state any remaining claim(s) so that Defendants can appropriately respond.

Respectfully submitted,

CHILDS & HALLIGAN, P.A.

By: 

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January 22, 2013
Columbia, South Carolina

The Court stated in the Denial of the Motion to Alter and Amend that the Motion was not timely filed and that the notice was delivered to the Counsel's mail box on December 28, 2012 and therefore the Motion was untimely. Plaintiff "Mother" submits the Motion was timely filed for the following reasons: 1) Under Rule 59e the time to respond to an order to Alter and Amend the order is within 10 days of receiving written entry of the order. Plaintiff, Mother received a letter from Child's and Halligan law firm forwarding the order after a phone conversation on January 8, 2013 with Kathy Mahoney, Esquire and Mother where Ms. Mahoney relayed the information that the order denying the temporary restraining order had been signed by the Honorable Judge James E. Barber III. 2) Mother then called the Clerk of Court to inquire whether the order had in fact been filed and to ask if an order had been copied to "Mother" from the Court. The Clerk then informed "Mother" that the order had been filed and the order was mailed to Jane Doe PO Box 689 Blythewood SC 29016 on either the 6th or 7th because the mail was "backed up due to the holiday's." 3) While "Mother" is responsible for the acts and omissions of agents that she engages, upon information and belief, the attorney firm, Bowens Law Firm, LLC, retained to represent son at the TRO hearing does not maintain a mailbox at the Clerk of Courts Office according to attorney Glenn Bowens. 4) Mother retained Bowens Law firm , PC **not** Pope and Bowens, LLC to represent Student #1 John Doe at the TRO hearing. It appears there may have been a mistake within the Clerk of Courts Office in that the order denying the Motion to Alter and Amend was erroneously placed in Pope and Bowens, LLC's box, Glenn Bowens former law firm.5). Bowens law firm, PC gives as the address for legal notice box 424 Winnsboro SC for notices from the court. This address is also listed and maintained in the 2012 manual for Attorney's as required by the rules of the court.(see attached screen prints) (6.)"Mother" cannot be held accountable for the actions or inactions of a firm she has not retained on behalf of her minor child. 7) Additionally, "Mother" is the author of the Motion to Alter and Amend and gives as evidence of the timely filing to "Mother" the envelope from the Clerk of Court's office with the stamped date of January 9, 2013 and the letter of Child's and Halligan copying Mother on the entered judgment via letter on January 8, 2013. (See attached postmarked copy from Clerk of Court). "Mother" respectfully requests the Court to inquire

with the Clerk's office and with Attorney Kathy Mahoney, esquire the validity of the claims of "Mother". If the Court's decision was based on the un-timeliness of the original Motion then "Mother" requests the court to re-consider the merits of the Motion and to either hear the merits of the Motion or to defer the two issues raised in the initial Motion to Alter and Amend until which time the full Appeal can be heard. The Order denying the TRO did not rule on two issues or questions of law brought before the court for consideration. In consequence, the Plaintiff respectfully requests the court to amend its findings or make additional findings pursuant to the Rule 60(a)(b)(1) motion.

A Principal is responsible for the acts and missteps of their agents; however, in a Court of Equity, it would be inequitable to make Mother and Student #1 John Doe forfeit rights based on errors of the Clerk of Court and or an Attorney's firm not engaged to represent minor son. Additionally, the Motion was made by the "Mother" so whether or not the attorney of record's notice of the order was sufficient, the Motion was timely made by "Mother's" receipt of written notice of entry of the order dated January 9th and received either the 10th or the 11th of January 2013 which was well within the required 10 days receipt of the written order. Even using the stamped date of January the 8, 2013, without allowing for mail delivery time, the January 18, 2013 filing of the Motion to Alter and Amend was within the required 10 days of written receipt of entry of order. Please accept as proof of the timeliness of the Motion the attached documents. (Date Stamped notice from Clerk of Court notice mailed to "Mother", Bowens Law firm, PC official address for the Court, and Bowens Law Firm, PC address in Lawyers Address book). The original questions requested of the Court to review in the Motion to Alter and Amend is below and is as follows:

The Plaintiff's Argument:

- (a) The parent or legal guardian (plaintiff) has the legal right to advocate and represent the child's best interest in the court system. Plaintiff "Mother" expressively indicated these rights deal with issues being reviewed in the administrative appeals process before a judge. Consequently, in order for the courts to properly rule on the findings of

fact, the Court must consider all testimony or evidence given (submitted) to avoid depriving any party of the opportunity to be heard and ruling rendered. The Court's written Order did not address the arguments brought by the Plaintiffs.

Plaintiff Question Posed:

(b) Is it possible in an appeal of a School Board Decision to separate the rights of the parents from the rights of the child? In the statutory construct of the Gifted and Talented education, some rights inhere to the parent and some rights inhere to the child. This issue was raised during the hearing but the written order did not contain a ruling on this issue. Consequently, the Plaintiffs are without guidance as to whether the Judicial Door is closed to them without hiring an attorney to represent them in continuation of the appeal of a School Board decision in the Courts of Richland County.

3. Plaintiff John Doe and Mother respectfully request unto this Honorable Court a review of the "Order Denying the Temporary Restraining Order", and amend the ORDER to address these two arguments, due to the presumed mistake and or oversight depriving the Plaintiffs of an order on these two critical issues:

Legal References:

A. Federal Law:

1. No Child Left Behind Act of 2001, P.L. 107-11--Sections 1111-1120B.

B. S.C. Code of Law, 1976 as Amended:

1. Sections 59-28-100 through 59-28-220-Parental Involvement in their Children's Education Act.

2. Section 59-139-90- Strategic plans to include stated goals and objectives for parent involvement.

3. Section 59-59-160-South Carolina Education and Economic Development Act parental participation, annual parent counseling conferences.

4. Sections 59-29-10 through 59-29-170-The Gifted and Talented Statute S.C. Code Ann. Regulation 43-220, Gifted and Talented Education

Background:

4. The Plaintiff, John Doe, is a citizen of the United States of America and a resident of Blythewood, South Carolina. The Plaintiff, Mother, is a citizen of the United States and resident of Blythewood SC and Isle of Palms SC.
5. John Doe is a minor and as such any requests for an intra-district transfer of his assigned school is only considered when accompanied by a Parent or legal guardian request. The decision of the Registrar and the School Board likewise can only be appealed by a parent or legal guardian pursuant to the South Carolina Board of Education policies and guidelines.
6. In this case, the parent or legal guardian is the party requesting this transfer. Subsequently, the true party of interest is requesting the transfer and appeal. Appeals of the school board decision statutorily must request a Judicial review from the Circuit Court of Richland County as the Appellate Court.
7. Since the intra-district school transfer and current Judicial Appeal are unavailable to minors, this appeal is submitted by and through his mother, (NAME REDACTED) as his legal guardian, as his advocate and as his next friend and as the true party of interest in these proceedings.

Support of Motion:

8. Pursuant to the Statutes and Regulations governing Gifted and Talented Students, the Plaintiffs respectfully request a ruling in favor of John Doe's Mother. Correspondingly, The United States Supreme Court case, *Turner v. Rogers et al* NO10-10 Decided June 20, 2011 387 S.C. 142,691 S.E. 2d 470, opinion delivered:

“We attach an important caveat, namely that the state must nonetheless have in place alternative procedures that assume a foreseeable fair determination of issues.” The Supreme Court was addressing the fact that in civil cases they ruled against the state being required to provide defendants a “court appointed attorney” but attached the above important caveat.

9. See, *Winkelman v. Parma City School District*, 550 U.S. 516 (2007), No. 05.983. Argued February 27, 2007. Decided May 21, 2007, opinion delivered:

These various provisions accord parents independent, enforceable rights. Parents have enforceable rights at the administrative stage, and it would be inconsistent with the statutory scheme to bar them from continuing to assert those rights in federal court at the adjudication stage of the Appeal

10. Furthermore, In the Appeal of the School Board Decision the ability of a parent to represent their child in some cases could be their only "*alternative procedure that assume a foreseeable fair determination of the issues,*" As noted by the Supreme Court in *Turner v. Rogers*. The school board is the final determination of issues; unless the Appellants (Plaintiff's) are allowed to enter and advocate on behalf of themselves and their minor children to the circuit court as one of the steps in the Administrative Appeals Process. Consequently, to deny access to a parent representing her interest and her child's interests that was "aggrieved" by the Board of Education decision; would unfairly require parents to "pay" for a free education and therefore violate their due process rights under the 14th amendment to the US Constitution. This free education is available under Article X of the South Carolina State Constitution and is available to student #1 John Doe as a citizen of the state of South Carolina. John Doe and Mother would also be deprived of rights afforded to them both under legislation for the "*Gifted and Talented*" mentioned in section S.C. Code Ann. 59-29-170 and Regulation 43-220, Gifted and Talented legislation.

Conclusion:

11. It is obvious, legislators intended for parents of Gifted Students to enjoy an independent and substantive right with regard to the education of their "Gifted" children. In the event these rights were violated, the parents of the child would be considered the "*aggrieved party,*" according to the definition given in the statute for Appeals of a Decision by the School Board 59-19-560.

12. Parents have rights at the administrative level of Appeals and should not be denied those rights at the adjudication phase of the Appeal. The legislature, by setting the Gifted and Talented Students apart from the general population and including the parents rights in the legislation has given both the student and the parent enforceable rights. Therefore, the Appeal of unfavorable decisions of the School Board not in accordance with S.C. Code Ann. 59-29-170, *Gifted and Talented* and Regulation 43-220, Gifted and Talented gives additional independent and enforceable rights to the parents. Consequently, the parent can further their appeal through the judicial proceedings on behalf of the child if the school board does not remedy the issues raised in the best interest of the child.
13. S.C. Code §59-28-100 referred to as the *Parental Involvement in their Children's Education Act*, clearly defines the "importance of parental involvement in middle school and high school in their child's education and the legislature has specifically noted the importance of these grades."
14. The U.S. Supreme Court case, *Winkelman vs. Parma City School*, (No5-983) 2007, irrefutably gives parents independent rights under Individuals with Disabilities Education Improvement Act of 2004 ("IDEA") and The Free and Appropriate Public Education (FAPE) , enabling them (parents) to represent their children as a continuation of the "*administrative remedies.*"
15. In comparison, the language that exists in S.C. Code§ 59-28-100, S.C. Code §59-29-170 and Regulation 43-220 with references to the SC Best Practices for Gifted Education Manual, 2006 mirrors the American Disability Act law for disabled children. Above all, the laws mentioned promotes parental involvement and satisfies any doubt to whether a parent has the authority or may act on behalf of a child in administrative hearings to represent their child in matters determined to be in the best interest of the child.


For the foregoing reasons, Plaintiff's respectfully submit that they have given good cause to amend or alter the Motion "*Order Denying the Temporary Restraining Order.*"

Confidential

Therefore, Plaintiff's pray this Court to enter an Order granting the Motion. In the same manner, granting Student #1 John Doe's ("John Doe") Mother (REDACTED NAME OF MOTHER) the authority to act on his behalf and proceed in this appeal as *Pro Se* Litigants pursuant to S.C. Code Ann. § 1-23-380(A)(2), § 1-23-600 (G)(5), and Rule 241(b)(6 & 9), SCACR and to enter an order stating the rights of the Parent and the Student are so inter-related they cannot be separated in Appeals of the school board concerning the education of Gifted and Talented Students. Furthermore, we request a hearing to fully argue these points or conversely an order deferring both issues until such time as the main appeal is heard.

Sir John Dalberg-Acton noted "Power corrupts and Absolute Power corrupts absolutely" as a Society we cannot allow any board or agency to escape Judicial review.

RESPECTFULLY SUBMITTED,



Mother (REDACTED NAME OF MOTHER)

Columbia, South Carolina

19, day of February, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Student #1 John Doe, Plaintiff;)
REDACTED NAME OF STUDENT;)
REDACTED NAME OF MOTHER)
OF)
STUDENT #1 JOHN DOE, Plaintiff)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

FILED
2013 FEB 19 PM 2:20
JEANETTE W. MORRIS
C.P. & G.S.

CERTIFICATE OF SERVICE

V.)
)
Board of Trustees,)
Richland School District Two)
Superintendent, Dr. Katie Brochuchu)
In her official capacity as School)
Superintendent, Defendant)

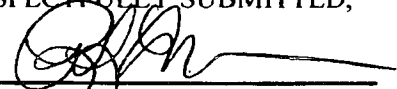
I, the undersigned acting on my own behalf and on behalf of Student #1 John Doe, do hereby certify that we have on the date given below served the **Motion For Relief of Judgement : Denial of Motion to Alter and Amend Order in Temporary Restraining Order** placing in a pre-paid postage envelope and mailing to:

Attn: Kathryn Mahoney, Esquire
Childs and Halligan, PA
P.O.Box 11367
Columbia, SC 29211

And via email to kmahoney@childs-halligan.net
jreagle@childs-halligan.net
tturner@childs-halligan.net

On this day 19 of February 2013

RESPECTFULLY SUBMITTED,



Rhonda L. Meisner, Plaintiff

PO Box 689 Blythewood SC 29016

(803)960-3696

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Student #1 John Doe, Plaintiff;)
REDACTED NAME OF STUDENT;)
REDACTED NAME OF MOTHER)
OF)
STUDENT #1 JOHN DOE, Plaintiff)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

DOCKET NO: 2012-CP-40-0712

MOTION TO ALTER AND
AMEND/MOTION FOR RELIEF
JUDGMENT

2013 FEB 26 PM 4:45
KAREN W. HERRIDGE
CLERK OF COURT
& G.S.

RICHLAND COUNTY
FILED

V.)
)
Board of Trustees,)
Richland School District Two)
Superintendent, Dr. Katie Brochuchu)
In her official capacity as School)
Superintendent, Defendant)

**MOTION TO ALTER AND AMEND AND MOTION FOR RELIEF OF JUDGMENT: DENIAL
OF TEMPORARY RESTRAINING ORDER**

1. TO THE DEFENDANTS NAMED ABOVE YOU WILL PLEASE TAKE NOTICE that in 10 days after the service hereof or as soon as Plaintiffs may be heard the Plaintiffs, Student #1 John Doe ("John Doe") and Student #1 John Does Mother ("Mother") will move before this Honorable Court for a relief of judgment entered on January 13, 2013 the denial of the Motion to Alter or Amend the Court's "Order Denying the Temporary Restraining Order". The Plaintiff's are requesting this relief by and through his Mother (REDACTED NAME OF MOTHER) proceeding Pro Se (herein referred to as Plaintiffs), to exercise their rights under the South Carolina Rules of Civil Procedure ("SCRCP) Rule 59 52 E Motion to Alter and Amend and 60(a)(b)(1).Relief from Judgment.

Plaintiff's file this order to ensure the decision remains with the Circuit Court for a ruling to stop the clock for Appeals in an abundance of Caution. The original motion for Relief of Judgment does not adequately protect keeping the Motion with the Circuit Court for Ruling as a

I:

Rule 60 Motion may not stop the clock for Appeals even when the original ^{59 RL} ~~52~~-E Motion is referenced. The delay in scheduling hearings before the Circuit Court, the original reason for the denial coupled with the original deficiency of the Rule 60 Motion require Plaintiff's to supplement their Motion so as not to lose the opportunity to be heard. Plaintiff's file this motion to supplement the Rule 60 Motion from Relief of Judgment. While the original motion references the SCRCR Rule ^{59E} ~~52~~-E Motion to Alter and Amend, the actual Motion was not placed in the headlines.

2. Plaintiffs will show the Court's Denial of the Motion to Alter and Amend the "*Order Denying the Temporary Restraining Order*" dated January 13, 2013 **was timely filed** and would request the Court to rule on the merits of the Motion to Alter and Amend after considering the timeliness of the Motion. The Court stated in the Denial of the Motion to Alter and Amend that the Motion was not timely filed and that the notice was delivered to the Counsel's mail box on December 28, 2012 and therefore the Motion was untimely. Plaintiff "Mother" submits the Motion was timely filed for the following reasons: 1) Under Rule 59e the time to respond to an order to Alter and Amend the order is within 10 days of receiving written entry of the order. Plaintiff, Mother received a letter from Child's and Halligan law firm forwarding the order after a phone conversation on January 8, 2013 with Kathy Mahoney, Esquire and Mother where Ms. Mahoney relayed the information that the order denying the temporary restraining order had been signed by the Honorable Judge James E. Barber III. 2) Mother then called the Clerk of Court to inquire whether the order had in fact been filed and to ask if an order had been copied to "Mother" from the Court. The Clerk then informed "Mother" that the order had been filed and the order was mailed to Jane Doe PO Box 689 Blythewood SC 29016 on either the 6th or 7th because the mail was "backed up due to the holiday's." 3) While "Mother" is responsible for the acts and

omissions of agents that she engages, upon information and belief, the attorney firm, Bowens Law Firm, LLC, retained to represent son at the TRO hearing does not maintain a mailbox at the Clerk of Courts Office according to attorney Glenn Bowens. 4) Mother retained Bowens Law firm , PC not Pope and Bowens, LLC to represent Student #1 John Doe at the TRO hearing. It appears there may have been a mistake within the Clerk of Courts Office in that the order denying the Motion to Alter and Amend was erroneously placed in Pope and Bowens, LLC's box, Glenn Bowens former law firm.5). Bowens law firm, PC gives as the address for legal notice box 424 Winnsboro SC for notices from the court. This address is also listed and maintained in the 2012 manual for Attorney's as required by the rules of the court.(see attached screen prints) (6.)"Mother" cannot be held accountable for the actions or inactions of a firm she has not retained on behalf of her minor child. 7) Additionally, "Mother" is the author of the Motion to Alter and Amend and gives as evidence of the timely filing to "Mother" the envelope from the Clerk of Court's office with the stamped date of January 9, 2013 and the letter of Child's and Halligan copying Mother on the entered judgment via letter on January 8, 2013. (See attached postmarked copy from Clerk of Court). "Mother" respectfully requests the Court to inquire with the Clerk's office and with Attorney Kathy Mahoney, esquire the validity of the claims of "Mother". If the Court's decision was based on the un-timeliness of the original Motion then "Mother" requests the court to re-consider the merits of the Motion and to either hear the merits of the Motion or to defer the two issues raised in the initial Motion to Alter and Amend until which time the full Appeal can be heard. The Order denying the TRO did not rule on two issues or questions of law brought before the court for consideration. In consequence, the Plaintiff respectfully requests the court to amend its findings or make additional findings pursuant to the Rule 60(a)(b)(1) motion.

A Principal is responsible for the acts and missteps of their agents; however, in a Court of Equity, it would be inequitable to make Mother and Student #1 John Doe forfeit rights based on errors of the Clerk of Court and or an Attorney's firm not engaged to represent minor son. Additionally, the Motion was made by the "Mother" so whether or not the attorney of record's notice of the order was sufficient, the Motion was timely made by "Mother's" receipt of written notice of entry of the order dated January 9th and received either the 10th or the 11th of January 2013 which was well within the required 10 days receipt of the written order. Even using the stamped date of January the 8, 2013, without allowing for mail delivery time, the January 18, 2013 filing of the Motion to Alter and Amend was within the required 10 days of written receipt of entry of order. Please accept as proof of the timeliness of the Motion the attached documents. (Date Stamped notice from Clerk of Court notice mailed to "Mother", Bowens Law firm , PC official address for the Court, and Bowens Law Firm, PC address in Lawyers Address book). The original questions requested of the Court to review in the Motion to Alter and Amend is below and is as follows:

The Plaintiff's Argument:

(a) The parent or legal guardian (plaintiff) has the legal right to advocate and represent the child's best interest in the court system. Plaintiff "Mother" expressly indicated these rights deal with issues being reviewed in the administrative appeals process before a judge. Consequently, in order for the courts to properly rule on the findings of fact, the Court must consider all testimony or evidence given (submitted) to avoid depriving any party of the opportunity to be heard and ruling rendered. The Court's written Order did not address the arguments brought by the Plaintiffs.

Plaintiff Question Posed:

(b) Is it possible in an appeal of a School Board Decision to separate the rights of the parents from the rights of the child? In the statutory construct of the Gifted and Talented education, some rights inhere to the parent and some rights inhere to the child. This issue was raised during the hearing but the written order did not contain a

ruling on this issue. Consequently, the Plaintiffs are without guidance as to whether the Judicial Door is closed to them without hiring an attorney to represent them in continuation of the appeal of a School Board decision in the Courts of Richland County.

3. Plaintiff John Doe and Mother respectfully request unto this Honorable Court a review of the “*Order Denying the Temporary Restraining Order*”, and amend the ORDER to address these two arguments, due to the presumed mistake and or oversight depriving the Plaintiffs of an order on these two critical issues.

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5. John Doe is a minor and as such any requests for an intra-district transfer of his assigned school is only considered when accompanied by a Parent or legal guardian request. The decision of the Registrar

and the School Board likewise can only be appealed by a parent or legal guardian pursuant to the South Carolina Board of Education policies and guidelines.

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11. It is obvious, legislators intended for parents of Gifted Students to enjoy an independent and substantive right with regard to the education of their "Gifted" children. In the event these rights were violated, the parents of the child would be considered the "aggrieved party," according to the definition given in the statue for Appeals of a Decision by the School Board 59-19-560.
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Consequently, the parent can further their appeal through the judicial proceedings on behalf of the child if the school board does not remedy the issues raised in the best interest of the child.

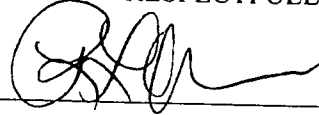
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15. In comparison, the language that exists in S.C. Code § 59-28-100, S.C. Code §59-29-170 and Regulation 43-220 with references to the SC Best Practices for Gifted Education Manual, 2006 mirrors the American Disability Act law for disabled children. Above all, the laws mentioned promotes parental involvement and satisfies any doubt to whether a parent has the authority or may act on behalf of a child in administrative hearings to represent their child in matters determined to be in the best interest of the child.

For the foregoing reasons, Plaintiff's respectfully submit that they have given good cause to amend or alter the Motion "*Order Denying the Temporary Restraining Order*."

Therefore, Plaintiff's pray this Court to enter an Order granting the Motion. In the same manner, granting Student #1 John Doe's ("John Doe") Mother (REDACTED NAME OF MOTHER) the authority to act on his behalf and proceed in this appeal as *Pro Se* Litigants pursuant to S.C. Code Ann. § 1-23-380(A)(2), § 1-23-600 (G)(5), and Rule 241(b)(6 & 9), SCACR) and to enter an order stating the rights of the Parent and the Student are so inter-related they cannot be separated in Appeals of the school board concerning the education of Gifted and Talented Students. Furthermore, we request a hearing to fully argue these points or conversely an order deferring both issues until such time as the main appeal is heard.

Sir John Dalberg-Acton noted "Power corrupts and Absolute Power corrupts absolutely" as a Society we cannot allow any board or agency to escape Judicial review.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

Mother (REDACTED NAME OF MOTHER)

Columbia, South Carolina

~~18~~ day of February, 2013

26

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF RICHLAND)

FIFTH JUDICIAL CIRCUIT)

Student #1 John Doe, Plaintiff;)
REDACTED NAME OF STUDENT;)
REDACTED NAME OF MOTHER)
OF)
STUDENT #1 JOHN DOE, Plaintiff)

CERTIFICATE OF SERVICE)

V.)

Board of Trustees,)
Richland School District Two)
Superintendent, Dr. Katie Brochuchu)
In her official capacity as School)
Superintendent, Defendant)

JEANETTE W. McBRIDE
C.C.P. & G.S.

2013 FEB 26 PM 4:45

FILED
CLERK OF COURT

I, the undersigned acting on my own behalf and on behalf of Student #1 John Doe, do hereby certify that we have on the date given below served the **Motion to Alter and Amend/Motion for relief of judgment : Denial of Motion to Alter and Amend Order in Temporary Restraining Order** placing in a pre-paid postage envelope and mailing to:

Attn: Kathryn Mahoney, Esquire
Childs and Halligan, PA
P.O.Box 11367
Columbia, SC 29211

On this day 26 of February 2013

RESPECTFULLY SUBMITTED,



Rhonda L. Meisner, Plaintiff

PO Box 689 Blythewood SC 29016

(803)960-3696

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Student #1 John Doe, REDACTED)
NAME OF STUDENT, REDACTED)
NAME OF MOTHER OF STUDENT #1)
JOHN DOE,)

C.A. No. 2012-CP-40-07122

Plaintiff,)

**DEFENDANTS' MEMORANDUM OF LAW
IN OPPOSITION TO PLAINTIFF'S
MOTION FOR RELIEF OF JUDGMENT**

vs.)

Richland School District Two Board of)
Trustees; Richland School District Two)
Superintendent, in her official capacity,)
Katie Brochu, PhD,)

Defendants.)

Defendants respectfully submit this memorandum of law in opposition to Plaintiff's Motion for Relief of Judgment.

I. Introduction

On November 26, 2012, Plaintiff moved for a temporary restraining order compelling Defendants to transfer Plaintiff John Doe from Westwood High School and enroll him in the ninth grade at Blythewood High School. Following a hearing on November 28, 2012 at which the parties submitted memoranda of law, supporting affidavits, and presented witnesses, this Court issued an Order denying Plaintiff's motion for temporary injunctive relief on December 28, 2012. (Ex. 1 Order.) On January 18, 2013, Plaintiff filed a motion to alter and amend the Order denying temporary injunctive relief. This Court denied Plaintiff's motion to alter or amend the Order. (Ex. 2 Order.) On February 19, 2013, Plaintiff filed a motion for relief of judgment from the Court's order denying Plaintiff's motion to alter and amend the Court's Order denying temporary injunctive relief. On February 26, 2013, Plaintiff filed a motion to alter and amend the motion for relief of judgment. Plaintiff's motion for relief of judgment is currently before

this Court.

Defendants respectfully request that this Court deny Plaintiff's motion for relief of judgment because there has not been a final judgment or order in this case and because Plaintiff has not asserted or shown any permissible grounds for such relief.

II. Standard of Review

Relief from judgment or order under Rule 60(b) is within the sound discretion of the circuit court and will not be disturbed absent a clear abuse of that discretion. *RRR, Inc. v. Toggas*, 378 S.C. 174, 181, 662 S.E.2d 438 441 (Ct. App. 2008); *Goodson v. Am. Bankers Ins. Co. of Fla.*, 295 S.C. 400, 402, 368 S.E.2d 687, 689 (Ct. App. 1988). "Such an abuse arises when the circuit court issuing the order was controlled by an error of law or when the order, based upon factual conclusions, is without evidentiary support." *Id.*

III. Argument

Under Rule 60(b), SCRCP, a court may relieve a party from a "final judgment, order, or proceeding" for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud, misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

Rule 60(b), SCRCP (emphasis added). For the reasons set forth below, Plaintiff's motion for relief of judgment under Rule 60(b) should be denied.

A. Plaintiff Does Not Seek Relief From A Final Judgment Or Order.

Rule 60(b), SCRCP, which governs relief from judgments or orders, explicitly applies to

final judgments and orders. Rule 60(b), SCRC. See also *RRR, Inc. v. Toggas*, 378 S.C. 174, 181, 662 S.E.2d 438, 441 (Ct. App. 2008) (Rule 60(b) applies to any "final judgment"); *Goodson v. Am. Bankers Ins. Co. of Fla.*, 295 S.C. 400, 402, 368 S.E.2d 687, 689 (Ct. App. 1988) (Rule 60(b) applies to any "final judgment"). "A final judgment is one which disposes of the cause as to all the parties, leaving nothing to be judicially determined between them in the trial court." *Nationsbank of N.C., N.A. v. Parsons*, 324 S.C. 506, 512 477 S.E.2d 735, 738 (Ct. App. 1996). "Furthermore, a final judgment is one which decides the case upon its merits without need of further direction of the court." *Id.* The South Carolina Supreme Court has explained when a judgment or order is final:

A judgment, order, or decree, to be final for purposes of an appeal or error, must dispose of the cause, or a distinct branch thereof, as to all the parties, reserving no further questions or directions for future determination. It must finally dispose of the whole subject-matter or be a termination of the particular proceedings or action, leaving nothing to be done but to enforce by execution what has been determined. In other words, a final judgment is one which operates to divest some right in such a manner as to put it beyond the power of the Court making the order to place the parties in their original condition after the expiration of the term; that is, it must put the case out of Court, and must be final in all matters within the pleadings.

Nationsbank of N.C., N.A. v. Parsons, 324 S.C. 506, 512 477 S.E.2d 735, 738 (Ct. App. 1996) (quoting *Good v. Hartford Accident & Indem. Co.*, 201 S.C. 32, 21 S.E.2d 209 (1942)).

In analyzing North Carolina's Rule 60(b), which is nearly identical to South Carolina's Rule 60(b), the South Carolina Court of Appeals stated that Rule 60(b) "has no application to *interlocutory* judgments, orders, or proceedings of the trial court." *Nationsbank of N.C., N.A. v. Parsons*, 324 S.C. 506, 514 477 S.E.2d 735, 739 (Ct. App. 1996). Rather, "[i]t only applies, by its express terms, to *final* judgments." *Id.*

Here, Plaintiff's complaint seeking permanent injunctive relief (i.e. Plaintiff John Doe's transfer to Blythewood High School) is currently pending in the circuit court. At this time, the

Court has not disposed of Plaintiff's claims against Defendants.¹ Accordingly, there has been no final judgment or order in this case. Therefore, Defendants respectfully request that this Court deny Plaintiff's motion for relief of judgment under Rule 60(b).

B. Plaintiff Has Not Asserted Any Permissible Grounds For Relief Under Rule 60(b).

Even assuming, *arguendo*, that Plaintiff seeks relief from a final judgment or order in this case, Plaintiff's motion for relief of judgment does not assert any permissible reason for granting such relief. Rule 60(b) lists reasons in which a court may relieve a party from a final judgment or order. Rule 60(b), SCRPC. Plaintiff's motion for relief of judgment does not assert any permissible reason for relief under Rule 60(b). Moreover, no permissible reason for relief under Rule 60(b) would be applicable to this Court's Order denying Plaintiff's motion to alter and amend this Court's Order denying Plaintiff's motion for temporary injunctive relief.

IV. Conclusion

For the reasons set forth above, Defendants respectfully request that this Court deny Plaintiff's Motion for Relief of Judgment.

Respectfully submitted,

CHILDS & HALLIGAN, P.A.

By: 

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¹ Defendants have moved the Court to dismiss this action under Rule 12(b)(6) and on the ground that Jane Doe is not a licensed attorney and is not permitted to represent Plaintiff John Doe *pro se*. Defendants' motion to dismiss is under advisement with Judge Lee.

P.O. Box 11367
Columbia, South Carolina 29211
(803) 254-4035

Attorneys for Defendants

March 12, 2013
Columbia, South Carolina

Exhibit 1 – Order

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Student # 1 One John Doe, REDACTED,)
NAME OF STUDENT, REDACTED)
NAME OF MOTHER OF STUDENT #1)
JOHN DOE,)

C.A. No. 2012-CP-40-07122

**ORDER DENYING TEMPORARY
INJUNCTION**

Plaintiff,)

vs.)

Board of Trustees, Richland School)
District Two, Richland School District)
Two Superintendent, Dr. Katie Brochu, In)
her official capacity as School)
Superintendent,)

Defendant.)

2012 DEC 28 AM 11:07

This matter is before the Court on Plaintiffs' motion for a temporary injunction pursuant to Rule 65, SCRPC. On Monday, November 26, 2012, Plaintiffs filed a motion for a temporary restraining order compelling Defendants to transfer John Doe from Westwood High School (WHS) and immediately enroll him in the ninth grade at Blythewood High School (BHS). Following a brief telephone conference with Plaintiff, Mother of Student #1 John Doe ("Mother"), and counsel for Defendants on November 26, 2012, the Court scheduled a follow-up conference in chambers with the parties for 9:30 a.m., Tuesday, November, 27, 2012. Plaintiff Mother was representing herself and her minor son, Plaintiff John Doe at both conferences. The Court then set Plaintiffs' request for interim injunctive relief for hearing at 9:30 a.m. on November 28, 2012. At the hearing, Plaintiff Mother appeared pro se and Plaintiff John Doe was represented by Attorney Glenn Bowen, who entered his appearance on behalf of John Doe that morning. The parties submitted memoranda of law, supporting affidavits, and presented witnesses at the hearing. Specifically, Mr. Ralph Schmidt, Principal of Westwood High School,

Dr. Fred McDaniel, II, Chief Planning Officer for Richland School District Two, Dr. Maria Kratsios, Senior Research Associate for Advanced Programs for Richland School District Two, Mr. Roger Wiley, Registrar for Richland School District Two, and Plaintiff Mother, all testified at the hearing. Based on the evidence presented at the hearing and through the affidavits the Court hereby denies the Plaintiffs' requested temporary injunctive relief.

I. BACKGROUND

Plaintiff John Doe is currently enrolled and attending the ninth grade at WHS. John Doe is zoned to attend WHS based on his residence. The 2012-13 school year is WHS's first year of operation, and its attendance zone was not established by the Richland School District Two Board of Trustees ("School Board") until December 2011. Plaintiffs allege that they were not properly notified of WHS's attendance zone and that they initially understood John Doe was zoned to attend BHS. The Defendants assert Plaintiffs were notified by a variety of methods, including direct mail, of the WHS attendance zone in December 2011.

Plaintiffs applied for John Doe's intra-District transfer to BHS in the summer of 2012. The District administration denied the requested transfer primarily on the grounds that BHS has a wait list of approximately 100 students, some of whom had previously been enrolled in and attended BHS, but were zoned into other schools as a result of the re-zoning of Richland Two's schools in 2011.

Plaintiffs appealed the District administration's denial of their transfer request to the School Board. On October 9, 2012, the School Board heard Plaintiffs' appeal and upheld the administration's denial of the transfer request. Ten days later, on October 19, 2012, Plaintiffs appealed the School Boards' decision to this Court, pursuant to S.C. Code Ann. § 59-19-560. Plaintiffs' appeal appears to be based on grounds of alleged violations of the Gifted and Talented

Program Statute, § 59-29-170, negligence and violation of Equal Protection guarantees under the Fourteenth Amendment to the United States Constitution.

In response to Plaintiffs' complaint, Defendant filed a motion to dismiss under Rule 12(b), SCRPC. Plaintiffs subsequently filed on November 13, 2012, an amended complaint styled "Second Amended Complaint Appeal Of Decision of Richland County School District Two and Board of Trustees, District Two." Defendants have filed a motion to dismiss this complaint as well.

Plaintiffs' motion for a temporary injunction is chiefly based on the contention that unless John Doe is immediately transferred to BHS he will suffer irreparable injury and the School Board did not comply with state law in considering Plaintiffs' transfer request, particularly with respect to John Doe's status as a gifted and talented student.

II. ANALYSIS

Plaintiffs have moved the Court for a temporary injunction requiring the Defendants to immediately transfer John Doe from WHS to BHS while their appeal from the School Board's denial of their requested transfer is pending before the Court. Such temporary injunctive relief is an extraordinary equitable remedy within the discretion of the Court. Generally, interim injunctive relief is granted for the purpose of preserving the status quo during litigation to prevent irreparable harm to a plaintiff. *Scratch Golf Co. v. Dune W. Residential Golf Prop., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004) ("An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff."); *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 601, 553 S.E.2d 110, 121 (2001) ("The sole purpose of a temporary injunction is to preserve the status quo and thus avoid possible irreparable injury to a party pending litigation."). Accordingly, to obtain a temporary injunction, a party must show he would suffer irreparable harm if the status quo is not preserved and a temporary injunction not granted.

MailSource, LLC. v. M.A. Bailey & Assocs., 356 S.C. 363, 368, 588 S.E. 2d 635, 638 (Ct. App. 2003).

Here, the status quo is John Doe's enrollment at WHS. John Doe was zoned to attend WHS in December 2011, while he was still in the 8th grade at Muller Road Middle School. His status in the gifted and talented program was not a factor in his zoning. John Doe has at all times been enrolled in and attending high school at WHS. Plaintiffs sought a transfer to BHS from Richland Two administration and School Board, and both denied the requested transfer. Consequently, the status quo is John Doe's enrollment at WHS.

Plaintiffs' requested injunction seeks not to preserve the status quo during their appeal, but rather to alter the current status of his school attendance. Plaintiffs contend that such affirmative injunctive relief is necessary to avoid irreparable harm to John Doe. Plaintiffs assert John Doe is suffering harm at WHS because, due to his gifted and talented academic status and recent traumatic events in his life, he needs to attend BHS where his friends attend school. The Plaintiff Mother testified she has observed John Doe exhibit recent signs of possible depression that she attributes to his attendance at WHS.

At this stage of the proceedings, the Defendants have not disputed that John Doe is a gifted and talented student, that he suffered from recent traumatic events, or that his friends attend BHS. However, Defendants contend and presented evidence to the Court establishing that WHS offers comparable gifted and talented educational programs with those at BHS, WHS has and can offer guidance and counseling services to John Doe, and opportunities for developing new friendships among gifted and talented students exist at WHS and developing new friendships is a meaningful and constructive experience for gifted and talented students, such as John Doe. The evidence at the hearing further established that John Doe's academic performance at WHS is consistent with his previous academic achievement, though he has required the assistance of his parents with studying in order to maintain his grades.

Importantly, Plaintiffs presented no evidence from a psychological or medical professional that John Doe is being harmed educationally, psychologically, or academically by attending WHS instead of BHS or that by attending BHS his educational or mental health status would improve. Indeed, Plaintiff Mother testified that John Doe has not been formally diagnosed with any mental or physical condition and has not received any formal professional counseling for the effects of trauma or depression. Likewise, no evidence shows John Doe's education has suffered as a result of attending WHS or not attending BHS. Accordingly, Plaintiffs have not established at this point that John Doe will likely suffer irreparable harm if he continues to attend WHS and not BHS.

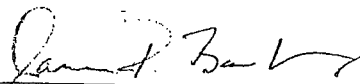
Finally, Plaintiffs' appeal from the School Board's decision to deny John Doe's transfer to BHS is made under § 59-19-560. The General Assembly has expressly made school boards responsible for the assignment of students to schools § 59-19-90(9). See also *Wharton v. Abbeville School District No. 60*, 608 F.Supp 70, 75 (D.S.C. 1984) ("South Carolina law grants a child of school age the right to a free education but does not confer a right upon pupils to attend a specific school."). The General Assembly has further provided with regard to appeals under § 59-19-560 that "[u]ntil the matter in controversy has been finally disposed of, no appeal shall act as a supercedeas or suspension of the order of the board having original jurisdiction of the cause." § 59-19-570. Accordingly, the General Assembly has clearly vested the power to assign students to schools in local school boards and instructed and declared its intent that school boards' decisions in such matters remain in effect pending judicial review.

Plaintiffs' requested temporary injunction seeks precisely what the General Assembly has discouraged, i.e., the suspension of the School Board's decision to deny their transfer request. Moreover, the proposed injunction asks the Court to invade the discretionary authority of the School Board under § 59-19-90(9) to assign students to schools. On the record before the Court,

the Court cannot find the equities of Plaintiffs' claim justify the granting of extraordinary temporary injunctive relief.¹

Plaintiffs' motion for a temporary injunction is hereby denied.

IT IS SO ORDERED.



The Honorable James R. Barber, III
Circuit Court Judge Presidency

December 28, 2012
Columbia, South Carolina

¹ Because Plaintiffs have failed to establish a temporary injunction is necessary to prevent possible irreparable injury, the Court does not reach the issues of whether Plaintiffs have alleged a prima facie claim for relief or whether Plaintiff Mother has stated a claim on her own behalf on which she can properly proceed pro se.

Exhibit 2 - Order

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012-CP-40-7122

Student #1 John Doe, Redacted Name of
Mother
PLAINTIFF(S)

Board of Trustees, Richland School District Two et al
DEFENDANT(S)

Submitted by: _____	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41, SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: This Motion to Alter and Amend Order is denied without oral argument. In addition, the motion was not served within 10 days of entry of the order.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order: _____ _____		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

 Circuit Court Judge	2110 Judge Code	2/11/13 Date
--	--------------------	-----------------

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 13 day of Feb, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Jeanette W. Meride

Court Reporter: _____

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Student #1 John Doe, Plaintiff;
REDACTED NAME OF STUDENT;
REDACTED NAME OF MOTHER
OF
STUDENT #1 JOHN DOE, Plaintiff

C.A. No. 2012-CP-40-07122

Vs

PLAINTIFFS REPLY TO
DEFENDANTS MEMORANDUM
IN OPPOSITION OF MOTION
FOR RELIEF OF JUDGMENT

2013 MAR 15 PM 4:20

Board of Trustees, Richland School
DISTRICT TWO;
Richland School District Two
Superintendent, Dr. Katie Brochu,
In her official capacity as School
Superintendent.

Defendants, Richland School District Two Board of Education and Dr. Katie Brochu,
Superintendent, in her official capacity, request this Court to deny Plaintiff's motion because:

"Plaintiff is not requesting relief from a final judgment and Plaintiff has not asserted or has not shown any permissible grounds for such relief." Plaintiffs, Student #1 John Doe and Student # 1 John Doe's mother would point out that the "Order denying the motion to alter and amend the Temporary Restraining Order" specifically states the "Motion was not served on the Court within 10 days of entry of the order". The Court indicated the motion was delivered to

“Counsel of Record’s box on December 28, 2013. (Please see attached evidence of timely filing attached to the Written Motion for Relief from Judgment and affidavit attached to this brief.)

Because the order suggested the filing of the Motion to Alter and Amend was untimely, Plaintiff’s request for a “ruling on the timeliness” of the Motion to Alter and Amend the Temporary Restraining Order is properly before the Court. Additionally, the initial Motion 59-e Motion to Alter and amend the “Order denying the TRO” failed to address 2 critical questions which if answered in the negative would be prejudicial to Student #1 John’s Does rights and to the rights of Student #1 John Doe’s mother in the “Appeal of the School Board Decision”. The two issues which were raised but not ruled on by the Honorable Judge James Barber in the TRO hearing due to their central role in the Appeal of the School Board decision requires a “Motion for Relief from Judgment”.

The first issue is: in an administrative appeal of a school board decision, does the parent have the “right” to continue to represent their child in the circuit court as a continuation of the Administrative Appeals process. *Winkelman v. Parma City School Dist. (No5-983) 2007*. The second issue is the question of whether the rights of the parents and the child can be separated under the “Gifted and Talented” statute 59-29-170 and the Parental Rights in the Children’s education 59-28-100 statute in the Appeal process. So that; if the court determines parents cannot represent their minor children in the courts during the administrative appeals process, then can the rights as parents be bifurcated to continue the appeal process pro se for the benefit of their child.

The wording in the order regarding the “timeliness of the order” necessitates the Motion for relief of Judgment filed by the Plaintiff’s. Additionally, the original denial of the Temporary

restraining order relied on the The state statute 59-19-570 which states “ [t]hat until he matter in controversy has been finally disposed of, no appeal should act as supersedes or suspension of the order of the board having original jurisdiction of the cause.” To properly understand that this order is in fact a “final order” with regard to substantial rights affected by the case; Plaintiff’s point to the order itself. The Order states: “Because Plaintiffs have failed to establish a temporary Restraining order is necessary” to prevent irreparable injury, the Court does not reach the issues of whether Plaintiff s have alleged a prima facie claim for relief or whether Plaintiff mother has stated a claim on her own behalf on which she can proceed pro se.”

Plaintiff student #1 John Doe and Plaintiff student #1 John Doe’s mother asserts that based on the claims asserted in the original complaint; the two issues not ruled on in the motion 59-e would be potentially prejudicial to both plaintiffs with proceeding in the original appeal. Additionally, if the original Motion to Alter and Amend under rule 59-e was ruled “untimely” an appeal would be unavailable.

Furthermore, the Plaintiffs assert the judgment denying the Temporary Restraining Order was an error of law based on misapplication of The state statute 59-19-570 which states [t]hat until he matter in controversy has been finally disposed of, no appeal should act as supersedes or suspension of the order of the board having original jurisdiction of the cause”. The original appeal alleged violations of the due process clause and the equal protection clause under the 14th amendment to the Constitution; relying on this statute would further the violations. Roger Wiley and Dr. Fred McDaniel both testified they were unaware of the Gifted and Talented Statutes, Regulations or best practices. It is axiomatic that if one is unaware of a law; that person **did not** consider the law in their decision; therefore, their ignorance of the state statutes and regulations requiring them to consider the law evidences the violations of the law. Unfortunately, Ignorance

of the law is not an excuse for violating it especially when it is the ignorance of a specific education law the school administration is charged with referencing. As such, reliance on statute is in conflict with the South Carolina Constitution, the United States Constitution and other state statutes regarding education, including the Gifted and Talented statute 59-29-170, the Statute for Parental involvement 59-28-100 and regulation 43-220 by allowing the violations of the due process clause and the equal protection clause guaranteed by both the State and the US Constitution and as such, by definition, the ruling is governed by an "error of law."

The South Carolina Supreme Court in Stinney v. Sumter County School Dist. 17 391 S.C. 547 (2011) explained that:

"In procedural due process claims, the deprivation by state action of a Constitutionally protected interest in "life, liberty, or property" is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest without due process of law. ...Therefore, to discover whether a constitutional violation has occurred, it is necessary to ask what process the State has provided and whether it was constitutionally adequate. This inquiry would examine the procedural safeguards built into the statutory or administrative procedure of effecting the deprivation, and any remedies for erroneous deprivations provided by statute or tort law.

The evidence at the hearing indicated that both the registrar Roger Wiley and his supervisor Fred McDaniel, PhD were unaware of the "Gifted and Talented Statute" Regulation R43-220 and that they did not consider the statute, the regulation governing "Gifted and Talented Students" or the SC Best Practices Manual for Gifted Education when they denied the transfer of Student #1. They further testified that they did not inform the board of their ignorance of the Gifted and Talented Statutes prior to the Board's vote. Fred McDaniel, PhD in fact sent an email to Mother of Student #1 John Doe indicating he had "reviewed the actions of Roger Wiley in the vein of policy and State law" and copied the board on this communication. The board was under the assumption the transfer request complied with the law when they made their decision to

sanction the denial of the transfer. Further evidence of the error at law is the fact that some of the statements of fact in the order denying the TRO were submitted by Defendants while the Defendants "were not under oath" which by legal definition is "not in evidence". The statements made by some of the district employees have been specifically questioned by Plaintiffs in the letter of opposition to the proposed order as "not supported by evidence" and potentially "not truthful and misleading the Court". Additionally, Fred McDaniel testified that the Muller Road Middle School housed both stale and current information up to and including April of 2012 giving evidence that notice was defective, a central concept in Due Process claims.

Furthermore, Plaintiff mother has represented her rights and her son's rights without counsel, in the interim to the Honorable Judge Alison Lee which would necessarily create a conflict should Judge Lee rule that Plaintiff Mother based on the Supreme Court Ruling in Winkelman controls and that as a matter of law "mother" can represent her and her son's interest as a continuation of the "administrative appeals process" for South Carolina law. The basis for relief necessarily requires noticing the Attorney General of South Carolina that a Statute is Unconstitutional which I have done via fax (803)253-6283.

The defendants previously represented that the Circuit Court lacks jurisdiction over the subject matter and that the filed appeal C.A. No 2012-CP-40-07122 failed to state facts sufficient to constitute a cause of action. The defendants state numerous cases where courts have found that parents may not represent their child's interest in court but failed to cite *Winkelman v. Parma City School Dist. (No5-983) 2007* where the Supreme Court opinion gives parents independent rights under the IDEA and FAPE and therefore enables them to represent their children as a continuation of the "administrative remedies" available under the law. Here, like in *Winkelman* under the state statutes 59-29-170; R43-220 and *SC Gifted and Talented Best Practices Guide* for

Gifted and Talented education the parent's rights are inseparable from the student's rights and parent's are therefore able to represent both the student's and parent's interests in Court.

In the interest of the student, it is necessary for the court to intervene when there is an immediate pending irreparable injury to the student particularly when the school "Board" has not complied with state law during their procedure or analysis. The employees for Richland District Two who were responsible for the initial review did not follow state law and therefore the reviewing body's decision was flawed as a matter of law. The court therefore must perform a critical function of stepping in when logic dictates the necessity of the intervention.

I. Background

The South Carolina Circuit Court offers its judgment in the case of School Board Appeals and functions as the Appellate Court for "aggrieved parties" pursuant to South Carolina Statute §59-19-560 which states that "Any party aggrieved by the order of the county board of education shall have the right to appeal to the court of common pleas of the county by serving a written verified petition upon the chairman of the county board of education and upon the adverse party within ten days from the date upon which copy of the order of the county board of education was **mailed** to the petitioner." (*emphasis added*). While the School Board did not send a "mailed" letter to the aggrieved student plaintiff or the aggrieved parent plaintiff, the Board via Roger Wiley, the district registrar, sent an email stating this was "the official decision of the board".

The appeal is based on a flaw in the notice for the change of school designation for a Gifted and Talented Student and the failure of the "District" to reference SC Gifted and Talented Best Practices Manual as required in State Statute 59-19-170. The Muller Road computers had

6

Student #1 John Doe assigned to Blythewood High School until April 18, 2012. School Choice and Expanded School Choice was over before the April 18, 2012 timeframe. Since Student #1 was registered to Blythewood High School (according to the middle school computers and employees) there was no reason to request a different school since Blythewood High School was the appropriate school for Student #1 John Doe.

Once student #1 John Doe was qualified, referred and accepted by the school for "Gifted Status" he became a statutorily protected member of the student population and as a result should have been given the protections available under the SC State Constitution and the United States Constitution by legislation regarding the sub-group of "Gifted and Talented" students under the Educational Improvement Act "Act", The Gifted and Talented State Statute 59-29-170 and R43-220. The transfer request of Student #1 John Doe never included a "child study" as recommended in the "Manual". Therefore the assumption the "District" was using to make their transfer decision regarding Student #1 John Doe was flawed. Defendants argue, "School boards are specifically entrusted by statute with decisions concerning the transfer of any student from one school to another and the determination within the district in which any student shall enroll. (59-19-09(9).)" However, defendants fail to acknowledge that we are not discussing the "general student population" and that there are specific instructions and processes as outlined in the "Regulation 43-220 and its reference to the "Manual" required for placement e.g.: "child study" for "Gifted and Talented Students". School Boards are also entrusted with implementing policies and procedures and analysis for the "gifted and talented" group of students within the (general population of students) which they did not do prior to denying the request for transfer for Student #1 John Doe. Regulation 43-220 the Gifted and Talented Mandate states under Program " To provide curriculum, instruction and assessment that

maximize the potential of the identified students, educational programs for academically gifted and talented students must reflect the following characteristics: c) Instructional strategies that **accommodate the unique needs**(emphasis added) of gifted learners; 3. Districts should reference the *South Carolina Gifted and Talented Best Practices Manual* for program models and curriculum requirements. In fact, the legislature thought this group of students so significant they took the bold step of not only implementing legislation to support and fund the students they also made references to the best practices manual in order to achieve the goals and the "intent of the legislature." In R43-220 the SC Gifted Education Best Practices Manual, 2006, there are specific processes with regard to placement that were not followed.

A temporary restraining order is appropriate when (1) Substantial likelihood of success on the merits of the case (2) Irreparable harm will occur without the requested relief (3) Equity tips in the favor of plaintiff (4) The public interest in issuing should be weighed.

Merits of the Case

The notice that Student #1 John Doe was to be re-assigned to a new school was defective in that the Muller Road Middle School computers were not updated to reflect his new assigned school (April 18, 2012) until well after the close of choice (January 28, 2012). This prevented The Plaintiff Student #1 John Doe from "applying to choice" within the designated choice time frame. The Plaintiff Student #1 John Doe is a member of "The Gifted and Talented" Group of Students that the *SC Best Practices for Gifted Education 2006* says the Curriculum for gifted and talented learners must be founded on South Carolina academic standards and must allow for both acceleration and enrichment. The School Board is entrusted by statute in the implementation of the "Gifted and Talented Mandate" 59-29-170. As well as R43-220 as it pertains to Gifted and

Talented Students. The district did not do a “child study” as required by R43-220 and SC Gifted and Talented Best Practices Manual when evaluating the placement of Student #1 John Doe. Parent of Student #1 John Doe requested a transfer of Student #1 John Doe to the school most appropriate for his Gifts and Talents, Blythewood High School. In the initial request via email, Parent of Student #1 John Doe referred to Student #1 John Doe (EXHIBIT #1) as “Gifted.” This should have alerted the district that Student #1 John Doe was a member of the protected class of “Gifted and Talented” and that according to the *SC Gifted and Talented Best Practices Manual* a “Child Study” should be completed to review his placement. Furthermore, I specifically requested the “Gifted and Talented” district coordinator review the request for transfer.

Chapter Three SC Gifted and Talented Best Practices 3.13

Best practices in Gifted and Talented education **require** that the individual student and his/her academic and intellectual development be the focus of all placement discussions, including the possible removal of a student. **Any procedures that a district develops for reviewing a student’s placement must incorporate a “Childs study”** approach involving the gifted and talented program coordinator, student, parent/guardian and teachers)...(24 SC Code Ann. Regs. 43-220.2 (B)(8)(c.) *emphasis added*

“Placement decisions resulting from the child study should have as their **primary** consideration the best instructional setting for the **individual** student.”

This review was never done. The Equal protection and Due process clause of the fourteenth amendment requires that members of the “same class of citizens” e.g.: “gifted and talented” students have equal protection under the law. The “Board” actually gave more consideration to arbitrary students that did not have statutory protections such as siblings of current attendees at Blythewood High School, the culinary students and children of teachers in the district without any consideration or mention to the “Gifted

and Talented” group of students, although this group falls under S. C. Code Ann. 59-29-170 State Board Regulation 43-220 Gifted and Talented

Irreparable Harm

Irreparable harm occurs when there is no monetary compensation available to right the wrong in an equitable case. Regulation 43-220 states throughout the regulation that Districts should reference the SC Gifted and Talented Best Practices Manual “manual” with regard to Gifted children in that the “Manual” was prepared by the South Carolina Department of Education. The “Manual” in Chapter 7 In this case, Student #1 John Doe has experienced witnessing two very tragic automobile deaths in a short amount of time. In both cases the accidents involved the passenger outside the car. In one case, his nanny and caretaker was hit and killed in front of him. Student #1 John Doe was left to take care of his 3 younger siblings on the side of the road. He desperately needs the comfort and reassurance that no one other than his friends and colleagues can give him. He cannot reclaim one day of camaraderie and comfort that he has lost since he has been separated from his support network of colleagues. He cannot transfer to another private school where he also knows several of the students due to the “block scheduling” at both Blythewood and Westwood. The statute 59-29-170 requires that “gifted and talented students at the elementary and secondary levels must be provided programs during the regular school year or during summer school to develop their **unique** (emphasis added) talents in the manner the State Board of Education must specify and to the extent state funds are provided.” R43-220 states districts should refer to the comprehensive *SC Gifted and Talented Best Practices Manual*. All students should have access to support services, but gifted and talented students by their nature have unique needs requiring specialized

services (24 S.C Code Ann. Reg 43-220.2(A)(1) (b). Here Student #1 John Doe's **unique needs** are to be reunited with his support network of colleagues so that he can heal as quickly as possible from these tragic events. Money cannot reclaim even one day for Student #1 John Doe. As defense notes, we could label Student #1 John Doe as in need of mental health intervention then under the IDEA the district would work to alleviate his stress. It is my contention that his status as a Gifted and Talented Student and protections under 59-19-170 and R43-220 are enough to require the district to intervene on his school placement and if the district will not then the court should. The legislature has placed an emphasis on supporting this group of students and the defendants have offered no other reason than 100 students in the general population have also requested transfer . Gifted and Talented focus has to begin with the individual student. We request the court to intervene and do what the school board should have done and that is evaluate Student #1 John Doe as an individual member of a protected class of students and allow him to immediately transfer to Blythewood High School.

Equity tips in Favor of Plaintiff

In the instant case issuing the Temporary Restraining Order or preliminary Injunction does not harm the defendants and significantly helps the Plaintiff avoid irreparable harm. The only possible inconvenience is the transfer paperwork which the School would have in the event of any student transferring into the district. There is space in the Classes Student #1 John Doe would need to enroll in. There is no additional cost to the district. We expect to be successful on appeal however the only change which would need to occur should we not prevail is that Student #1 John Doe would be sent back to Westwood High School or a private school for next year. In January he could apply for School

Choice under the Gifted and Talented Statutes for next year at Blythewood High School and in the interim his potential harm will be eliminated.

Public Policy Considerations

There are no public policy considerations as "Appeals from the School Board Decisions" are individual with individual considerations and individual facts. While defendants contend this would allow access to all students to appeal placement decisions. This is hyperbole at best. Parents of students can currently appeal school board decisions "as an aggrieved party". The student population of "Gifted and Talented" students is small relative to the general population of students and the "choice" process is usually not coupled with the opening of a new school like in the current case. There simply is no policy concern that would be contrary to the Public good. In contrast, when the "Board" makes a decision without proper information and an individual student suffers the intervention of the court relieves the suffering of the individual student. It also offers the School the opportunity to review their policies in light of warranted correction by the court. Furthermore, the Supreme Court of the United States of America, in the case of Winkelman vs. Parma City School Dist (No5-983) 2007 gives parents independent rights under IDEA and FAPE and therefore enables them to represent their children as a continuation of the "administrative remedies" available under Federal law. In the Opinion of the Supreme Court of the United States, "since the IDEA gives parent's enforceable rights in the administrative stage of disputes over the Free Appropriate Public Education, it would be inconsistent if they could not exercise their rights in Federal Court." The court reasoned that some rights inhere in both the parents and the students and some rights were only available to the student. It would be unnecessarily confusing

and was not indicated in the text and the structure of the IDEA to separate those rights. The Court ruled, “therefore the Winkelman’s (parents) could be a party aggrieved under the statute and the rights afforded the student need not exclude the parent.”

The language in South Carolina’s statutory construct of appeals of decisions of the school board , and of the “Gifted and Talented” legislation 59-29-170 and R43-220 and it’s reference to *SC Best Practices for Gifted Education* mirrors the Federal Statutes for disabled students in that parents are 1) “highly involved” in the process 2) have certain rights and responsibilities independent of the student e.g.: the right to a) request transfer of student under the b) object if the student is “to be removed from the Gifted and Talented program” c) request special magnet school transfers that the student has qualified to attend d)counseling and informational rights upon their child being identified as “Gifted and Talented”. Also, R43-220 gives additional substantive rights and benefits to parents in the following way: d) 2. “Each school district shall offer a range of mentoring opportunities for students beginning no later than the seventh grade. Students participating in any of the work-based programs **shall have the written permission of their parents or legal guardians** in order to engage in such experiences. Adult supervision shall be provided for mentoring opportunities.”

5.) In Grade 7, **students and their parents and/or legal guardians in collaboration** with appropriate school personnel shall revise career planning records in which the student has an interest. 6.) In Grade 8, “**students and their parents and/or legal guardians in collaboration** with appropriate school personnel shall review and revise the career planning record. The record shall include a high school course of study based on a major plan and an alternate plan for career options in which the student has an

interest and the postsecondary programs of study related to achieving a career goal” 5.) Each school must comply with the **Family Educational Rights and Privacy Act** regarding student records (20 U.S.C. Section 1232(g)). The Family Educational Rights and Privacy Act gives rights and privileges to both student and parent. The referencing of this Act further bolsters the fact that both Students and Parents have rights and privileges under R43-220 and the “Gifted and Talented Legislation”.

The South Carolina Legislature further has expressed a State interest in advancing and **nurturing** education of the “State’s Brightest Student’s.” Indeed, by referencing the **South Carolina Best Practices Manual for Gifted Education, 2006** throughout the legislation for Gifted and Talented as well as R43-220, the Legislature has given special consideration and rights to this group of students and **parents**.(emphasis added) Throughout the **S.C. Best Practices Manual**, the State Board of Education requires the involvement of parents in the following ways: (*Subsequent bolded words are not emphasized in the original text, only to indicate parental involvement.*)

- 1) R43-220 references the **SC Best Practices Manual for Gifted Education** throughout the legislation.
- 2) P 31, “Also schools **must form collaborative relationships with parents** to ensure educational needs address the **particular** needs of the “Gifted and Talented” learner.
- 3) P36 School Districts must design a curriculum to support their unique characteristics and needs.
- 4) P39 Research has shown not “one size” will “fit all” and equal opportunity does not and should not mean identical content and activity for all students.
- 5) P56 2. Students that may have been mismatched may have their placement adjusted to meet their needs.
- 6) Any procedure that the district develops to review the student’s placement must incorporate a “child’s study” approach involving the gifted and talented coordinator, student, **parent/guardian** and teacher. 24 S.C Code Ann. Regs 43-220 (B)(8)(c). Placement should have as the **primary consideration the best instructional setting for the individual student.**

- 7) P60 ...Performance has not been acceptable to both **parents** and teachers.2) regular conferences with students and **parents**. 3) Specific strategies... students, **parents** and teachers.8) the student and the **parent** are advised... If a **parent** wishes to...the **parent** should...will conduct a meeting of the placement team, the student, the **parent** and teacher present.
- 8) P71 grade 2 Special training and services for **parents**.
- 9) P75 Gifted education must...develop and nurture the unique socio-emotional development of the gifted learner.
- 10) P77 these procedures should be articulated to teachers...and **parents**.
- 11) P78 Appropriate counseling sessions with students as well as conferences with student's **parents/guardians** and teachers must precede....
- 12) P80**parent** survey.
- 13) P84 references all aspects of notifications to parents and input via parent surveys in graph model.
- 14) P93 access information through **parent** surveys....by incorporatingand parental **involvement**.
- 15) P100 Teachers, **parents**, support personnel and mentors are critical to the development of the whole (gifted and talented) child.
- 16) P105 **parents** must understand...
- 17) P107 Counselors can make **parents** aware. Communication between **parents** and teachers. Managing the expectations of **parents**, teachers, peers etc.
- 18) P108 often perfectionism can be seen **more often at home** than at school.
- 19) P111 Technology offers support services to gifted and talented students educators and **parents**...students, teachers and **parents** need to become familiar....
- 20) P112 Technology for Teachers Students and **Parents**.
- 21) P113 of particular interest to **parents**... **Parents** are the most significant influence on the lives of their children.
- 22) P114 Similarly Bloom noted the important role of **parents, family support** and sacrifice on the achievement of the "Gifted and Talented "students. Education programs for **parents** must address....**Parent** Education Delivery Models...
- 23) P115 many districts serve **parents** through....
- 24) P123 district referral procedures must allow referrals through administrators, **parents**, teachers or students...

It is obvious from the legislation and from the Best Practices for Gifted and Talented students that parents as well as students enjoy independent and substantive rights which should allow access and representation of their interest to the circuit court for review as ruled in the recent Supreme Court decision of Winkelman v. Parma City School District. 2007.

Also it should be noted that the parent of Student #1 John Doe is the one that requested the transfer of Student #1 John Doe to the registrar Roger Wiley, requested the "Gifted and Talented" review from the District coordinator and Dr. Katie Brochu, requested the appeal to the school board, appeared on behalf of Student #1 John Doe and herself before the school board and is now submitting this appeal on behalf of Student #1 John Doe and herself.

The United States Supreme Court in Turner v. Rogers et al NO10-10 Decided June 20, 2011 387 S.C. 142,691 S.E. 2d 470 stated, "We attach an important caveat, namely that the state must nonetheless have in place alternative procedures that assume a foreseeable fair determination of issues." The court was addressing the fact that in civil cases a "court appointed attorney" is unavailable. The school board is the final determination of issues unless the Appellants are allowed to enter and advocate to the circuit court. To deny access for a parent and child "aggrieved" by the Board of Education decision would unfairly require parents to "pay" for a Free education which is available to student #1 John Doe as a citizen of the state of South Carolina and would deprive he and his mother of rights afforded to them both under legislation for the "Gifted and Talented" section of students and R43-220.

It is obvious from the legislation that parents of Gifted Students enjoy an independent and substantive right with regard to the education of their "Gifted" children and should therefore meet the "any aggrieved party" in appealing the decisions of the school board. The language in the School Board decision appeals process, which includes access to the court system as well as the ability to represent their interest in court, suggests the circuit court is the appropriate conduit for appeals.

Furthermore, the Circuit Court of South Carolina would be the most appropriate court due to the “state rights” issues with regard to the funding and the oversight of education. The legislation involving “Gifted and Talented” students in addition to being a state supported objective of improving education, also involves multiple layers of state government.

The state interest in this group of students is without question based on the effort and funding provided by the State Legislature. To “stop or attempt to interfere with the appeals of education” for this group of students and their parents would undermine the efforts of so many in government. Accordingly, since Free Public Education is a well established right to all South Carolina students, to prevent parents from representing themselves and their children under the “Gifted and Talented” mandate **throughout** the “administrative appeals” would be contrary to the Supreme Court holdings in Winkelman v Parma County School District.2007.

Drawing on the Courts judicial experience, in an appeal of a school board decision, the Court reviews the appeal “DeNovo” and as such, the issue at hand is whether the transfer decision of student #1 John Doe was made in accordance with the “Gifted and Talented” mandates and state law. The fact that Student #1 John Doe was denied transfer to the most “appropriate school” for his gifts and talents is a question for the court. This DeNovo review includes statutory interpretation, evidence and intention of the Legislature and should not be summarily dismissed in the interest of justice. Furthermore, It is evident from the pleadings that

- 1) John Doe Student #1 was in fact a member of the protected class of “Gifted and Talented” students.

- 2) John Doe Student #1 and his mother appealed for transfer to a more appropriate school for his individual needs as outlined in the SC Best Practices for Gifted Education Manual,
- 3) John Doe Student #1 and his mother was denied transfer by the Richland School District Two board and the denial did not comply with State law.
- 4) The reason for denial was referencing a “waitlist of over 100 students” of the general population which is not included in the subclass of “Gifted and Talented.”
- 5) The denial did not follow policy and procedure for the “Gifted and Talented” student analysis.
- 6) The denial did not take into account the notices and the individual circumstances and review as required under the “Gifted and Talented Mandate”.

For the above reasons I request the court to issue a relief from judgment indicating the “Motion to Alter Amend the Denial of The TRO” was timely filed and therefore preserved for Appeal. Additionally, I request the court to issue a ruling that because Student #1 John Doe was represented by counsel at the TRO hearing this fact is not dispositive of the issue of whether “mother” can represent her child in the continuation of the administrative appeals process and that the rights of the mother and the child are so intertwined that for the purposes of an appeal of the school board they cannot be separated.


SIGNATURE LINE NEXT PAGE

18

CONFIDENTIAL

Respectfully submitted,

Rhonda L Meisner, parent of Student #1 John Doe

A handwritten signature in cursive script, appearing to read 'RL Meisner', is written over a horizontal line.

Parent, Natural guardian and next friend of Plaintiff

John Doe

PO Box 689 Blythewood South Carolina 29016

One Chester Road

Blythewood, South Carolina 29016

Telephone (803)960-3696

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Circuit Court

Judge James E. Barber III, Circuit Court Judge

Case No. 2012-CP-40-07122

JEANETTE W. HEBRIDE
C.C.P. & G.S.

2013 MAR 15 PM 4:28

RICHLAND COUNTY
FILED

Board of Trustees, Richland School District Two;
Superintendent of School District Two,
Dr. Katie Brochu , in her official
capacity.....Respondents,

v.

Student #1 John Doe, Plaintiff
;REDACTED NAME OF STUDENT;
REDACTED NAME OF MOTHER OF Student #1 John Doe,
Plaintiff.....Appellant.

NOTICE OF APPEAL

Mother of Student #1 John Doe and Student #1 John Doe by and through his mother
appeals the order of the Honorable James R. Barber III dated February 13, 2013. Appellant
received written notice of entry of this order on February 16, 2013.

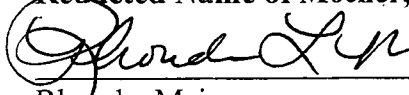
Respectfully submitted,

March 15, 2013

RECEIVED
NOV 9 6 2013

SC COURT of Appeals

Redacted Name of Mother, Appellant

By: 
Rhonda Meisner
P.O. Box 689
Blythewood, South Carolina 29016
Phone: (803) 960-3696
Fax: no available fax

RECEIVED

MAR 15 2013

SC COURT of Appeals

SCANNED

Counsel of Record:

Tyler R. Turner, Esquire
Kathryn Long Mahoney, Esquire
John M. Reagle, Esquire
Childs and Halligan
Post Office Box 11367
Columbia, SC 29211-1367
803-254-4035

Attorney at TRO hearing representing Student #1 John Doe

Glenn Bowens, Esquire
Bowens Law Firm
P.O. Box 424
Winnsboro, SC 29080
803-714-7766

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF Richland)

5 JUDICIAL CIRCUIT

Student #1 John Doe, Redacted)
Name of Student) Redacted name of)
Mother of Student #1 John Doe)
Plaintiff,)

CASE NO.: 2012-CP-40-07155

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

vs
of Richland School District Two Board)
of Trustees, Richland School District Two)
Superintendent Katie Brochure, in)
her official capacity, Katie Brochure, PhD)
Defendant.

RICHLAND COUNTY
 FILED
 2013 AUG 12 PM 4:07
 JEANETTE W. MCERBIDE
 C.C.P. & G.S.

Plaintiff's Attorney: <u>Rhonda Merwin</u> , Bar No: <u>N/A</u> Address: <u>P.O. Box 689</u> <u>Blythewood, SC 29014</u> Phone: <u>803-960-3696</u> Fax E-mail: <u>pcasw@nuvov.net</u> Other:	Defendant's Attorney: _____, Bar No Address: Phone: _____ Fax E-mail: _____ Other:
--	--

- MOTION HEARING REQUESTED (attach written motion and complete SECTION I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information
 Nature of Motion: Motion to Alter + Amend
 Estimated Time Needed: 1 hour Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type
 Written motion attached
 Form Motion/Order
 I hereby move for relief or action by the court as set forth in the attached proposed order.
Rhonda Merwin August 12, 2013
 Signature of Attorney for Plaintiff / Defendant Date submitted

SECTION III: Motion Fee
 PAID - AMOUNT: \$ 25.00
 EXEMPT: (check reason)

- Rule to Show Cause in Child or Spousal Support
- Domestic Abuse or Abuse and Neglect
- Indigent Status State Agency v. Indigent Party
- Sexually Violent Predator Act Post-Conviction Relief
- Motion for Stay in Bankruptcy
- Motion for Publication Motion for Execution (Rule 69, SCRPC)
- Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

 Name of Court Reporter:
 Other: Motion to Alter + Amend judgment

JUDGE'S SECTION
 Motion Fee to be paid upon filing of the attached order.
 Other: _____ JUDGE CODE _____
 Date: _____, 20

CLERK'S VERIFICATION
 Collected by: DM Payne Date Filed: _____, 20
 MOTION FEE COLLECTED: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____

COUNTY OF RICHLAND

Student #1 , John Doe, REDACTED
NAME OF STUDENT, REDACTED
NAME OF MOTHER OF STUDNET
#1 JOHN DOE,

Plaintiff

vs.

Richland School District Two Board
of Trustees; Richland School District
Two, Superintendent, in her official
capacity, Katie Brochu, PhD

Defendant

C.A. No 2012-CP-40-07122

PLAINTIFF'S MOTION TO ALTER AND
AMEND JUDGEMENT PURSUANT TO
RULE 59-e SCRPC

2013 AUG 12 PM 9:07
JEANETTE W. McBRIDE
C.C.P. & C.S.
RICHLAND COUNTY
FILED

Plaintiff's Student #1 John Doe (hereinafter "student #1") and Mother of Student #1 John Doe (hereinafter "Mother") respectfully submit this memorandum in support of their motion to alter and amend the judgment of the Court issued July 30, 2013 and received August 2, 2013. As a preliminary matter, the ruling which was scanned into the Court system inappropriately named Plaintiff. The Plaintiff should be identified as "redacted name of Mother of Student #1 John Doe." The Court did not rule of several issues presented in the Second Amended Complaint and further explained in the Plaintiff's memorandum in opposition of the Motion to Dismiss the Second Amended Complaint.

1.)The Court did not rule on the timeliness of the Defendants answer and the Plaintiff's request for a default judgment as outlined in Plaintiff's memorandum in opposition of motion to dismiss for failure to state a claim. The Defendants motion to dismiss, as a matter of law, is not timely and therefore inappropriately before the Court. Plaintiff's submitted to the Court, that the Defendant District did not follow the procedures as outlined in S. C. Code Ann. §59-29-560. In an appeal of a School Board decision, the amount of time given for reply is only 20 days and not 30 days as in most appeals. Specifically, the Statute requires notice by U.S. Mail. If, as argued in the memorandum, the Court accepts

e-mail notice as sufficient and proper notice; then as a matter of law, the Defendants did not answer the appeal within the 20 days as required by the Statute and as such a default judgment should be entered against the Defendants.¹

2) Mother of Student #1 and Student #1 John Doe both have standing to appeal the school Board decision as parties aggrieved per the statute. Additionally, Mother argues she can continue the representation of Student #1's interests along with her own independent interests in her child's education pursuant to S. C. Code Ann. §59-28-100 entitled parents rights in their child's education act as a continuation of the administrative appeals process. The Gifted and Talented Statute also gives parents independent enforceable rights via the 2 Regs 43-220 (20111) mandate. The Court only ruled on her right as a "next friend" without issuing a ruling on the right to represent her child as a continuation of the appeals process. *Winkelman v. Parma City School Dist.*, (No 5-983) 2007. The State of South Carolina has created the system of appeals for an adverse school board decision namely entering the Circuit Court as the appellate phase of the appeals process and as such, should not require parents to employ an attorney to continue the administrative appeals process since attorneys are not required in the earlier stages of the appeal. This requirement would have a chilling effect to parents like Mother of Student #1 who cannot afford an attorney for this appeal.

The United States Supreme Court in *Turner v. Rogers et al* No 10-10 Decided June 20,2011 387 S.C. 142,691 S.E.2d 470 stated,

"We attach an important caveat, namely that the state must nonetheless have in place alternative procedures that assume a foreseeable fair determination of issues."

This is an appeal of School Board decision and it would be manifestly unjust for the Board to escape judicial review primarily due to the requirement to hire an attorney to continue the appeal into the Circuit Court.

¹ Filed memorandum entitled memorandum of law in opposition to motion to Dismiss for failure to state a claim, filed Jan 18, 2013 at 2:49 p.m.

3) Additionally, the Second Amended Complaint alleges the Board had violated state law via the redistricting of the high school attendance lines coupled with the misapplication of choice resulting in a de-facto segregated high school system for the students in Blythewood.² It is axiomatic that if the school itself is illegally formed to create a de-facto segregated system, then it is illegal to compel Student #1 to attend an illegal school.³

4.)The Court did not rule on the procedural due process violations argued in the Complaint and during the hearing. The District set in place a mechanism for "choosing the appropriate high school" via expanded choice; however the district did not update or maintain accurate records in the middle school computers. Plaintiff's argue this prevented participation in the Choice program and violated Student #1's procedural due process rights.

5.) Plaintiff's further argue the Gifted and talented statute **does** creates a private cause of action by giving the students so qualified specific and special education benefits. Here unlike in *Abbeville County Sch. Dist v. State*, the Gifted and Talented Statute S.C. Code Ann. §59-29-170 was (1) created specifically for a group of students, as individuals that qualified for special services due to their "unique" talents (it is important to note the students must qualify individually and not as a group). (2) The statute also requires the South Carolina Board of Education to create policies, procedures and best practices requirements for serving the Gifted Students for the school Districts to reference. (3) The students are identified specifically and individually due to testing (4) The Plaintiff , Student #1 John Doe is a member of the protected class of the gifted and talented students (5) The State Board of Education has the authority to withhold funds and as a result has the understanding that not providing the services results in a violation of state law. (6) the State Superintendant has the authority and the ability to sanction

² Portions of the TRO hearing acknowledged the District and Board was aware of the creation of a de-facto segregated high school population in Blythewood.

³ S.C. Code Ann § 59-29-570

the schools that do not comply by withholding state and federal funds if they do not follow all regulations in S.C. Code Ann Regs. 43-220 (2011). The cases cited by the Defendants and placed in the order pre-date the Gifted and Talented Statute and apply to students in the general population that have not qualified for additional educational benefits under a specialized statute. Under the statute, students are considered individually and therefore when the District and Board does not consider Student #1 as an individual then they have in fact violated his rights under the Statute.

6) The Creation of an illegal school system within Blythewood does not preclude relief for an individual; even if that relief further exacerbates the racial imbalance at the school. Currently, Student #1 is **not** attending Westwood High School so the argument that this would exacerbate the racial imbalance is moot. However, it is important to note, S.C Code Ann. § 59-63-40(2008) specifically precludes denial to a certain school on the basis of race.

S.C. Code Ann. 59-63-40 (2008). Discrimination on account of race, creed, color or national origin prohibited.

(1) No person shall be refused admission into or be excluded from any public school in the State on account of race, creed, color or national origin.

(2) Except with the express approval of a board having jurisdiction, no student shall be assigned or compelled to attend any school on account of race, creed, color or national origin, or for the purpose of achieving equality in attendance or increased attendance or reduced attendance, at any school, of persons of one or more particular races, creeds, colors, or national origins; **and no school district or attendance area, by whatever name known, shall be established, reorganized or maintained for any such purpose**, provided that nothing contained in this section shall prevent the assignment of a pupil in the manner requested or authorized by his parents or guardian, and further provided that nothing in this section shall be deemed to affect, in any way, the right of a religious or denominational educational institution to select its pupils exclusively or primarily from members of such religion or denomination or from giving preference to such selection to such members or to make such selection to its

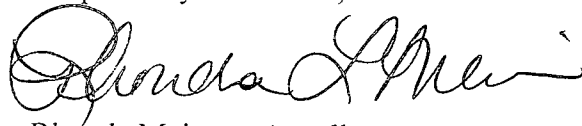
C. N. W. W. W. W. W.

pupils as is calculated to promote the religious principle for which it is established. (emphasis added)

7) The Defendants requested the Court to dismiss the Appeal without prejudice. The Court has ordered the Appeal dismissed prior to argument or discovery with prejudice which in the opinion of Mother of Student #1 is an abuse of discretion and Mother of Student #1 respectfully requests the Court to reconsider based on this submitted memorandum. Mother further contends because this is an appeal, it is premature to dismiss the Complaint without Judicial review since allegations of due process and equal protections violations are part of the appeal.

For the above reasons, Mother of Student #1 respectfully requests a reconsideration. Under Rule 59-e SCRPC a reconsideration of the Dismissal with prejudice and deny the motion to dismiss outright in the interests of justice.

Respectfully Submitted,



Rhonda Meisner, Appellant

PO Box 689
Blythewood, SC 29016
pegasus@nuvox.net
(803)960-3696

This 12 day of August, 2013 A.D.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

Student #1 , John Doe, REDACTED
NAME OF STUDENT, REDACTED
NAME OF MOTHER OF STUDNET
#1 JOHN DOE,

Plaintiff

vs.

Richland School District Two Board
of Trustees; Richland School Distrit
Two, Superintendent, in her official
capacity, Katie Brochu, PhD

Defendant

C.A. No 2012-CP-40-07122

CERTIFICATE OF SERVICE BY MAIL

RICHLAND COUNTY
FILED
2013 AUG 12 PM 4:08
JEANETTE W. MCBRIDE
C.G.P. & G.S.

Plaintiff , Mother of Student #1 John Doe certifies she has served the following counsel
of record with the foregoing PLAINTIFF'S MOTION TO ALTER AND AMEND JUDGMENT
PURSUANT TO RULE 59-e SCRPC by mailing a copy of same , postage prepaid and return
address clearly indicated to the following on 12th day of August , 2013

John Marshall Reagle, Esquire
Kathryn Long Mahoney, Esquire
Tyler Turner, Esquire
Post Office Box 11367
Columbia, SC 29211
(803)254-4035



Rhonda Meisner
Post Office Box 689
Blythewood, SC 29016
pegasus@nuvox.net
(803)960-3696

Appellant, Mother of Student #1 John Doe respectfully submits this reply to “the District’s Return to Counsel’s Petition to Withdraw as Counsel.” Respondents seek to silence the voice of Student #1 John Doe by cutting, metaphorically speaking, Student #1’s John Doe’s umbilical cord from Mother. In this appeal case, as a minor, Student #1 John Doe’s individual claims cease to exist with the separation of his and his Mother’s rights in the appeal. The State Legislature has conferred certain rights to parents in their children’s education via S.C. Code Ann. §59-28-100. While these rights do not include the right to act as an attorney; the Statute does confer the right to be involved in their children’s education and if their children’s education is lacking; it is not only the parent’s right but their duty to intervene on behalf of their child.

The State has devised a system of appealing school Board decisions that includes entry into the Circuit Court as the Appellate Court and as such should not exclude those parents unable to pay for an attorney as a free public education is provided to all citizens of the state of South Carolina. The Circuit Court judges certainly have the ability to discern whether or not an appeal is proper or has merit. There are many State supported reasons to educate the students of the State and certainly parents have a vested interest in their student/children’s education; however, there are very few reasons a board or agency should evade judicial review. As a Gifted and Talented student (and a minor) Student #1 has no voice to question and or oppose the decisions of the District should elements of his state enhanced education, due to his membership in the group of gifted and talented students, be deficient or in the event questions arise with his education.

Consequently, the current state school Board appeals system requires the Mother to request a review; and appeal on behalf of both Student #1 and Mother's claims in the early administrative phases; not in the role of an attorney, but as the legal representative of Student #1's claims as well as her own claims. Additionally, one of the questions presented to the Court of Appeals for a legal opinion is whether "in an appeal of a school Board decision, can the rights of the parent and the rights of the student/ child be separated?" As the Respondents acknowledge, under South Carolina law S.C. Code Ann. §40-5-80, Appellants are able to represent their own interests to the Court. S.C. Code Ann. §59-19-560 allows "any party aggrieved" by a decision of the school Board to appeal to the Court of Common Pleas, since minors are not allowed to appeal to the school Board initially, in the continuation of the appeal; it follows their parent should be able to continue the representation of both of their rights into the Circuit Court.

The Respondents go to great lengths to explain why non-lawyers cannot represent other entities; however, they do not offer an alternative forum for appeals of a school board decision to ensure a fair determination of issues because one does not exist. They simply ignore that an appeal of a school board decision is in fact an individual decision, based on individual facts, concerning an individual family with individual student issues. Respondents expect South Carolina parents to return home after an adverse decision of the school board as the end of the appeal even-though the Legislature has specifically given "any aggrieved party" an appeals process that in the initial stages does not include hiring an attorney. While the Winkelman's in *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516

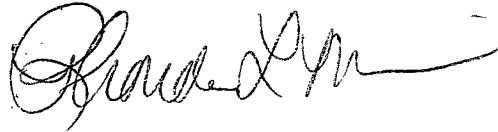
(2007) gained their right to represent their own interests under the IDEA, it is Mother Appellant's position is that under the South Carolina Statutory Scheme for appeals of school Board decisions, she as a parent of a Gifted and talented student derives her ability to represent both her and her son's interests in Court as a continuation of the appeals process. The state confers rights for parents to be involved in their children's education under State Statutes S. C. Code Ann. §59-28-100; S. C. Code Ann. §59-29-170 and 2 S. C Code Regs 43-220(2011).

Determining whether a statute gives a private cause of action is a legal question of Statute interpretation reserved for the Court. While it is convenient for Respondents to come to the conclusion the Gifted and Talented statute in South Carolina does not give parents or for that matter, students a private cause of action, this determination is a question for the Court. Unlike general statutes for the education of students in South Carolina, the Gifted and Talented statute S. C. Code Ann. §59-29-170 uses words like "unique" meaning "no other" or "individual" to identify the students served.

Whether or not a statute confers a "right" or a "private cause of action" is a question of law for the Court and not a fact for the Respondents to declare. The State has in this instance conferred "special education" opportunities for the gifted and talented students to develop their "unique" or individual talents. Appellant Mother additionally argues that the State Statute S. C. Code Ann. § 59-28-110 grants Mother the right to be involved in Student #1's education throughout the appeals process of adverse education decisions. For the above reasons, Mother of Student #1 respectfully requests to remain the legal representative of Student #

1 John Doe until the Court of Appeals issues their opinion on the questions presented to the Court on Appeal.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Rhonda Meisner".

Mother of Student #1
Rhonda Meisner
Post office Box 689
Blythewood, SC 29016
Pegasus@nuvox.net
(803)960-3696

May 26, 2013

STATE OF SOUTH CAROLINA) IN THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND) THE COURT OF GENERAL SESSIONS
) 2012-CP-40-07122
STUDENT NUMBER ONE, JOHN DOE,)
)
PLAINTIFF,)
)
VERSUS)
)
)
RICHLAND SCHOOL DISTRICT TWO)
BOARD of TRUSTEES, et al,) DATE: NOVEMBER 28, 2012
DEFENDANTS.) COLUMBIA, SOUTH CAROLINA

TRANSCRIPT OF RECORD

B E F O R E:

THE HONORABLE JAMES R. BARBER

A P P E A R A N C E S:

MOTHER PLAINTIFF
GLENN BOWENS, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

KATHRYN L. MAHONEY, ATTORNEY AT LAW
JOHN REAGLE, ESQUIRE
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SOUTH CAROLINA JUDICIAL DEPARTMENT

INDEX

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE-CROSS</u>
<u>ROGER LEE WILEY</u>				
MOTHER PLAINTIFF	13-17			
MR. BOWENS	17-20			
<u>FRED MCDANIEL</u>				
MOTHER PLAINTIFF	21-31			
MS. MAHONEY	32-42			
<u>DR. MARIA KRATSIOS</u>				
MOTHER PLAINTIFF	43-49			
<u>MOTHER PLAINTIFF</u>				
MR. BOWENS	50-60			
MS. MAHONEY			61-69	
<u>RALPH SCHMIDT</u>				
MOTHER PLAINTIFF	70-73			
CERTIFICATE				83

EXHIBITS

NO PLAINTIFF'S EXHIBITS

DEFENDANT'S EXHIBIT

D)1 PACKET OF CORRESPONDENCE, EMAILS 21

1 THE COURT: Good morning, y'all. It's my
2 understanding that Student Number One, John Doe, is now
3 represented. Is that correct?

4 MR. BOWEN: Yes, sir. Glenn Bowens for Student Number
5 One.

6 THE COURT: And I suppose y'all found that out this
7 morning?

8 MS. MAHONEY: This morning when we walked in.

9 THE COURT: All right. I met with the mother of John
10 Doe. I don't know if you are trying to keep your name
11 quiet, but I met with the attorneys with the school
12 district yesterday and Mother Plaintiff was in my office,
13 was it Monday?

14 MOTHER PLAINTIFF: Yes, sir.

15 THE COURT: About 4:30 and indicated to me she had
16 filed this lawsuit and wanted a TRO and contacted counsel
17 for the school district and asked them to meet with me
18 yesterday along with Mother Plaintiff and we had some
19 discussions about the case informally and I indicated to
20 Mother Plaintiff that it might be in the child's best
21 interest to retain counsel because I had some concerns
22 about whether she could represent, as a non-attorney,
23 represent the interests of her son and she has done that
24 and is ready to proceed today. What do y'all want to tell
25 me? Y'all are the ones seeking the order here this

STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

1 morning.

2 MR. BOWENS: That's correct, Your Honor.

3 THE COURT: One other thing. I've received, this
4 morning, your memorandum from Mother Plaintiff. Frankly, I
5 have not had a chance to read it, because I had another
6 matter I had to deal with in chambers with attorneys and
7 parties from another lawsuit. I indicated to the attorney
8 for your son that I haven't read it because I saw him
9 sitting in here and he told me he had just received it as
10 well and I believe he has had a chance to review it quickly
11 this morning. All right. Who's going to go first?

12 MOTHER PLAINTIFF: Your Honor, I was just going to
13 clarify that you were going to allow me to represent my
14 interests with regard to ---

15 THE COURT: You can represent yourself.

16 MOTHER PLAINTIFF: Yes, sir. Thank you very much.

17 MS. MAHONEY: Your Honor, could I just -- we don't
18 have a copy of whatever document you just referenced. If
19 we could just get a copy, please.

20 (Mr. Bowens hands Ms. Mahoney a document)

21 MS. MAHONEY: Thank you.

22 THE COURT: Do you want a minute to look at it? Do
23 you want a minute to look at it?

24 MS. MAHONEY: That would be great. Thank you.

25 THE COURT: All right. We'll take a quick break.

STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

1 (Brief Break)

2 THE COURT: All right. Are one of you going to make
3 the argument and the other concur, or...

4 MR. BOWENS: Well, I think I'd like to give the Court
5 a little background ---

6 THE COURT: Sure.

7 MR. BOWENS: --- of where we are and a little context.
8 The underlying litigation in this case is an appeal from
9 the decision of the school board denying the student a
10 transfer from Westwood High School to Blythewood High
11 School. The parents made the request to have him
12 transferred and the school board denied that request. The
13 parents believe that there will be irreparable harm to the
14 student if he is not allowed to transfer to Blythewood
15 pending the resolution to this appeal, which may be several
16 months down the road before we reach the ultimate
17 resolution of it.

18 The irreparable harm that we believe will occur
19 include the student's grades are falling, currently. He
20 has been ranked in the top 99% in math, nationally, but the
21 last two math tests that he has had at Westwood, he's
22 failed. He is experiencing symptoms of cognitive
23 dissonance. He cannot sleep and when he does sleep, he
24 sleeps for twelve hours straight. He feels threatened at
25 Westwood. He's experiencing depression. I think he's had

STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

1 a loss of his support group, all of which are at
2 Blythewood, his support group. The need for a support
3 group is more important for talented and gifted students
4 than you would ordinarily think it would be for students.
5 For the talented and gifted, it's essential. They really
6 need a support group to be able to thrive and succeed
7 academically.

8 We believe there is a likelihood of success on the
9 merits of the underlying appeal in that the school district
10 did not follow proper procedures in denying the transfer.
11 One of the issues that we have, before school began,
12 Student One had been designated to go to Blythewood. The
13 school's computers that you look at to determine where you
14 will be placed indicated that this student was going to be
15 going to Blythewood High School.

16 At the same time, the district had a school choice
17 period in which student's who were assigned to any school,
18 to Westwood, could choose to go to Blythewood or a
19 different school. Once this choice period was closed, then
20 the school's computers switched the student from Blythewood
21 to Westwood and so they didn't have a chance at that point
22 to elect the school choice option. So, then when they
23 asked that he be transferred, they were denied by saying
24 simply there was a wait list and they couldn't accommodate
25 him. Under the talented and gifted statute and regulations

STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

1 adopted by the board of education, the State Board of
2 Education, talented and gifted students are in a sub group
3 or sub class of the general student population in Richland
4 County and the State and they are supposed to be given
5 special consideration to maximize their gifts and talents
6 of the talented and gifted students, which includes special
7 analysis in determining their placement, whether it's in --
8 in what school they are placed in. They are supposed to be
9 put in the school that's most appropriate for their
10 specific and unique situation for that student. In this
11 case, it would be going to Blythewood High School, not
12 Westwood, as was originally indicated by the school's
13 computer.

14 One of the things that is required is a thing called a
15 student study which involves the guidance counselor, the
16 talented and gifted coordinator, the parents and the
17 student and that's supposed to be a study that's done to
18 evaluate what is the appropriate placement. There was no
19 problem when he was already going to Blythewood. That was
20 the appropriate school. The denial of that request,
21 though, after it was changed, would require a student study
22 be done and that was never done. So, these two issues
23 about the Blythewood student study and the kind of a bait
24 and switch, where he was going to go to Blythewood and then
25 he was switched to Westwood when it was too late to apply

STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

1 under the school choice option. We think it would result,
2 ultimately -- and there will be a lot more evidence under
3 this as to what was required to support a gifted and
4 talented student than what's required for the educational
5 program. It's supposed to be tailored to their unique
6 needs, the unique needs of each student. There will be a
7 lot of evidence before the Court when we get to the
8 substantive merits of the case about why it's appropriate
9 for this student to go to Blythewood as opposed to
10 Westwood. But ultimately, the legislature has determined
11 that these student's subgroup of gifted and talented
12 students are supposed to get special consideration in the
13 tailoring of their academic program and the placement of
14 those students in the appropriate school and appropriate
15 instructional setting, I think is the way that the
16 regulations describe it.. Those considerations were not
17 applied to this student and he's entitled to those
18 protections and if he is allowed to transfer, if the Court
19 intervenes today and allows him to transfer to Blythewood,
20 if in the end he ultimately loses the appeal, which we
21 don't think is going to happen, the worst that would happen
22 is he would be sent back to Westwood, but if he doesn't win
23 the appeal, which we believe he will, then the ultimate
24 harm that we described will be alleviated and he will
25 remain at Blythewood. We understand from Blythewood

STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

1 that there is available space for him in the gifted and
2 talented classes there and so there seems to be no harm
3 from what we can see to the district in allowing this
4 transfer to take place.

5 That's where I see the case going from the student's
6 prospective. I think the mother would like to give you
7 some information from her side.

8 THE COURT: Sure. Yes, ma'am.

9 MOTHER PLAINTIFF: Good morning, Judge Barber. Thank
10 you so much for allowing me to be heard today. I would
11 like to call some of the witnesses from the school board
12 that were involved in this, or not involved in this, for
13 your consideration if that would please the Court.

14 THE COURT: I don't have any objection. Do you have
15 any objection to it?

16 MS. MAHONEY: Your Honor, we don't have an objection.
17 We've made available all the persons she requested be here.

18 THE COURT: All right.

19 MOTHER PLAINTIFF: First, I would like to call Mr.
20 Roger Wiley.

21 THE COURT: You understand, you can only pursue the
22 claim as to your claim.

23 MOTHER PLAINTIFF: Yes, sir.

24 MR. REAGLE: Your Honor, before we proceed, it would be
25 helpful if we get some clarification on what her claim is.

STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

1 I still don't think she has any substantive rights that she
2 can or is seeking to enforce relative to the gifted and
3 talented program.

4 THE COURT: How is it that your claim would be
5 different from your son's claim?

6 MOTHER PLAINTIFF: Well, in Winkelman versus Parma
7 City Schools, it was a Supreme Court decision that was
8 handed down in January of 2007, the Supreme Court said in
9 that setting, that under an IDEA plan, that the parents of
10 the student's rights were ---

11 THE COURT: I don't know what an IDEA plan is.

12 MOTHER PLAINTIFF: IDEA is the Individuals with
13 Disabilities Education Act plan. It's a plan for students
14 who are disabled and, basically, what the Court said was,
15 it was difficult to discern where the parent's rights end
16 and where the student's rights begin in an administrative
17 appeal. Now, while this was an appeal under the Federal
18 Statute, the gifted and talented statute for South
19 Carolina, I believe, along with the statutes regarding
20 student transfers where it says a parent has a right to
21 appeal a transfer, gives me the right to represent my
22 interests.

23 Additionally, Your Honor, I would like to point out
24 that while Student Number One is the one who goes to
25 school, I, as the Mother Plaintiff, had to request the
STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

1 transfer initially from the School Board, from Mr. Roger
2 Wiley, and had to follow up with emails. I had to provide
3 them with supporting documentation. I had to do all these
4 things that ---

5 THE COURT: Well, he's represented at this point, so
6 he, I guess, in order to administratively do what needed to
7 be done for your son to try and get this transfer, you
8 assisted him in that regard and he does not require an
9 attorney to do that. You are now in a courtroom and you
10 have -- I'm not sure what your claim is that's different
11 from what your son's claim is.

12 MOTHER PLAINTIFF: Well, that's exactly what the
13 Supreme Court said, Your Honor, and the ---

14 THE COURT: Well, I don't know what you mean. If, you
15 know, when you have a disabled child, there may be
16 something that distinguishes that from the situation where
17 you just have a son, and I'm not trying to minimize it, but
18 a son who is in one school and wants to be in another
19 school for whatever reason, it's not -- I mean, clearly,
20 parents have a different involvement when they have a child
21 who is impaired or disabled in some way, because they do
22 have to function in order to keep that child, but I'm going
23 to let her say what she wants to say and then we'll go from
24 there.

25 MOTHER PLAINTIFF: Your Honor, thank you. I would

STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

1 like to point out, if I may, that ---

2 THE COURT: Well, you wanted to call a witness. Who
3 is it you want to call?

4 MOTHER PLAINTIFF: Okay. Mr. Roger Wiley.

5 THE COURT: All right. Now, this is not a merits
6 hearing. You understand that. This is a hearing on a
7 temporary restraining order.

8 MOTHER PLAINTIFF: Temporary, but I... (Mr. Bowens
9 speaks to Mother Plaintiff)

10 ROGER WILEY, after being duly sworn by Judge Barber,
11 testified as follows:

12 THE COURT: Have a seat in the witness box and tell us
13 your full name, please, sir.

14 MR. WILEY: My name is Roger Lee Wiley.

15 DIRECT EXAMINATION

16 BY MOTHER PLAINTIFF:

17 Q Mr. Wiley, thank you so much for being here. I wanted
18 to talk with you. What is your position with the
19 school?

20 A I am the district registrar.

21 Q As the registrar, are you involved in the high school
22 attendance lines, student accommodations, and
23 revisions?

24 A Would you ask that again, please?

25 Q Are you involved with the 2012-2013 high school

STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

1 attendance lines, student accommodations, and
2 revisions?

3 A I am not involved in the redistricting of our school
4 district. I had no part in drawing the lines.

5 Q If a student requested a transfer, who would they
6 contact within the district?

7 A They would contact me, the district registrar.

8 Q And when they contact you, what analysis do you do to
9 decide whether they can be transferred?

10 A I take a look at where they are zoned to attend and
11 see if they qualify for any of our district provisions
12 that would allow for a transfer.

13 Q Have you reviewed the gifted and talented rules in our
14 legislation?

15 A I have not.

16 Q So, when you made your analysis of Student Number One,
17 you did not review that legislation prior to making a
18 decision?

19 A I did not.

20 Q Has anyone told you about that legislation and asked
21 you to review it since then?

22 A They have not.

23 Q Has anyone from the district mentioned the gifted and
24 talented statutes in the regulation R43-220?

25 A In relationship to transfers?

STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

1 Q Yes, sir.

2 A They have not.

3 Q Once you make your recommendation whether a student
4 can transfer or not, or cannot transfer, the next
5 step, can you describe that, please?

6 A Well, I would consult with the necessary people
7 involved if there is some information that I need with
8 regards to what has been brought before me. Beyond
9 that, I would communicate back to the parent in
10 writing and let them know what our decision is.

11 Q Yes, sir. So, with regard to Student Number One, with
12 whom did you consult to make the decision whether to
13 move him?

14 A I'm not sure that I was approached about gifted and
15 talented programs and in the issue of the email sent
16 to me, I saw no reference to gifted and talented that
17 would make me consult with anyone.

18 MOTHER PLAINTIFF: Your Honor, may I take a minute to
19 find an email to show him?

20 THE COURT: Is there a controversy about -- your son
21 made an application to transfer. It went to this
22 gentleman. He denied it. You then took it on appeal to
23 the school board. Right?

24 MOTHER PLAINTIFF: Yes, sir.

25 THE COURT: I mean, is that in conflict? Do y'all

STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

1 disagree with that?

2 MS. MAHONEY: No, Your Honor.

3 THE COURT: Well, what's the issue?

4 MOTHER PLAINTIFF: In the original email, Student
5 Number One was documented as a gifted student and that, in
6 my opinion, should put the school on notice that they
7 should at least look at the regulations.

8 THE COURT: Well, ma'am, that may go to the merits of
9 the case at some point in time ---

10 MOTHER PLAINTIFF: Yes, sir.

11 THE COURT: --- but right now, we are here to
12 determine whether I should require this school district to
13 order that your son be transferred to another school, which
14 is a whole different situation.

15 MOTHER PLAINTIFF: Yes, sir.

16 THE COURT: And you have certain things that are
17 required to be proven in that instance. One is the
18 likelihood that you are going to succeed and two, that the
19 purpose of an injunction is to generally maintain the
20 status quo and, you know, irreparable harm and things of
21 that nature and so, I mean ---

22 MOTHER PLAINTIFF: I have a couple more questions, if
23 I may, Your Honor.

24 Q Mr. Wiley, could Student Number One transfer right now
25 if he wanted to?

1 A Under normal circumstances, we do not transfer after
2 -the start of school. If there are some extenuating
3 circumstances, then we would take them into
4 consideration. It's not unprecedented, but under
5 normal circumstances, we would not.

6 Q Have you been told of recent severe tragic accidents
7 that Student Number One was involved with?

8 A Yes. You referenced that in your initial request.

9 Q Did you take that into consideration of him as in
10 individual in the gifted and talented program
11 regarding it?

12 A I took into consideration what you presented to me and
13 I believe I responded to it.

14 Q Thank you so much.

15 DIRECT EXAMINATION

16 BY MR. BOWENS

17 Q Mr. Wiley, you would agree that under the State
18 regulations, the districts are supposed to accommodate
19 the unique needs of a gifted and talented student.
20 Would you agree with that?

21 A I'm not well versed in the area of the gifted and
22 talented program to answer that question thoroughly.

23 Q Would you agree that it's not fair for the school
24 district to tell the student and parents that the
25 student is going to go to Blythewood during the school

STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

1 choice period and then once that period closed, to
2 then switch him to Westwood? Would you agree that
3 that is not fair?

4 A Would you repeat that, sir?

5 Q Would you agree that it is not fair for the school
6 district to tell the parents and the student that he
7 is going to go to Blythewood High School during the
8 time the school choice options are available, during
9 that period, and then once that period closed, to then
10 switch him to Westwood?

11 MS. MAHONEY: Your Honor, I would object. This is a
12 false statement of facts being presented to the witness.

13 THE COURT: Well, he might say, "If that were the
14 case, I might agree or disagree or I have no opinion if
15 that were the case. I mean, or if that's not the situation
16 here, then I'm not in the position..." You know, I don't
17 know what his answer is going to be. He might agree.

18 Q Would you agree that would be unfair to the student
19 and the parents?

20 A I don't know if I would say unfair. I can see where
21 that would cause confusion if that were the case.

22 Q You would agree that the student's talented and gifted
23 status did not play any role in your decision to deny
24 his request for a transfer? Did you consider his
25 status as a talented and gifted student in denying his

STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

1 transfer request?

2 A At that time I believe she referred to something other
3 than gifted and talented. I think it was the honor's
4 program or something of that sort and it's my
5 understanding, and in checking, that each of our
6 schools offered the same program with regards to the
7 gifted and talented and so I would say that that was
8 not unfair to not give that consideration for that.

9 Q But you are aware that the talented and gifted
10 statutes and regulations go beyond the programs that
11 are offered, that it's more involved than just what
12 programs are offered. Do you agree with that?

13 A I would only be speculating on that, sir, because I'm
14 not familiar with the guidelines.

15 THE COURT: All right. Ms. Mahoney?

16 MS. MAHONEY: Your Honor, we would just like to note
17 for the record that in our memo that we submitted
18 yesterday, that it has all the emails, all the
19 correspondence back and forth between Mr. Wiley about the
20 request.

21 THE COURT: Are you talking about your CD?

22 MS. MAHONEY: No. It was the record attached to the
23 memo along with the emails back and forth.

24 THE COURT: I read your memorandum.

25 MS. MAHONEY: I just wanted to make sure that got

1 officially introduced.

2 THE COURT: Do y'all have any objection to the
3 documentation that was submitted with the Defendant's
4 brief?

5 MOTHER PLAINTIFF: Your Honor, I respectfully object,
6 because the initial email -- I'm trying to find it

7 THE COURT: You want to go through and introduce each
8 one individually here today?

9 MOTHER PLAINTIFF: No, sir. Not unless you tell me
10 to.

11 THE COURT: I'm not telling you -- if you want to
12 object that is your privilege.

13 MOTHER PLAINTIFF: Yes, sir.

14 THE COURT: Then they will probably want to go through
15 each one of the documents and have them admitted.

16 MOTHER PLAINTIFF: That would be okay if they did
17 that, because I do have the initial email where he was
18 identified as gifted.

19 THE COURT: Do you have all those documents attached?
20 Take the brief off and take the documents and see if he can
21 identify those as documents kept in the regular course of
22 business. Mr. Bowens, do you have any objection?

23 MR. BOWENS: Well ---

24 MS. MAHONEY: This is the record that went before the
25 school board.

STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

1 MR. BOWENS: I think if it went before the school
2 board, it's already a part of the record. The only thing
3 brought to mind is hearsay, but they are a part of the
4 record.

5 THE COURT: They are kept in the normal course of
6 business. All right. I'm going to admit them for this
7 hearing.

8 (WHEREUPON, a packet of emails presented to the school
9 board is admitted as Defendant's Exhibit #1, over
10 objection)

11 MOTHER PLAINTIFF: Thank you, Your Honor. Nothing
12 further.

13 THE COURT: Thank you, sir. You may step down. Do
14 y'all have any other witnesses?

15 MOTHER PLAINTIFF: Your Honor, I'd like to call Fred
16 McDaniel, PhD. He would be in charge after Roger Wiley, if
17 I may.

18 THE COURT: Call him.

19 DR. FRED MCDANIEL, after being duly sworn by Judge
20 Barber, testified as follows:

21 DIRECT EXAMINATION

22 BY MOTHER PLAINTIFF:

23 Q Good morning, Dr. McDaniel. When you made the
24 decision to uphold Mr. Wiley's denial of the transfer,
25 did you realize that he had not evaluated Student

STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

1 Number one as a gifted and talented student?

2 A We did not discuss his gifted and talented status, so
3 I was not aware of the degree that he considered that
4 or not.

5 Q Did you, at any time, become aware of Student Number
6 One's gifted and talented status?

7 A I became aware of his gifted and talented status after
8 I denied your appeal. In the information you
9 presented on October 1st, ahead of the October 9th
10 board meeting, you submitted several documents related
11 to gifted and talented. That was after Mr. Wiley's
12 decision and my decision.

13 Q So, you actually got the information that Student
14 Number One was gifted and talented after your decision
15 was made in the interim of it going to the board and
16 so, at no time, did you reflect on that?

17 A I received the information after I denied your appeal
18 regarding the many documents you submitted before the
19 board. When I considered the appeal, it was relevant
20 to the string of emails and the bulk of those emails
21 focused on items other than gifted status.

22 Q Do you recall seeing this article from the Davidson
23 Institute on highly gifted children? (Mother
24 Plaintiff hands document to the witness)

25 A I do not recall this specific document. All the

1 documents that I recall, they were very voluminous,
2 hundreds of pages that were submitted, again, after I
3 denied the appeal.

4 Q And is there any chance in the appeal process, once
5 you received additional information, for you to say, I
6 received additional information, let me make sure that
7 this information is considered prior to going to the
8 board of trustees?

9 A I'd say that's atypical, but it's not unprecedented.
10 At the point that you presented the data to me, I was
11 in the process where I was collecting it and the board
12 was expecting the information. It was already on
13 their agenda for the appeal at your request and so I
14 merely relayed that information to the school board.

15 Q Did the school board consider the request during the
16 previous meeting, the October 9th meeting?

17 A They did not consider the request in terms of making a
18 decision. They were briefed on the fact that there
19 was a case pending.

20 Q And in that briefing, what exactly did you give to
21 them for their analysis?

22 A I provided them a verbal update that there was an
23 appeal coming to the board in the coming weeks of my
24 decision.

25 Q And so, at that time, you didn't tell them that this

1 was a gifted and talented student that was coming
2 before their court?

3 A I did not.

4 Q And once you got the update, did you review the
5 information with any of the gifted and talented
6 educators?

7 A I provided the information to our officer. To my
8 understanding, she discussed that with some of her
9 staff who in turn discussed it with other experts in
10 that area.

11 Q Did they ever meet with you to discuss Student Number
12 One?

13 A I may have given them a verbal update of the previous
14 six months of correspondence regarding the case, but I
15 don't recall talking specifically about the gifted and
16 talented status.

17 Q Have you been briefed by the superintendent about the
18 gifted and talented statutes and how they relate to
19 your student population?

20 A No. That would not be -- No, I have not.

21 Q So, have you taken it upon yourself to understand the
22 student population?

23 A I reviewed some of the information you presented.

24 Q Do you think the recommendations---

25 THE COURT: Based on our conference yesterday, it's my

STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

1 understanding that it is your concern -- and this all came
2 about because your son has been a very good student. I
3 don't know where they start putting you into a gifted and
4 talented program, at what grade they do that or an advanced
5 placement program or whatever the case may be, but at some
6 point your son was put in a program -- was it at Blythwood
7 Middle School, is that where he was?

8 MOTHER PLAINTIFF: He was originally identified at a
9 private school.

10 THE COURT: Where was he in middle school?

11 MOTHER PLAINTIFF: He was identified at ---

12 THE COURT: Where was he identified ---

13 MOTHER PLAINTIFF: --- Blythewood Middle School.

14 THE COURT: All right. He was at Blythewood Middle
15 School in the advanced gifted and talented program ---

16 MOTHER PLAINTIFF: Yes, sir.

17 THE COURT: --- that this -- and you say you were
18 noticed that he would be a Blythewood High School and ---

19 MOTHER PLAINTIFF: Yes, sir.

20 THE COURT: --- and you would have had the opportunity
21 to --- if you had known he was going to be at the new high
22 school, you could have gone and said I want him at
23 Blythewood. I think the school disputes that, or the
24 school district disputes that. But the way you indicated
25 to me yesterday is that your son has experienced two very

STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

1 traumatic events in his life that has had a great effect on
2 him and that when he was in middle school he had a support
3 group of other children, most of which went on to
4 Blythewood High School as opposed to Westwood High School,
5 that because of these events your son is lacking the
6 support group and that seems to be the primary concern that
7 you've had, not that he's not getting something in one
8 program and not the other program. He is getting the same
9 thing in both programs, except he wouldn't get his support
10 at one school that he's not getting at the other school.
11 Is that basically the crux of the matter?

12 MOTHER PLAINTIFF: Yes, sir. And ---

13 THE COURT: Well, how does that have anything to do
14 with what the gifted and talented program does? I mean,
15 it's really not a gifted and talented issue. It's an issue
16 of, because of his what you may consider special needs at
17 this time, that you want him in one program as opposed to
18 another, although I do think you told me yesterday that he
19 can get German in one and can't get German in the other. I
20 don't know that that necessarily makes it gifted and
21 talented. It would probably be just the school curriculum
22 because I assume -- Are only the gifted and talented
23 students allowed to take German?

24 MS. MAHONEY: No, sir, Your Honor.

25 THE COURT: Anybody can take it, so that's not really

1 a gifted and talented issue. I don't see what the gifted
2 and talented issue has to do with this.

3 MOTHER PLAINTIFF: Your Honor, there is something
4 called dissonance and it's when highly gifted kids have
5 problems coping with their environment and surroundings and
6 that is why I wanted to have Dr. Kratsios here to let you
7 know, based on the testimony of my next two questions, that
8 he never had a chance to make that change to Blythewood
9 because we were always zoned ---

10 THE COURT: I understand. That's a whole different
11 issue. That doesn't have anything to do with whether it's
12 gifted or talented. This has to do with were you, in fact,
13 told that you would go to Blythewood High School and that
14 was your school and then you got some notice that you can't
15 go to Blythewood High School and your opportunity to choose
16 had been foreclosed. That has nothing to do with gifted
17 and talented. I assume that would apply to any challenge
18 at either school.

19 MOTHER PLAINTIFF: Yes, sir. The only comment that I
20 would make about that is that in the placement mandates, if
21 a gifted and talented child is in a position in a placement
22 where they, or either a parent of somebody in the program,
23 say that they are not doing well or they are not thriving,
24 then there can be a review. Because he was not doing well
25 at Westwood, I requested a transfer and that should have

STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

1 come into play in that way based on regulation 43 220 and,
2 you know, I know that a lot of people think that this is
3 not an important issue ---

4 THE COURT: Ma'am, I don't know what the situation is
5 because I wasn't there, but just on the face of it, if you
6 were, in fact, told that your child could go to Blythewood
7 High School and then given information later that he
8 couldn't go to Blythewood and because of the time factor,
9 he was foreclosed from being able to pursue a transfer
10 which he would automatically be entitled to on the face of
11 it, seems to be a real problem. I don't understand where
12 there is an issue in the respect he is a gifted and
13 talented student. I mean, there's nothing -- and I assume
14 that you are going to show me here today that by virtue of
15 putting him in this school that these traumatic events are
16 going to disappear.

17 MOTHER PLAINTIFF: No, sir.

18 THE COURT: So, I mean, I just, I don't understand
19 that, but ---

20 MOTHER PLAINTIFF: Yes, sir. And I do understand what
21 you are saying. We can't take back deaths.

22 THE COURT: Well, I understand all that.

23 MOTHER PLAINTIFF: But we can provide a support system
24 where they can thrive academically and that support system
25 that ---

1 THE COURT: But that's all based on what you say.

2 MOTHER PLAINTIFF: Actually, I'm going to call some
3 other people and they will tell you, sir.

4 THE COURT: They will tell me that if your son were
5 transferred to this school that that support system would
6 cure all ills?

7 MOTHER PLAINTIFF: I don't think it would cure
8 everything, but it would certainly ---

9 THE COURT: Well, I don't know if that -- all right,
10 so, I just don't know if we need to pursue this gifted and
11 talented issue. I don't see where that is a factor at this
12 point in time. Now, maybe if they fail to, if they were
13 supposed to consider something and it wasn't done, you
14 could ask them to reconsider that at some point in time or
15 resubmit it, but I don't know, based on the record that we
16 have up to this point that that in fact is an issue based
17 on what you told me yesterday and you confirmed today. It
18 really is a situation where you are trying to do what you
19 think is in the best interests of your son for his overall
20 situation as opposed to, I'm not getting this in algebra
21 class or whatever they take in the gifted and talented
22 program, but the question would be would he get it at the
23 other school or am I being denied something.

24 MOTHER PLAINTIFF: Yes, sir.

25 MR. BOWENS: If I could make just one quick comment

1 about this. I think the concern that we have is, that
2 because the student is a talented and gifted student, when
3 he's not doing well at placement and needs to be
4 transferred and it is brought to the school's attention,
5 because of that status, he's supposed to have a student
6 study done before he's denied the transfer ---

7 THE COURT: Well, we had a discussion about that
8 yesterday and I'm not convinced that's what the situation
9 is, but anyway. I don't think we need to go into that.

10 MOTHER PLAINTIFF: Could I ask him just one more
11 question, Your Honor?

12 THE COURT: One question.

13 MOTHER PLAINTIFF: Thank you. Well, it's actually two
14 parts.

15 THE COURT: I'll see if I like part "A" before we go
16 to part "B".

17 MOTHER PLAINTIFF: Okay. Fair enough.

18 CONTINUED DIRECT EXAMINATION

19 BY MOTHER PLAINTIFF:

20 Q Dr. McDaniel, when were the school computers updated
21 to reflect 2012-2013 information?

22 A We have a system called PowerSchool and each academic
23 year is reflected in that system and so the academic
24 year 2011-2012 would have been updated in April of
25 2011. The academic year for 2012-2013 would have been

1 updated around that same time frame.

2 Q When did choice...

3 MOTHER PLAINTIFF: May I ask the next question?

4 THE COURT: Yes. Go ahead

5 Q When did choice end?

6 A The choice application period ended near the end of
7 January 2012 for the 2012-2013 school year.

8 THE COURT: Do you have a part "C"?

9 MOTHER PLAINTIFF: "C". Yes, sir.

10 Q So, if a student or a parent called the school and
11 somebody looked at the computer, what would they tell
12 that parent in, let's say, March?

13 A It would depend on the question asked. If you said,
14 "What school is my son going to for high school, and
15 they were looking at the current year, they would say,
16 "That current school". If it had changed and you
17 asked for the following school year, they would give
18 you the following school year because that data is
19 available to them. It was available in December of
20 2011, after the board adopted the new guidelines.

21 Q So, you are saying you updated the computers in
22 December of 2011?

23 A No, ma'am. What I said was, the data reflecting the
24 12-13 academic year school assignments was available
25 electronically, and there were those trained to access

STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

1 that information when asked questions in December of
2 2011. The system update that rolls over from the 2011-
3 12 school year to the 2013 school year occurs in
4 April, well in advance of the start of the school
5 year.

6 THE COURT: All right. Thank you, sir. Do y'all have
7 any questions of this witness?

8 MS. MAHONEY: Your Honor, we would like to request
9 that we go into our direct with Dr. McDaniel now about this
10 very issue, about the notice and how the zoning took place.

11 THE COURT: You can go into anything you want. He's
12 been called as a witness.

13 MS. MAHONEY: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MS. MAHONEY:

16 Q Dr. McDaniel, your position, could you please state
17 that for the record. I'm not sure you've said that
18 yet.

19 A I am Chief Planning Officer for Richland Two.

20 Q And is one of your responsibilities as a Chief
21 Planning Officer to develop attendance lines for
22 district schools?

23 A Yes. I facilitate and manage that process.

24 Q And were you involved in developing attendance lines
25 for the new Westwood High School that was opening in

STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

1 August of the 2012-2013 school year?

2 A Yes. I facilitated and managed that process.

3 Q And what process did the district follow when drawing
4 the attendance lines for the district high schools for
5 the current 2012-2013 school year, when did all that
6 begin?

7 A We actually began in the summer of 2011. We took a
8 survey of our community requesting feedback and
9 information about guidelines they would like to see in
10 place for Westwood and have us consider when drawing
11 the lines and we received over a thousand responses to
12 that survey. We then convened a group of parents and
13 teachers, administrators and students representing all
14 middle and high schools to meet and they first met on
15 August 11 of 2011.

16 Q Okay. And what factors were those committees given
17 and the district considering when drawing the
18 attendance lines for the school district high schools?

19 A Our goals in drawing attendance lines were to downsize
20 Blythewood High School and to downsize Richland High
21 School, significantly, because they were both
22 overcrowded and using portables on those campuses. If
23 at all possible, downsize Spring Valley High School a
24 little bit to increase Richland Northeast High School
25 and then to open Westwood High School with

1 approximately 1200 students, a number of students that
2 would afford them the opportunity for a full array of
3 educational opportunities for their students. We also
4 considered things like natural boundaries, keeping
5 neighborhoods intact, transportation groups and things
6 of that nature.

7 Q All right. Could you talk about the process? You say
8 they began in the summer?

9 A The survey was administered in the summer and the
10 first meeting of the group was August 11th. That
11 group met a total of four times for about 10 hours and
12 we provided them with blank maps, existing maps, data
13 about students, where they lived, number of students
14 living in different locations. They looked at that
15 information, drew maps, and the planning team then
16 came back with data reflecting what they had drawn and
17 it was a very intricate process, again, lasting
18 several months. The group was charged with bringing
19 forth three proposals to the public and they brought
20 those to the public in a public session on October 4th
21 at the middle school and presented to the board the
22 following week, officially, at the board meeting by
23 the group. We then took several months of public
24 feedback in written form, verbal form, box form. The
25 board provided feedback based on public comment. They

1 charged the planning officer with taking that
2 information and their recommendations and to bring
3 back one additional scenario. We brought back a
4 single scenario to the board and the public on
5 November 9th, 2011 online, got additional feedback and
6 the final scenario was presented to the board on
7 December 6th and so we are looking at a six month
8 process and that's when they voted.

9 MS. MAHONEY: Your Honor, just for demonstrative
10 purposes, could we just show the attendance line map just
11 to give you a sense of the general overall attendance lines
12 of the school district and where the plaintiff parents'
13 house is located just for informational purposes?

14 THE COURT: Well, I don't know why we need all that,
15 but I'll look at whatever you want. Your witness testified
16 that in December of 2011 we had our final lines as to where
17 you were going to school.

18 MS. MAHONEY: That is correct.

19 THE COURT: And that if you called, I think what he
20 said was, if you called in February of 2012 and said,
21 "Where am I zoned for high school," you would have gotten
22 that year wherever you were zoned for high school. If you
23 called and said, "Hey, where am I going to be zoned for
24 high school next year," they had the capability to tell you
25 in February based on the adoption in December. Is that

STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

1 correct?

2 MR. MCDANIEL: Yes, sir.

3 THE COURT: In April is when they issued, then, some
4 public -- I don't know what you did in April, but that's
5 when something was done that anybody could have found out
6 where they were going, basically. Is that what happened in
7 April?

8 MR. MCDANIEL: Actually, in April, that's completely
9 independent of the process. That's an annual migration of
10 data in our school data system.

11 THE COURT: So, basically, what he's saying is,
12 depending on how you asked the question, "Where am I
13 zoned," you probably would have gotten the information for
14 that year. "Where will I be zoned next year," you would
15 have gotten the other information and they could have given
16 you that information in February, March or April, anytime
17 after December 15th or so. Right?

18 MR. MCDANIEL: Yes, sir.

19 MS. MAHONEY: If I could ask it this way, then,
20 without getting out the map.

21 THE COURT: I'll look at your map.

22 MS. MAHONEY: Okay. I'll ask a couple of questions
23 while he's getting that up.

24 Q I just want to get this real clear for the record.

25 The address that the plaintiff family resides. You

1 are familiar with that address in Blythewood. Is that
2 correct?

3 A I am.

4 Q And that address, in all the proposed scenarios over a
5 six-month time period with maps, et cetera, was that
6 address ever zoned for Blythewood High School for the
7 proposed 2012-2013 school year?

8 A No. It wasn't.

9 Q In any scenario?

10 A In no scenario, whatsoever.

11 Q And the six months of discussions that you described,
12 was all that done privately behind closed doors where
13 no one in the public would know what was going on?

14 A No private ---

15 THE COURT: Just bring it up here. I can't see that
16 far anyway. (Referring to large map)

17 MR. REAGLE: Thank you, Your Honor. I have the
18 parents' address identified. (Mr. Reagle points out
19 address on map)

20 Q So, in other words, the December 6, 2011, finality of
21 the attendance lines was made public at a board
22 meeting. Was there any media coverage during this
23 several month time period?

24 A There was tremendous media coverage and we received
25 thousands of responses. Information was sent home in

1 school newsletters, on the automated dialing system to
2 every family that had a student in Richland Two, phone
3 calls were made, information was covered in the State
4 newspaper, the Blythewood Chronicle, on Richland's
5 website, it was in our R2 TV. It was covered in many
6 different points.

7 Q After the December 6, 2011, board meeting did you send
8 any separate letters to parents affected by the
9 attendance changes?

10 A We did on December 14, 2011, by U.S. Mail. We sent
11 notice to all impacted families that had any changes
12 done to their attendance lines, they were mailed, and
13 after the plaintiff's question, we pulled the file to
14 insure that her address was listed correctly in the
15 file we used to generate the mailings and it was.

16 THE COURT: Do y'all have a policy that if any parent
17 comes to you at some point in time prior to some date and
18 said I want my child to go to another school, they would
19 automatically be entitled to put them in whatever school?

20 MR. MCDANIEL: No, sir.

21 THE COURT: So, there is no just free choice, that you
22 can go to any school you want to go to up to some point?

23 MR. MCDANIEL: We do not have free choice. We have a
24 process, an application process and a notification process
25 in Richland Two. It's called expanded choice, but we do

STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

1 not have free choice. No, sir.

2 THE COURT: People that make those applications, do
3 you know what percentage are generally approved?

4 MR. MCDANIEL: It varies tremendously by school. Some
5 schools have a high number of applicants, others have
6 lower. It varies. At Blythewood High School, I think it
7 was around 50% approved last year.

8 THE COURT: And that's transferred into Blythewood or
9 transferred out of Blythewood?

10 MR. MCDANIEL: Transferred into Blythewood and it's a
11 net game based on the number of students that choose to
12 transfer out because every year we have students that
13 transfer in and out of all of our schools.

14 Q And if you would, follow that in terms of your choice
15 program, what is the process that a parent would go
16 through, the deadlines, et cetera.

17 A Sure. We actually have a choice fair tomorrow night
18 in Richland Two that we do around November, end of
19 November, early December procedure, which is the
20 choice application and in January preceding the
21 following school year, parents are told January 3rd or
22 4th to apply online and they are able to select three
23 selections and school and magnet programs are selected
24 in the same system. At the close of the term, near
25 the end of January, we do some computer processing,

STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

1 it's a random computer-generated selection, and
2 students then are notified in March whether or not
3 they were selected and it's completely computer
4 generated.

5 Q And for the 2012-13 school year, were any choice
6 submitted applications for students by parents denied
7 to get to attend Blythewood High School?

8 A Approximately, 100 students applied that did not get
9 into Blythewood High School.

10 Q So, right now you've got 100 requests that were
11 submitted last January for Blythewood this year that
12 were denied?

13 A That's correct.

14 Q Based on this sort of lottery system.

15 A Yes.

16 Q And random selection. Okay. Did the parents in this
17 case submit a choice application?

18 A They did not.

19 Q And I note you've already gone, you've obviously
20 stipulated to the fact that you ultimately denied the
21 request when submitted to your attention that the
22 student be transferred to Blythewood under the
23 circumstances put before you and questions were asked
24 to you about his academic abilities and whatnot, but
25 as chief planning officer for the district and your

1 responsibilities in that capacity, does the district
2 serve gifted and talented students at all at their
3 high schools?

4 A Without question, there are gifted and talented
5 programs at all of our schools.

6 Q So, would that factor, in any way, impact whether or
7 not a transfer was granted from one school to another
8 based on how the districts serve its students at all
9 its schools?

10 A No, it would not. It has no impact.

11 Q After you denied the request of the parent to appeal,
12 she appealed it to the board. Could you please
13 describe briefly the process the board considered?

14 A Sure. I'm responsible in my role as Chief Planning
15 Officer to collect all the correspondence between the
16 person appealing and the district and also any other
17 documentation they would like to provide and on
18 October 1st, the plaintiff provided lots of
19 documentation with regards to gifted and talented. I
20 reported that information, provided that to the school
21 board in advance of their October 9th school meeting,
22 if I recall. At the school board meeting, in
23 executive session and the plaintiff was called back,
24 along with a couple of district representatives, and
25 the board asked plaintiff questions and plaintiff had

1 the opportunity to state their case. The board asked
2 a few clarifying questions of me and Mr. Wiley, as
3 registrar, Ms. Mellette, the chief academic officer,
4 asked questions of those and after hearing all this
5 information, which took about forty or forty-five
6 minutes or something like that, we were dismissed and
7 they moved onto other executive session items. In the
8 public session, when they come to the portion where
9 they vote on items, motions are made, votes are
10 recorded and the appeal was denied in the public
11 session. The plaintiff was in the audience and heard
12 the denial and then the following day, Mr. Wiley
13 followed up with an official notification email to
14 that effect.

15 Q And you said you are having a choice fair this week in
16 the district. Would you have a similar open choice
17 application process in January, 2013, for the
18 following year?

19 A Yes, we do.

20 Q Would this parent be entitled to apply in that same
21 window in January to request a transfer to a different
22 high school for the 2013-2014 school year?

23 A Certainly. Yes.

24 Q All right. Thank you.

25 THE COURT: All right. Anything further of this

1 witness? (No response) Thank you, sir. You may step
2 down. All right. Plaintiff, Mom.

3 MOTHER PLAINTIFF: Thank you, Your Honor. If it
4 please the Court, I would like to call Dr. Kratsios.

5 DR. MARIA KRATSIOS, after being duly sworn by Judge
6 Barber, testified as follows:

7 DIRECT EXAMINATION

8 BY MOTHER PLAINTIFF:

9 Q Dr. Kratsios, thank you so much for being here today.
10 Can you please tell the Court the difference with
11 gifted kids in the general population?

12 A That's a very ---

13 THE COURT: Hold on a second. Ma'am, before you go
14 into that, tell me your name.

15 DR. KRATSIOS: Maria Kratsios.

16 THE COURT: What kind of work do you do?

17 DR. KRATSIOS: Senior research associate for advanced
18 programs.

19 THE COURT: Senior research associate. Where?

20 DR. KRATSIOS: Richland School District Two.

21 THE COURT: So, you work at the school district.

22 DR. KRATSIOS: And my responsibilities are to work
23 with gifted and talented students, grades two through five.

24 THE COURT: All right.

25 COURT REPORTER: Could I get a spelling of her last

STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

1 name, please?

2 THE COURT: You're going to have to figure that one
3 out.

4 DR. KRATSIOS: K-R-A-T-S-I-O-S.

5 COURT REPORTER: Thank you.

6 THE COURT: Just like it sounds.

7 Q Dr. Kratsios, could you please tell the Court what
8 makes gifted students different?

9 A That is a really loaded question, a big time question.
10 I think it is a special needs, like we say, and these
11 children work best in the company of others that they
12 like. I think with great pride, I have to say our
13 district does a fantastic job. I sympathize with you
14 as a parent. I have great empathy because I
15 understand the power of you advocating for your child,
16 because you are the first teacher, the mentor, but
17 what we have in place in our district is an excellent,
18 wonderful experience that we offer every student that
19 comes in, gifted or not gifted and especially our
20 gifted kids and we make every day a special day for
21 them. So, what we have in place is great counselors
22 for every level, elementary all the way to high
23 school, but also, we take great pride in our training
24 and the endorsements. All of our districts are doing
25 a good job, but I think we are doing the best because

1 all of our teachers, which means not only working with
2 curricula, which is extraordinary with our advanced
3 students, but also with the general classes. So, the
4 classes that we teach is the nature of the needs so
5 the teachers are best qualified and best trained to
6 approach the students in a very sensitive manner,
7 which we do, I think, a fantastic job.

8 Q Dr. Kratsios, and thank you for your efforts in that
9 regard. Are some gifted students, highly gifted
10 students, particularly more sensitive to things than
11 the general population?

12 A It is not the response to that because it has a lot to
13 do with the home environment and I think a lot of
14 times from the support that they receive at home and
15 we supplement at school and so the sensitivity comes
16 from the needs each individual student has and from
17 home and how they express themselves when they come to
18 school.

19 Q Do you -- can you tell us what dissonance is?

20 A It's a special need that our gifted students have to
21 grow and to learn in the company of others that care
22 and learn the social and emotional needs in an
23 environment that is sometimes very difficult for these
24 children to be themselves, but what we do and I can
25 say with great confidence that we do that in our

1 district and I just have come from a conference on
2 that and have confidence here how advanced we are in
3 our district, the people that are saying, "Oh, my
4 goodness, I can't believe you are doing what you are
5 doing," and so what we are doing with the social and
6 emotional is quite serious and we take good care of
7 our students.

8 Q Dr. Kratsios, and thank you. Do you think that in
9 taking care of the students that it is important to
10 look at their individual needs if they are not doing
11 well in that particular class or school?

12 A I think even with the department and the policies, we
13 cannot individualize the courses. You look at the
14 student's entire profile and so we are not just
15 looking at science or mathematics, just that their
16 general social adjustment.

17 Q Can their social adjustment be important for their,
18 you mentioned their peer groups.

19 A I think to those students it helps students socially.

20 Q Have you seen this article from the Davidson Institute
21 on the gifted and talented social and emotional needs?

22 A Yes.

23 Q One of the things they point out in the article is
24 that school can be a very big source of dissonance.
25 Why is that?

1 A I'm not an expert. I'm not an expert. I am familiar
2 with the Davidson Institute and also the struggles
3 between the higher and lower I.Q. Sometimes it
4 applies to all our students.

5 Q Do you think when there is a traumatic event in a
6 student's life that they are affected?

7 A I'm not an expert on that. I apologize.

8 Q Do you think that it is reasonable that students need
9 a base of support from other students in the highly
10 gifted group that they are familiar with and
11 comfortable with to ---

12 A I think in the class that I have looked at it is
13 provided where a student is right now and you can tell
14 that we provide that support through the class.

15 Q No, I'm not talking about the teachers. I'm talking
16 about their support students.

17 A I think that we have kids that belong in those groups
18 that take those advanced classes, they belong. Of
19 course, a little bit higher or a little bit lower, you
20 are going to find students in the ninety-nine and
21 students in the ninety-six, but we have students in
22 the same group and they learn because the ninety-nine
23 are more specialized than the ones in the lower, but
24 they are compared in one subject or another and so
25 they help and that's the way that they learn.

1 Q If there is a gifted student that comes to you, and
2 based on the regulations, that says, "I am having a
3 problem in this school. I feel I would be better
4 served to go to another school," how would you respond
5 to that?

6 A Really, I'm not comfortable with answering that. I
7 would maybe be looking for some other reasons because
8 one of the things we want for those children is to be
9 able to work with others, that when they come out, we
10 want them to be able to work with others and that's
11 the first thing we teach them is collaboration and
12 cooperation. Those students would like to learn from
13 someone that is so advanced. So, I think it does a
14 great deal of good just to get a very bright child, to
15 get them with others who he is going to be working
16 with and who he is going to be dealing.

17 Q Right. Do you think it is important to also keep that
18 comradery together if that is their emotional and
19 social support?

20 A This, that would be fine, but at the same time, it is
21 not absolutely necessary. It would be fine, because
22 whereas adults, we would like to have someone that is
23 fun to be with, but we have to tolerate others that we
24 don't want to be with.

25 Q That is very true, but I would say that ninth graders

1 being put with eleventh graders would be a little
2 disconcerting some---

3 THE COURT: All right.

4 MS. MAHONEY: I would object to her testimony here.

5 MOTHER PLAINTIFF: I'm so sorry.

6 THE COURT: Now, look. I understand that children
7 generally do better if they are happy than if they are not
8 happy. Children generally do better if they are
9 emotionally stable than if they are not emotionally stable.
10 Generally, they do better if they are with a peer group
11 that is compatible to their backgrounds than if they are
12 not, but I mean, I don't know that that is the issue here
13 today, so is there anything else you want to ask her? I
14 don't think you are going to get what you want out of her.

15 MOTHER PLAINTIFF: Maybe so. Thank you, Your Honor.

16 THE COURT: Do you have anything you want to ask?

17 MS. MAHONEY: Nothing, Your Honor.

18 THE COURT: All right, ma'am. You may step down.

19 Anything further?

20 MR. BOWENS: Your Honor, I would like to call Ms.
21 Meisner, the mother plaintiff, and have her testify about
22 the harm and ---

23 THE COURT: You understand, we have a problem.
24 Lawyers generally can't -- well, she's not a lawyer. All
25 right. We'll hear from her.

1 MOTHER PLAINTIFF, after being duly sworn by Judge
2 Barber, testified as follows:

3 THE COURT: Unfortunately, ma'am, you will have to
4 identify yourself.

5 MOTHER PLAINTIFF: May I identify myself as Mother of
6 Plaintiff?

7 THE COURT: From my recollection, you understand you
8 placed your name on your motion for a temporary restraining
9 order.

10 MOTHER PLAINTIFF: Yes, sir. I was going to make a
11 motion to seal the record.

12 THE COURT: I don't think we can do that. All right.
13 Proceed, if you would, please, sir.

14 DIRECT EXAMINATION

15 BY MR. BOWENS:

16 Q If you would, please, describe for the Court what you
17 went through in terms of being told that you were
18 going to have Blythewood High School as your high
19 school and then it was switched. Give the Court your
20 version of what happened.

21 A So, the Blythewood Community was told there was a new
22 school ---

23 THE COURT: You can't tell what the Blythewood
24 Community was told. You can testify what information you
25 were given.

STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

1 A Okay. I was given information that a new school was
2 opening on Turkey Farm Road called Westwood and that
3 it was due to overcrowding at Blythewood and that
4 basically there would be a split of the Blythewood
5 High School. Some kids would go to Westwood, some
6 would go to Blythewood, but they didn't know what the
7 lines were and so forth. I travel extensively and I
8 know they reported that there was a lot of information
9 at the school board meetings. I can tell you that
10 I've been to a couple of school board meetings since
11 this has occurred and there are very few parents
12 there. Possibly, other than parents who may be
13 participating in the board meeting, maybe fifteen.
14 The rest of the people there are employees, district
15 employees, you know, things of that nature, for the
16 two board meetings that I have attended.

17 Q So, the information that you had was that your student
18 was going to go to Blythewood High School.

19 A That's correct. And I did call and ask Muller Road
20 Middle what our student, where he was going in the
21 fall because he, as an eighth grader, would go to high
22 school and so I asked for the high school designation
23 for next year.

24 Q And you were given Blythewood High School?

25 A I was given Blythewood High School.

STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

1 Q And that was during the choice period that we've heard
2 about?

3 A That was up until April 27th.

4 Q And then after the choice period closed, what
5 happened?

6 A We realized that he wasn't going there. Actually,
7 they still had us scheduled for Blythewood for the
8 counseling sessions. When I called, I got the dates
9 confused and we were still registered at Blythewood.
10 In fact, when we went to the Westwood counseling
11 sessions, Dr. Tyson could not pull up our profile
12 because it was still at Blythewood. So, he just took
13 hand notes and so forth.

14 Q And so, after this choice period closed when you could
15 apply through this lottery system, you were then
16 notified you were then going to Westwood instead of
17 Blythewood.

18 A Correct.

19 Q He's been in Westwood for the last couple of months,
20 through the appeal of this initial denial by the
21 district?

22 A Yes.

23 Q Describe for the Court what kind of harm he's been
24 experiencing while he's been at Westwood.

25 A I think that ninth grade can be difficult for any

1 student and I think when we first go to high school,
2 it's a time of change and those changes are to be
3 expected, but unfortunately, my son was involved in
4 two very tragic car accidents where he witnessed a
5 death on the side of the road, the last one being our
6 Nanny and during the event, he had to take care of his
7 three younger brothers and was obviously traumatized
8 because this is somebody that's been taking care of
9 them for three-and-a-half years. Frequently, I'm out
10 of town. I travel all over the whole state and a part
11 of Georgia and so it was a very upsetting time for our
12 parent, our family and as a parent I tried to do
13 things to console my son and part of his happiness,
14 because we live in an isolated rural setting is being
15 with his friends and unfortunately, because he is in a
16 gifted and talented program, all of his classmates
17 from geometry went to Blythewood High School.
18 Apparently, a lot of the gifted folks from, well, most
19 of the gifted folks went to Blythewood from his
20 school, other than there was one student who was there
21 and unfortunately, that was a student that he didn't
22 know very well. So, he had a lot of difficulties when
23 he first started going to school. Westwood High
24 School is culturally very different from him,
25 different than Blythewood. It is predominately

STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

1 African American and many of the students there are
2 from the lower income families that were spun off, if
3 you look at the map, from Richland Northeast and
4 Spring Valley and some of the other schools and it's
5 unsettling to him. He was approached in his study
6 hall class and asked if he was a racist and he said,
7 "No, my best friend is African American," and that is
8 the case, but there are large cliques at that school
9 that are very imposing and it is sometimes, he is
10 sometimes nervous about that school and, apparently,
11 the first few weeks of school he reported that there
12 was a fight almost every day in the cafeteria, so he
13 does not feel that it is a completely safe
14 environment, not because it's -- It's because he
15 doesn't know the kids there and highly gifted kids are
16 very reserved in their approach of joining other kids
17 and things like that. I mean, I think he tries, but
18 he is suffering.

19 Q Where is he ranked? What is his ranking, nationally,
20 in mathematics and academics?

21 A I did not get the actual breakdown, but when he
22 qualified for gifted and talented in the second grade,
23 he was in the 99 percentile. When he qualified again
24 in the seventh grade under the Duke Talented
25 Identification Program, he was in the 99 percentile.

1 My twins, they are also in the gifted and talented
2 program, scored in the 99.6 percentile, so...

3 Q How's he doing currently, academically? How are his
4 grades now at Westwood?

5 A He just failed two of his math courses and when he
6 thought that he was going to have the opportunity to
7 potentially be able to move back with his friends, he
8 was, I guess encouraged, and his very last test, he
9 made a 92, but previous to that he failed a test on
10 parallelism and orientation of the slope.

11 Q Explain to the Court your observation of his
12 dissonance that you talked about earlier. How was he
13 exhibiting signs of having dissonance?

14 A Well, I think that anybody that has highly gifted kids
15 can read a bunch of articles and learn more about
16 their kids than they ever really knew. For example,
17 one of my twins, currently, is having issues where he
18 doesn't want to do anything because he's afraid of
19 failing. With ~~MEGAN~~... **redacted**

20 MR. BOWENS: Your Honor, if we could strike the last
21 name from the record.

22 THE COURT: I'm not really sure what the secrecy is.
23 I mean, there's nobody here but us and, you know, if you
24 want to have Plaintiff child, go ahead.

25 MOTHER PLAINTIFF: Thank you. I'm sorry.

STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

1 A Immediately after the first traffic accident, he was
2 very upset because he had made some -- this was an
3 African-American couple and they were goofing off on a
4 motorcycle and he had made some comments that were not
5 very nice. He said that they deserved -- I made the
6 comment that the woman was going to fall off and get
7 killed acting like that, because she was standing up
8 and leaning over and he said, "Well, if she does that,
9 then she deserves to die." I was so upset by that and
10 I told him that was not something he should consider
11 and I spent about ten minutes explaining no one
12 deserves to die. Things happen. You don't know
13 what's going on in her life, blah, blah, blah, blah,
14 blah. Because of that extended conversation, about
15 ten minutes down the road on I-26, there was something
16 in the roadway and I thought that it could be that
17 woman and it, in fact, was and so I pulled my car in
18 front of her off the expressway, the side of the road
19 and ran into the oncoming traffic so no one would stop
20 that and ~~Michael~~ ^{redacted} saw that and he was very upset after
21 that event because he made the comment that she
22 deserved to be hurt and it upset him and affected him
23 deeply. A few months later, we had car trouble and
24 the car broke down and ~~Michael~~ ^{redacted} got out of the car to
25 stop the traffic and Mandy got out of the car and a

1 truck subsequently hit our car, hit and killed our
2 Nanny in front of ~~██████~~ ^{redacted} and my other three kids.
3 ~~██████~~ ^{redacted} was initially ---

4 THE COURT: Ma'am, let me ask you something. Is your
5 son receiving counseling?

6 MOTHER PLAINTIFF: We have not.

7 THE COURT: He's not receiving any counseling?

8 MOTHER PLAINTIFF: Other than, we contacted a
9 psychiatrist and ---

10 THE COURT: And so the answer would be no.

11 MOTHER PLAINTIFF: No, other than my husband. The
12 only complaint that he ---

13 THE COURT: Other than your husband. What does that
14 mean? Is your husband a physician or ---

15 MOTHER PLAINTIFF: Yes, sir.

16 THE COURT: What kind of work do you do?

17 MOTHER PLAINTIFF: I sell medical equipment.

18 THE COURT: And you travel a lot?

19 MOTHER PLAINTIFF: Yes, sir.

20 THE COURT: So, you are not home a lot?

21 MOTHER PLAINTIFF: No, sir.

22 Q Explain for the Court how the lack of his support
23 group at Westwood that currently is at Blythewood has
24 affected your son.

25 A We live in a rural setting, in the middle of a bunch

1 of land. He has no friends there other than what
2 contact he has in sports or church or different
3 things. He has started doing online gaming as a way
4 of trying to connect with some of the kids from
5 Blythewood, but dissonance is the feeling of being
6 different from the general population and the
7 population at Westwood, because it is very different
8 from what he's familiar with and he doesn't have a
9 support group with him. It's -- children respond to
10 dissonance by trying to avoid it. I did not realize
11 this was happening, but I had to pick him up from
12 school a couple of times because of the babysitter
13 being sick and found that he was running from the
14 school and I didn't really understand that but he was
15 the only one that, instead of waiting in line, just
16 ran out of the door. He feels, he feels threatened in
17 that environment and he doesn't have a lot of
18 opportunities to be around other kids that he had when
19 he was in his geometry class before, that he had
20 before, those relationships, those connections.

21 Q Has he exhibited any signs of depression?

22 A He has exhibited signs of depression, periodically,
23 mostly manifested in his recent poor grades.
24 Sometimes he's sleeping twelve hours at a time and
25 sometimes he can't sleep at night.

1 Q Does he have trouble eating?

2 A Occasionally, but not generally.

3 Q Has he given ---

4 THE COURT: What kind of doctor is your husband? Is
5 he a psychiatrist?

6 MOTHER PLAINTIFF: No, sir. He's an anesthesiologist,
7 but he took psychiatry.

8 THE COURT: Oh, I understand they all take it a little
9 bit. Why wouldn't you have your child seeing somebody?

10 MOTHER PLAINTIFF: You know, his brother was the chief
11 of psychiatry and his other brother is a clinical
12 psychologist and when we consulted with a psychiatrist
13 here, she recommended some time because the events were so
14 traumatic. Sometimes the best thing is to give time so
15 that when you talk about it ---

16 THE COURT: Ma'am, your son has apparently had an
17 ongoing situation since the first event, which occurred
18 some time ago.

19 MOTHER PLAINTIFF: Yes, sir.

20 THE COURT: Maybe a psychiatrist is not what you need.
21 Maybe it's a psychologist. Maybe it's something, but I
22 don't understand. Your son is exhibiting -- I mean, you
23 expect that if he transfers schools, the depression is
24 going to go away.

25 MOTHER PLAINTIFF: No, sir. I think that his support

1 group of friends will make a big difference with him.

2 THE COURT: And what if it doesn't? Are we going to
3 wait another year or two years to see if it does or doesn't
4 and then we might get him some counseling?

5 MOTHER PLAINTIFF: No, sir. The only request that he
6 has made of me is to be with his friends.

7 THE COURT: I understand, but he's, what, thirteen or
8 fourteen years of age?

9 MOTHER PLAINTIFF: He just turned fifteen.

10 THE COURT: All right. You are considerably older and
11 more experienced and you have three other children and you
12 understand this child needs your care and guidance probably
13 more than ---

14 MOTHER PLAINTIFF: Yes, sir, and on the way to court
15 he said yesterday, when he looked at me, he said, "Mom, you
16 look tired. He said, "Get some rest so you can be sharp
17 tomorrow."

18 THE COURT: I'm sure he's a good child, but it sounds
19 to me like he has some serious problems and needs some
20 help. Anything further?

21 MR. BOWENS: That's all, Your Honor.

22 THE COURT: Do y'all have any questions you want to
23 ask the witness?

24 MS. MAHONEY: Just briefly, Your Honor.

25 CROSS EXAMINATION

STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

1 BY MS. MAHONEY:

2 Q He is currently enrolled in all honors classes being
3 offered at Westwood High School. Is that correct?

4 A Yes.

5 Q And the SOAR program at Westwood High School is the
6 Scholarship Academic, which is really the Honors
7 Program, he did not apply for that program. Is that
8 correct?

9 A Yes. SOAR is a program, it's like an extracurricular
10 program and it's a program that is available if you
11 have one honors class, you can apply to that and ~~and~~ *redacted*
12 looked at the information, but felt it wasn't
13 something that he was interested in pursuing.

14 Q And school administration at Westwood, in their
15 communications with you, offered to provide him with
16 appropriate counseling assistance. Is that correct?

17 A Yes. We -- they wanted to talk to ~~him~~ immediately
18 after the accident and we were advised that that was
19 not a good idea. Recently, whenever he had some
20 problems -- you know, sometimes you have to listen to
21 the student and you listen to your child. They, you
22 know, yes, I'm the parent but when they tell you they
23 don't really want to talk to somebody at school about
24 it, it's very embarrassing -- several situations after
25 the district found out about it, that he had not

1 received the counseling he was supposed to receive
2 before going to the sixth grade, they sent somebody, I
3 don't know who it was, he doesn't know who it was, to
4 his chemistry class and pulled him out of class to ask
5 him what he wanted to do as far as his aspirations,
6 what his major was going to be or what he was going to
7 do and it was very unsettling to him because he felt
8 singled out and isolated and thought he was in
9 trouble.

10 Q So, your answer is no, he's not received -- he's not
11 accepted any offers of counseling provided to him by
12 the district?

13 A Well, the counselor at Westwood is not gifted and
14 talented certified anyway.

15 Q Okay. So, the answer that any counseling offered to
16 you or to your son, through you, through the school,
17 ~~you~~ you declined?

18 A No. That's not -- I had an email from another
19 counselor from Blythewood High School. She gave us
20 some counseling. She's the tennis coach there.

21 Q Has he accepted any offer of counseling from anyone in
22 the district, District Two?

23 A He has ---

24 THE COURT: Answer yes or no and then you can give
25 your explanation.

1 A No, he has not. However, he has been given counseling
2 by the tennis teacher at Blythewood. She gave some
3 recommendations for some grief counseling and things
4 like that immediately after the accident.

5 Q It's my understanding that you had a conversation with
6 Shavorn Jenkins, guidance assistant at Westwood High
7 School just before Thanksgiving. Is that correct?

8 A When [REDACTED], when he failed two of his math classes, is
9 that what you are talking about?

10 Q You expressed concern about his math.

11 A Yes. I wanted to find out if it was the whole class
12 having problems or if it was him having problems,
13 because if it was him only and the whole math class
14 was not doing well, then that was of concern to me and
15 after talking with her, it seemed it was jut [REDACTED] and
16 we ---

17 Q It's my understanding that that teacher, that math
18 teacher offered your son some additional help and
19 tutoring and that he then declined. Is that correct?

20 A Well, when we talked, I was in Greenville, South
21 Carolina, out of town, and it was about 5:00 in the
22 afternoon before the following morning when she said
23 he could come in that morning for counseling. I
24 called and talked to everyone and apparently my
25 husband had spent three hours that night going over

1 math and so there was no need for it. He subsequently
2 made a 93 after my husband tutored him for three
3 hours.

4 Q So, the answer is, yes, you declined the tutoring?

5 A Yes.

6 Q At school?

7 A For that day.

8 MS. MAHONEY: Your Honor, if I could put in front of
9 her the state email packet we've already introduced into
10 evidence.

11 THE COURT: Let me ask a question just for my own
12 information. How many students in the gifted and talented
13 program at Westwood High?

14 MR. MCDANIEL: It would just be a guess, Your Honor.
15 I'm not sure.

16 THE COURT: Well, an educated guess. Would it be ten,
17 a hundred?

18 MR. MCDANIEL: No, sir. Probably over a hundred.

19 THE COURT: How many would be at Blythewood High?
20 Would it be of a similar size?

21 MR. MCDANIEL: Probably.

22 THE COURT: What other high schools are out there?
23 Would they all be similar sizes? I mean, maybe one school
24 is a lot bigger than another, but proportionally, on a
25 proportional level they would all be ---

1 MR. MCDANIEL: Yes, sir.

2 THE COURT: If you've got 1200 students, a hundred of
3 them are in gifted and talented and if you had 2400, two
4 hundred might be in gifted and talented. Would that be a
5 fair assessment?

6 (Everyone nods their head)

7 THE COURT: All right. Thank you. Excuse me, Ms.
8 Mahoney.

9 MOTHER PLAINTIFF: Your Honor, if I may. In his math
10 class at ---

11 THE COURT: Well, I asked in the program.

12 MOTHER PLAINTIFF: Oh.

13 THE COURT: I mean, I assume the different classes
14 have different sizes. I mean, the whole program doesn't
15 meet at once because there are probably different grades.
16 Right? Or is it sort of like the little one room school
17 where everybody meets and does the same thing at the same
18 time?

19 MOTHER PLAINTIFF: Well, with regards to math, there
20 are only about eleven students at Westwood. The rest are
21 juniors and seniors.

22 THE COURT: So, they really get personalized attention
23 then.

24 MOTHER PLAINTIFF: Well, no. The rest of the class is
25 with juniors and sophomores. They have a limited program

STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

1 so that the gifted kids are ---

2 THE COURT: So, they have a ninth grader, tenth
3 graders with the twelfth graders?

4 MOTHER PLAINTIFF: Yes, sir.

5 THE COURT: We did that when I was in high school.
6 All right. Proceed. Do you have something you want to ask
7 her?

8 Q Yes. Would you look, please, towards the bottom of
9 the page that I just put in front of you. This is in
10 the record, the emails, which is the record of the
11 school board back and forth about your request for a
12 transfer and there's an email from you to Mr. Wiley on
13 July 16th at 4:05 p.m. If you could look down, you
14 communicated with him, if you could just look with me:
15 Mr. Wiley, I went to Open House at Westwood and tried
16 to reassure my son that he would have the opportunity
17 to influence the character and set the stage for a
18 great high school experience because he had heard that
19 many of the schools with "gang" problems were re-zoned
20 disproportionately to Westwood and as a result
21 Westwood was nicknamed Westhood. What did you mean by
22 that?

23 A Well, because of the disproportionate gang
24 neighborhoods, the nickname of Westwood is Westhood.
25 That's exactly what I meant by that. That was a

1 comment -- I had never heard that until it was said by
2 several students.

3 Q Okay. If you turn over to the next page, which is
4 still in the same email that you sent when you were
5 seeking the administration's request, when you were
6 requesting that he be transferred, you said in there,
7 three lines down, "I understand the desire to give the
8 least privileged of our society a "fighting chance" to
9 succeed, however the answer cannot be discriminatory
10 in the approach when it affects the rights of others
11 to get an excellent education." What did you mean in
12 that statement which was in your request for a
13 transfer to a different school?

14 A Well, I think I was pretty clear earlier that the
15 character of Westwood is very different than the
16 character of Blythewood in that a lot of the
17 neighborhoods are from the neighborhoods that,
18 Richland Northeast, Spring Valley did not want going
19 to their school. In fact, I was at one of the school
20 boards in Richland Northeast has a new program to try
21 to change the image of Richland Northeast to --
22 because they described it as one of the reporters
23 described it as a least desirable school because of
24 the neighborhoods that were associated with gangs in
25 that area.

1 Q And did you make a comment at a public board meeting
2 referencing a program at Westwood High School in which
3 you called the program that had just been presented by
4 some students as Studio "D", did you refer to that at
5 the school board meeting and refer to that as Studio
6 "Dumb" in reference to the students?

7 A I think I referred to that in the way it was referred
8 to me. Several parents, the way that Studio "D" was
9 brought up before the school board is it is my
10 understanding that it had so many problems and parent
11 complaints about Studio "D" that the parents that are
12 a part of that have nicknamed that "Studio Dumb Down"
13 and the reason for that is that none of the students
14 that are in that Studio "D" are any -- all takers can
15 come in and they work in group projects. As such,
16 some of the least skilled -- or what's going on and
17 apparently the teacher of that class frequently does
18 not go to the class. There are concerns by parents,
19 one of the parents is, her son is a gifted and
20 talented student that signed up for it and was very
21 disappointed to find out -- she doesn't know what he's
22 doing in there. They took study from Stanford,
23 Stanford University, obviously they were reviewing a
24 very homogeneous group, people that are going to
25 Stanford and Harvard are all intellectually about the

1 same level and tried to integrate that into Studio
2 "D". Unfortunately, the different levels of academic
3 ability has caused it to be a failure in the eyes of
4 some parents and so that is the nickname for that
5 program.

6 Q And you realize, though, when you said publicly to the
7 students in the audience that that was referred to
8 Studio "Dumb" that you were actually referring to
9 students in that capacity?

10 A The teacher and, I believe, the students left by the
11 time I went up there because I talked to the teacher
12 and asked her to stay after the program because there
13 were several people and she said that she had a
14 meeting.

15 Q Thank you. Nothing further.

16 THE COURT: Anything else?

17 MR. BOWENS: No, sir.

18 THE COURT: Thank you, ma'am. You may step down.

19 Anything further?

20 MOTHER PLAINTIFF: Your Honor, may I call Ralph
21 Schmidt from the school board, please?

22 THE COURT: All right. Well, let me tell you. I have
23 a 12:00 function that I have to be at. Judge Cooper, one
24 of our judges is retiring, so we need to be quick about it.

25 MOTHER PLAINTIFF: Yes, sir.

STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

1 THE COURT: And I have to hear from the other side.

2 RALPH SCHMIDT, after being duly sworn by Judge Barber,
3 testified as follows:

4 THE COURT: Tell us your full name, please.

5 MR. SCHMIDT: Ralph Charles Schmidt, principle of
6 Westwood High School.

7 DIRECT EXAMINATION

8 BY MOTHER PLAINTIFF:

9 Q Mr. Schmidt, when you first got the opportunity to
10 open Westwood High School, were you surprised at the
11 attendance of the students there?

12 A You know, I started working with this over a year ago,
13 with Dr. McDaniel, as we started planning this, so as
14 I watched the attendance lines, I kind of knew where
15 we were going to be.

16 Q When you say you watched the attendance lines, what do
17 you mean by that?

18 A Well, I mean, I attended all the school board meetings
19 and so I got to see the discussions and what was going
20 on through the school board.

21 Q So, you knew the student population would be
22 approximately 81% African-Americans?

23 A That's correct.

24 Q And is that the same ratios in the other schools?

25 A No. I mean, there are some differences.

1 Q Tell me about the number of whites.

2 A We had -- you know, after our conversation yesterday,
3 I went back and reviewed all our disciplines, and we
4 have had two fights. They were both on the same day.
5 We've had -- I believe one of them occurred in the
6 cafeteria. We've had about four other pushing
7 incidents that didn't manifest themselves into fights
8 and so there were two fights.

9 Q Have you had any issues with drugs?

10 A We've had a couple of incidents where we've had to
11 recommend students to the drug officer. Yes.

12 Q And how many incidents would those be?

13 A My guess would probably be three.

14 Q The first week of school, were there several arrests
15 at the school?

16 A Not to my knowledge.

17 Q When you had the Open House, tell me what you said to
18 the population that was there at the Open House.

19 A That was a long time ago and so I'm not sure. I'm
20 sure we talked about the additions to the school, that
21 we wanted to see our school go, wanted to make sure we
22 provided opportunities for our students to be twenty-
23 first century people, twenty-first century citizens,
24 make each of them concentrate on three things, which
25 are: 1) Academics, making sure we provide the best

1 instruction we can in the classroom 2) Developing a
2 leadership program, that we are ensuring that we are
3 teaching the children to be the future leaders and 3)
4 to be sure we are working on the idea of service above
5 self, community service and I'm proud to say at this
6 point, Westwood High School is doing well in all three
7 of those categories. One in particular is that we
8 sent a group of students from our student government
9 that went to the Southeastern Student Councils and we
10 were the only school from the State of South Carolina
11 to win a first place award and the only school in the
12 Southeast to win two first place awards for
13 leadership, so I think we are following through on the
14 divisions we are trying to achieve.

15 Q Do you feel like it is a safe school?

16 A Absolutely.

17 Q And so you don't feel the students are at risk in any
18 way?

19 A No, ma'am. No, ma'am. We work real hard everyday.
20 We invite people to come in and have many visitors
21 come in. Our children are great. I will tell you
22 that in the short time we've been there, I'm extremely
23 impressed by the character of the majority of our
24 students. I would characterize that there is always a
25 small population with some unruliness. I've been a

STATE OF SOUTH CAROLINA)
) CERTIFICATE
 COUNTY OF ANDERSON)

BE IT KNOWN THAT I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT REPRESENTS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE HEARING IN THE CAPTIONED CASE, RELATIVE TO APPEAL, BEFORE THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, SO GIVEN ON NOVEMBER 28, 2012 TO THE BEST OF MY SKILL AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO, NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

IN WITNESS WHEREOF I HAVE HERE UNTO SET MY HAND AND SEAL THIS 6TH DAY OF FEBRUARY, 2013.

Jo Rice

JO RICE
 OFFICIAL COURT REPORTER

STUDENT NUMBER ONE, JOHN DOE V RICHLAND SCHOOL DISTRICT TWO

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
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NO EXHIBITS INTRODUCED

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NO.</u>
Motion/Mr. Turner	4
Response/Ms. Meisner	17
Reply/Mr. Turner	42
Decision by The Court	45
Certificate Page	46

1
2
3
4
5
6
7
8
9
10
11
12
13
14
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THE COURT: This is Docket No. 2012-CP-40-07122. The plaintiff is pro se and the defendant's represented by Tyler Turner; is that correct?

MR. TURNER: That's correct.

THE COURT: And that's Richland County School District 2?

MR. TURNER: That's correct.

THE COURT: And we're here on a motion to dismiss the second amended complaint; is that correct?

MR. TURNER: That's correct.

THE COURT: Ms. Meisner, I'll hear from the defendant's attorney relating to their motion. I'll then -- then give you a chance to respond, and then I'll hear rebuttal from him on -- on whatever issues you -- you have.

I believe that -- that you all provided some information relating to this case, which I -- I have a him memorandum in opposition to the motion, and then I also have a memorandum in support of the motion. Okay.

So Mr. Turner, I'll hear from you.

MR. TURNER: Thank you, Your Honor. This -- this case arises and this complaint arises out of a school board's denial of a transfer request from a high school student. The student's currently enrolled at Westwood High School, in Richland School District 2, in the ninth grade, and

1 sought a transfer to Blythewood High School, which is also
2 in Richland School District 2.

3 The administration in -- in Richland 2 and the board
4 both denied the transfer request, in part based on limited
5 space available at Blythewood High School, which -- which
6 the plaintiff points out in her complaint.

7 The complaint alleges three different claims to it's -
8 - it's -- the appeal does. The -- the first seeks a
9 declaratory judgement that the denial of the transfer
10 request violates South Carolina's gifted and talented
11 laws.

12 The second claim is an equal protection claim, and
13 that's based on the school board's and school district's
14 assignment of students to both Westwood High School and
15 Blythewood High School.

16 And the third claim is a due process claim, based on
17 the denial of the transfer.

18 And the -- the board and the superintendent moved to
19 dismiss those claims under Rule 12(B)(6); and also because
20 the plaintiff in this case is represented by his mother,
21 who is not a licensed attorney, is not eligible to
22 practice law in South Carolina and represent her son pro
23 se.

24 And I'm going to -- I'm going to start with the latter
25 argument.

1 THE COURT: And -- and -- and he's under the age of
2 18?

3 MR. TURNER: That's correct.

4 THE COURT: So she would just need to -- to be
5 appointed as a guardian; is that -- is that correct, in
6 order to pursue the claims?

7 MR. TURNER: As -- as far as representing -- she --
8 she can be the next friend, certainly, of him and -- and --
9 --

10 THE COURT: He's a minor; is he not?

11 MR. TURNER: He is a minor.

12 THE COURT: So she would be appointed as his guardian
13 to represent his interest in court.

14 MR. TURNER: I think she can be appointed as a
15 guardian to represent his interest as a next friend or as
16 a guardian or as a parent; but she can not do it pro se.

17 THE COURT: Okay.

18 MR. TURNER: And I'll -- and I'll -- I'll continue on.
19 South Carolina Code Section 40-5-310 states (as read):

20 "No person may either practice law or solicit the legal
21 cause of another person or entity in the state unless he
22 is enrolled as a member of the South Carolina Bar."

23 Our Supreme Court has decided a few cases under that
24 statute that -- for example, *Summit Teleservices*, they
25 said the president and chair holder of a corporation

1 cannot represent the corporation pro se if that person's
2 not a licensed attorney. In *Brown vs. Coe*, the -- the
3 Supreme Court said that an executor or personal
4 representative of an estate can not represent the estate
5 pro se; and they talked about what the practice of law was
6 in the *Brown vs. Coe* case, and that includes, of course,
7 the preparation of legal pleadings, such as a complaint or
8 a motion.

9 THE COURT: But that -- that -- the fact that she --
10 she is here pursuing claims on behalf of her son, that
11 would not necessarily be fatal to her -- her lawsuit.
12 Certainly she would be able to -- to be appointed as
13 guardian and the lawsuit be able to continue on. It
14 wouldn't have to be dismissed and re-filed.

15 MR. TURNER: I -- I think she would have to have
16 counsel representing her son's interest. And I'll -- and
17 I'll say that the South Carolina Supreme Court -- I think
18 the law indicates that she could not represent her son pro
19 se. She could certainly do it as a next friend through
20 counsel.

21 And while the South Carolina Supreme Court hasn't
22 ruled on this specific issue, the Fourth Circuit has. The
23 district courts in South Carolina have, and numerous other
24 federal and state courts have.

25 THE COURT: How bout Rule 4(D)(2)?

1 MR. TURNER: I -- I don't have a -- the -- the rule
2 book with me.

3 THE COURT: Rule 4(D)(2) says -- I'm sorry. That --
4 I'm sorry. That relates to service.

5 But certainly -- certainly a minor can have a guardian
6 appointed who -- and the guardian could then represent
7 themselves pro se. Is that -- would you disagree with
8 that?

9 MR. TURNER: I -- I -- if -- if the guardian has their
10 own claim and their own rights, I think they could
11 represent themselves pro se, but ---

12 THE COURT: Why -- why would a guardian not be able to
13 -- since a -- since a minor cannot come into court and
14 represent themselves ---

15 MR. TURNER: Right.

16 THE COURT: --- their not required to have an
17 attorney. Even if they had an attorney, they would not be
18 able to represent their interest in court.

19 MR. TURNER: I -- I mean, I think under -- and we --
20 we have a long string site of cases on page 8 and 9 of our
21 memo, including Fourth Circuit cases, South Carolina
22 cases, other state cases that all say that -- that
23 addresses this exact situation where a parent wants to
24 represent a minor pro se in court. And -- and the seminal
25 case in the Fourth Circuit, that happens to be against the

1 school district. So it's -- it's almost the exact same --

2 -

3 THE COURT: In ---

4 MR. TURNER: --- situation.

5 THE COURT: In that case, was the minor a guardian of
6 the child?

7 (Mr. Turner and the Court speak simulataneously.)

8 MR. TURNER: The -- the -- you mean the -- the person

9 ---

10 THE COURT: I'm sorry.

11 MR. TURNER: --- representing the child?

12 THE COURT: The -- the person -- the pro se individual
13 was ---

14 MR. TURNER: It was. It was the parent ---

15 THE COURT: that ---

16 MR. TURNER: --- the parent of the child.

17 THE COURT: No. That's not my question.

18 MR. TURNER: Okay.

19 THE COURT: My question was: Was that person approved
20 by the Court as a guardian to represent the interest of
21 the child?

22 MR. TURNER: I'm -- I'm not sure. I'm not sure if
23 they were or were not.

24 THE COURT: Would -- and so you are still disputing
25 that a -- a person who's recognized as the guardian for

1 the child by the Court and approved to be the guardian of
2 a minor could not come into court and -- and represent --
3 and stand in -- and stand in the shoes of the -- the
4 minor, and -- and -- and proceed with court.

5 MR. TURNER: That's my understanding from reading all
6 -- all the case law.

7 THE COURT: I'll be happy to take a look at that.

8 MR. TURNER: Sure.

9 THE COURT: I wouldn't spend a lot of time arguing
10 that point.

11 MR. TURNER: Right. I mean, it seems ---

12 THE COURT: I -- I don't -- I -- I don't -- I don't --
13 I don't necessarily think that that's correct, but I'll be
14 happy to look at the case law on that part. And if you
15 are right on that point, then that's a different story.

16 MR. TURNER: Okay. Well ---

17 THE COURT: That's -- I'd rather that you spend your
18 time arguing what I consider to be the merits of the case.

19 MR. TURNER: Gladly. Gladly. On the 12 -- 12(B)(6)
20 portion of the case, the -- the first is a request --
21 declaratory judgement request that -- seeking that the
22 transfer denial violated South Carolina's gifted and
23 talented laws. And -- and South Carolina has a gifted and
24 talented statute, it's section 59-29-170. And also a
25 regulation; it's section 43-220.

1 And -- and simply put, there is no private cause of
2 action under either the statute or the regulation. The --
3 the enforcement scheme, through both the statute and
4 regulation, which talks about school districts, how they
5 set up their gifted and talented programs, is that school
6 districts then each -- each year have to report to the
7 State Board of Education what they're doing with their
8 programs. And the State Board of Education can withhold
9 funding if they're not -- the Districts aren't holding up
10 their end of the deal with the programs.

11 They don't discuss anywhere in -- in the statute or
12 the regulation parents having any sort of rights, much
13 less the right to bring a cause of action, other than
14 rights to notice and certain -- certain things like that.
15 They -- they have to provide notice to the parents and
16 meet with them at times, as one would expect in -- in any
17 school scenario.

18 They don't mention student transfers at all in the
19 gifted and talented statute or regulation. They don't
20 mention students going to any specific school under gifted
21 and talented laws. And actually in -- in section 59-19-90
22 -- and it's subsection 9, 59-19-90 sets forth the powers
23 of duties of school boards in the State of South Carolina.
24 And subsection 9 gives school boards the authority and the
25 duty to transfer students from one school to another and

1 to assign students -- students to schools. I think that's
2 -- that would be inconsistent with giving students the
3 right to transfer under gifted and talented statutes,
4 which it -- which those statutes -- the statute and the
5 regulations don't do.

6 Also there's a -- any potential claim under those
7 statutes that -- like the one that plaintiff has alleged,
8 would essentially be an educational malpractice claim,
9 claiming that my child is getting an inadequate education,
10 and the gifted and talented program at -- at Westwood High
11 School is not as good as it is in this other high school.

12 And our Supreme Court, in *Hendrix vs. Clemson*, has
13 said that that is not a claim we recognize in South
14 Carolina. The parent thinks their child is -- you know,
15 took an AP literature course last semester, and they were
16 only required to read five novels and the parent thinks
17 they should have been required to read seven novels,
18 that's not a viable legal claim in South Carolina.

19 So for that reason, because there's no private cause
20 of action under this gifted and talented statute and
21 regulation, we're respectfully ask that the Court dismiss
22 plaintiff's declaratory judgement claim.

23 On the equal protection claim -- and -- and I'll go
24 ahead and say in -- in the second amended complaint, it's
25 -- it's a little bit difficult to make out what the claims

1 are. They're all sort of intermingled. And so I've tried
2 to group them into -- to separate causes. And I realize
3 the equal protection may be mentioned in -- in every
4 section, but I'm just going to address it by itself in my
5 argument for simplicity's sake.

6 The equal protection claim is based on the school
7 district's assignment of students to Blythewood High
8 School and Westwood High School. And the plaintiff
9 alleges that Richland School District 2 has created a
10 defacto segregated high school system in assigning
11 students to those two schools.

12 And -- and the complaint doesn't come out and say it,
13 but I think what essentially it's alleging is that the
14 District is assigning students to Westwood High School and
15 Blythewood High School based on their race, and -- and in
16 fact, sending -- allegedly sending white students to
17 Blythewood High School and African-American students to
18 Westwood High School.

19 I think it's a ridiculous allegation, but even -- we --
20 -- we probably have to consider it to be true at this stage
21 in the pleadings. Even if it is true, the relief
22 requested by the plaintiff would not remedy the alleged
23 violation.

24 The plaintiff in this case is white. He's currently
25 at -- at Westwood High School and is seeking a transfer to

1 Blythewood High School, which is the alleged white student
2 high school.

3 And there's a lot of case law out there, and I -- I've
4 cited it in my brief, that says that when you have a
5 constitutional claim, especially an equal protection
6 claim, the relief must remedy the alleged constitutional
7 violation. And in this case, what the plaintiff is asking
8 is essentially for the Court -- they're saying that
9 there's a violation of the equal protection clause through
10 this segregated assignment, and now we're asking the Court
11 to further that segregation which makes no sense at all.
12 And because of that this is not a viable equal protection
13 claim and we respectfully ask the Court dismiss the
14 plaintiff's equal protection claim.

15 The other claim that the plaintiff has alleged is the
16 due process claim based on -- again, based on the denial
17 of the transfer. It's not completely clear whether it's a
18 procedural or substantive due process claim. But for
19 either one, the first element is that you have to
20 establish that there's a constitutional property interest
21 in what you're seeking. So in this case, the plaintiff,
22 for their due process claim, would have to establish and
23 show that there's a constitutional property interest that
24 he has in attending Blythewood High School.

25 Courts have -- have described what a property interest

1 is under the due process clause. It's more than an
2 abstract need or desire for what you're seeking. It's
3 more than a unilateral expectation of what you're seeking.
4 It's a legitimate claim of entitlement to what you're
5 seeking.

6 Here the plaintiff has no legitimate claim of
7 entitlement to attend Blythewood High School under South
8 Carolina's gifted and talented laws, which don't discuss
9 at all what school anyone attends.

10 As I mentioned earlier, section 59-19-90, subsection
11 9, gives school boards the authority and duty to transfer
12 and assign students to schools. And we know, just from
13 the way that school districts work in South Carolina, kids
14 attend schools based on their residence. If -- if every
15 student had the -- had the right -- a constitutional right
16 to attend any school they wanted to, based on their
17 opinion of which school would give them the best
18 education, regardless of where they lived or anything
19 else, we'd have an absolute mess.

20 So for those reasons, we'd ask that the board [sic]
21 dismiss the plaintiff's due process claim. And I'll --
22 I'll take any questions and respond to any argument that --
23 -- that --

24 THE COURT: So is -- this is not in the nature of an
25 appeal from a decision made by the school board. This is

1 a separate -- a separate claim or cause of action against
2 the school board that just happens to arise out of those
3 allegations.

4 MR. TURNER: It -- it appears to be the case. I think
5 it's -- I -- I don't know. You might be asking the wrong
6 person, but I -- it appears to me that's both an appeal,
7 but it's based on those grounds, which we would assert are
8 not -- could not possibly be correct.

9 THE COURT: What is the administrative review or
10 judicial review from a decision by the school board?

11 MR. TURNER: It's -- it comes under 59-19-560. And
12 it's usually a substantial evidence standard.

13 THE COURT: But it's based upon the record below.

14 MR. TURNER: Correct.

15 I THE COURT: So In other words, she -- the student
16 would have the opportunity to go through the district and
17 then appeal to the school board and then appeal to the
18 circuit court. But it would -- any decision by the -- the
19 circuit court would be limited to the information that was
20 before the school board and the -- the district at the
21 time the decision was made.

22 MR. TURNER: I believe so.

23 THE COURT: Okay. Thank you.

24 MR. TURNER: Thank you.

25 THE COURT: Yes, ma'am, Ms. Meisner.

1 MS. MEISNER: Your Honor, thank you so much for
2 allowing me to be here today. I appreciate it very much.
3 And I -- I really want to, if it's okay with you, start
4 with the fact that this is an appeal of the school board
5 decision under 59-19-560.

6 While the defendants say that I -- I don't have the
7 right to represent my son, I believe, based on the Supreme
8 Court decision in *Winkelman vs. Parma City School*
9 *District*, it was certiorari from the United States Court
10 of Appeals for the Sixth Circuit, that I do have that
11 right, based on my son's gifted and talented status.

12 While the Winkelman child was an IDEA student -- he
13 was a student with disabilities and there is a special
14 federal law regarding students with disabilities -- there
15 is also federal law regarding gifted students.

16 Basically, that law protects the people in our society
17 that -- that really need us to protect. And it also gives
18 the opportunity of those that have special gifts to be
19 elevated, to make sure that they have what they need to be
20 able to -- to accelerate, I believe is the -- the language
21 in the statute.

22 THE COURT: And how old is your son?

23 MS. MEISNER: My son is 15 years old.

24 THE COURT: And is he disabled or when -- you know,
25 "gifted and talented" means different things.

1 MS. MEISNER: No, ma'am, he is not disabled. He
2 actually is in the top 99 percent of the country on
3 standardized tests. So he has been identified by Duke
4 University as a highly gifted child.

5 THE COURT: Okay.

6 MS. MEISNER: Highly gifted children do have some
7 disabilities, if you will. They have difficulties making
8 friends; they have something that is sometimes called --
9 well, a terrible, terrible example is the young man in the
10 northeast that was very bright, but he used his intellect
11 for bad things.

12 THE COURT: But your son is not subject to any
13 individualized educational plan.

14 MS. MEISNER: No, ma'am, you're correct. He is,
15 however, under the gifted and talented regulation 43-220,
16 and the gifted and talented statute 59-29-170.

17 Both of those statutes I believe -- looking at my
18 notes, as -- as Mr. Turner was talking, he said that --
19 and I beg your pardon, Your Honor. I am -- I'm a little
20 out of order that I wanted to go over, to make sure that I
21 don't miss anything that I wanted to say. Could I --
22 could I back up just a little bit --

23 THE COURT: Sure.

24 MS. MEISNER: -- about -- the -- the other reason that
25 I believe I feel I have the right to represent my son is

1 statute No. 59-28-100. And that is parental rights in --
2 and involvement in the child's education.

3 My quote of that is probably a little bit inaccurate;
4 however, in the brief it is the -- the actual title to
5 that.

6 Basically, what the legislature's saying in that
7 statute is that it is important for parent's to be
8 involved in their children's education. And it does
9 confer to them certain rights, certain rights that, in my
10 mind, with the gifted and talented legislation, it also
11 confers certain rights.

12 I don't think, like in the *Winkelman* case, that the
13 gifted and talented students' rights can be separated from
14 the rights that the legislature gives to parents under 59-
15 28-100 through 140, I believe; and also the 59-29-170 in
16 the regulations.

17 THE COURT: And I understand that. But that -- that
18 may or may not give you the right to actually stand in
19 court without an attorney to represent your interest.

20 While you may have those rights to be involved in --
21 in the education and those choices and to be able to
22 pursue claims, Mr. Turner's argument is that you can
23 certainly do that, but you may -- you must be represented
24 by counsel.

25 And -- and that's the only issue as to ---

1 MS. MEISNER: Yes, ma'am.

2 THE COURT: --- whether or not you need to have an
3 attorney or not.

4 MS. MEISNER: Yes, ma'am.

5 THE COURT: Okay.

6 MS. MEISNER: This -- this is not a -- the rights for
7 my son is not being brought as a new issue, a commercial
8 issue, where other peoples' rights would be affected.
9 This is the appeal of the school board decision.

10 And as an appeal, the *Winkelman* opinion said that --
11 that it would be unfair to not allow parents to continue
12 their progress of their appeal to the circuit court. And
13 the circuit court -- I think Mr. Turner had said that it's
14 only the evidence that is in for the -- that was before
15 them.

16 However, the statute, 59-19-560, in fact says that it
17 is a de novo review by the -- the circuit court judge as
18 the appellate court. And that the appellate --
19 appellates, like myself, could bring in additional
20 information and additional testimony and so forth.

21 With regard to his comment that -- that there is no
22 private cause of action for violating South Carolina's
23 gifted and talented code, this is a novel question for the
24 State of South Carolina. They have put in place codes
25 that protect the students and give them opportunities.

1 They cite a case, Your Honor, that is -- I -- I -- I
2 beg your pardon. I'm looking for that. Their first ...

3 They cite a case that says that's there no private
4 code of -- private cause of action, and they -- they say -
5 - state *Abbeville County School District vs. the State*.
6 And in the Supreme Court -- the -- the Supreme Court of
7 South Carolina did find that the Education Finance Act did
8 not create a private cause of action.

9 In that particular case, Your Honor, the -- the -- the
10 people in Abbeville County were saying that the way that
11 the funding for the -- the State school was unfair because
12 their district was particularly poor, and that they should
13 have a disproportionate share of the -- the funds or there
14 should be a more equal share for them.

15 That's wholly different than in this situation. And -
16 - and statute interpretation is -- a private cause of
17 action is based on what the intent of the legislature is,
18 and whether -- whether you -- if -- if you are the judge
19 on the case decides that this creates a private cause of
20 action from the statute, not necessarily from what -- what
21 cases have been decided before.

22 This is wholly different, when it -- because the
23 gifted and talented statute refers several places in it to
24 their unique -- unique is -- is you know, looking at the
25 plain and ordinary meaning, individual -- ordinary --

1 other than -- other than -- there's no other like that.

2 And the purpose of that -- in Abbeville Schools, the -
3 - the District argued that -- that they weren't providing
4 a base opportunity. The Supreme Court's opinion said we -
5 - we don't find that they're not providing a base
6 opportunity. Opportunity is, you know, basically, the
7 floor. They have the opportunity to receive the same
8 things that everyone else in other districts have.

9 Here, the gifted and talented statute is specifically
10 trying to take the gifted and talented students and give
11 them the opportunity to be better than they can. So -- so
12 it's not a base level of -- of what is required in
13 education. And it, in fact, throughout the gifted and
14 talented statute and regulation references the best
15 practices -- South Carolina Best Practices for gifted and
16 talented education with regard to appointment.

17 While Mr. Turner argued that there was nothing in
18 there about placement for the kids, that is absolutely not
19 the case. And I did -- if it's okay if I approach you, I
20 did bring a copy of the Best Practices for you, and I also
21 have one for Mr. Turner.

22 (The bailiff confers with Ms. Meisner and Ms. Meisner
23 hands a document to the bailiff.)

24 (The bailiff hands a document to the Court.)

25 THE COURT: Is that something that's already in the

1 file, has already been provided?

2 MS. MEISNER: It's in the big file, but it wasn't in
3 what I gave you -- what you requested from us.

4 THE COURT: I -- and I have the big file, so ...

5 MS. MEISNER: Okay. And I -- I believe that there is
6 a copy in there, Your Honor.

7 THE COURT: Is that what was attached to your
8 documents when you filed the case?

9 MS. MEISNER: I think it was a -- potentially. I'm --
10 I'm not sure. It -- it was attached in there at some
11 point. I'm not sure when I put it in there.

12 (Brief pause.)

13 THE COURT: I'll hold onto it temporarily, but if we
14 already have a copy, I'll return this to you, because I
15 don't need to have an extra copy.

16 MS. MEISNER: Yes, ma'am.

17 THE COURT: Yes, ma'am.

18 MS. MEISNER: Thank you very much.

19 So whereas the *Abbeville* case was talking about a base
20 level for all students, gifted and talented regulation is
21 talking about once they're identified -- and they do
22 actually have to qualify. In that qualification there's -
23 - there's very strict protocols, in that they have
24 regulations regarding the testing, so that the testing
25 security is the way that it -- you know, that noone can

1 cheat and get into the program.

2 And once they're in the program, there is continual
3 referral, and also placement guidelines that are -- that
4 are put in there.

5 My initial email to the school district requested a
6 transfer based on the fact that ~~his son~~ ^{redacted} is a gifted student,
7 and he -- we, unfortunately, had two very serious
8 tragedies in our family. We were coming back from
9 Charleston and there was a young couple on a motorcycle,
10 and they were playing, goofing off. And my son had made
11 comment that if she falls off and dies, she deserves that
12 because she's goofing off.

13 And I -- we talked about that for about 10 minutes and
14 I explained to him that you -- you cannot say that about
15 anyone. You don't know, you know, why she's doing that.
16 You know, she may have just met this man and is very
17 excited; maybe she had alcohol for the first time. We
18 don't know why she's doing what she's doing, but -- but
19 you know, don't say that. We had a very in-depth
20 conversation about that.

21 About eight or nine miles down the road -- well,
22 probably had to be more than that -- the woman did fall
23 off. And I initially thought that it was, you know, part
24 of the -- a big tire that was in the road. And when I
25 realized that it was the woman that fallen off the back of

1 the motorcycle, I slammed on my brakes and got in front of
2 her, off the -- the side of the thing. I just remember
3 thinking very quickly and -- and I locked my car and told
4 my son -- because I had all four of my children in the car
5 -- I said, "Stay here." And I ran into the oncoming
6 traffic to ^{save} stop it so they wouldn't hit her again. He
7 witnessed that.

8 Unfortunately, about -- about six months later,
9 several months later, our nanny was taking the kids to
10 school and had car trouble. And she got out of the car
11 and -- and my son got out of the car, seeing what I had
12 done before, and she was -- she was struck and killed.
13 And it was a very devastating event for our family, but
14 particularly for my son.

15 Part of -- part of gifted kids is that they're hyper-
16 sensitive and they're very critical of what they may have
17 done/what they might have done; how they might have
18 affected things.

19 In the -- (to bailiff handing tissue to her) -- thank
20 you very much.

21 This happened in February; actually, on February the
22 20th. And the school computers at -- at the -- the middle
23 school still had him going to Blythewood High School.
24 School choice ended on January 28th and he still thought
25 he was going, up until the counseling sessions, where they

1 -- they are required under state law to have counseling
2 sessions in the eighth grade -- did we find out that he
3 was zoned for another school.

4 It was particularly upsetting for him because he -- he
5 has a very high work load because he is a gifted student.
6 But also, he had two very tragic events. And his -- his
7 math class consisted of eight kids. Most of them went to
8 Blythewood, so he wanted to transfer. And that's where
9 the transfer of all of this came in.

10 I tell you this because I -- I understand that the
11 school board has the ultimate authority in creating -- in
12 -- in setting the school lines. But they are also -- they
13 also have duties to the gifted and talented students under
14 the -- the regulations and also under the gifted and
15 talented statute; and specifically in the Best Practices,
16 it does make several mention of -- of those things.

17 I'm sorry. I got a little discombobulated.

18 For -- for example, this is in -- on page 9 of the
19 2006 -- well, it's actually in the -- in the placement
20 page, it talks about appropriate placement. And it says
21 (as read): "The evaluation step and the identification
22 process of gifted and talented students shall be the
23 responsibility of an evaluation placement team within the
24 school or district. The team shall be composed of ..."
25 and then it goes through what it's -- what's there. And

1 it -- and it further goes on to say (as read): "The
2 evaluation placement team shall have the responsibility
3 ..." several things that -- that are required. You can
4 read there. But it basically says that the primary
5 concern should be for the individual student and what his
6 needs are.

7 There also is a social/emotional component. And it
8 talks about that they, gifted students, need additional
9 services, above and beyond the general population. In
10 fact, the mission statement says (as read): "The mission
11 of gifted education is to maximize ..." -- and here is the
12 difference between the Abbeville County School funding,
13 the EFA, and what is going on with the gifted education --
14 (as read) "... is -- is to maximize the potential of
15 gifted and talented students, by providing academic and
16 artistic programs and services that match the unique
17 characteristics and needs of those students."

18 I did try to have -- I -- I did ask Judge Barber for a
19 temporary restraining order for him to move immediately.
20 And there is a statute that it -- that says that no --
21 there can't be -- it's a superceded statute where until
22 the appeal is -- is continued, it would not be considered.
23 You -- you can't -- he couldn't do anything about that
24 because there was a superceded statute.

25 However, in that hearing, both the initial person that

1 reviewed the transfer, Mr. Roger Wylie, who is the
2 registrar, testified that he never knew about any of the
3 statutes governing gifted and talented students, the
4 regulation, or the Best Practices; and never considered
5 that in his request to move from Westwood to Blythewood.
6 Then he referred his decision. His decision was that
7 there could be no change.

8 It is -- it is my supposition the reason that they
9 can't change anything is because they did create a de
10 facto segregated school. With the choice that they had
11 and the choice that -- and the districting, basically,
12 Westwood is 81 percent African-American and Blythewood is
13 about -- and Blythewood is probably about 78 percent
14 Caucasian. And so it -- there is a great divide between
15 those schools.

16 Both of the schools, in -- in my opinion, both of
17 their rights are being violated. They both have a right
18 to have a diverse student population. But their decision
19 in creating this made it so that they would not consider
20 any transfers of the minority race out of either schools.

21 And into Blythewood, they specifically cut off all
22 transfers; however, Westwood, I think, because there were
23 less students, to their capacity, they would allow
24 transfers there.

25 My equal protection claim was that just because they

1 made a mistake in creating illegal de facto student
2 populations at both places, it doesn't mean that they
3 should not consider my son's legal appeal or request to go
4 to another school based on his status as gifted and
5 talented.

6 And you know, actually, one of his friends at
7 Blythewood is an African -- African-American that he
8 misses very dearly. So it's not that everybody at -- at -
9 - you know, that there is a majority at Westwood, it's
10 that he needs his group of friends. That's his unique
11 need. His unique need is based on the tragedy that he
12 suffers and his sensitivities.

13 As such, we have moved him to where we could affect
14 his -- some of his friends, and we did move him this
15 semester to another school, to a private school. But he
16 still would prefer to be at Blythewood. If we could pay
17 the tuition -- if there was any way that we could even pay
18 a disproportionate tuition, we would send him to
19 Blythewood so that he could be with his friends. That's
20 not possible for us.

21 I -- I would like to, Your Honor, if it is okay with
22 you, go through what -- what Mr. Turner has said, so that
23 I don't miss anything that I had wanted to say to you.

24 THE COURT: Yes, ma'am. And I think the -- the other
25 matters that you need to address would be the due process

1 argument, as well as -- you talked about the -- the
2 private cause of action, I believe.

3 MS. MEISNER: Yes.

4 THE COURT: The declaratory -- the declaratory
5 judgement private cause of action. You talked a little
6 about -- you talked about the equal protection. So I -- I
7 think one that's left would be the -- the due process.

8 MS. MEISNER: Yes, ma'am. Let me find their thing.
9 I've got notes written on there.

10 As I stated earlier, it is my opinion that the -- the
11 school district had a duty to all students, but
12 specifically to Student No. 1, John Doe. I said his name
13 earlier.

14 I -- that -- with regard to notice, whenever their
15 classroom placement is changed -- and the placement,
16 again, is related to the gifted and talented statutes.
17 And I'll go into that placement, how they specifically go
18 through that as an ongoing basis and have a format that we
19 touched on earlier.

20 THE COURT: Well, and you understand that I'm only
21 here today to discuss whether or not, you -- your -- your
22 -- your claim should be dismissed, and not whether or not
23 it's -- you know, I'm not here to discuss the merits of
24 the claim.

25 MS. MEISNER: Oh, yes, ma'am.

1 THE COURT: Okay.

2 MS. MEISNER: The -- the due process portion, the
3 computers at the middle school were not updated. They
4 actually had stale information.

5 Now, the District did put the new school lines in
6 several different locations, you know, on their internal
7 internet and on several other places. However, at the
8 school itself, where most parents would call to get
9 information, you know, assuming that the school
10 information is -- is more accurate than, you know, what
11 somebody says in the -- in the community or whatever, they
12 did not update their computers, and had the -- the zones
13 of attendance still with the last year's zones of
14 attendance.

15 It is my supposition that if in December, when they
16 made the decision to change the -- the attendance lines,
17 that the first thing that they should have done is to
18 change those -- those lines in the schools in the
19 computers, based on the addresses they have. They had all
20 that information.

21 They should have done that in December, so that if
22 somebody called in January, they weren't told that they
23 were still going to the -- the school that they had always
24 gone to. If they called in February, after choice was
25 closed, they would get that -- the -- the correct

1 information. If they called in March, up until April
2 18th, that's when they changed over the information, which
3 was well after the choice deadline.

4 So I believe that the School District had both a duty
5 and owed a duty to each student to have accurate
6 information stored and disseminated from their computers.

7 And with regard to private cause of duty, of course,
8 that's a statute interpretation. But in the U.S. Supreme
9 Court in *Cleveland Board of Education vs. Loudermill*, 470
10 US 532, in 1985, the Board of Education basically fired
11 someone who they -- they argued, you know, had not given
12 them information. The -- the bottom line of the case is
13 that (as read): "The essential principal of due process
14 is deprivation of life, liberty, or property be preceded
15 by notice and opportunity for -- for a hearing appropriate
16 to the nature of case."

17 In this situation, my son did not have notice that he
18 was going to a new school because the computers were not
19 updated. He did not have notice that he was not going to
20 be treated like other gifted and talented students when
21 they have a placement request, as I made a request to the
22 district to be evaluated under the gifted and talented
23 statute.

24 And I believe that there probably is a private cause
25 of action for the gifted and talented statutes with the

1 way that the legislature has created not only the statute,
2 but its reference to a regulation, where the State Board
3 gives specific guidelines, specific recommendations, to
4 not only the school districts, but to the school boards
5 themselves.

6 And in -- and in doing so, references the Best
7 Practices. The Best Practices were a compilation of cases
8 throughout the United States. Once the gifted and
9 talented program was federally funded under the ESEA and -
10 - I'm sorry. I get nervous when you look at me.

11 THE COURT: (Laughing) Okay. I won't look at you.

12 MS. MEISNER: (Laughing) I'm fine until you look at me
13 because it makes me nervous. I'm sorry.

14 The ESEA is basically what everybody refers -- or
15 remembers as "No Child Left Behind." Underneath that
16 legislation, there are several titles, several parts; the
17 part that affects the Javits program, which is currently
18 unfunded; however, it is still referenced from the
19 standpoint of the -- of -- the program is titled "V, Part
20 D, Section 5461 dash 5466" of the ESEA.

21 The definition of gifted and talented from the federal
22 is Title 9, Part A, section 9101, in No. 22.

23 While Mr. Turner says that I don't have the right to
24 be here representing my school -- the -- the --
25 representing my son in his request to go to -- to a more

1 appropriate school for him for his particular unique
2 needs, the State of South Carolina -- if I didn't provide
3 for him minimum standards for his level for his abilities
4 -- could sanction me, and could bring me to court. So
5 therefore, I think, based on *Winkelman vs. Parma City*
6 *Schools*, the fact that if my son got into trouble, the
7 first person that someone would want to sue would be me, I
8 was the real party of interest in -- in the transfer,
9 because they would not accept a transfer from my son.

10 If my son called the school board and said, "I want a
11 transfer," too bad. I would have to request a transfer,
12 which I did. I also went -- went to the school board and
13 followed up with that myself.

14 So I would say that I don't think that my rights,
15 under the 59-28-100, to be involved in his education --
16 and interestingly enough -- I think it's 59-28-1 --
17 somewhere in 100 between 140 -- places a special emphasis
18 on parents be involved in middle school and high school.

19 So the legislature says they want us involved, but
20 they -- they want to stop our petition for -- from our
21 child for judicial review.

22 And what has happened in this situation is that the
23 right hand, the gifted and talented hand, doesn't know
24 what the transfer hand is doing. And that disconnect
25 affected my son's rights, because both the -- the

1 registrar had no idea about any of the gifted and talented
2 legislation, the regulation, or any of that; and neither
3 did his supervisor. And in fact, his supervisor presented
4 to the board that he had to review each case individually
5 with regard to the law and with regard to special
6 circumstances.

7 You know, I -- I -- obviously I'm very emotional about
8 my son's particular circumstances as -- as everybody is
9 with their family. But I think if there was ever a reason
10 for him to transfer, that would be it. And we have
11 actually -- he -- this -- because we could not do anything
12 about the fact that Westwood and Blythewood does block
13 scheduling for these gifted and talented students, he
14 basically is not getting any additional credits in the
15 spring. But we felt his emotional situation warranted
16 that change, as opposed to worrying about his academics.

17 So I -- I do need to run through this -- this thing,
18 because you said that --

19 THE COURT: I -- I think you've covered everything,
20 unless there's --

21 MS. MEISNER: Well -- well, I -- I had notes. Okay.
22 I wanted to go -- go -- do you mind if I go through this?

23 THE COURT: I don't know what you're going through. I
24 have your brief.

25 MS. MEISNER: Yes, ma'am. I -- I wrote that brief,

1 and then I had to go to Florida for a business trip all
2 week. So I never had an opportunity -- I actually talked
3 with your law clerk about trying to respond to that. But
4 I didn't have the time to do it to -- when I got back.

5 So I put my brief in on the 18th, and then they
6 submitted that, at like 4:30, on the 22nd. But I was in
7 Miami. I didn't get back until Friday night late.

8 So I did write -- write notes on their thing that I
9 would just like to -- to tell you.

10 The -- I -- I talked with you -- talked with you about
11 that -- the -- Abbeville being the minimum, versus
12 "reaching for the stars," the acceleration in the language
13 of the gifted and talented. And it said -- it said -- the
14 Supreme Court, in that statute, said that there was no
15 special benefit of a private party.

16 And I am going to agree with Mr. Turner's brief and
17 say -- when it said -- he says (as read): "... for the
18 benefit of a private party, each individual students, the
19 language in the gifted and talented, in fact, does
20 reference individual students and their unique needs and
21 their unique situation."

22 So I believe that's wholly different from that, so I
23 agree with his characterization of individual students.

24 And then down -- further down it says (as read): "The
25 State Board of Education is given the authority to enforce

1 the gifted and talented statute regulation."

2 And then I'm going to agree with him further where he
3 says (as read): "Gifted and talented programs must be
4 provided in the manner the State Board of Education must
5 specify."

6 And that manner, Your Honor, is the Best Practices,
7 which they have -- do. So I fully agree with his second.

8 Then he talks about the attendance at a particular
9 school. I would disagree with that, because the gifted
10 and talented talks about not only placement, but
11 protocols. It talks about getting the gifted and talented
12 group together and -- and saying what is best for this
13 particular child. So that placement, I believe, is -- is
14 -- is in the -- the regulation.

15 He says that neither the language of South Carolina
16 creates a private -- a private cause of action. I would
17 say that that is a novel question, as statute
18 interpretation is both legal and equitable. I think that
19 that's not his ability to decide that. I think that's
20 Your Honor's ability to decide whether that creates a
21 private cause of action.

22 And then he says that -- that by asking for my son to
23 go to the school, that I would further exacerbate the de
24 facto segregated school system; however, it's the school
25 board that created this segregated school system. I -- I

1 really would like to see where the NAACP is and say, you
2 know -- I mean, this is 2013. I -- I can't even imagine
3 that that's allowed, but it obviously is.

4 But it's a question of the chicken and the egg, Your
5 Honor. He says that -- that we can't do that because
6 we've already violated the law before. So now we can't
7 follow the law, because that would further violate law.
8 But in fact, it's the -- you know, it's the chicken or the
9 egg.

10 If -- if that wasn't the case, maybe some of my son's
11 friends would have gone to Westwood just like the -- and
12 I'm not going to say his name, because he is, in fact, a
13 minor -- but his friend that has gone to his last three
14 birthday parties who happens to be African-American, and
15 he misses dearly. But he doesn't get to see him.

16 So anyway, during the TRO hearing, Mr. Ralph Schmidt
17 testified that he knew the race -- racial makeup of the --
18 of the high schools prior to them opening. And so I think
19 that that shows that the district knew what they were
20 doing when they did this. It was a compilation or a
21 combination -- pardon me -- of not only the -- of the
22 lines, but also the use of choice.

23 And that -- that choice designation, I -- I can't find
24 the case and I -- I'm not going to take the time looking
25 for it. But that -- but you can't do that either

1 according to the law.

2 And so again, their -- their arguments about the --
3 you -- they can't fix my son because they've broken both
4 school things is -- is just not, I don't think, a valid
5 argument.

6 With regard to the due process and also the equal
7 protection, I think that the processes for placement were
8 not followed and did not treat him as an individual. In
9 fact, they referenced that because 100 students were on
10 the wait list, that -- that they could not allow him to --
11 they could not consider that because there were 100 other
12 students. Those hundred other students were not in the
13 gifted and talented pool. Students in -- as such were not
14 in that protected class of gifted and talented students.
15 And --

16 THE COURT: I think you've covered everything.

17 MS. MEISNER: Okay. The only -- the last thing I
18 wanted to say, Your Honor -- and I'm sorry -- once the
19 benefits conferred by the state, then that -- that benefit
20 is tenured, so to speak. And that's what the Supreme
21 Court said in that case regarding Loudermill or whatever.

22 THE COURT: Okay.

23 MS. MEISNER: And -- and he said -- he quoted
24 something that says that he must have -- instead have a
25 legitimate claim, not just a desire to it. Once -- once

1 he was accepted into the gifted and talented pool of
2 students, the state conferred that right to him, I think
3 that made it ...

4 And the final thing is you cannot create attendance
5 zones under one of the statutes. And I -- I beg your
6 pardon, I don't -- I don't have it here, but I do know
7 that it's in there. And I can get that for you if -- if -
8 - if you want me to.

9 But it -- South Carolina law says that you cannot
10 create attendance zones that are racially
11 disproportionate. I mean, everybody knows that.

12 The other thing is because this is a review of the
13 school board decision, I do believe that -- again, that I
14 -- I have the right to do this. While they -- they talk
15 about commercial things and not representing trusts and
16 legal corporations, that makes perfect sense to me.
17 That's -- that's -- that's a logical conclusion.

18 But to stop a parent at the -- the courthouse steps
19 whenever they believe that their -- their child has not
20 received, you know, a fair shake at the process when the
21 people at the front end, before they send it to the school
22 board, didn't even know about the law, then I don't think
23 that it's -- it makes sense to stop parents from
24 representing their -- their interest.

25 So even though it's not typically allowed in South

1 Carolina, there was a case where they had requested the
2 Supreme Court review the ability of a civil plaintiff to
3 request the state to provide them with legal counsel. And
4 the Supreme Court of South Carolina said no, we're not
5 going to do that. The Supreme Court of the United States
6 said that's fine, because that would tip the scales
7 between the -- the mother that needs to get the child
8 support/the father that needs to pay the child support.
9 It -- you know, we can't provide the protection of legal
10 services to one side without making it -- the weights
11 unbalanced.

12 However, they put an important caveat on -- on that,
13 saying that the state must come up with some sort of forum
14 that leads to a -- a fair determination of the issues.

15 So if the State of South Carolina requires the appeal
16 to come before Your Honor in circuit court, then it -- it
17 is my contention the South Carolina statutes, just like
18 the *Winkelman*, say that we should be able to -- to
19 advocate on behalf of our child.

20 I recognize that I would be much better served by an
21 attorney; however, it's -- you know, you're talking about
22 \$50,000 or 60 or whatever I would be charged, and the
23 State of South Carolina, under Title 10, gives every
24 citizen the right to a free education.

25 So it's -- it's a novel approach, but I think just

1 like in *Winkelman*, because of our statute -- or
2 statutorily constructs that I -- I would appreciate your
3 consideration of that.

4 And then --

5 THE COURT: I -- I -- I need to -- I think you've
6 stated them a couple of times. And so I'm going to hear
7 any rebuttal from Mr. Turner, and then we'll move on.

8 MR. TURNER: Thank you. I'll be brief. Let's --
9 let's start with the standard of review. 59-19-560 says
10 (as read): "Records shall be admitted as evidence and
11 considered by the Court, along with such additional
12 evidence as the parties may desire to present."

13 That -- that probably would be a de novo, if we move
14 forward in this case, standard of review, and I apologize
15 for saying otherwise earlier.

16 I think, at this stage, we're just accepting her facts
17 in the complaint as true, which we have to do on a motion
18 to dismiss.

19 *Winkelman*, as -- as Ms. Meisner stated, is an IDEA
20 case. The difference between the IDEA, which the Supreme
21 Court looked at in that case -- it's a 2007 case. It's
22 550 US 516.

23 The difference in that case and what we have here is
24 the Supreme Court looked at the IDEA and the actual
25 language in that statute, which gives any party aggrieved

1 the right to bring a civil action; and talks about parents
2 being awarded attorneys fees in such an action, and the
3 potential even for parents to be awarded private school
4 tuition if their child is not given a free, appropriate
5 public education in public schools.

6 The Supreme Court looked at that language and said
7 because of that language, the parents actually have their
8 own claim. And so we aren't even going to address the
9 issue of whether the parent in this case could represent
10 their child pro se. We're just going to say that parent
11 has their own claim under the IDEA. And so you can bring
12 that claim, the parent.

13 And that's -- that -- there's no similar language like
14 that in South Carolina's gifted and talented statute,
15 giving anyone a private cause of action or saying you can
16 -- any aggrieved party can bring a private cause of action
17 or parents can get attorney's fees or anything along those
18 lines.

19 I -- I mentioned in my brief, there's a quote in
20 *Warden vs. Abbeville*, Judge G. Ross Anderson said (as
21 read): "South Carolina law grants a child of school age
22 the right to a free education. It does not confer a right
23 upon pupils to attend a specific school."

24 And that -- that basically sums up this whole case.
25 We're not telling the plaintiff that he cannot attend

1 Blythewood High School. He's just got to do it how every
2 other student in this state does, which is either apply
3 for school choice or move into the school district you
4 want to attend. That -- that's how -- that's how the
5 school districts work, and that's how they assign students
6 in our state.

7 And -- and currently, right now, he attends a brand-
8 new high school that opened this year. It's a state-of-
9 the-art facility, as mentioned in the plaintiff's
10 complaint. I -- the -- the principal there has been in
11 education for over 30 years. He's a fantastic guy and
12 they have an extensive gifted and talented program.

13 I understand that the plaintiff may feel that --
14 plaintiff's mother may feel that her son would get a
15 better education at a different school, and -- and that's
16 fine. I understand there's been a personal tragedy and
17 that's sad and that he has friends at this other school.
18 But those are not grounds to -- to have a constitutional
19 property interest in attending another school.

20 And she's gone through some of the facts and testified
21 through some of our witnesses in regard to the due process
22 claim, but at the end of the day, she still -- still has
23 to have a constitutional property interest in her son
24 attending a different school. And that just doesn't exist
25 in our state.

1 I'll be happy to answer any questions.

2 THE COURT: I don't have any others. I will review
3 the information that I have.

4 Ms. Meisner, I'm going to -- I'm going to return this
5 information to you because there is a copy of it. And so
6 I'll give you your copy back to be able to hold on to it,
7 because there is a copy in the record which I have before
8 me.

9 And I'll review all of your information and your
10 briefs and your arguments; and then I'll issue a written
11 order. Thank you.

12 MS. MEISNER: Thank you, Your Honor.

13 MR. TURNER: Thank you.

14

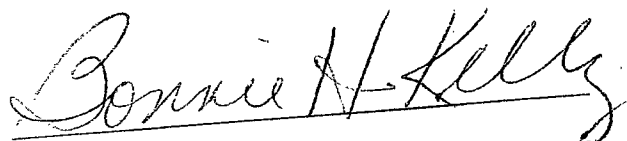
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-- END OF TRANSCRIPT RECORD ---

CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fifth Circuit Court for Richland County, South Carolina, on the 30th day of January, 2013.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.



Bonnie H. Kelly, CVR
Official Court Reporter

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South Carolina Gifted and Talented Best Practices Manual

**Prepared by
the South Carolina Department of Education**

**May 2006
Second Edition**

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Table of Contents

Acknowledgements	i
Preface	ii
Regulation 43-220 Gifted and Talented (amended June 2004)	
Chapter 1 – Gifted Education	
Mission	1-1
Beliefs	1-1
Rationale	1-1
§59-29-170. Programs for talented students	1-4
Chapter 2 – Academically Gifted and Talented	
 Curriculum and Instruction	
Introduction	2-1
Curriculum for Gifted Education Programs	2-2
Curriculum Components	2-2
Standards based Curriculum.....	2-3
Curriculum Goals.....	2-3
Curriculum for Academically Gifted	2-4
Instructional Provisions in the General Education Classroom	2-7
Content Recommendations	2-8
Process Recommendations.....	2-8
Product Recommendations	2-9
Learning Environment Recommendations	2-9
Bibliography	2-10

Chapter 3 – Student Assessment and Evaluation

Introduction	3-1
Ways of Assessing Student Achievement	3-2
Pre-Assessment Strategies	3-2
Assessment During Instruction	3-2
Post-Assessment Strategies	3-3
Ways of Evaluating Student Progress	3-4
Evaluating Knowledge Acquisition	3-5
Using Pre/Post Test Comparisons	3-5
Pre/Post Comparisons of Concept Maps	3-5
Pre/Post Comparisons of “Need to Know” Boards ..	3-6
Evaluating Skill Development	3-7
Establishing Performance Criteria	3-7
Designing or Selecting Rubrics	3-8
Using Exemplars	3-10
Evaluating Growth Over Time	3-10
Developing an Evaluation Plan	3-10
Using Portfolios	3-11
Using the Evaluation Conference	3-11
Reporting Student Progress	3-11
Report Cards and Grading Practices	3-12
Exemplary Reporting Practices	3-12
Review of Placement	3-13
Procedures for Review of Placement	3-13
Guidelines for Removal of Students	3-14
Removal from the Pullout/Resource Room.....	3-14
Removal from the Special Class or Special School.....	3-16

Removal of a Student by a Parent	3-17
Bibliography	3-19
Sample Documents	3-16
Sample A – Sample Concept Maps	3-20
Sample B – Sample Evaluation Plan	3-21
Sample C – Sample District Procedures for Removal	3-22

Chapter 4 – Program Models

Introduction	4-1
Approved Program Models for Grades 1 and 2	4-3
Regular Classroom/Itinerant Teacher	4-3
Multi-Age Classroom	4-3
Resource Room/Pull-out Class or Center	4-3
Approved Program Models for Grades 3 through 12	4-4
Resource Room/Pull-out Class or Center (Grades 3-8)	4-4
Special Class (Grades 3-12)	4-4
Special School (Grades 3-12)	4-5
Considerations for Program Model Selections.....	4-5
Extension Models	4-6
Bibliography	4-7

Chapter 5 – Program Evaluation

Introduction	5-1
Components of an Effective Gifted Education Program.....	5-1
On-Going Program Evaluation	5-6
Steps in Developing an Evaluation Design	5-6
Bibliography	5-9
Sample Documents	5-10
Sample A – Program Component Checklist	5-10

Sample B – Evaluation of Sample Program Goals	5-11
Sample C – Sample Classroom Observation Form	5-12
Sample D – Sample Parent Survey	5-13
Sample E – Sample Evaluation Timetable	5-14

Chapter 6 – Professional Development

Introduction	6-1
Professional Development for Total School Staff	6-2
Administrators	6-2
Guidance Counselors	6-2
Regular Classroom Teachers	6-2
Professional Development for Teachers of the Gifted and Talented ..	6-3
Gifted and Talented Teacher Endorsement	6-3
On-Going Professional Development	6-3
Designing and Evaluating Professional Development for Teachers ...	6-5
Bibliography	6-7
Annotated Bibliography.....	6-8

Chapter 7 – Support Services

Introduction	7-1
School Guidance Services	7-1
Developmental Counseling	7-1
Career Counseling	7-5
College Counseling	7-6
Issues for Intervention	7-7
Underachievement	7-7
Perfectionism	7-8
Academic Support Services	7-9
Academic Assistance Programs	7-9

Advanced Coursework	7-10
School Extension Programs	7-10
Academic Recognition Programs	7-10
Opportunities Offered Through Community Organizations ..	7-11
Academic Competitions	7-11
Technology Support Services	7-12
Technology for Students	7-13
Technology for Administrators, Teachers, and Parents	7-13
Parent Education Support Services	7-15
Parent Education Delivery Models	7-16
National and State Organizations	7-17
Bibliography	7-18
Sample Documents	7-19
Sample A – A Checklist to Identify Gifted and Talented Underachievers	7-19

Chapter 8 – Identification

Identification	8-1
Notification	8-3
Training and Guidance.....	8-4
Referrals	8-5
Screening	8-5
Criteria Used in the Screening Process	8-6
Steps in the Screening Process.....	8-7
Assessment	8-8
Recommended Steps in the Assessment Procedure	8-9
Evaluation/Placement	8-10
Appendix	8-11

Sample A – Criteria Used in the Assessment Process	8-11
Sample B – Student Profile Sheet	8-12
Sample C – Nondiscrimination Statement	8-13
Bibliography	8-13

Chapter 9 – Monitoring and Reporting

Introduction	9-1
Three Year Plan with Annual Updates	9-1
Data Collection and Analysis	9-1
Examination of Written Evidence	9-2
Interviews and Observations at the Classroom Level	9-2

Chapter 10 – Roles and Responsibilities of School Boards and Administrative and Instructional Staffs

Introduction	10-1
State Level	10-1
State Board of Education	10-1
State Department of Education	10-1
State Superintendent of Education	10-1
Division of Curriculum and Assessment, Office of Curriculum and Standards	10-2
Office of Finance	10-2
Office of School Quality	10-2
District Level	10-3
Local School Board	10-3
District Office	10-3
Superintendent	10-3
Assistant Superintendent for Instruction	10-3
Financial Officer	10-3
District Gifted and Talented Program Coordinator ..	10-4

Staff Development Coordinator	10-4
School Psychologist	10-5
Assessment Coordinator	10-5
Building Level Personnel	10-5
Administrator	10-5
Guidance Counselor	10-6
Classroom Teacher	10-6
Teacher of the Gifted	10-7

Appendix – *Gifted Students: Who Are They?*

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Preface

The *South Carolina Gifted and Talented Best Practices Manual* (2006 Second Edition) is designed for educators involved in the administration and implementation of gifted and talented programs. This document is a joint effort of the South Carolina State Department of Education (SDE) and the South Carolina Consortium for Gifted Education (SCCGE). Included in the manual is a copy of the current state regulation governing the education of the gifted and talented (Regulation 43-220, Gifted and Talented), along with clarification of the regulation, information on research-based best practices in gifted education, and resources to which the reader can refer for additional detail.

Regulation 43-220 (amended June 2005) makes specific reference to the *Gifted and Talented Best Practices Manual*. This manual outlines the mission of gifted education and sets forth the dimensions of effective compliance with regard to all aspects of the gifted and talented program—curriculum and instruction, student assessment and evaluation, program models, program evaluation, professional development, support services, identification, and reporting and monitoring. Each of these aspects provides the focus for a separate chapter. The final chapter describes the roles and responsibilities of state and local educators, including administrators of gifted and talented programs and teachers of the gifted and talented.

This manual is intended to be a dynamic document—one that is refined and extended as the needs of educators and changes in law, regulations, and research dictate. The SDE and SCCGE invite program administrators and teachers to assist in the updating of the contents. Educators can send comments and suggestions to either organization.

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Legislation Pertaining to State-Funded Gifted and Talented Program in South Carolina

§ 59-29-170. Programs for talented students. Code of Laws of South Carolina, 1976, Amended 1986

Not later than August 15, 1987, gifted and talented students at the elementary and secondary levels must be provided programs during the regular school year or during summer school to develop their unique talents in the manner the State Board of Education must specify and to the extent state funds are provided. The Select Committee shall study the implementation of this section and report its findings to the General Assembly by July 1, 1986. By August 15, 1984, the State Board of Education shall promulgate regulations establishing the criteria for student eligibility in Gifted and Talented Programs. The funds appropriated for Gifted and Talented Programs under the Education Improvement Act of 1984 must be allocated to the school districts of the State on the basis that the number of gifted and talented students served in each district bears to the total of all those students in the State. However, districts unable to identify more than forty students using the selection criteria established by regulations of the State Board of Education shall receive fifteen thousand dollars annually. Provided, further, school districts shall serve gifted and talented students according to the following order of priority: (1) grades 3-12 academically identified gifted and talented students not included in the state-funded Advanced Placement Program for eleventh and twelfth grade students; (2) after all students eligible under priority one are served, students in grades 3-12 identified in one of the following visual and performing arts areas: dance, drama, music, and visual arts must be served; and (3) after all students eligible under priorities one and two are served, students in grades 1 and 2 identified as academically or artistically gifted and talented must be served. All categories of students identified and served shall be funded at a weight of .30 for the base student cost as provided in Chapter 20 of this title. Where funds are insufficient to serve all students in a given category, the district may determine which students within the category shall be served. Provided, further, no district shall be prohibited from using local funds to serve additional students above those for whom state funds are provided.

HISTORY: 1984 Act No. 512, Part II, § 9, Division II, Subdivision A, SubPart 4, § 2, 1985 Act No. 201, Part II, § 9C, 1986 Act No. 540, Part II, § 18.

Title of Regulation:

Regulation No.: R43-220

GIFTED AND TALENTED

Effective Date: 06/25/04

Constitutional and Statutory Provisions:

S.C. Code Ann. § 59-5-60 (2004)

General powers of [State] Board.

Descriptor Code: IDD

State Board Regulation:

R 43-220. Gifted and Talented

Purpose: The State Board of Education recognizes the need to provide gifted education services to identified students in grades one through twelve. These regulations provide the framework for provision of these services. All regulations must be followed in order to qualify for state funding.

In order to comply with the South Carolina Education Improvement Act of 1984, school districts must provide programs for all gifted and talented students at the elementary and secondary levels. These programs shall develop the unique talents of students.

I. Definitions

A. Population

1. Gifted and talented students are those who are identified in grades one through twelve as demonstrating high performance ability or potential in academic and/or artistic areas and therefore require an educational program beyond that normally provided by the general school program in order to achieve their potential.
2. Gifted and talented abilities for these regulations include
 - (a) Academic and Intellectual Ability: Students who have the academic and/or intellectual potential to function at a high level in one or more academic areas.

- (b) Visual and Performing Arts: Students who have the artistic potential to function at a high performance level in one or more of the fine arts.

B. Terms

1. Demonstrating: making evident or establishing by reasoning; proving
2. Academic areas: any or all of the academic disciplines and performance skills that cross the disciplines to include research, technology, and reasoning
3. High level: functional or performance level set by the identification dimensions in these regulations
4. Confluent: blending and moving forward together
5. Multi-: more than one
6. Multiage classroom: regular classroom where gifted and talented students are served through grade placement above chronological grade placement
7. Screening: considering all students on consistent measures (Screening involves census testing to guarantee each student consideration in the identification process.)
8. Referral: considering one or more students based on recommendation or nomination (Each student referred must be assessed and reassessed as indicated in these regulations.)
9. Assessment: evaluation and re-evaluation of student aptitudes, attributes, and behaviors according to specified dimensions
10. Placement: evaluation of student profiles for service indications
11. Special school: full-time gifted and talented magnet school: full-time gifted and talented school-within-a-school
12. Special class: self-contained gifted and talented class organized around one or more disciplines
13. Resource room/pull-out: self-contained gifted and talented class that meets away from the regular classroom to provide the services established in these regulations

14. Regular classroom cluster/itinerant teacher: an intra-classroom model in which students in grades one through two receive services from the trained classroom teacher or an itinerant teacher
15. Academic discipline/disciplines: English language arts, mathematics, science, social studies, and foreign language

II. Academics

A. Program

1. Districts will submit a local gifted and talented program plan every three years and delineate progress on this plan annually. The State Department of Education will review the plan annually and provide written feedback to the districts. The State Department of Education shall establish a format and template for the plan. The following academic program requirements will be addressed in a district plan:
 - (a) curriculum, instruction, and assessment that maximize the potential of the identified students;
 - (b) support services that facilitate student learning (e.g., technology, guidance, academic support, staff development, academic competition);
 - (c) program models that facilitate the delivery of curriculum and instruction;
 - (d) a teacher-pupil ratio that fosters positive results; and
 - (e) appropriate and sufficient time in instruction to assure that the goals and objectives of the program are met.
2. To provide curriculum, instruction, and assessment that maximize the potential of the identified students, educational programs for academically gifted and talented students must reflect the following characteristics:
 - (a) content, process, and product standards that exceed the state-adopted standards for all students;
 - (b) goals and indicators that require students to demonstrate depth and complexity of knowledge and skills;
 - (c) instructional strategies that accommodate the unique needs of gifted learners;

- (d) a confluent approach that incorporates acceleration and enrichment;
 - (e) opportunities for worldwide communication/research; and
 - (f) evaluation of student performance and program effectiveness.
3. Districts should reference the *South Carolina Gifted and Talented Best Practices Manual* for program models and curriculum requirements.
 4. The models and teacher-pupil ratios that are approved for program service at respective grade levels are

<u>Grades</u>	<u>Approved Program Model Choices</u>
1-2	Regular Classroom/Itinerant Teacher (1:10) Multiage Classroom (NA) Resource Room/Pull-out (1:15)
3-5	Special School (1:25) Special Class (1:25) Resource Room/Pull-out (1:20)
6-8	Special School (1:25) Special Class (1:25) Resource Room/Pull-out (1:20)
9-12	Special School (1:25) Special Class (1:25)

5. Extension Models, while encouraged to supplement service, may not be substituted for one of the Approved Program Model Choices. They include but are not limited to

<u>Grades</u>	<u>Extension Model</u>
1-2	After School/Summer Services Individual Educational Plan Grade/Subject Acceleration Independent Study Special Training/Services for Parents
3-5	Regular Classroom Cluster/Itinerant Model After School/Summer Services Independent Study

6--12 Mentorship/Internship
 Regular Classroom Cluster/Itinerant Model
 After School/Summer Services
 Independent Study
 Seminars
 Exploratory Courses

6. A school or district may elect to serve students in any of the above Approved Program Models through a consortium agreement with other school districts. Other models developed by the school district must receive written approval annually from the State Department of Education.
7. An appropriate teacher-pupil ratio fosters positive results. The teacher-pupil ratios are listed beside the models in the chart above. Teachers shall be provided two hundred and fifty minutes per week or the equivalent for planning.
8. The program must provide appropriate and sufficient time to assure that the goals and objectives of the program are met. The following time requirements must be met by resource room/pull-out and regular classroom/itinerant teacher program models at respective grade levels to assure funding:

<u>Grades</u>	<u>Minimum Minutes Per Year</u>
1-3	4500
4-8	7200

The special school model requires full-time (academic) service. The special class model time requirements are 8100 minutes per year.

B. Identification of Population to be Served

1. The purposes of identification are (1) to find students who display characteristics of the gifted and talented; (2) to assess the aptitudes, attributes, and behaviors of each student; and (3) to evaluate each student for the purposes of placement. Student aptitudes, attributes, and behaviors will be identified, assessed, and reviewed through a multistep, multimodal, and multidimensional identification system.

2. Gifted and talented students may be found within any racial, ethnic, or socioeconomic group; within any nationality; within both genders; and within populations with physical disabilities, learning disabilities, or behavioral problems.
3. Identification is a multistep process, which consists of screening and referral, assessment of eligibility, and placement.
4. Districts should reference the *South Carolina Gifted and Talented Best Practices Manual* for the identification process.
5. The following students are deemed eligible for services with the approval of the District Evaluation Placement Team:
 - (a) students who were served and qualified by state regulations prior to 1999,
 - (b) students who meet the criteria in two out of three dimensions that follow,
 - (c) students who meet the 96th national age percentile composite score or higher (placement grades three through twelve) or the 98th national age percentile composite score or higher (placement grades one through two) on an individual or group aptitude test, and
 - (d) students identified in one South Carolina school district are eligible for services in any South Carolina school district.
6. Screening/Referral Procedures
 - (a) Districts shall screen all students by reviewing census aptitude and achievement test scores. Referrals from administrators, parents, teachers, and students must be accepted. Initial screening does not in itself guarantee placement.
 - (b) Districts shall include the following procedures in the screening/referral process:
 - (1) provide all parents/guardians with effective, written notice of the gifted education program, screening/referral procedures, and eligibility requirements;
 - (2) implement processes for identifying the academically gifted from all student populations;

- (3) provide training/guidance regarding the characteristics of academic giftedness for teachers and other district staff involved in the identification process;
 - (4) use screening criteria and procedures that are directly related to the purpose of the gifted program (i.e., identifying all students with demonstrated potential for high academic performance as well as those who have demonstrated high achievement).
- (c) All students with the potential for eligibility after screening and all students with referrals must continue into the assessment for eligibility phase of the identification process. The State Department of Education will establish procedures for screening and referral criteria with options for districts. Districts must use one of these options or obtain State Department of Education approval of an alternative proposal.

7. Assessment for Eligibility

- (a) Districts must ensure that all assessment instruments/measures are reviewed for bias and accurately assess the abilities/skills/potential intended to be measured; these abilities/skills/potentials are consistent with the definition of population set forth in this regulation; and, to the extent that subjective assessment criteria are used, those individuals conducting the assessment are trained to ensure proper evaluation.
- (b) No private testing will be accepted for eligibility, but those results may be considered for referral purposes.
- (c) The following criteria organized by dimensions shall be used in the screening/referral/assessment processes of identification:

(1) Dimension A: Reasoning Abilities

These students demonstrate high aptitude (93rd national age percentile or above) in one or more of these areas: verbal/linguistic, quantitative/ mathematical, nonverbal, and/or a composite of the three.

- a) Individual aptitude test (full-scale or component score)
- b) Group aptitude test (composite, verbal, or nonverbal scores)

(2) Dimension B: High Achievement in Reading and/or Mathematical Areas

These students demonstrate high achievement (94th national percentile and above or advanced status) in reading and/or mathematical areas as measured by nationally normed or South Carolina statewide assessment instruments. (See *South Carolina Gifted and Talented Best Practices Manual* for approved subtest areas.)

(3) Dimension C: Intellectual/Academic Performance

These students demonstrate a high degree of interest in and commitment to academic and/or intellectual pursuits or demonstrate intellectual characteristics such as curiosity/inquiry, reflection, persistence/tenacity in the face of challenge and creative productive thinking. Characteristics for this dimension are demonstrated through

- a) Evidence of commitment in academic disciplines through grades for placement in grades seven through twelve; the standard is 3.75 points on a 4.0 scale (See the glossary of terms for a listing of the academic disciplines.);

or

- b) Assessments of performance on Project STAR for placement in Grades three through six. . Instruments for these assessments will be maintained secure under S.C. Code Ann. §59-1-445 (1990), Section 59-1-445, Violations of mandatory test security; penalties; investigations. The performance standard for the primary level is sixteen on either the verbal or nonverbal assessments for placement into grade three and eighteen on either the verbal or nonverbal assessment for placement into grade four. The performance standard for the intermediate level is sixteen on the verbal or twenty-two on the nonverbal for placement into grade five and eighteen on the verbal or twenty-five on the nonverbal for placement into grade six. The qualifying standards for new forms of Project STAR will be equivalent to those of the base year.

- (4) Districts will follow steps established by the Department of Education to guarantee no single criterion eliminates students from gifted program participation.

8. Placement

- (a) The evaluation step in the identification process of gifted and talented students shall be the responsibility of an evaluation/placement team within the school or district. The team shall be composed of at least a teacher, an administrator, and a psychologist (if employed by the district) and may also include a guidance counselor and/or a community-related person whose training and expertise qualifies him or her to appraise the special competencies of students.
- (b) The evaluation/placement team shall have the responsibility to interpret and evaluate student data in such a way that will insure appropriate placement. The evaluation/placement team may require additional assessment before determining student placement. Placement may involve a trial period for at least one semester but not more than one year. Criteria for trial placement shall be established in guidelines established by the State Department of Education. Students whose progress within the gifted and talented program at the end of trial placement is not deemed adequate by the evaluation/placement team may be withdrawn from the program.
- (c) The evaluation/placement team will be responsible for developing appropriate written procedures for removing a student from the gifted program. The criteria for these procedures according to the program model shall be established by the State Department of Education by January 1, 2005. Removal from the program must be preceded by appropriate counseling with the student and conferences with the student's parents and teachers. Records of any assessment and evaluative measures and other student information must be maintained in a confidential manner.
- (d) Students identified and served according to prior eligibility criteria will continue to be eligible for placement and funding provided their program service meets the requirements herein. Any student entering the program once these regulation amendments are effective shall be considered for placement based on the eligibility criteria herein.

C. Staff

1. Teacher Qualifications

- (a) Teachers must hold valid teaching certificates appropriate to the grade level(s) or subject area(s) included in the program.
- (b) Each teacher of a state-funded gifted and talented course or class shall have completed a training program approved by the State Department of Education.
 - (1) Exception 1: Newly assigned teachers will have one year to meet gifted and talented training requirements.
 - (2) Exception 2: Teachers who have a master's degree or higher in gifted education may have this requirement waived upon approval of credentials by the State Department of Education.

2. Professional Development

Appropriate, ongoing staff development activities in gifted education shall be provided annually by the district.

D. Reporting

- 1. Districts will report to the State Department of Education information, which includes, but is not limited to, student eligibility, screening, and referrals. Districts will annually collect and maintain, district statistical data on (1) the number, by race, of students referred for evaluation for eligibility for gifted education services; (2) the number, by race, of students determined eligible for services; (3) the number, by race, of students actually served during the school year; and (4) the number, by school, by grade, by race, by model, of students actually served during the school year.
- 2. Districts shall review annually the performance of gifted students on PACT, AP exams, IB exams, SAT, ACT, and similar college entrance tests. Districts shall summarize the performance of gifted students on these assessments and report trend data to the State Department of Education annually. These data will be disaggregated demographically and reported annually to the General Assembly.
- 3. Official enrollment reports to be used for funding purposes shall be submitted at the end of the 135-day enrollment period. The enrollment reports shall be submitted on forms to be furnished by the State Department of Education.

E. Funding

1. Allocation of Funds

The State Department of Education will annually calculate each district's allocation based on the number of gifted and talented students projected to be served in each district as it relates to the total of all such students in the state. Unobligated funds, which become available during the fiscal year (July 1–June 30) will be redistributed to serve additional eligible students.

2. Distribution of Funds

School districts will be authorized to expend allocated funds on students meeting the eligibility criteria of prior regulations and students meeting the eligibility criteria and being served in approved programs. Distribution of funds will be made periodically with a final adjustment occurring at the end of the 135-day attendance reporting period for regular academic programs.

3. Base Allocation for School Districts with Small Enrollments

School districts identifying and serving, according to the State Board of Education Regulations, forty students or less shall receive a minimum funding of \$15,000 annually for academic programs.

F. Expenditures and Accounting Procedures

1. State funds provided for gifted and talented programs must impact directly on students served in accordance with provisions of the State Board of Education Regulations. Accounting procedures shall conform to those outlined in the Financial Accounting Handbook issued by the State Department of Education. The entire allocation must be used directly for gifted and talented related expenditures.
2. A supplemental schedule shall be required in the school district's annual audit under the single audit concept.

III. Artistic

A. Program

1. Districts shall develop a written plan to include the following artistic requirements:
 - (a) curriculum, instruction, and assessment that maximize the potential of the identified students;

- (b) support services that facilitate student learning (e.g., technology, guidance, artistic support, staff development, artistic competition);
 - (c) program models that facilitate the delivery of instruction;
 - (d) a teacher-pupil ratio that fosters positive results; and
 - (e) appropriate and sufficient time in instruction to assure that the goals and objectives of the program are met.
2. To provide curriculum, instruction, and assessment that maximize the potential of the identified students, educational programs for the artistic gifted and talented students must reflect the following characteristics:
- (a) content, process, and product standards that exceed the state-adopted arts standards for all students;
 - (b) goals and indicators that require students to demonstrate depth and complexity of knowledge and skills;
 - (c) instructional strategies that accommodate the unique needs of gifted learners;
 - (d) opportunities for worldwide communication/research; and
 - (e) evaluation of student performance and program effectiveness.
3. Program Models
- (a) Visual and performing arts programs may be offered during the regular school year or during the summer for grades one through twelve. Visual and performing arts programs shall focus on creative expression in one or more of the following areas: dance, drama, music, and/or visual arts. A diversified arts program encompassing the disciplines of dance, drama, music, and visual arts may be offered in grades one through six. (A diversified program is one in which students take a variety of disciplines, typically in a summer program.) The program models are in-school programs, after-school programs, summer programs, Saturday programs, and consortium programs. Combinations of the approved program models are also acceptable.
 - (b) A school district may elect to serve students in any of the models through consortium agreement with other school districts.

4. Length of Time in Models

Academic School Year

(In-school, after-school, and Saturday Programs)

<u>Grades</u>	<u>Minimum Minutes Per Year</u>
1-3	4500
4-8	7200

9-12

8100

Summer Programs (30 days in length)
 Saturday Programs (minimum 30 Saturdays)

<u>Grades</u>	<u>Minimum Hours Per Day</u>
1-3	2 ½ hours
4-8	4 hours
9-12	5 hours

5. Teacher-Pupil Ratios: an appropriate teacher-pupil ratio fosters positive results. Districts should reference the *South Carolina Gifted and Talented Best Practices Manual* for further information.

B. Identification of Population to be Served

1. The purposes of identification are (1) to find students who display talent beyond that of their peers in one or more artistic areas; (2) to assess the aptitudes, attributes, and behaviors of each student; and (3) to evaluate each student for the purposes of referral.
2. Gifted and talented students may be found within any racial, ethnic, or socioeconomic group; within any nationality; within both genders; and within populations with physical disabilities, learning disabilities, or behavioral problems.

C. Identification/Selection is a four-step process, which consists of referral, recommendation, demonstration, and placement.

1. Referral Procedures

- (a) Students may be referred by a teacher, administrator, parent, self, or a peer using a State Department of Education-approved instrument appropriate to the visual and performing arts area, to include creativity and expressive qualities. The referral should be used to identify students who have an aptitude for the arts and may benefit from intense exploration and in-depth study in one or more of the arts. The initial referral does not itself guarantee placement.
- (b) Districts shall include the following procedures in the referral process:
 - (1) provide all parents/guardians with effective, written notice of the gifted education program, referral procedures, and eligibility requirements;
 - (2) implement processes for identifying artistically gifted from all student populations;

- (3) provide training/guidance regarding characteristics of the artistically gifted for teachers and other district staff involved in the identification process;
- (4) use referral criteria and procedures that are directly related to the purpose of the artistically gifted program; and
- (5) reference the *South Carolina Gifted and Talented Best Practices Manual* for appropriate forms for the referral process.

(c) Assessment for Eligibility

Districts shall establish a review team comprised of at least three individuals to include an arts teacher, an administrator, and a community person with experience in the arts. The team shall ensure that all assessment instruments/measures are reviewed for bias and accurately assess the abilities/skills/potentials intended to be measured and, to the extent that subjective assessment criteria are used, that those individuals conducting the assessment are trained to ensure proper evaluation.

2. Recommendation Form

- (a) A recommendation form, which may be combined with the referral form, consisting of a checklist to assist with identifying the gifted artistic student will be completed by the dance teacher, the physical education teacher, the classroom teacher, the drama teacher (or the classroom teacher in the elementary school or middle school if the middle school does not have a drama teacher), the music teacher, or the visual arts teacher.
- (b) A teacher should base responses to the checklist on student behaviors that were observed throughout the school year.
- (c) Districts should refer to the *South Carolina Gifted and Talented Best Practices Manual* for recommendation forms and checklists.

3. Demonstration/Audition

- (a) The demonstration/audition should enable the evaluation-placement team to determine a student's artistic potential to function at a high level in one or more of the arts.
- (b) The demonstration/audition must also include either a student interview or questionnaire to assist the evaluation/placement team in determining suitability for placement.

- (c) Students will be rank ordered using results from the demonstration/audition and the student interview or questionnaire.
- (d) Parents of referred students may decide not to proceed with the demonstration/audition.

4. Placement

- (a) The placement of gifted and talented students should be the responsibility of the evaluation/placement team comprised of one member of the arts faculty or district arts staff, an administrator, and an additional member from the community who has expertise in the arts area for which the student has been referred.
- (b) The evaluation/placement team shall interpret and evaluate student data in such a way that will insure appropriate placement. The team may require additional assessment before determining student placement. Placement may involve a trial period for at least one semester but not more than one year. Students whose progress within the program are not deemed adequate by the team may be withdrawn from the program.
- (c) The team will be responsible for developing appropriate written procedures for removing a student from the gifted program. Removal from the program must be preceded by appropriate counseling with the student and conferences with the student's parents and teachers. Records of any assessment and evaluative measures and other student information must be maintained in a confidential manner.

D. Staff

1. Teacher Qualifications for a Visual and Performing Arts Program: Teachers must hold a valid teaching certificate appropriate to the grade level(s) or subject area(s) included in the program. Professionals in the visual and performing arts may teach in the gifted and talented program if serving in the program under the supervision of the appropriate district personnel.
2. Professional Development: Appropriate, ongoing staff development activities related to serving gifted and talented students shall be provided by the district annually.

E. Reporting

1. Districts will report to the State Department of Education information that includes, but is not limited to, student eligibility and referrals. Districts will annually collect and maintain district statistical data on (1) the number, by race, of students referred for evaluation; (2) the number, by race, of students determined eligible for services; and (3) the number, by race, by school, by grade, by arts area, of students actually served during the school year.
2. Official enrollment reports shall be submitted annually on appropriate State Department of Education forms.
3. Districts will submit a local gifted and talented program plan every three years and delineate progress on these plans annually. The State Department of Education will review the plans annually and provide written feedback to the districts. The State Department of Education will provide a format and template for the plans.

F. Funding

Distribution of Funds: School districts will be authorized to expend allocated funds on students meeting eligibility criteria and being served in approved programs. Programs initiated prior to June 30 will be funded from that fiscal year's allocation.

G. Expenditures and Accounting Procedures

1. State funds provided for gifted and talented programs must impact directly on students served in accordance with provisions of the State Board of Education Regulations. Accounting procedures shall conform to those outlined in the Financial Accounting Handbook issued by the State Department of Education. The entire allocation must be used directly for gifted and talented related expenditures.
2. A supplemental schedule shall be required in the school district's annual audit under the single audit concept.

Chapter 1 - Gifted Education

A gifted program is a permanent curricular response to the needs of gifted [and talented] students that articulates with the basic core curriculum.

—James H. Borland
Associate Professor of Education
Teachers College, Columbia University

Mission

The mission of gifted education is to maximize the potential of gifted and talented students by providing academic and artistic programs and services that match the unique characteristics and needs of these students.

Beliefs

Gifted and talented students have a right to an appropriate education, one grounded in the recognition of their individual differences and unique learning needs.

Gifted and talented students must be taught using a curriculum that is responsive to their individual strengths and their learning styles.

Curriculum for gifted and talented learners must be founded on South Carolina academic standards and must allow for both acceleration and enrichment.

The instructional environment for gifted and talented learners must encourage and nurture inquiry, flexibility, and critical and creative thinking.

Rationale

Gifted and talented students are those who are identified in grades 1–12 as demonstrating high performance ability or potential in academic and/or artistic areas and therefore require an educational program beyond that

normally provided by the general school program in order to achieve their potential. (*Regulation 43-220, Gifted and Talented*)

... no matter what the initial characteristics (or gifts) of the individuals, unless there is a long and intensive process of encouragement, nurturance, education, and training, the individuals will not attain extreme levels of capability (Bloom, 1985)¹

Gifted and talented students possess learning characteristics and needs that differ from those of their chronological peers: they typically learn faster, desire greater depth of content, and concentrate on tasks longer. They are more curious and prefer solving more complex problems than their chronological peers. These differences call for challenging educational opportunities in which gifted and talented students can learn with and from intellectual peers. Special programming and services are essential in order for gifted and talented students to maximize their potential. Accordingly, the South Carolina General Assembly has mandated that school districts provide modified programs to develop the unique talents of these students. (§59-29-170. Programs for talented students. Code of Laws of South Carolina, 1976, amended 1986).

Gifted and talented learners should be identified as soon as they enter school. Since advanced abilities may become evident at different times for different individuals, identification should be an ongoing process. Identification should be inclusive, with attention given to underrepresented populations of gifted and talented learners.

Great diversity exists within the population of gifted and talented learners with respect to areas of academic and artistic giftedness, degree of giftedness within those areas, qualities such as motivation and persistence, and level of performance in school subjects. Because of this diversity, school districts must employ consistent procedures and multiple measures for the identification of gifted and talented students. Placement in gifted and talented programming as a result of the identification process implies that a student has the potential to learn at an advanced level in one or more areas of the curriculum when the program services provided match the student's strength(s).

Given the diverse needs of gifted and talented students, programming must be flexible and responsive to the needs of particular learners at a given stage of development. Programming for the gifted and talented should include a variety of options, including early school entrance, acceleration, grade/subject skipping, in-depth work in selected areas of study, and opportunities for community-based learning such as mentorships. Teachers who work with these learners must be carefully selected and trained in gifted education.

¹Bloom, B. (1985). *Developing talent in young people*. New York: Ballantine Books.

Curriculum for gifted and talented learners must have rigor, depth, and complexity. Instructional services must be delivered in an environment that honors diversity in thinking, fosters inquiry, and engenders positive attitudes toward learning. Curriculum scope and sequence must be designed to ensure that all learning opportunities for gifted and talented students form a coherent program of studies not only in specific content areas but also in critical/creative thinking and research.

Assessment of student learning is essential for continued student growth. Assessment strategies for gifted and talented students must match the instructional approaches used in the curriculum and provide specific, constructive feedback about growth and areas for further development. Assessment strategies should allow students to demonstrate their ability to function as disciplinarians in the various academic and artistic areas would in daily life (authentic assessment).

In addition to differentiated programming, curriculum, and assessment, gifted and talented students require guidance and counseling services responsive to their unique needs. Defined services for meeting the social and emotional needs of gifted and talented learners through differentiated guidance and counseling must be developed at the school and district level. These services should address issues especially pertinent to gifted populations, such as coping with being different, perfectionism, underachievement, and dealing with uneven abilities. While teachers may support the social and emotional needs of gifted and talented students, professionals who are trained in guidance and counseling should be the principal provider of these services. In order for counselors to address these issues effectively, counselors should complete graduate work in the nature and needs of the gifted and talented and meeting the social and emotional needs of gifted learners. Counselors must also assist with academic and career planning appropriate for the aspirations and goals of gifted and talented learners. Early access to scholarship information and opportunities is crucial for these students.

When an educational program does not provide the challenge that gifted and talented students need, they may experience motivational, behavioral, and other problems that put them at risk. Therefore, it is critical that administrators, teachers, and support personnel participate in regular, relevant professional development that supports their understanding the nature and needs of gifted and talented learners. Also, schools must form collaborative relationships with parents to ensure that educational services address the particular needs of gifted and talented learners. Our gifted and talented students are too important to let them be “left behind” or to “fall through the cracks” of the educational system.

Legislation Pertaining to State-Funded Gifted and Talented Program in South Carolina

§ 59-29-170. Programs for talented students. Code of Laws of South Carolina, 1976, Amended 1986

Not later than August 15, 1987, gifted and talented students at the elementary and secondary levels must be provided programs during the regular school year or during summer school to develop their unique talents in the manner the State Board of Education must specify and to the extent state funds are provided. The Select Committee shall study the implementation of this section and report its findings to the General Assembly by July 1, 1986. By August 15, 1984, the State Board of Education shall promulgate regulations establishing the criteria for student eligibility in Gifted and Talented Programs. The funds appropriated for Gifted and Talented Programs under the Education Improvement Act of 1984 must be allocated to the school districts of the State on the basis that the number of gifted and talented students served in each district bears to the total of all those students in the State. However, districts unable to identify more than forty students using the selection criteria established by regulations of the State Board of Education shall receive fifteen thousand dollars annually. Provided, further, school districts shall serve gifted and talented students according to the following order of priority: (1) grades 3–12 academically identified gifted and talented students not included in the state-funded Advanced Placement Program for eleventh and twelfth grade students; (2) after all students eligible under priority one are served, students in grades 3–12 identified in one of the following visual and performing arts areas: dance, drama, music, and visual arts must be served; and (3) after all students eligible under priorities one and two are served, students in grades 1 and 2 identified as academically or artistically gifted and talented must be served. All categories of students identified and served shall be funded at a weight of .30 for the base student cost as provided in Chapter 20 of this title. Where funds are insufficient to serve all students in a given category, the district may determine which students within the category shall be served. Provided, further, no district shall be prohibited from using local funds to serve additional students above those for whom state funds are provided.

HISTORY: 1984 Act No. 512, Part II, § 9, Division II, Subdivision A, SubPart 4, § 2, 1985 Act No. 201, Part II, § 9C, 1986 Act No. 540, Part II, § 18.

Chapter 2 - Academically Gifted and Talented Curriculum and Instruction

To implement appropriate curriculum for gifted [and talented] students, there must be concern for the translation of theoretical principles into good practice in a holistic manner so that education of the gifted [and talented] is complete, not fragmented.

—Joyce VanTassel-Baska, Ed. D.
Smith Professor of Education and Director of the Center for Gifted Education
The College of William & Mary

Introduction

Regulation 43-220 requires that South Carolina school districts provide programs for all gifted and talented students at the elementary and secondary levels. According to R43-220, these programs shall provide curriculum and instruction that maximize the potential of gifted and talented students (24 S.C. Code Ann. Regs. 43-220.2(A)(1)(a)). More specifically, programs for the gifted and talented must reflect the following curricular and instructional characteristics:

- a. Content, process, and product standards that exceed the state-adopted standards for all students;
- b. Goals and indicators that require students to demonstrate depth and complexity of knowledge and skills;
- c. Instructional strategies that accommodate the unique needs of gifted and talented learners;
- d. A confluent approach that incorporates acceleration and enrichment;
- e. Opportunities for worldwide communication and research.

This chapter addresses curriculum requirements for gifted education programs, as well as recommended instructional provisions for gifted and talented students in the general education classroom.

Curriculum for Gifted Education Programs

The curriculum for gifted education programs must be, not only different from the basic core curriculum, but defensible—i.e., matching the needs and abilities of gifted and talented students. Gifted and talented learners require a multi-faceted curriculum that utilizes approaches based on content advancement, analysis of abstract themes or concepts, development of complex thinking processes, and transformation of learning into creative products. Instructional strategies for the gifted and talented should include inquiry-based learning, group and individual problem solving, and questioning that encourages critical and creative thinking.

The curriculum plan should be written to include goals and indicators for the performance of gifted and talented students. The following checklist of curriculum components is intended as a guide for the on-going curriculum development process.

Curriculum Components

Effective curriculum and instruction for gifted and talented students must incorporate the following components:

- ◆ goals that support mastery of core areas of learning,
- ◆ scope and sequence that provide meaningful organization and structure,
- ◆ learning experiences organized around complex concepts, themes, and issues,
- ◆ challenging, meaningful content that exceeds state grade-level standards,
- ◆ instruction in the processes of communicating, problem solving, and critical thinking that exceeds state grade-level standards,
- ◆ instruction in independent learning skills,
- ◆ opportunities for worldwide communication and research,
- ◆ products that reflect advanced achievement and in-depth research,
- ◆ combination of acceleration and enrichment,
- ◆ articulation with the basic core curriculum, and
- ◆ integrated, relevant assessment of student performance.

Additional curriculum resources for gifted education programs include Davis and Rimm (2004), Gallagher and Gallagher (1994), Maker and Nielson (1995), O'Tuel and Bullard (1993), and VanTassel-Baska (2003 & 2006).

A gifted and talented curriculum designed to serve culturally diverse populations should also include components such as mentorships, remediation for deficiencies in basic skills, adaptations for variant learning styles, extracurricular enrichment, counseling, and career education. Further information on serving culturally diverse populations is provided in the following references: Borland (1989, Chapter 10), Colangelo and Davis (2003), Davis and Rimm (2004), and Gallagher and Gallagher (1994, Chapters 2 & 12).

Standards-based Curriculum

South Carolina's emphasis on discipline-based standards is focusing the teacher of the gifted on the need to integrate discipline content and process skillfully when designing and developing curriculum. Powerful curricular experiences for high ability learners must proceed through the content standards, not around them.

Why is this content standards approach important?

- Basic content areas organize schools, and the majority of student time is allocated across academic content. By using content as our organizational framework, we increase communication and maximize learning.
- In our culture, knowledge is organized by disciplines. Professions are often based on content expertise, and many significant products of civilization are discipline-specific (e.g. novels, medicines, political treaties, fine art).
- Our current research base on conceptions of giftedness supports a content-specific organizational model. Theorists such as Gagné, Csikszentmihalyi, and Bloom suggest that giftedness is domain specific.
- The research on teaching and learning suggests that integration of content and process optimizes transfer.
- Students in South Carolina are identified and placed in gifted programs based on verbal and/or nonverbal abilities; thus, the need exists to offer students curricular experiences that are congruent with their abilities. (Joyce Van Tassel-Baska in conversations with teachers from South Carolina at the Center for Gifted Education, College of William and Mary, February 2001.)

The curriculum for South Carolina academically gifted programs and must incorporate strategies to ensure the appropriate differentiation of the South Carolina Academic Standards for the gifted learner. An effective curriculum for gifted learners is articulated across grades and addresses significant concepts across disciplines.

Teachers and coordinators involved in the design, adaptation, and development of curriculum for gifted learners must approach curriculum and instruction as a team and as colleagues. Individual teachers can no longer work in isolation to respond to the reform agenda.

Curriculum Goals

State Board of Education Regulation 43-220 requires districts to develop a plan for academically gifted and talented classes that maximizes the potential of identified students. Six specific characteristics of this educational program are outlined in the regulation. The following goals are examples of the kind of curriculum goals that must be developed by districts to guide their planning of curriculum, instruction, and assessment for academically gifted programs. Districts may adopt these goals or prepare local goals provided that the curriculum goals fully reflect the requirements of Regulation 43-220.

GOAL ONE

To support mastery of core areas of learning at a pace, complexity, abstractness, and depth appropriate for gifted learners.

GOAL TWO

To develop understanding of concepts, themes, and issues which are fundamental to the disciplines as well as society and to develop an appreciation for interrelationships among the disciplines.

GOAL THREE

To develop inquiry skills at a level of complexity, abstractness, and depth appropriate for gifted learners.

GOAL FOUR

To develop the skills of critical thinking, problem solving, and decision-making at a level of complexity, abstractness, and depth appropriate for gifted learners.

GOAL FIVE

To develop proficiency in communicating abstract and complex ideas, relationships, and issues.

Curriculum for Academically Gifted Students

School districts must provide a curriculum for academically gifted and talented students that is designed to support their unique characteristics and needs. This curriculum must address specific goals so that gifted and talented students have the opportunity to reach the corresponding culminating objectives for each goal. A culminating objective is what the learner will know and be able to do as the result of instructional experiences.

GOAL ONE

To support mastery of core areas of learning at a pace, complexity, abstractness, and depth appropriate for gifted and talented learners.

School district and teachers will ensure that gifted and talented students are appropriately challenged. Effective curriculum will address the academic strengths and weaknesses of the identified students. To accomplish this task, teachers should pre-assess students' learning (See Chapter Three in the *Best Practices Manual*) and provide instruction so that students demonstrate continuous progress.

The key to developing and designing effective curriculum to address goal one is the ability to differentiate pace, complexity, abstractness, and depth. Both acceleration and enrichment strategies must be used.

GOAL ONE CULMINATING OBJECTIVE:

In the designated curriculum area or areas, gifted and talented students will meet or exceed South Carolina Curriculum Standards.

GOAL TWO

To develop understanding of concepts, themes, and issues which are fundamental to the disciplines as well as society and to develop an appreciation for interrelationships among the disciplines.

“Central to any vision of comprehensive curriculum for the gifted is the focus on the ideas that have guided the development of civilization as we know it. These large concepts, ideas, and themes are those that dominate all areas of knowledge exploration, yet may have specific connotations within a given discipline of thought. So the task of educators of the gifted is to seek out those ideas that can be best utilized with gifted learners at various stages of development both within and across traditional fields of inquiry.” Joyce VanTassel-Baska, *Comprehensive Curriculum for Gifted Learners* (Boston: Allyn and Bacon, 1988.)

School districts and teachers will design curriculum, instruction, and assessment so that gifted and talented students will articulate the underlying structure of the discipline(s), explain the interconnectedness of knowledge across the disciplines, and apply this understanding to current societal problems and issues.

GOAL TWO CULMINATING OBJECTIVES

Gifted and talented students will

- A. Demonstrate comprehension of a discipline as a system of knowledge.
- B. Analyze the content of a discipline in terms of major concepts, themes, and issues of that discipline.
- C. Analyze a concept, theme, problem, or issue within and across disciplines by using the different perspectives of those disciplines.
- D. Analyze the ethical dimensions of ideas, issues, problems, and themes.
- E. Explain the dynamic nature of knowledge and the interaction between culture and knowledge.

GOAL THREE

To develop inquiry skills at a level of complexity, abstractness, and depth appropriate for gifted learners.

School districts and teachers will ensure that gifted and talented students acquire the skills necessary for self-directed and life-long learning. Students will develop facility in using various technologies and sources of information to conduct inquiry appropriate to the discipline(s). The curriculum will provide students with opportunities to explore and to evaluate existing research as well as to identify and to research new areas of interest. Students will gather, analyze, interpret, and communicate data (See Goal Five.). They will learn to plan and to organize their work, to monitor their progress, and to assess the quality of their products and presentations. In the process they will develop and exercise the traits of the reasoning mind. See Richard Paul, *Critical Thinking: What every person needs to survive in a rapidly changing world* (CA: The Foundation for Critical Thinking 1992).

GOAL THREE CULMINATING OBJECTIVES

Gifted and talented students will

- A. Demonstrate inquiry skills.
 1. Identify a topic, problem, or issue and formulate questions for research.
 2. Select and apply research methodology appropriate for the topic, problem, or issue.
 3. Access information worldwide from primary and secondary sources by using a variety of print, electronic, and other media.
 4. Assess the validity, reliability, and relevance of the information collected.
 5. Organize and analyze data.
 6. Synthesize and interpret data.
 7. Develop conclusions and implications in the light of the problem.
 8. Select an appropriate medium to communicate the results of research.
- B. Demonstrate management skills.
 1. Plan, pace, implement, and evaluate research projects.
 2. Demonstrate effective allocation of time and resources
- C. Apply ethical standards in conducting and reporting research. (See Paul Leedy and Jeanne Ormrod, *Practical Research* Seventh Edition, Merrill: 2001 or Gary W. Heiman, *Research Methods in Psychology* Second Edition, Houghton Mifflin: 1999.)
- D. Apply intellectual standards and aesthetic criteria to assess the quality of their research products and presentations.

GOAL FOUR

To develop the skills of critical and creative thinking, problem solving, and decision-making at a level of complexity, abstractness, and depth appropriate for gifted learners.

School districts and teachers will incorporate models of critical and creative thinking, problem solving, and decision making so that students develop a repertoire of strategies to apply in the context of significant content.

As they learn reasoning strategies, students will apply intellectual standards (clarity, specificity, relevance, logic, breadth, significance, fairness, precision, accuracy, consistency, depth, completeness, adequacy) to assess the quality of their thinking. (See Paul, 1992).

GOAL FOUR CULMINATING OBJECTIVES

Gifted and talented students will

- A. Demonstrate effective use of critical and creative thinking skills.
 1. Apply the cognitive processes of application, analysis, synthesis, and evaluation.
 2. Apply basic argument forms (i.e., induction and deduction).
 3. Reason logically (define the central issue, analyze assumptions, select appropriate data or evidence, determine central concepts, distinguish points of view, develop valid inferences, determine purpose, and analyze implications). (Paul, 1992)

4. Apply the divergent thinking processes of fluency, flexibility, elaboration, and originality.
- B. Demonstrate effective use of problem-solving and decision-making strategies.
- C. Evaluate the quality and appropriateness of arguments, lines of reasoning, and solutions in terms of both ethical and intellectual standards.
- D. Analyze the content, structure, value, aesthetic qualities, and historical context of products of creative thinking.

GOAL FIVE

To develop proficiency in communicating abstract and complex ideas, relationships, and issues.

School districts and teachers will provide learning experiences for gifted and talented students to develop the ability to communicate ideas, issues, and relationships in effectively manners using multiple forms and technologies. Districts and schools will provide opportunities for students to demonstrate transformation of learning through the creation of products and presentations appropriate for both content and audience.

GOAL FIVE CULMINATING OBJECTIVES:

Gifted and talented students will

- A. Synthesize knowledge and skills to communicate ideas, relationships, and issues effectively through products and presentations.
- B. Analyze and evaluate the quality, effectiveness, and substantive content of products and presentations.

Instructional Provisions in the General Education Classroom

In addition to the services provided through gifted and talented program models, districts should attend to instructional provisions for gifted and talented students in the general education classroom. Depending on the nature of the gifted and talented program being implemented, identified students may spend the majority of their school time in a regular heterogeneous classroom. These students are gifted and talented 100 percent of the time, not just the percentage of time spent in a pull-out program or special class.

How have teachers in the regular classroom typically addressed the needs of gifted and talented students? A national survey of 3600 elementary teachers indicated that few, if any, modifications were made for gifted and talented students (Archambault, Westberg, Brown, Hallmark, Emmons, & Zhang, 1993). When change did occur, it was likely to be passive—an increase in the workload. The results of this survey were borne out in an observational study conducted in 46 classrooms across the nation (Westberg, Archambault, Dobyons, & Salvin, 1993). In the regular classroom, 84 percent of the instructional activities were the same for all students, whether gifted or not.

Research has shown that if every child is to be challenged to develop to maximum potential, “one size” will not “fit all.” Equal opportunity does not and should not mean identical content and activities for all students. To accommodate the needs of gifted and

talented students in the general education classroom, curriculum and instruction must be flexible in aspects such as pace, depth, complexity, and novelty.

What, then, can teachers do to meet the needs of gifted and talented students in the general education classroom? Presented in the following sections are recommended curricular and instructional provisions with regard to content, process, product, and the learning environment.

Content Recommendations

- ◆ Use pre-assessment techniques to establish what students already know. Do not re-teach the mastered content to those students.
- ◆ Increase the pace of learning for gifted and talented students by compressing the curriculum in terms of skills and/or knowledge areas.
- ◆ Adjust the complexity of objectives that gifted and talented students are required to achieve.
- ◆ Provide more complex/abstract materials for gifted and talented students.
- ◆ Provide mentors for gifted and talented students who demonstrate unusual interest in specific content areas.
- ◆ Allow students time to reflect and construct meaning.


Process Recommendations

- ◆ Teach strategies that students need to process content and to create products.
- ◆ Give students choices throughout the instructional process—in topics, ways of learning, modes of expression, and working conditions.
- ◆ Use a variety of modes to present or introduce information.
- ◆ Give students open-ended tasks to encourage exploration.
- ◆ Use flexibility in assigning groups and tasks.
- ◆ Allow students to work independently some of the time and collaboratively in groups at other times. (The majority of a student's time in groupwork should be spent with intellectual peers.)
- ◆ Structure a metacognitive approach for accomplishing academic tasks.
- ◆ Make sure that all students are actively participating in the learning process. It is essential that gifted and talented students be engaged in their learning.

Product Recommendations

- ◆ Encourage student choice and originality in the creation of products. Allow students to use a variety of media and techniques to produce their creations.
- ◆ Encourage students to create products that demonstrate more complex and in-depth mastery of content—e.g., independent study projects, special reports, research summaries, simulations, presentations, demonstrations.
- ◆ Require self-evaluation of all products as part of the metacognitive process.

Learning Environment Recommendations

- ◆ Create a safe, risk-free learning environment to facilitate student selection of appropriately challenging tasks.
 - ◆ Require student-to-student dialogue and discussion.
 - ◆ Balance teacher-talk with student-talk.
 - ◆ Listen respectfully to what students have to say.
 - ◆ Open the classroom to new ideas and resources.
 - ◆ Create an inviting environment for advanced learning.
 - ◆ Encourage and model acceptance of the unique abilities and needs of each student in the classroom.
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Chapter 3 – Student Assessment and Evaluation

If teachers [of the gifted and talented] think of their time with students as a conversation, then assessments are perhaps one of the most potent means of communication. Through assessment, teachers [of the gifted and talented] say to their students what they think is or is not important learning.

—James Gallagher
University of North Carolina at Chapel Hill

Introduction

Along with specifying curriculum and instruction requirements, Regulation 43-220 calls for assessment that maximizes the potential of identified students (24 S.C. Ann. Regs. 43-220.2 (A)(1)(a) and 2(A)(2)). Assessment involves the collection and organization of data related to student performance. Evaluation involves using assessment data to determine how well a student is performing in relation to pre-established criteria. The purposes of this chapter are two-fold: (1) to describe ways of assessing student achievement of gifted and talented curriculum goals and (2) to present methods of analyzing assessment data to evaluate student performance.

The discussion of assessment and evaluation in this chapter incorporates the following principles:

1. Student assessment is an integral part of curriculum design and of each instructional unit.
2. The assessment tools used for a particular curriculum objective must be appropriate for the measurement of that objective.
3. The criteria which students are expected to meet in their performance must be presented at the beginning of instruction.

Ways of Assessing Student Achievement

Pre-Assessment Strategies

It is imperative for teachers to determine prior to instruction what students already know and can do. Only by assessing a student's current level of knowledge and skill can a teacher ensure that new learning will take place as a result of instruction. Teachers can pre-assess content knowledge and skills through a variety of strategies such as those listed below.

Pre-Assessment of Content Knowledge

- ◆ Oral questioning
- ◆ Brainstorming
- ◆ Concept maps (See pages 3-5 and 3-6.)
- ◆ "Need to Know" boards (See pages 3-6 and 3-7.)
- ◆ Checklists
- ◆ Conventional written tests

Pre-Assessment of Skills

- ◆ Portfolio reviews
- ◆ Performance tasks
- ◆ Examination or assessment of previous products
- ◆ Review of previous assessments of the skill

Assessment During Instruction

Assessment must be ongoing throughout the instructional process. Teachers collect assessment data through observing and monitoring student progress toward instructional goals. Strategies appropriate for this stage of the assessment process include those listed here.

- ◆ Observation of student involvement/interaction
- ◆ Oral questioning
- ◆ Monitoring of student practice
- ◆ Formative measure that is scored for diagnostic purposes, but not graded
- ◆ Spot checks of products in progress (not graded)
- ◆ Collection of work samples

Students should be active participants in monitoring their progress during instruction. Accordingly, teachers should guide students through the process of self-assessment—looking at their strengths and weaknesses in relation to unit goals/objectives and setting appropriate personal goals for performance. Once goals have been set, students should check themselves throughout the unit to ascertain their progress toward achieving these goals. Students can use self-assessment strategies such as those listed below.

- ◆ Learning logs or journals
- ◆ Self-checklists
- ◆ Conferencing with the teacher
- ◆ Peer review groups

Post-Assessment Strategies

To determine student progress at the conclusion of a unit of study or at specific points in a lengthy unit, the teacher should use post-assessment strategies that are consistent with the instruction provided. Post-assessment strategies must also be consistent with the assessment strategies used before and during instruction. Presented here are just a few examples of assessment strategies that teachers and students can use to culminate an instructional unit.

- ◆ **Written tests**

These should include student-constructed responses to open-ended questions that require analysis, synthesis, and evaluation.

- ◆ **Concept maps** (See pages 3-5 and 3-6.)

These require students to design a visual representation of everything they now know about the unit topic. The post-assessment concept map can be compared with a pre-assessment map in order to determine student growth as a result of the instructional unit.

- ◆ **“Need to Know” boards** (See pages 3-6 and 3-7.)

The final column—“What Have I Learned?”—represents the culmination of the instructional unit.

- ◆ **Other graphic organizers**

There are many other graphic organizers that students can use to display their acquired knowledge—e.g., Venn diagrams, flow charts, matrices, spatial arrays, models, graphs, other diagrams and charts.

◆ **Performance tasks**

These tasks should require students to apply knowledge and skills acquired during the unit to a new problem, in a new situation, or in a different context.

◆ **Products, projects, and presentations**

These should require students to synthesize and transform unit learning, then communicate it effectively to a specified audience. Students should receive specific instruction in the techniques of design and construction needed for the particular type of product, project, or presentation.

◆ **Portfolios**

Most portfolios will include samples of student work completed during the unit. Samples should be arranged chronologically in order to show student progress through the course of the unit. Additional items to place in a portfolio include the following: relevant entries from student learning logs or journals, parent letters or accounts, documentation of interviews or volunteer work related to the unit content, narratives of fieldwork or out-of-class activities carried out by the student, and a bibliography of related reading completed by the student. The items included in the portfolio may be specified by the teacher and/or selected by the student. If items are student-selected, the portfolio should include a personal statement from the student explaining why each piece was chosen.

All of the assessment measures described here are criterion-referenced. These are the appropriate kinds of measures for assessing individual student progress toward mastery of specific goals or objectives. In contrast to these criterion-referenced measures, there are a number of standardized norm-referenced assessment measures—such as the *Metropolitan Achievement Tests* (MAT), *Stanford Achievement Tests* (SAT), *Terra Nova*, and *Iowa Tests of Basic Skills* (ITBS)—that can be used to identify a specific sample within a general population of students. Because norm-referenced tests have this purpose, such measures are appropriate for the identification of gifted and talented students, but they are not appropriate for the assessment of students' progress toward curriculum goals.

Ways of Evaluating Student Progress

After collecting assessment data, the teacher must evaluate the data in order to determine how the student is performing in relation to pre-established criteria. The articulation of performance or evaluation criteria is a crucial aspect of curriculum development. Evaluation criteria can address the degree of student understanding (with regard to knowledge acquisition) or the degree of student proficiency (with regard to skill development). In either case, evaluation criteria may focus on short-term progress or on growth over longer periods of time.

Evaluating Knowledge Acquisition

The most effective methods of evaluating knowledge acquisition involve comparing student responses on pre- and post-assessment measures. Pre- and post-assessments are essential for the evaluation of gifted and talented students. All too often, when pre-assessments are omitted, instruction focuses on content the students already know. Effective utilization of pre- and post-assessment comparisons can ensure that instruction focuses on new learning for the gifted and talented and, accordingly, that the culminating evaluation reflects real change in knowledge and understanding.

Using Pre/Post Test Comparisons

If written tests are used for pre- and post-assessments, the following series of questions can help to focus the evaluation on what students have learned and how well they can use the information to analyze, synthesize, and evaluate.

- ◆ **To what extent has the student increased command of the vocabulary, concepts, and information contained in the unit of study?**
 1. How much of the vocabulary is the student able to use correctly?
 2. How many of the key concepts can the student explain accurately?
 3. How much of the essential unit information is the student able to incorporate accurately into written statements about the unit topic?
- ◆ **To what extent has the student's knowledge of the unit topic increased in depth and complexity?**
 1. How well can the student use details to support generalizations?
 2. How effectively can the student use unit content to analyze or address new situations, problems, or issues?
 3. How well can the student evaluate or critique assertions of others in relation to unit content?

Pre/Post Comparisons of Concept Maps

If students have constructed concept maps at the beginning and end of the unit, the teacher can compare various characteristics of the maps to evaluate student growth in knowledge and understanding of unit content. Through concept maps, gifted and talented students should be able to demonstrate gains not only in the acquisition of content information but also in the depth and complexity of understanding. Such gains are evident in the pre- and post-assessment concept maps presented in the Sample Documents at the end of the chapter. (See Sample A, page 3-20).

Noted below are characteristics of pre- and post-assessment concept maps that can be compared in the evaluation process.

- ◆ Amount, accuracy, and significance of the content information or details that are included
- ◆ Appropriateness of the categories under which information or details are subsumed
- ◆ Complexity of categorization
- ◆ Number, accuracy, and significance of any other interrelationships shown by color, arrows, connecting lines, and/or illustrations
- ◆ Overall sophistication of conceptualization

Pre/Post Comparisons of “Need to Know” Boards

If students use “Need to Know” boards to record their learning over the course of an instructional unit, their responses in the three columns of the board—“What Do I Need to Know?”, “Where Do I Find It?”, and “What Have I Learned?”—provide evidence of student knowledge acquisition. Listed here are types of evidence that would be relevant for each column of a “Need to Know” board.

◆ **“What Do I Need to Know?” Column**

- Evidence of inquiry/curiosity (number of appropriate queries)
- Significance of queries in the context of the unit
- Evidence of queries above the fact/detail level
- Evidence of inquiry continuing as the unit progresses (e.g., new items/questions added as more content is learned)

◆ **“Where Do I Find It?” Column**

- Appropriateness of sources used
- Quality and variety of sources used
- Extent to which all possible resources for the unit have been utilized
- Evidence of persistence when initial sources do not provide adequate information

◆ **“What Have I Learned?” Column**

- Evidence of acquisition of new information
- Evidence of understanding of the significance of information in relation to the unit as a whole
- Evidence of a deepening understanding (e.g., through supported generalizations or insights)
- Evidence of complexity of understanding (e.g., through descriptions of underlying patterns or interrelationships of information)

In addition to providing information about knowledge acquisition, evaluation that addresses all columns of the “Need to Know” board can provide considerable information about how well the student is learning the skills needed for a self-directed study or inquiry.

Evaluating Skill Development

Establishing Performance Criteria

At the beginning of a unit of study that focuses on skill development, the teacher should present the criteria by which student performance will be evaluated. The criteria should vary with the skills to be assessed with a weighted emphasis on demonstrating knowledge and understanding of the skill. The sample criteria presented here might be appropriate for an instructional unit on the selection and construction of graphs to communicate research data.

Sample Performance Criteria - Graphing Research Data
1. The type of graph is appropriate for the data communicated.
2. The graph is properly constructed.
3. The graph is properly labeled and titled.
4. The graph displays the data clearly, correctly, and without distortion.
5. The graph makes effective use of visual elements.
6. The student summarizes and hypothesizes using the graph in class discussions.

Designing or Selecting Rubrics

Teachers should incorporate performance criteria into a scoring rubric that will be used for evaluation purposes at the end of the unit. The scoring rubric—which should be explained to students along with the performance criteria—indicates levels of proficiency in relation to each criterion. Shown here are two possible rubric formats for the graphing criteria. Format 1 provides a numerical score (1, 2, 3), signifying a specified achievement level while Format 2 provides a letter grade (E, S, N) for each criterion. Comments regarding the student’s performance relative to the criterion should be provided for complete feedback to the student.

Sample Rubric – Graphing Research Data - Format 1			
Performance Criteria	Needs Improvement	Satisfactory	Exemplary
1. Appropriate type of graph.	1	2	3
2. Properly constructed.	1	2	3
3. Properly labeled and titled.	1	2	3
4. Clear, correct display of data.	1	2	3
5. Effective use of visual elements.	1	2	3
6. Oral presentation accurate.	1	2	3

Sample Rubric – Graphing Research Data - Format 2		
E = Exemplary, S = Satisfactory, N = Needs Improvement		
Performance Criteria	Grade	Comments
1. Appropriate type of graph.	<i>E</i>	<i>Best type of graph for your data.</i>
2. Properly constructed.	<i>N</i>	<i>Use a protractor to divide your circle graph rather than estimating visually.</i>
3. Properly labeled and titled.	<i>E</i>	<i>Excellent labels and titles.</i>
4. Clear, correct display of data.	<i>S</i>	<i>Use of protractor would help accuracy.</i>
5. Effective use of visual elements.	<i>E</i>	<i>Nice color choice. Good contrast.</i>
6. Oral presentation accurate.	<i>E</i>	<i>Great summary explanation</i>

Other types of skill development may suggest different styles of scoring rubrics. For example, for a short story unit that focuses on literary interpretation skills, a teacher might utilize the sample scoring rubric shown below. In this sample, three criteria are denoted. The scoring rubric provides qualitative descriptions of three levels of proficiency for each criterion, along with a corresponding point value for each level. Note that the point values for more proficient work are significantly higher than the point values for more limited student responses.

Sample Scoring Rubric – Literature Interpretation	
1. States the main idea of the reading selection in a sentence or two.	<ul style="list-style-type: none"> <input type="checkbox"/> Limited response that fails to capture the main idea (1 point) <input type="checkbox"/> Statement about story lacking elaboration or synthesis (10 pts.) <input type="checkbox"/> Clear statement, indicating insight into theme (15 pts.)
2. Explains the significance of the following sentence: <i>[sentence from the reading selection]</i>	<ul style="list-style-type: none"> <input type="checkbox"/> Limited response (1 point) <input type="checkbox"/> Accurate but literal response (5 pts.) <input type="checkbox"/> Interpretive response (10 pts.)
3. Explains the author’s treatment of change and supports explanation with detail from the story.	<ul style="list-style-type: none"> <input type="checkbox"/> Vague or limited response (5 pts.) <input type="checkbox"/> Valid, understandable generalization about change supported with at least two details from the story (10 pts.) <input type="checkbox"/> Valid, sophisticated (for age) statement or generalization about change, well-supported with evidence from the story (15 pts.)

All scoring rubrics should specify the evaluation criteria, describe levels of performance, and provide feedback on areas of strength and areas for growth. Rubrics used with the gifted and talented should set performance standards at sufficiently high levels so that advanced students are challenged to grow and to refine their skills to the greatest extent possible.

Using Exemplars

A key to effective implementation of scoring rubrics is the use of exemplars—samples of student products or responses that illustrate the levels of proficiency described by the rubric. Exemplars can assist in the development of consistency among teachers in evaluating student work. In addition, exemplars can serve as models for students. By studying exemplars, students can see work of varying degrees of proficiency and begin to establish a sense of the quality of their own work and the changes they need to make to raise their level of performance.

Evaluating Growth Over Time

Sometimes evaluation focuses on the quality of a student product or performance following a relatively short unit of study (e.g., several weeks or a month). At other times, evaluation focuses on how the student has grown in understanding or proficiency over an extended period of time. Many of the goals of gifted and talented programs—e.g., the development of research skills, the development of problem-solving skills, the development of communication skills—require evaluation of the student's development over the course of a year or even over a period of years.

Developing an Evaluation Plan

The evaluation of growth in student achievement over an extended period of time requires the development and implementation of a specific evaluation plan. When establishing such a plan, the teacher should identify those curriculum goals for which the focus is student growth over time. The plan should articulate evaluation procedures for each goal, specifying the following:

- ◆ the time period over which student growth will be evaluated;
- ◆ the developmental stages—and levels of proficiency at each stage—through which students can be expected to move during the designated time period;
- ◆ a list of checkpoints at which student achievement will be assessed and evaluated;
- ◆ descriptions of the documentation of student achievement or performance level that will be collected at each checkpoint.

Sample B (page 3-21) provides an example of an evaluation plan that could be used for one component of the research skills goal—constructing a bibliography. Included in the sample plan are each of the components listed above: time period, developmental stages, checkpoints, and documentation.

Using Portfolios

Teachers can use portfolios for assessment and evaluation at all levels of instruction and in a variety of subject areas. The portfolio is an excellent tool for documenting student growth—particularly growth in those performance dimensions that may take months or years for change to occur. A portfolio provides samples of a student’s work over time, stored in either a paper file or an electronic file.

To be most effective for evaluation purposes, a portfolio should contain the following elements:

- ◆ a clear statement of purpose or rationale agreed upon by student and teacher;
- ◆ a table of contents;
- ◆ work samples selected by the student and/or the teacher;
- ◆ evaluations of the student’s work samples;
- ◆ the student’s explanation of any student-selected samples;
- ◆ periodic (e.g., semester or yearly) growth goals set by the student or by the student and teacher.

Using the Evaluation Conference

A three-way (student, teacher, parent) conference can be another useful component of an evaluation plan. (See Evaluation of Growth in Sample B, page 3-17.) In such a conference, the student, teacher, and parent meet to review the documentation of the student’s growth. They analyze the student’s current performance level, the amount and quality of change since the previous conference, and areas that should be targeted for future growth.

As students become accustomed to three-way conferences, they can gradually assume greater responsibility for conducting the conference. The student-conducted conference has the added benefit of promoting self-evaluation and goal setting, two skills that are fundamental if students are to become self-directed learners.

Reporting Student Progress

Methods of reporting student progress will vary depending upon the program model and the curriculum. All gifted and talented programs should utilize reporting procedures that are appropriate to their delivery models and curricula. (See Chapter 4 of this manual for a description of program delivery models.) Regardless of the reporting methods used, all gifted and talented programs should go beyond simple grade reporting to provide more detailed information relative to student achievement and growth.

Report Cards and Grading Practices

Gifted and talented students served in special class or special school models should receive the same report cards as other students in the school district. These reports should use the district grading system and be sent home on the regular district schedule. Grades should reflect evaluation of the gifted and talented student's achievement of the special class or special school curriculum goals. In addition to these traditional report cards, gifted and talented students should receive more specific information regarding their progress in relation to the special class or special school goals—e.g., through checklists or teacher narratives.

Programs for gifted and talented students in a resource room/pull-out class or center vary in their grading procedures, the kinds of reports sent home, and the frequency of reporting (weekly, grading period, semester, or end of unit). Some programs use the district grading system, while others have developed their own grading systems.

An effective program establishes a reporting schedule at the outset of the school year so that parents know when to expect information on their students' achievement.

Exemplary Reporting Practices

Gifted and talented programs that are using best practices have a reporting system which communicates student progress on a regular basis. The reporting system should include a profile of student knowledge and proficiency in relation to gifted and talented curriculum goals.

An effective gifted and talented program utilizes more extensive reporting procedures than the traditional report card. Even when traditional report cards are used, as in a special class model, they should be supplemented with one or more of the reporting practices listed below.

- ◆ Evaluation reports on special products and performances
- ◆ Student self-reports in which the student reports to the teacher and parent his/her progress relative to specific learning goals
- ◆ Unit evaluations that communicate the student's level of skill proficiency and/or knowledge acquisition relative to unit objectives
- ◆ Gifted and talented program progress report listing curriculum goals and indicating the student's level of achievement for each
- ◆ Annual longitudinal growth conference in which the student, teacher, and parent discuss the student's growth over time

Review of Placement

The results of student assessment and evaluation may prompt questions about the appropriateness of a student's placement in the gifted and talented program. A student who finds work difficult and/or who performs poorly may seek to leave the gifted and talented program—perhaps out of concern about grade-point average or because of doubts about his/her abilities. A teacher may want a student who performs at a relatively low level to be removed from the program—perhaps because of questions about whether the student is “truly gifted and talented.” These judgments about the student and his/her abilities may or may not be valid.

Effective gifted and talented programs have clearly established and written procedures for reviewing student placement, in order to insure the following:

1. that students who do need gifted and talented programming are provided with the support they need to succeed, and
2. that students who may be mismatched with a particular class or service can have their placement adjusted to better meet their needs.

Procedures for Review of Placement

Best practices in gifted and talented education require that the individual student and his/her academic and intellectual development be the focus of all placement discussions, including the possible removal of a student. Any procedures that a district develops for reviewing a student's placement must incorporate a “child study” approach involving the gifted and talented program coordinator, student, parent/guardian, and teacher(s). The school or district Evaluation/Placement Team that carries out the evaluation step in the initial identification process shall also be involved in the review process (24 S.C. Code Ann. Regs. 43-220.2(B)(8)(c)).

Placement decisions resulting from a child study should have as their primary consideration the best instructional setting for the individual student. Sample C (page 3-22) illustrates a set of district procedures that could be used for reviewing a placement, including appropriate questions for the Evaluation/Placement Team.

Often situations which prompt a student, parent, or teacher to request review of a student's placement in the gifted and talented program are ones that can be addressed through conferencing and provision of appropriate support services rather than through withdrawal or removal of the student from the program. A child study conducted by an Evaluation/Placement Team can be helpful to the student, parent, and teacher by clarifying the situation, making recommendations for regular classroom modifications, and providing appropriate support services for the student.

Guidelines for Removal of Students

The gifted and talented program exists to provide services to identified students that will develop their unique talents and abilities. Participation in an educational program that goes beyond the services provided by the regular classroom/school program should allow these students to achieve their potential. Identified students have demonstrated high performance ability or potential and therefore have the right to these additional services. Moreover, the services provided for identified students must match their area(s) of strength(s)—the way a student qualified for gifted and talented. Gifted and talented students are sometimes twice exceptional or underachievers. Therefore, the denial of services to a student who has qualified for gifted and talented requires careful attention and serious consideration.

Regulation 43-220 required the State Department of Education (SDE) by January 1, 2005, to develop criteria for procedures for removing a student from the gifted and talented program. The regulation also requires districts to develop appropriate written procedures that are consistent with the SDE criteria for removing a student from the gifted and talented program (24 S.C. Code Ann. Regs. 43-220.II.(B)(8)(c)). The Evaluation Placement team is responsible for developing these procedures and for final decisions relative to removal of a student from the program.

Removal is defined as discontinuing the participation of a student in the program. Prior to removal from a gifted and talented program, a student must be placed on probation.

Probation is defined as critically examining and evaluating the performance of a student with prescribed interventions for a period of time while the student remains in the program.

Both probation and removal require appropriate counseling with the student and documented conferences with the student, the student's parent(s), and teachers. Records of any assessment, evaluative measures, and other relevant student information must be maintained in a confidential manner.

Removal from the Pullout/Resource Room

Gifted and talented students served in the pullout/resource room program model often experience management problems as they learn to maintain and balance the responsibilities of the regular classroom and the resource room. The skills and strategies to function successfully in these two environments must be taught. Students should not be expected to navigate between these two educational settings without the support of the classroom teacher and the pullout/resource teacher. Frequent

interactions and joint planning between the classroom teacher and the pullout/resource room teacher are critical to the success of students.

In planning for a student to be successful in a pullout/resource room program model, the district must provide

- curriculum in the resource room that is a match with the strength area(s) of the student and
- teachers with the ability and necessary resources to differentiate instruction within the pullout/resource room.

Also, the district must have written policy addressing the essential assignments that must be completed when a student is absent from the regular classroom because of participation in the pullout/resource room program. This policy should establish

- additional time to complete the essential regular classroom assignments (i.e. Assignments missed in the regular classroom and newly assigned homework are not both due the next day.) and
- a process for defining, explaining, and providing in writing the essential assignments to the student.

Neither of the above should not create a punitive environment for the student.

Similar written policy should address assignments that must be completed as part of the gifted and talented pullout/resource room program.

Research on the performance of students in South Carolina's pullout/resource room program models suggests that students need two complete years in the program to make the adjustments of working in a regular classroom and pullout/resource room. To remove a child prior to two years of active participation in a pullout/resource program is a questionable action without substantive concerns for the student's physical, emotional, or social health.

Criteria for Removal from a pullout/resource room program

1. A child has completed two years in the program, and performance in the regular classroom and/or the pullout/resource room has not been acceptable by both the parent(s) and the teacher(s).
2. Regular conferences with the student, teachers, and parent(s) have been conducted and documented.
3. Specific strategies for supporting and improving student performance have been implemented and monitored by the student, parent(s), and teacher(s).
4. Regular counseling has been provided by the school's guidance counselor to support the student during the probation period.
5. Grade point average is not the sole indicator for removal under most circumstances.
6. Performance on PACT is not the sole indicator for removal under most circumstances.
7. Poor behavior is not the sole indicator for removal under most circumstances.
8. A student's social, emotional, or physical health is a factor related to removal from the program.

9. The student and parent(s) are advised that the student may return to full participation in the gifted and talented program at the beginning of the next school year. The student is not required to requalify for participation.

Removal from the Special Class or Special School Program Model

Gifted and talented students served in the special class or special school program model are engaged with a curriculum that reflects acceleration and enrichment in a specific discipline. Both the special class and special school model recognize that students display high ability or potential in some academic areas but not in others.

To be successful in the special class model, a gifted and talented student must be placed in a special class that corresponds with the strength(s) of the learner. For example, it would be inappropriate to place a child in a language arts special class if a child's only strengths were non-verbal/quantitative and mathematical.

To be successful in the special school model, a gifted and talented student must be provided with classes that correspond with the strength(s) of the learner and classes that compensate for and support academic weaknesses of the learner. As stated earlier, gifted and talented students may display high ability or potential in some academic areas but not necessarily in all academic areas.

In planning for a student to be successful in a special class or special school program model, the district must provide students with

- a special class or special school that is a match with the strength area(s) of the student;
- curriculum for the special class or special school that is differentiated and articulated in a written scope and sequence;
- teachers with the ability and necessary resources to differentiate instruction within the academic area(s);
- processes and strategies for gathering diagnostic data on student performance level(s) and monitoring student performance; and
- policies regarding assignments that must be completed as part of the special class program.

If a student is removed from a special class or special school and returned to the regular class or school, the ability of the student to perform adequately in the special class or special school must be addressed. Adequate performance must not be measured solely by grades. Careful consideration must be given to providing academic support, accommodating learning styles, ensuring a curriculum match with the student's strengths, addressing motivational issues, and attending to any social, emotional, or physical concerns that might affect student performance.

Criteria for Removal from a special class or special school program

1. A child has completed a minimum of one report card grading period but no more than a semester in the special class or special school, and performance has not been acceptable by both the parent(s) and the teacher(s).
2. Regular conferences with the student, teacher(s), and parent(s) have been conducted and documented throughout the grading period(s).
3. Specific strategies for supporting and improving student performance have been implemented and monitored by the student, parent(s), and teacher(s).
4. General counseling to support the student has been provided regularly by the school's guidance counselor.
5. Grade point average is not the sole indicator for removal under most circumstances.
6. Poor behavior is not the sole indicator under most circumstances.
7. A student's social, emotional, or physical health is a factor related to removal from the program.
8. The student and parent(s) are advised that the student may return to full participation in the gifted and talented program at the beginning of the next school year. The student is not required to requalify for participation.

Removal of a Student by a Parent

If a parent wishes to remove his or her child from the gifted and talented program, the parent should complete a "Request for Removal" form specifying the reasons for this request. A sample form is provided. This form will be given to the district coordinator of gifted and talented programs who will conduct a meeting of the Evaluation Placement team with the student, parent, and teacher present. The Evaluation Placement team will have the final authority for approving or denying the request. When responding to the request of a parent, the same criteria for removal should be applied whenever possible. If a student is removed from the gifted and talented program at the request of a parent, the student may return to full participation in the gifted and talented program at the beginning of the next school year. The student is not required to requalify for participation.

Parent/Guardian Request for Removal of Student from the Gifted Program

I request that my child _____, be removed from the gifted and talented program. I understand that if my child is removed from the gifted and talented program, he/she may not participate for the remainder of this current school year. Further, I understand that my child will not be required to requalify for service in the gifted and talented program and will be eligible to return for service at the beginning of the next school year. It is my responsibility to advise the school if I wish for my child to return to the gifted and talented program since he/she will have missed a significant portion of the curriculum designed for gifted and talented students.

I am requesting the removal of my child for the following reason(s):

I understand that the Evaluation and Placement team for the gifted and talented program will review this request and notify me in writing of a date and time to discuss this request.

_____ Date

_____ Signature of Parent

Name of Student _____

School _____ Grade _____

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Sample Documents

Sample A - Sample Concept Maps (Pre- and Post-Assessment)

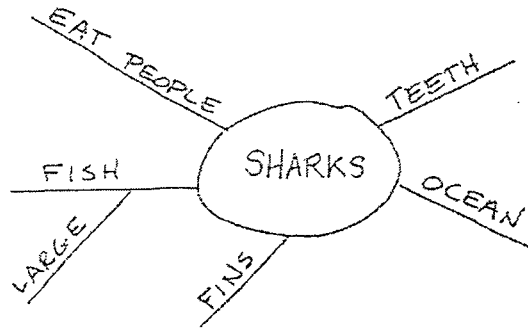
Grade Level: 4

Instructional Unit: Independent Study

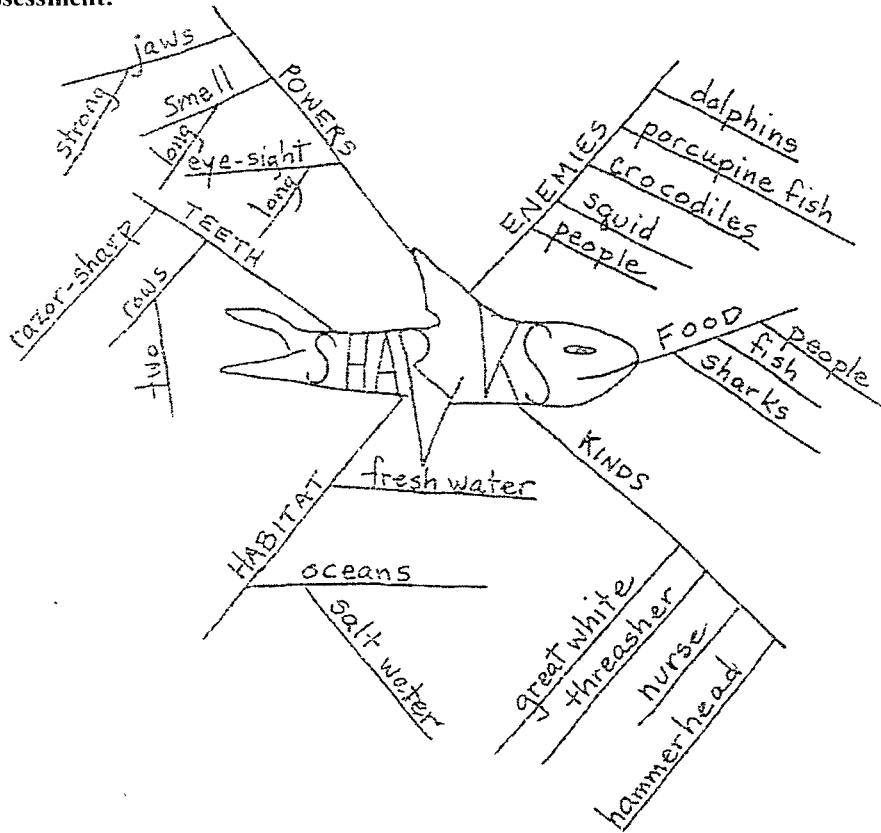
Student: (No prior experience in concept mapping)

Curriculum Theme: Power

Pre-Assessment:



Post-Assessment:



Sample B

Sample Evaluation Plan – Constructing a Bibliography
Time Period: Growth from Grade 3 through Grade 10
Developmental Stages: <ul style="list-style-type: none"><input type="checkbox"/> No bibliography<input type="checkbox"/> Author and title on note cards<input type="checkbox"/> Written bibliography specifying author and title in correct style<input type="checkbox"/> Written bibliography specifying author, title, publisher, place of publication, and date of publication in correct style<input type="checkbox"/> Written bibliography containing complete entries in correct style for books, periodical articles, encyclopedia articles, electronic and audio-visual materials<input type="checkbox"/> Written bibliography containing complete entries in correct style for all of the above, plus interviews, observations, experimental data, electronic data, surveys, and other sources<input type="checkbox"/> Written annotated bibliography which meets all criteria listed above
Checkpoints: <p>The student's bibliography will be assembled and evaluated each year at the conclusion of the student's annual research project.</p>
Documentation: <p>The student will develop a bibliography portfolio. This may be either a paper file or an electronic file. Each year, the student will add to the portfolio a copy of the bibliography produced for that year's research project and the scoring rubric which shows the evaluation of the student's level of proficiency at that point.</p>
Evaluation of Growth: <p>Every year after the first year, the student will explain in a parent/teacher/student conference how he/she has grown from the previous checkpoint and what he/she plans to do to continue to grow from the current level of performance. The goals for growth set at each conference will be included in the student's portfolio.</p>

Sample C

Sample District Procedures for Review of Placement

Withdrawal Requests:

If a student wishes to withdraw from the gifted and talented program, he/she will complete a "Request for Withdrawal" form specifying the reason(s) for the request. The form will be given to the coordinator, and the coordinator will initiate the review process.

A parent or guardian who wishes to withdraw his/her student from the gifted and talented program will complete a "Request for Withdrawal" form and give it to the coordinator. The coordinator will initiate the review process.

Requests for Review of Placement:

A teacher who feels that a student may be misplaced in the gifted and talented program may complete a "Request for Review" form and give it to the coordinator. The coordinator will initiate the review process.

Review Process:

Upon receiving a withdrawal request or a request for review of placement, the coordinator will schedule a conference with the initiating party to gather additional information about the request. The coordinator will schedule other conferences and gather other information as needed to develop a full picture of the student's situation. The coordinator will schedule a meeting with the Evaluation/Placement Team to share the data collected and initiate a child study involving the student, parent/guardian, and teacher(s). Appropriate questions for the Evaluation/Placement Team are as follows:

- What is the reason for the request?
- Do the curriculum and instructional strategies match the student's needs?
- Are the needs of the student being met in the regular classroom?
- Is excessive homework a contributing factor?
- Are there any underlying factors that need to be addressed?
 - ◆ motivation?
 - ◆ academic strength/class mismatch?
 - ◆ skill deficits or content knowledge deficits?
 - ◆ lack of access to resources (e.g., materials, library)?
 - ◆ study skill deficits?
 - ◆ time-management problems?
 - ◆ learning style mismatch?
 - ◆ other?
- How can the situation be addressed through provision of support services?
- What interventions will be implemented and what time frame will be established?
- Is an adjustment in placement warranted? If so, what is the best placement for the student?

Chapter 5 - Program Evaluation

Evaluation should always be directed toward bold action that hopefully will result in the improvement of services to [gifted and talented] students through the continuation, modification, or elimination of conditions which affect learning.

—Joseph Renzulli
Director of the National Research Center on the Gifted and Talented

Introduction

Regulation 43-220 requires that school districts submit a gifted and talented plan every three years and report on progress annually (24 S.C. Code Ann. Regs. 43-220.2 (A)(1)(a-e)). While not a formal, external program evaluation, the process requires districts to assess current program status relative to *R43-220* and to establish goals in areas identified by the State Department of Education (SDE). This planning process offers one route to evaluate student performance and the effectiveness of educational programs for gifted and talented students.

Evaluation of program effectiveness involves a two-fold process:

- 1) ensuring that the program conforms to *R43-220* and includes all components that characterize an effective program;
- 2) designing and implementing a plan for on-going program evaluation.

This chapter addresses both aspects of the evaluation process: evaluating the current status of the school district's gifted and talented program and establishing a plan for on-going program evaluation.

Components of an Effective Gifted Education Program

To evaluate the current status of the district's gifted and talented program, school district personnel must examine the program relative to the components that characterize an effective program, making sure that the program conforms to the requirements specified in *R43-220*.

The National Association for Gifted Children in 1998 published program standards for pre-k through grade twelve to assist districts in examining the quality of their programs for gifted learners. These standards, which range from minimum to exemplary, can be an excellent resource for assessing gifted programs.

The Standards are divided into seven programming criterion areas.

Program Design

The development of appropriate gifted education programming requires comprehensive services based on sound philosophical, theoretical, and empirical support.

Program Administration and Management

Appropriate gifted education programming must include the establishment of a systematic means of developing, implementing, and managing services.

Student Identification

Gifted learners must be assessed to determine appropriate educational services.

Curriculum and Instruction

Gifted education services must include curricular and instructional opportunities directed to the unique needs of the gifted child.

Socio-Emotional Guidance and Counseling

Gifted education programming must establish a plan to recognize and nurture the unique socio-emotional development of gifted learners.

Professional Development

Gifted learners are entitled to be served by professionals who have specialized preparation in gifted education, expertise in appropriate differentiated content and instructional methods, involvement in ongoing professional development, and who possess exemplary personal and professional traits.

Program Evaluation

Program evaluation is the systematic study of the value and impact of services provided.

Another significant resource for program planning and evaluation is *Designing Services and Programs for High Ability Learners: A Guidebook for Gifted Education* (2005) published by NAGC and Corwin Press. All districts should consult this resource when planning and evaluating local programs to understand best practices in gifted education.

This section describes briefly the components of an effective gifted and talented program. The Sample Documents at the end of the chapter include a checklist of these components that can be used to guide the evaluation of current program status. (See Sample A, page 5-10).

Mission Statement

The district's vision and mission should address students who are gifted and talented. The district's gifted and talented program should have a mission statement that focuses on enhancing the intellectual and academic development of gifted and talented students. The mission statement articulates clearly and succinctly the purpose of the program.

◆ Program Goals and Objectives

The gifted and talented program should have a set of clearly written goals and objectives to direct the program activities. These goals and objectives should be consistent with best practices for gifted and talented programs.

◆ Program Design and Service Delivery Model(s)

The gifted and talented program should deliver services to identified students through a model or models that facilitate achievement of the program goals. The selected model(s) should be supported by research as effective in advancing the intellectual and academic development of gifted and talented students. Approved program models are described in R43-220 and in Chapter 4 of this manual.

◆ Written Scope and Sequence

An effective gifted and talented program has a scope and sequence that specifies curriculum goals and objectives that will enable gifted and talented students to develop their potential to the highest possible level. The scope and sequence should be consistent with the overall goals of the gifted and talented program, the curriculum requirements stated in R43-220, and the recommendations in Chapter 2 of this manual (24 S.C. Code Ann. Regs. 43-220.2(A)(1)(a) and 43-220.2(A)(2)).

◆ Written Curriculum

The gifted and talented program should include written curriculum units and/or syllabi that teachers can implement with students to maximize their potential and to meet the expectations set forth in the written scope and sequence. The curriculum units/syllabi should incorporate principles of differentiation for the gifted and talented and be consistent with the recommendations in Chapter 2 of this manual.

◆ **Student Assessment Procedures**

An effective program has measures to document student achievement of curriculum goals and objectives. The gifted and talented program should have procedures for assessing, evaluating, and reporting student progress at the classroom level and at the district level. (See Chapter 3 of this manual.)

R 43-220 requires districts to review annually, summarize and report gifted students' performance on PACT, AP exams, IB exams, SAT, and ACT (24 S.C. Code Ann. Regs. 43-220.2(D)(2)).

Program Evaluation Design

Effective programs are constantly improving through on-going evaluation and implementation of any needed changes. The gifted and talented program should have a plan for on-going program evaluation.

◆ **Identification Procedures**

The gifted and talented program should have written identification procedures that are consistent with R43-220 and provide equity of access for qualified students (24 S.C. Code Ann. Regs. 43-220.2(B)). These procedures should be articulated for school staff members and for parents and community members who may wish to refer a student for gifted and talented program placement. (See Chapter 8 of this manual.)

◆ **Evaluation/Placement Team**

The gifted and talented program must utilize an Evaluation/Placement Team. The evaluation step of the identification process is the responsibility of the Evaluation/Placement Team within the school or district (24 S.C. Code Ann. Regs. 43-220.2(B)(8)). R 43-220 specifies that the team should be composed of a teacher, an administrator, and a psychologist (if employed by the district) at the least. It is highly recommended that the administrator be the district gifted and talented coordinator. The team may also include a guidance counselor and a community-related person whose training and expertise qualifies him or her to appraise the special competencies of students. Districts may choose either to have one team for the district as a whole or to have a team at every school. If the latter choice is selected, one team member should serve on all teams in order to ensure consistency within the district.

The evaluation and placement team is responsible for interpreting and evaluating student data in such a way that appropriate placement in the gifted and talented program is ensured (24 S.C. Code Ann. Regs. 43-220.2 (B)(8)(b)). The team may require additional testing of a student before determining his or her placement in the gifted and talented program. (For further information, see Chapter 8 of this manual. Also, see Review of Placement in Chapter 3.)

◆ **Written Policy on Probation, Leave, and Withdrawal**

An effective gifted and talented program articulates procedures for student withdrawals and temporary leaves from programming. Programs that place students on probation should have written procedures to guide this process. (See Review of Placement, Chapter 3, pages 3-13 through 3-17.) The evaluation and placement team is responsible for developing appropriate written procedures for probation and removing a student from the gifted and talented program (24 S.C. Code Ann. Regs. 43-220.2(B)(8)(c)). The probation and removal policies of the district must conform to the state guidelines from the Office of Curriculum and Standards. Appropriate counseling with the student, as well as conferences with the student's parents/guardians and teachers, must precede his or her removal from the program. Records of any assessment and evaluative measures and other student information must be maintained in a confidential manner.

◆ **Support Services**

In addition to instructional services, gifted and talented programs must provide support services that facilitate student learning (24 S.C. Code Ann. Regs. 43-220.2(A)(1)(B)). Such support services include school guidance and counseling, academic support, technology, staff development, academic competition, and parent education. (See Chapter 7 of this manual.)

◆ **Professional Development Plan**

The gifted and talented program should include professional development appropriate for total school staff, as well as for gifted and talented program personnel. Professional development related to gifted and talented education should be an integral part of the district's staff development plan. (See Chapter 6 of this manual.) Assessment of expected changes resulting from professional development activities as well as follow-up strategies should be part of an effective professional development plan.

Procedures for Record-Keeping and Reporting

R43-220 requires that gifted and talented programs keep accurate records of data for periodic reporting to the state. Documentation is also necessary for on-going program evaluation (24 S.C. Code Ann. Regs. 43-220.2(D)). School district personnel should develop procedures for record keeping that will enable the district to meet the reporting and evaluating requirements for gifted and talented programs. (For information on reporting requirements, see Chapter 9 of this manual.)

◆ **Program Websites, Brochures and Handbooks**

Effective programs publish websites, brochures and handbooks to communicate program information to appropriate audiences. The district's gifted and talented program should provide public information websites, brochures and handbooks for parents and staff members. Publications should

include the state definition of gifted and talented, identification procedures, program goals, and a curriculum overview.

◆ **Rationale for Each Program Component**

The components of an effective program work together to facilitate the achievement of program goals. The gifted and talented program should have a written rationale for each component, indicating the significance of that component within the context of the entire program. The components should come together to form a coherent whole.

On-Going Program Evaluation

“The fundamental role of evaluation is to provide information that can be used to improve and advance the state of the art of gifted programs” (VanTassel-Baska, 2004, p.23). Every gifted and talented program needs a systematic plan for evaluating program effectiveness. Is the program accomplishing its goals? If not, where do adjustments need to be made? The evaluation plan should focus on the appropriateness and effectiveness of the program in meeting the needs of the students identified and served. As there is no one “right” program for gifted and talented, each gifted and talented program should be judged in terms of whether it is appropriate and effective within its own setting.

The gifted and talented program evaluation plan should provide for evaluation of all program components during a three-to-five year cycle. It should specify a reasonable timetable so that some components are assessed each year, all components are evaluated over a period of three to five years, and every component is re-evaluated on a regular basis. Provided here are steps to assist district personnel in designing an evaluation plan for a gifted and talented program.

Steps in Developing an Evaluation Design

1. Examine the goals of the program.

Effective gifted and talented programs have written goals that are clearly focused on students’ academic development. School district personnel must analyze existing program goals to insure a strong academic focus. If goals have not been established for the gifted and talented program, developing them is a priority. Key individuals in the school district, as well as outside consultants, can assist with the task of identifying goals and objectives. The district’s gifted and talented program might include goals such as those listed in the table that follows.

Sample Program Goals
<ul style="list-style-type: none"> • To insure that all program components are carried out in accordance with law, regulations, and best practices in gifted and talented education.
<ul style="list-style-type: none"> • To provide a program design that facilitates the effective delivery of services to meet the needs of gifted and talented learners.
<ul style="list-style-type: none"> • To enhance the curriculum for gifted and talented learners by adjusting the pace of instruction, the depth and breadth of content, and the complexity of intellectual processes and products.
<ul style="list-style-type: none"> • To communicate program information effectively.

2. Design a procedure to evaluate each goal.

For each goal of the program, school district personnel must determine how the goal can be measured. As each goal is considered, district personnel should address the following issues:

1. What questions need to be answered?
2. What data collection methods will be used for each question (e.g., interviews, surveys, observations, checklists, tests)?
3. How will school district personnel organize and analyze the data collected?
4. To whom will school district personnel report the data once collected? (Clearly identify each group or audience—e.g., school district administrators, program teachers, parents.)
5. How will data be reported to each group?

Sample B provides examples of responses to each of these issues, using the sample program goals from the table above.

As a part of this step in designing the evaluation plan, school district personnel should construct any observation forms, surveys, or other data collection instruments needed to implement the plan. The Sample Documents at the end of this chapter include several examples of data collection instruments—a classroom observation form compare this to form as revised (Sample C) and parent survey compare this one too (Sample D).

3. Establish a timetable for implementing the evaluation design.

School district personnel must determine how often each program goal should be evaluated in order to ensure that the program is meeting student needs in accordance with R43-220 and best practices. Some aspects of the program may need to be evaluated annually or biannually; other aspects may need to be evaluated less frequently—perhaps every three to five years. The timetable can be adjusted if an aspect of the program needs evaluating more or less frequently than originally planned. Sample E illustrates a simple timeline for implementing an evaluation plan, using the sample program goals..

4. Implement the evaluation design.

With an evaluation design in place, school district personnel can then begin to carry out the evaluation plan. Provisions should be made to review and adjust the evaluation design as needed.

5. Learn from evaluation results

As evaluation data are compiled and studied, areas that need improvement will be identified. Since the purpose of program evaluation is improving areas of weakness, school district personnel should incorporate program changes indicated by evaluation data .



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Sample Documents

Sample A

Program Component Checklist

An effective program has the following components:

- Mission Statement
- Program Goals and Objectives
- Program Design and Service Delivery Model(s)
- Written Scope and Sequence
- Written Curriculum
- Student Assessment Procedures
- Program Evaluation Design
- Identification Procedures
- Evaluation/Placement Team
- Written Policy on Probation, Leave, and Withdrawal
- Support Services
- Professional Development Plan
- Procedures for Record-Keeping and Reporting
- Program Websites, Brochures and Handbooks
- Rationale for Each Program Component

Sample B

Evaluation of Sample Program Goals					
Sample Goal	Sample Questions	Data Collection Methods	Organization & Analysis of Data	Audiences	Reporting Methods
Goal 1: Insuring that all program components are carried out in accordance with law, regulations, & best practices.	Is the program insuring equity of access to all students?	Documentation of: <ul style="list-style-type: none"> • Notification • census testing • referrals 	List of the requirements in law, <i>R43-220</i> , & <i>Best Practices Manual</i> , with areas of compliance & deficiency noted	Program administrator Evaluation/Placement Team District administrators SDE	Written report
Goal 2: Providing a program design that facilitates effective delivery of services to meet student needs.	Does program model used for each grade level meet the learning needs of all identified students?	Class rosters Progress reports Student profiles Current test data Permanent records Parent interviews List of students no longer participating	Summary of student performance in program Chart of student profile vs. program placement Summary of parent survey responses Attrition rates	Program administrator Evaluation/Placement Team Guidance counselor School & district administrators	Charts & narrative summaries
Goal 3: Enhancing the curriculum for gifted & talented learners.	Are students using complex intellectual processes in their classes?	Classroom observations	List of processes used in classes, with frequency observed	Program teachers Program administrator	Conferences with teachers Staff development session
Goal 4: Communicating program information effectively.	Are parents informed about the programs in which their children are participating?	Copies of communications Sign-in sheets from parent meetings Agendas of parent meetings Parent survey	List of types of communications List of topics on which parents: 1) have been informed, & 2) should have been informed, but were not Summary of parent survey responses.	Program administrator School & district administrators Program teachers	Summary of findings from lists, along with analysis of parent responses

Sample C

Sample Classroom Observation Form							
Observer _____		Date _____		Time _____			
School _____			Grade _____				
Teacher _____			Course/Subject/Unit Observed _____				
Student Information: Total # _____		Observed Gender: #Boys _____		#Girls _____			
Observed Ethnicity: #White _____		#AfricanAm _____		#Hispanic _____		#AsianAm _____	
						#Other _____	
Service Delivery Model: Self-contained Resource Room/Pull-out Special class Other _____							
Description of Lesson Observed _____ _____ _____							
Rating of Teacher Behaviors							
<i>1 = Observed 2 = Not Observed 3 = Not Applicable A = Highly Evident B = Evident C = Not Evident</i>							
Teacher Behavior	1	2	3	Comments	A	B	C
Use of activities/techniques that enable students to:							
◆ Evaluate situations, problems, issues							
◆ Compare and contrast ideas and issues							
◆ Generalize from concrete to abstract							
◆ Explore diverse points of view/ reframe ideas							
◆ Generate many diverse thoughts on ideas/issues							
◆ Infer from data and draw conclusions							
◆ Conduct inquiry and construct meetings							
◆ Solve complex problems							
ADDITIONAL COMMENTS:							

NOTE: Adapted from a form developed by the Center for Gifted Education, The College of William and Mary.

Sample D

Sample Parent Survey							
<p>Dear Parents/Guardians: We are currently assessing the effectiveness with which we communicate with parents/guardians regarding the gifted and talented program and the progress of students in the program. To assist us, please complete the following survey and return it to the school office in the envelope provided.</p>							
<p>Directions: Please circle the number that indicates how well you have been informed about each of the following:</p>							
	No Information		Some Information			Well Informed	
The gifted & talented curriculum	0	1	2	3	4	5	6
Your child's progress	0	1	2	3	4	5	6
Field studies	0	1	2	3	4	5	6
Weekly program assignments	0	1	2	3	4	5	6
Gifted & talented identification	0	1	2	3	4	5	6
Needs of identified students	0	1	2	3	4	5	6
Parent education opportunities	0	1	2	3	4	5	6
Procedures for re-evaluation of student placement	0	1	2	3	4	5	6
<p>Directions: Please circle the number that indicates how helpful you have found the following materials and opportunities:</p>							
	Didn't see or attend	Couldn't read or understand	Some help	Clear	Very helpful		
Program newsletter	0	1	2	3	4		
Letters from program teachers	0	1	2	3	4		
Parent handbook	0	1	2	3	4		
Parent orientation meeting	0	1	2	3	4		
Open House	0	1	2	3	4		
Conferences with teachers	0	1	2	3	4		
<p>Please indicate below any information you would like to receive about the gifted and talented program.</p>							

Sample E

Sample Evaluation Timetable						
	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011
Goal 1 (Program Components): ♦ Program delivery models ♦ Identification procedures ♦ Record-keeping and reporting NOTE: This is a partial list of Program Components.		X		X		X
Goal 2 (Delivery of Services): ♦ Elementary level ♦ Middle school level ♦ High school level	X			X		
Goal 3 (Curriculum Enhancement): ♦ Pace of instruction ♦ Depth and breadth of content ♦ Complex processes and products	X		X		X	
Goal 4 (Effective Communication): ♦ Communication with parents ♦ Communication with school staff	X	X	X	X	X	X

Chapter 7 - Support Services

Teachers, parents, support personnel, and mentors are all critical in the development of the whole [gifted and talented] child.

—Ken Seeley
Colorado Foundation
Denver, Colorado

Introduction

All students should have access to support services, but gifted and talented students by their nature have unique needs requiring specialized services (24 S.C. Code Ann. Regs. 43-220.2(A)(1)(b)). This chapter examines the following types of services or resources: school guidance, academic support (including academic competitions), technology, parent education, and national and state organizations.

School Guidance Services

Developmental Counseling

A developmental counseling program should foster both the cognitive and affective growth of gifted and talented students. One of the primary goals of the counselor should be to ensure that identified students, particularly those in underserved populations, have the support needed to remain in the gifted and talented program. An effective school guidance program must identify and implement strategies to help gifted and talented students meet success in their differentiated curriculum.

Developmental counseling should include individual and group counseling sessions. In individual sessions, gifted and talented students can learn to understand their strengths and weaknesses as decision-makers and to take responsibility for their lives. In group sessions, the counselor can address topics of common concern to gifted and talented students.

According to Colangelo (1997), school guidance services should include a developmental counseling program with the following components:

- ◆ An articulated and coherent rationale;
- ◆ A program of activities based on the affective and cognitive needs of gifted and talented students;
- ◆ Trained counselors who are well grounded in counseling and in giftedness;
- ◆ A minimum of attention to rehabilitative services, but a strong component of individual, family, and teacher consultations;
- ◆ Input and participation from teachers, administrators, parents, and the students who are served; and
- ◆ Provision for the continued professional development of the counselor so that he or she can keep pace with the latest research and practices in counseling gifted and talented students.

The developmental counseling program for gifted and talented students must recognize a consistent set of issues and concerns that can affect this population. The list below indicates the set of gifted and talented student concerns identified by Strop (1983).

- ◆ Establishing and maintaining positive relationships with peers;
- ◆ Dealing with oversensitivity to what others say and do;
- ◆ Making appropriate career choices;
- ◆ Developing the ability to relax and relieve tension;
- ◆ Maintaining the motivation and desire to achieve;
- ◆ Developing positive leadership skills;
- ◆ Getting along with siblings;
- ◆ Developing tolerance;
- ◆ Dealing with striving for perfection;
- ◆ Avoiding prolonged periods of boredom.

Similarly, Silverman (1994) lists specific issues or problems that gifted and talented students may face due to their situations or personalities.

- ◆ Underachievement
- ◆ Depression (often masked as boredom)
- ◆ Hiding abilities
- ◆ Understanding their introversion
- ◆ Uneven development
- ◆ Excessive competitiveness
- ◆ Hostility of others toward their abilities
- ◆ Feeling overly responsible for others
- ◆ Being overshadowed in the family by the oldest sibling
- ◆ Hidden handicaps
- ◆ Lack of true peers

Taking these needs into consideration, Silverman (1994) recommends the following topics for an affective program designed for gifted and talented students.

- | | |
|----------------------------|---------------------------------|
| ◆ Understanding Giftedness | ◆ Social Skills |
| ◆ Self-Expectations | ◆ Dealing with Stress |
| ◆ Fear of Failure | ◆ Sensitivity |
| ◆ Expectations of Others | ◆ Tolerance |
| ◆ Feeling Different | ◆ Family Dynamics |
| ◆ Uneven Development | ◆ Responsibility for Others |
| ◆ Introversion | ◆ Developing Study Habits |
| ◆ Peer Pressure | ◆ Developing Leadership Ability |
| ◆ Competitiveness | ◆ Career Exploration |
| ◆ Guilt | |

The table below (from VanTassel-Baska, 1998) illustrates how school counselors can address the needs of the gifted and talented in a developmental counseling program.

Linkage of Counseling Needs of the Gifted to Strategies for Intervention	
Social-Emotional Needs of the Gifted	Strategies to Address the Needs
To understand the ways in which they are different from other children and the ways in which they are the same	<ol style="list-style-type: none"> 1. Use bibliotherapy techniques 2. Establish group discussion seminars 3. Hold individual dialogue sessions
To appreciate and treasure their own individuality and the individual differences of others	<ol style="list-style-type: none"> 1. Promote biography study 2. Honor diverse talents through awards, performance sessions, special seminars, and symposia 3. Encourage contest and competitive entry
To understand and develop social skills that allow them to cope adequately within relationships	<ol style="list-style-type: none"> 1. Teach creative problem solving in dyads and small groups 2. Create role-playing scenarios 3. Devise appropriate simulation activities
To develop an appreciation for their high-level sensitivity that may manifest itself in humor, artistic endeavors, and intensified emotional experiences	<ol style="list-style-type: none"> 1. Encourage positive and expressive outlets for sensitivity, such as tutoring, volunteer work, art, music, and drama 2. Promote journal writing that captures feelings about key experiences
To gain a realistic assessment of their ability and talents and how they can be nurtured	<ol style="list-style-type: none"> 1. Provide for regular testing and assessment procedures 2. Provide for grouping opportunities with others of similar abilities and interest
To develop an understanding of the distinction between the "pursuit of excellence" and the "pursuit of perfection"	<ol style="list-style-type: none"> 1. Create a "safe" environment to experiment with failure 2. Promote risk-taking behavior
To learn the art and science of compromise	<ol style="list-style-type: none"> 1. Provide "cooperation games" 2. Work on goal setting 3. Encourage the development of a philosophy of life

Career Counseling

As with developmental counseling, school counselors must have an understanding of the unique nature and needs of the gifted and talented in order to provide effective career guidance. An often overlooked problem for multi-talented students is choosing which of their interests to pursue vocationally and which to keep as avocational. While some gifted and talented children know from an early age “what they want to be when they grow up,” others may delay their career decisions. Counselors need to understand and honor this situation while helping students explore varied career opportunities and options. The assumption that gifted and talented students do not need career counseling is false.

According to Silverman (1993), career counseling for gifted and talented students should be sensitive to their multiple interests, the existential dilemmas they face in making choices, their fear of making an error, their fear of being less than ideal or not living up to their potential, the depth of their sadness over the road not taken, and their fear that if they try to nurture all their potentials, they will end up second rate at everything.

An effective career counseling program may assist gifted and talented students by

- ◆ Preparing them for many options;
- ◆ Providing them with information about careers in which they would have the opportunity to synthesize interests from many fields;
- ◆ Allowing them to delay decision-making until college;
- ◆ Giving them real-life experiences in some of their interest fields;
- ◆ Discussing the possibility of serial or concurrent careers;
- ◆ Helping them determine which of their interests they could maintain as avocations;
- ◆ Suggesting the possibility of creating new careers;
- ◆ Exploring life themes as a basis for career choice.

Some futurists are predicting that today’s students will have several careers and many different kinds of jobs during their professional lives. Therefore, students must be given information about how their strengths and interests relate to various fields of endeavor and numerous careers. Real-life experiences can help gifted and talented students gain perspective on their career possibilities. Examples of such experiences include the Executive Internship Program, mentoring or shadowing, and service learning projects or volunteer work. Each of these opportunities is described more fully in the following table.

Examples of Real-Life Experiences
<p>Executive Internship Program</p> <p>This program enables students to spend time with professionals at the work site and in areas in which students have interests. Students keep logs of their field experiences, complete related assignments, and receive high school credit for their participation in the program.</p>
<p>Mentoring and Shadowing</p> <p>Like the Executive Internship Program, a mentoring program can provide a student with the opportunity to work with and learn from a practicing professional. Shadowing experiences can serve a similar function. The latter may be especially helpful to students who have a wide variety of interests and aptitudes.</p>
<p>Service Learning Projects & Volunteer Work</p> <p>Students can also gain real-life experiences through service learning projects and volunteer work in the community. Counselors can assist students with these opportunities by finding qualified adults or service organizations in the community, helping students plan and organize the experiences, and ensuring that students take time to reflect on their experiences.</p>

College Counseling

College counseling for gifted and talented students must begin in middle school. School counselors should steer students toward appropriate classes that will prepare them for Advanced Placement and/or International Baccalaureate coursework in high school. Parents of gifted and talented students must understand the importance and implications of coursework selection in the middle school.

Gifted and talented students should take the most challenging courses possible to prepare them for the rigors of high school studies, the ACT/SAT, and admission to the college of their choice. Such middle school choices establish the foundation for student success in high school and beyond.

Early in high school, gifted and talented students and their parents should be given information on college requirements for admission, along with scholarship opportunities. Students should know where to obtain college catalogs and how to access college websites. Taking the PSAT/PLAN and/or SAT/ACT annually in high school enables the student to provide information to colleges and may help the student to improve his/her scores. The gifted and talented student may learn from this practice

that specific colleges are interested in having him/her on their campus. Many colleges actively recruit academically gifted and talented students based on their performance.

School counselors should make gifted and talented students aware of the many factors that competitive colleges and universities examine when considering candidates for admission. In addition to grade point averages, class rank, and ACT/SAT scores, college admission criteria usually include experiences such as extracurricular activities, community service, and leadership positions. Also of increasing importance are character traits communicated through essays and interviews.

Technology can help counselors guide students along the sometimes confusing path to higher education. Many large high schools have college and career centers equipped with the latest software to enable students to analyze career choices, compare college programs and costs, seek scholarships, and prepare polished applications. This type of service provides a competitive edge and places pressure on all high school counselors to ensure that their students have the best guidance available in the college admissions and scholarship process.

Issues for Intervention

Underachievement

Researchers have conducted a number of studies on the incidence of underachievement among gifted and talented students. Academic underachievement may start with some boys as early as kindergarten, while surfacing among girls more commonly in the middle school years. Research findings indicate that as many as half of our gifted and talented children do not perform up to their academic potential. Studies of high school dropouts show that up to twenty percent of this group may be gifted and talented (Davis & Rimm, 2004).

Researchers and educators typically define underachievement as a discrepancy between ability and performance. The Sample Documents at the end of the chapter include a checklist that can assist school counselors in identifying gifted and talented underachievers. (See Sample A, page 7-19.)

Whitmore (1980) described school environments that may contribute to underachievement of gifted and talented students. Environmental factors identified by Whitmore include a lack of respect for the individual child, a strongly competitive climate, emphasis on outside evaluation, inflexibility and rigidity, overattention to errors and failure, an “all controlling teacher, and an unrewarding curriculum.”

Some of the more prominent characteristics of gifted and talented underachievers are low self-esteem, defensive avoidance of threatening academic tasks, skill deficiencies, poor study habits, problems with peers, and discipline problems. These problems may also exist in the home.

To address the problem of underachievement, guidance counselors can set up study skills groups and time management classes, emphasize responsibility and respect for education, and assist students with peer relationships. Teachers and counselors can help underachieving students see the relationship between effort and outcome. They can also facilitate communication between home and school. Counselors can make parents aware of community resources, such as family counseling centers that may provide additional assistance.

Rimm's TRIFOCAL model (Davis & Rimm, 2004) has shown great promise for reversing underachievement in gifted and talented students. The TRIFOCAL model requires the following six steps:

1. Assessment of skills, abilities, reinforcement contingencies, and types of underachievement;
2. Communication between parents and teachers;
3. Changing the expectations of parents, teachers, peers, and siblings;
4. Encouraging identification with achieving role models (mentors);
5. Correcting skill deficiencies;
6. Modifying home and school reinforcements that currently support underachievement.

Perfectionism

Perfectionism can create great difficulties for some gifted and talented students. Perfectionism among the gifted and talented may result from receiving “all A’s” and continued praise from both teachers and parents. As children internalize extreme praise over a period of years, they tend to depend on this external reward system for self-fulfillment, and they exert strong pressure on themselves to perform at a level that elicits such praise.

In addition to self-pressure, many students become victims of parent, peer, and societal pressure to achieve at higher levels. The gifted and talented student may develop unrealistic expectations of perfection in all areas of performance and, when this cannot be maintained, feel like a failure. This can result in a life filled with worry, self-imposed guilt, the tendency to overwork, or the avoidance of risk. Perfectionism is a heavy burden that, in its extreme, may cause illness or may even be associated with suicide.

Students must come to realize that perfection is impossible. They need to understand the difference between “doing your best” and “overdoing it”—between a reasonable pursuit of excellence and compulsive perfectionism. Gifted and talented students must learn that it is okay to be wrong: we learn from our mistakes. The gifted and talented must be able to take chances and laugh at themselves.

Learning to balance schoolwork, social obligations, family activities, and recreation is a life-long struggle for the perfectionist. It is the responsibility of school counselors and teachers to help gifted and talented students learn to balance all parts of their lives. Group counseling sessions—where gifted and talented students can discuss the issues of perfectionism—are appropriate. In the classroom, teachers can create a safe environment where students can experiment without fear of failure and practice risk-taking behaviors.

Often perfectionism is more apparent in the home than at school. Parents may see the child staying up late at night and/or giving up recreational activities to perfect an assignment, as well as quarreling with siblings who disturb him/her. At school, the end result (i.e., the “perfect assignment”) may be all that is noticed. The school counselor should encourage parents to report signs of excessive perfectionism in their child. In addition, counselors and teachers should look for signs of too little sleep and exquisite detail in homework assignments.

Severe cases of perfectionism should be referred to psychological or medical professionals for treatment.

Academic Support Services

A myriad of academic support programs and experiences are available to encourage gifted and talented students to reach their potential. Those opportunities include academic assistance programs, advanced coursework, school extension programs, academic recognition programs, programs offered through community organizations, and academic competitions.

Academic Assistance Programs

Some gifted and talented students may demonstrate a need for additional support in basic skill achievement. These students must receive academic assistance through appropriate programs and services. Such support could include tutoring, special classes, extended day programs, and computer assisted instruction. Gifted and talented students with special needs must be referred to appropriate special services programs and agencies.

Advanced Coursework

- ◆ Dual enrollment: the practice of enrolling in a college or university while enrolled in high school to earn high school and college credit simultaneously
- ◆ Concurrent enrollment: the practice of enrolling in a college or university to earn college credit while attending high school
- ◆ The College Board Advanced Placement Program (high school AP courses)
- ◆ The International Baccalaureate Program (prescribed programs of study for elementary, middle and high school)
- ◆ The Governor's School for Arts and Humanities (residential program in Greenville, SC, for grade 11 and 12 and special summer programs)
- ◆ The Governor's School for Math and Science (residential program in Hartsville, SC, for grades 11 and 12 and special summer programs)

School Extension Programs

- ◆ Saturday Academies: enrichment and preparatory programs
- ◆ Seminars
- ◆ Summer enrichment and preparatory programs
- ◆ Extended day experiences

Academic Recognition Programs

- ◆ South Carolina Junior Scholars Program
- ◆ Duke University Talent Identification Program (See page 7-12.)
- ◆ Johns Hopkins University Summer Program for Mathematically Precocious Youth and similar programs at other colleges and universities
- ◆ The Presidential Academic Fitness Program
- ◆ National Honor Societies
- ◆ Beta Clubs
- ◆ Local school and community programs

Opportunities Offered Through Community Organizations

- ◆ Business partnerships, apprenticeships, and mentoring programs

- ◆ Civic clubs (e.g., Scouts, 4-H Club, Boys and Girls Clubs)
- ◆ Civic organization projects (e.g., Junior League, Optimists)
- ◆ Volunteer opportunities
- ◆ Religious activities
- ◆ Community resources (e.g., guest speakers and teachers)

Academic Competitions

- ◆ *American Computer Science League Contest* (Grades 7–12). Association of Computer Science Leagues, P.O. Box 40118, Providence, RI 02940.
- ◆ *Anthology of Poetry by Young Americans* (Grades K–12). American Academy of Poetry, P.O. Box 698, Asheboro, NC 27203.
- ◆ *Arts Recognition Talent Search* (Grade 12). National Foundation for Advancement in the Arts, 3915 N. Biscayne, Miami, FL 33137.
- ◆ *Creative with Words* (Ages 5–18). CWW Publications, P.O. Box 223226, Carmel, CA 93922.
- ◆ *Future Problem Solving* (Grades K–12). The Future Problem Solving Program, 318 W. Ann St., Ann Arbor, MI 48104.
- ◆ *International Children's Art Exhibition* (Grades K–9). Pentel of America, Ltd., 2805 Columbia St., Torrance, CA 90503.
- ◆ *International Physics Olympiad* (Grades 9–12). American Association of Physics Teachers, One Physics Ellipse, College Park, MD 20740-3845.
- ◆ *International Science Olympiads* (High School). Website: olympiads.win.tue.nl
- ◆ *Mathematical Olympiads for Elementary and Middle Schools*. International Math Olympiads, Department E-1, 2154 Bellmore Ave., Bellmore, NY 11710-5645. Website: www.moems.org
- ◆ *MathCounts* (Grades 7 & 8). MATHCOUNTS Foundation, 1420 King St., Alexandria, VA 22314. Website: www.mathcounts.org
- ◆ *Model United Nations* (High School). Website: www.amun.org
- ◆ *National Chess Championships* (Grades K–12). U.S. Chess Federation, 186 Route 9W, New Windsor, NY 12553. Website: www.uschess.org
- ◆ *National Geography Bee* (Grades 4–8). National Geographic Society, 1145 17th St. NW, Washington, DC 20036-4688.

- ◆ *National History Day*. 0119 Cecil Hall, University of Maryland, College Park, MD 20741. Website: www.thehistorynet.com/NationalHistoryDay
- ◆ *National Knowledge Master Open* (Grades 5–12). Academic Hallmarks, Box 998, Durango, CO 81302.
- ◆ *National Science Olympiad* (Grades K–12). Box 5477, Hauppauge, NY 11788-0121. Website: www.geocities.com/CapeCanaveral/Lab/9699
- ◆ *Odyssey of the Mind (OM)* (Grades K–12). OM Association, P.O. Box 547, Glassboro, NJ 08028-0547. Website: www.odyssey.org
- ◆ *Optimist International Oratorical Contest* (Ages 16 and Under). 4494 Lindell Blvd., St. Louis, MO 63108.
- ◆ *South Carolina Alliance for Minority Participants (SCAMP)*. USC College of Engineering, Columbia, SC 29208.
- ◆ *Stock Market Game* (Grades 4–12). 120 Broadway, New York, NY 10271-0080. Website: www.smg2000.org
- ◆ *Talent Identification Program* (Grade 7). Duke University, 1121 West Main St., Suite 100, Durham, NC 27701. Website: www.shodor.org/tip
- ◆ *WordMasters Challenge* (Grades 3–8). 213 E. Allendale Ave., Allendale, NJ 07401.
- ◆ *Young Inventors Competition* (Grades 9–12). Foundation for a Creative America, 1755 Jefferson Davis Hwy., Suite 400, Arlington, VA 22202.
- ◆ Local, Regional, and National Science Fairs

Technology Support Services

The rapidly expanding field of technology offers an incredible range of support services to gifted and talented students, administrators, teachers, and parents. Listed here is just a sampling of the resources now available. Students, administrators, teachers, and parents need to become familiar with the use of search engines and other tools to stay abreast of current and emerging developments.

Technology for Students

- ◆ Distance learning, especially with two-way audio and video, is an excellent way to offer advanced courses in which only a few students seek to enroll. This is a particularly attractive option for students in smaller schools and districts. Middle and high school students alike can benefit greatly from such opportunities. The former can take courses for high school credit, while the latter can take courses for

college credit. At all levels, this technology can provide unique experiences for students to learn from experts in a field. The South Carolina Governor's School for Math and Science and SCETV have distance learning opportunities. Stanford University offers a number of on-line courses in mathematics and writing (EPGY). Counselors can check with South Carolina colleges and universities for other on-line course offerings.

- ◆ The World Wide Web provides research opportunities that are limited only by a student's imagination. Students must know and abide by school districts' acceptable use policies.
- ◆ E-mail and monitored chat rooms can enable students to communicate with experts anywhere in the world. Supervised chat rooms can offer gifted and talented students the opportunity to interact with other students anywhere on any topic of interest. Some Internet service providers offer supervised chat rooms.
- ◆ Other technology being used by South Carolina students includes the following: digital cameras; presentation, simulation, and word processing software; laser disc programs; and video microscopes.

Technology for Administrators, Teachers, and Parents

- ◆ The Gifted Resources Home Page (Website: www.eskimo.com/~user/kids.html) provides information for administrators, teachers, and parents, as well as links to many other sites. There is also a section for "key pals"—computer pen pals.
- ◆ The National Research Center on the Gifted and Talented (Website: www.gifted.uconn.edu) has a complete listing of their publications, along with selected abstracts. Several publications deal with identifying and retaining underrepresented populations in gifted and talented programs.
- ◆ The Association for Supervision and Curriculum Development (ASCD) has a system of networks, including one called "Developing Giftedness and Talent," run by Brian Reid at the University of Alabama-Birmingham. For more information, visit the ASCD Home Page (Website: www.ascd.org); then click on "Constituent Relations," "Who We Serve," and "Networks."
- ◆ The Education Resources Information Center (ERIC) is made up of 16 separate information clearinghouses, including one for Disabilities and Gifted Education. Searches for information can be conducted on-line (Website: www.eric.org).
- ◆ GiftedNet is an on-line mailing list dealing with gifted and talented issues. Since GiftedNet is located at the College of William and Mary (Website: www.wm.edu/education/giftednet.htm), there are many discussions about their instructional units. Discussions also cover a wide range of topics, from gifted and talented math curricula to the pros and cons of acceleration. To subscribe, send e-mail to the following address: listserv@listserv.cc.wm.edu. Skip the subject

line; then, in the first text line, type the following: SUBSCRIBE GIFTEDNET-L
Firstname Lastname (e.g., SUBSCRIBE GIFTEDNET-L Jane Doe).

- ◆ Teachers can find lesson plans on-line for almost any topic imaginable. *Classroom Connect* describes many such websites, as well as information on virtual field studies.
- ◆ Teachers can get on-line assistance with problem-based learning from the Center for Problem-Based Learning. (Website: www.imsa.edu/team/cpbl/cpbl.html). This site includes sample units and tutorials on writing problem-based units.
- ◆ Information on teaching critical evaluation skills is available on-line as well (e.g., Website: www2.widener.edu/Wolfgram-Memorial-Library/webeval.htm).
- ◆ U-ACHIEV is a site for the discussion of academic underachievement, including, but not limited to, gifted and talented underachievers. To subscribe to this site, send e-mail to the following address: majordomo@virginia.edu. In the subject line, type subscribe; then, in the message line, type subscribe u-achiev.
- ◆ TAG-L is an open forum that discusses general issues related to gifted and talented education. To subscribe, send e-mail to the following address: listserv@listserv.nodak.edu. Skip the subject line; then, in the first text line, type the following: SUBSCRIBE TAG-L Firstname Lastname.
- ◆ Of particular interest to parents is TAGFAM, a discussion group that supports families of gifted and talented children. Topics of discussion include parenting, home schooling, distance learning, and many others. TAGFAM generates a large number of messages. To subscribe, send e-mail to the following address: listserv@maclstrom.stjohns.edu. Skip the subject line; then, in the first text line, type the following: sub TAGFAM Firstname Lastname.
- ◆ Administrators, teachers, and parents can follow the activities of the South Carolina General Assembly at www.lpitr.state.sc.us/homepage.htm. This site includes updates on various bills that are being considered, as well as a listing of previous bills from the last several years.

As the state becomes more connected to the Internet, additional resources will become available. Readers who locate other websites that would be interest to administrators, teachers, parents, students, or others involved in gifted and talented education should contact the South Carolina Consortium for Gifted Education, P.O. Box 255, Irmo, SC 29063. Please send a brief description of the site and its address.

Parent Education Support Services

Parents are the most significant influence on the lives of their children. Consider these findings from a study of MacArthur Fellows (Cox, Daniel, & Boston, 1985):

Almost without exception the MacArthur Fellows pay tribute to their parents. While the education level of the parents varied, and the level of financial backing as well, virtually all the parents let their children know the value of learning by personal example. The parents supported without pushing. Their homes had books, journals, newspapers. They took the children to the library. The parents themselves read, and they read to their children. Most important, they respected their children's ideas. (p. 24)

Similarly, Bloom (1985) has noted the important role of parents, family support, and sacrifice in the achievement of gifted and talented individuals across various disciplines and professions.

Education programs for parents of the gifted and talented must address a number of issues and themes. A primary need of parents is assistance in providing for their gifted and talented children's cognitive and affective development. Shore, Cornell, Robinson, and Ward (1991) suggest the following as appropriate issues for parenting education programs:

- ◆ Developing awareness of how personal needs and feelings influence the relationship with the child;
- ◆ Avoiding excessive emphasis on developing the child's giftedness;
- ◆ Discouraging children's perfectionism and excessive self-criticism;
- ◆ Encouraging social as well as academic development;
- ◆ Facilitating social development through ability/peer contact;
- ◆ Fostering potential for giftedness through preschool intervention;
- ◆ Being sensitive to potential sibling adjustment problems.

Parents appreciate information on the characteristics and needs of gifted and talented children, as well as advice on problems or issues such as underachievement, carelessness, time management, and career/college choice. Also crucial for parents is information regarding the educational offerings provided by the school—through both the gifted and talented program and the general education program.

Parent Education Delivery Models

Districts can utilize various delivery models for parent education. Most districts provide parent orientation sessions to showcase their gifted and talented programs, explain the identification process, and provide parenting advice. Throughout the school year, additional parent education services may be offered—e.g., parenting sessions on particular topics; videos to demonstrate effective parenting practices, such as questioning and discussion techniques; a lending library for parents, with books and journals on gifted and talented education and parenting, as well as information on

accessing relevant websites. Many districts serve parents through an association and some have even formed foundations where parents work to provide additional financial support to the gifted and talented program. Parent education delivery models are limited only by local convention and the creativity of the gifted and talented program staff.

Gifted and talented programs must also use the print media to communicate effectively with parents. Program notice and identification procedures must be communicated to all parents. Additionally, parents of children qualified for the gifted and talented program must receive written policies and procedures, including the program's mission, curriculum goals, evaluation of student achievement, and evaluation of program effectiveness.

Most gifted and talented programs go beyond this basic level of parent communication—e.g., through the newsletters, brochures, videos, e-mail and/or websites. One South Carolina district uses parent volunteers to print and disseminate a regular newsletter that highlights educational opportunities in the community. Another has made videos to describe the curriculum, showing gifted and talented students at work on units of instruction.

Parents need access to the gifted and talented program staff for answers to their questions or concerns. Communicating with parents is a time consuming, but rewarding practice in an effective gifted and talented program.

National and State Organizations

In addition to the many resources listed and described throughout this chapter, key national and state organizations offer support services for those involved in gifted and talented education.

- ◆ The National Association for Gifted Children (NAGC): www.nagc.org
- ◆ The National Research Center on the Gifted and Talented:
www.gifted.uconn.edu
- ◆ The Center for Gifted Education, College of William & Mary:
www.cfge.wm.edu
- ◆ Council for Exceptional Children (CEC): www.cec.sped.org
- ◆ The South Carolina Consortium for Gifted Education (SCCGE):
P.O. Box 255, Irmo, SC 29063
- ◆ The South Carolina Department of Education: www.myschools.com

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Chapter 8 - Identification

The identification process should be a needs assessment whose primary purpose is the placement of [gifted and talented] students into educational programs designed to develop their latent potential. (emphasis in the original)

—E. Susanne Richert
Global Institute for Maximizing Potential
Brigantine, New Jersey

Identification

State Board of Education Regulation 43-220 specifies requirements and procedures for identifying gifted and talented students. As described R 43-220, the purposes of the identification process are

- to find students who display characteristics of the gifted and talented (i.e., ability or potential for high performance in academic areas);
- to assess the aptitudes, attributes, and behaviors of each student; and
- to evaluate each student for the purposes of placement. (24 S.C. Code Ann. Regs. 43-220.2(B)(1))

This description reflects South Carolina's definition of gifted and talented in R 43-220: "Gifted and talented students are those who are identified in grades one through twelve as demonstrating high performance ability or potential in academic and/or artistic areas and therefore require an educational program beyond that normally provided by the general school program in order to achieve their potential" (24 S.C. Code Ann. Regs. 43-220.1(A)(1)).

South Carolina's definition of gifted and talented students is in keeping with that given in the foreword to *National Excellence: A Case for Developing America's Talent* (Ross 1993), which itself is based on the definition in the federal Jacob K. Javits Gifted and Talented Students Education Act of 1988:

Children and youth with outstanding talent perform or show the potential for performing at remarkably high levels of accomplishment when compared with others of their age, experience, or environment.

These children and youth exhibit high performance capability in intellectual, creative, and/or artistic areas, possess an unusual leadership capacity, or excel in specific academic fields. They require services or activities not ordinarily provided by the schools.

Outstanding talents are present in children and youth from all cultural groups, across all economic strata, and in all areas of human endeavor.

“To put this definition into practice,” *National Excellence* continues, “schools must develop a system to identify gifted and talented students”—a system that operates in the following manner:

- Seeks variety—looks throughout a range of disciplines for students with diverse talents;
- Uses many assessment measures—uses a variety of appraisals so that schools can find students in different talent areas and at different ages;
- Is free of bias—provides students of all backgrounds with equal access to appropriate opportunities;
- Is fluid—uses assessment procedures that can accommodate students who develop at different rates and whose interests may change as they mature;
- Identifies potential—discovers talents that are not readily apparent in students, as well as those that are obvious; and
- Assesses motivation—takes into account the drive and passion that play a key role in accomplishment. (Ross 1993, 26).

In undertaking the identification process, it is essential for district personnel to remember that, as 43-220 states, “gifted and talented students may be found within any racial, ethnic, or socioeconomic group; within any nationality; within both genders; and within populations with physical disabilities, learning disabilities, or behavioral problems” (24 S.C. Code Ann. Regs. 43-220.2(B)(2)).

To be in compliance with Title IX and the Office for Civil Rights, district personnel should monitor referral, screening, and eligibility data in terms of the previously referenced groups to determine where underrepresentation might occur in the district and to implement strategies to ensure that all students have equal access to referral and are screened with valid, reliable, and appropriate assessments.

R 43-220 describes *identification* as a multistep process that must include the following:

1. notification of parents/guardians regarding gifted and talented program services and identification procedures;

2. training and guidance regarding the characteristics of academic giftedness for teachers and other district staff involved in the identification process;
3. referrals from administrators, parents, teachers, and students;
4. screening of all students with aptitude and achievement measures;
5. assessment and reassessment of student eligibility; and
6. evaluation of student data for placement.

This resource document provides an explanation of the entire identification process. Included in the appendix is the sample “Referral-Screening-Assessment Student Profile Sheet,” which can be used to facilitate that process.

Notification

According to R 43-220, school districts must provide parents/guardians with effective, written notice of the gifted education program’s existence, its screening and referral procedures, and its eligibility requirements (24 S.C. Code Ann. Regs. 43-220.2(B)(6)(b)(1)). The school district must issue this notice annually with the same level of importance that it does for other significant district activities, policies, and procedures.

Methods for disseminating this notification include brochures and flyers that are distributed during school registration and the inclusion of the notice in the school’s student handbook. To ensure broad awareness of the gifted and talented program, the district may wish to use mass media and technology to provide notice throughout all segments of the community. Along with the distribution of written notice, districts may wish to conduct annual meetings to inform parents/guardians about the program and such related issues as the characteristics of academic giftedness and the role of parents/guardians in the identification of gifted and talented students.

Districts must make certain that parents/guardians of underrepresented students receive effective notice of the gifted and talented program. According to a national survey on identification practices, underrepresented groups include economically disadvantaged students, culturally diverse students, students with minimal proficiency in English, males (when identifying verbal ability below grade five), females (when identifying mathematical ability), intellectually creative students, academically underachieving students, and physically handicapped and learning disabled students (Alvino, McDonnel, and Richert 1981).

At a minimum, notification should contain these components:

- (a) the definition of the term *academic giftedness* as put forth by R 43-220 and the State Department of Education;

- (b) the purpose of the gifted and talented program and a description of the district's program models and services;
- (c) a description of the identification process and eligibility criteria (with an explanation of Dimensions A, B, and C as delineated in R 43-220);
- (d) an explanation of the referral process, specifying who may refer a student and how and when a referral can be made;
- (e) a discussion of the screening process, explaining which tests are used, who is tested, and when the testing is done;
- (f) a statement of nondiscrimination or assurance of equity of opportunity for participation (see the sample statement in the appendix); and
- (g) a description of the process for obtaining additional information regarding identification procedures and program services, as well as a clear statement of the process by which parents/guardians may raise concerns with respect to identification, evaluation, and services.

The district should employ various strategies to determine the effectiveness of the notification procedure. For example, the annual written notice may include a form for parents to sign and return as an acknowledgement that they have received the notice. The district might also periodically conduct parent surveys to assess awareness of the gifted and talented program and to solicit suggestions for disseminating program information.

Training and Guidance

In addition to the notification requirements for parents, R 43-220 mandates that school districts provide training and guidance regarding the characteristics of academic giftedness for teachers and other district staff involved in the identification process (24 S.C. Code Ann. Regs. 43-220.2(B)(6)(b)(3)). Administrators, guidance counselors, and teachers all require knowledge of the characteristics of gifted and talented students.

To assist districts with their training efforts, the State Department of Education has created a staff development resource entitled *Gifted Students: Who Are They?* Copies of this document, which is appropriate for use with the total school staff, are available from the state's gifted and talented coordinator in the Office of Curriculum and Standards.

Districts should incorporate initial awareness of gifted students in their orientation sessions for new teachers. In addition, annual presentations and discussion on the nature and needs of gifted children should be conducted at each school to ensure that the knowledge base of administrators, guidance counselors, and teachers continues to grow.

Referrals

Referral procedures ensure that students who have demonstrated ability or potential for high performance in academic areas will have access to the gifted and talented program. In accordance with R 43-220, the district's procedures must allow for referrals from administrators, parents, teachers, and the students themselves (24 S.C. Code Ann. Regs. 43-220.2(B)(6)(a)).

Districts should select or develop referral forms that clearly describe the characteristics of gifted and talented students. These referral instruments should be relevant to the socioeconomic characteristics of the district's students and should include characteristics that are specific to the underrepresented groups in that district. As delineated in the "Notification" section, above, underrepresented groups in general are economically disadvantaged students, culturally diverse students, students with minimal proficiency in English, males (when identifying verbal ability below grade five), females (when identifying mathematical ability), intellectually creative students, academically underachieving students, and physically handicapped and learning disabled students.

The district's referral instruments should be easily accessible to administrators, parents, teachers, and students. Private test results may be considered for referral purposes, but they may not be used to determine eligibility for the gifted and talented program.

Districts must collect and maintain records of all student referrals for use during the assessment process and annual reporting. Fields in the Curriculum and Standards Atom of SASI are available to collect and report these data. Districts may use the software program called Gifted Identification Forms and Tasks (GIFT) for collection of these data on referrals as well.

Screening

R 43-220 specifies that districts must screen all students with regard to aptitude and achievement (24 S.C. Code Ann. Regs. 43-220.2(B)(6)(a)). Census testing (i.e., the testing of *every* student) for both aptitude and achievement should be administrated to all second-grade students in the state.

It is recommended that census testing also be conducted at points of significant programmatic changes for students (e.g., from an elementary pull-out program to a middle school special class with a specific subject-area focus).

As a best practice, census testing for aptitude and achievement is conducted on a yearly basis for the sole purpose of finding additional students for the program. Such testing may *not* be used for the removal of students who are already placed in the program. Once identified, students do not have to requalify for the gifted and talented program each year.

Whether or not additional census testing is done, the district should develop procedures to ensure that students who have not previously qualified for the gifted and talented program are not overlooked, that students who move into the district have the opportunity to be considered for placement, and that underrepresented student populations are assessed with appropriate instruments.

CRITERIA USED IN THE SCREENING PROCESS

R 43-220 explains the criteria for the identification of gifted and talented students in terms of three dimensions (see 24 S.C. Code Ann. Regs. 43-220.2(B)(7)(c)(1-3)).

Dimension A: Reasoning Abilities

Reasoning abilities are those higher-level cognitive processes that reflect general aptitude for thought—strategies such as inferring, analyzing, and problem solving. For the purposes of identifying students with high potential in this area, nationally normed individual or group aptitude tests must be employed. Students must demonstrate high aptitude (93rd national age percentile or above) in one or more of the following areas: verbal/linguistic, quantitative/mathematical, nonverbal, and/or a composite of the three.

NOTE: Students may qualify for the academically gifted and talented program solely on the basis of their composite aptitude scores. Students who meet or exceed the 96th national age percentile composite score (placement into grades three through twelve) or the 98th national age percentile composite score or higher (placement into grades one through two) are not required to meet any other criteria (see 24 S.C. Code Ann. Regs. 43-220.2(B)(5)(c)).

Dimension B: High Achievement in Reading and/or Mathematics

The term *achievement* refers to academic performance in the areas of reading and/or mathematics. Students must demonstrate high achievement in at least one of these areas as measured by nationally normed achievement tests or by the South Carolina statewide assessment instrument PACT (Palmetto Achievement Challenge Tests). The term *high achievement* is defined as the 94th percentile or above on the nationally normed tests or a score at the *advanced* level on the PACT. Approved subtests for nationally normed achievement tests are reading comprehension and/or mathematical concepts and problem solving. On the PACT, the only approved subtest is the reading portion of the English language arts test.

Dimension C: Intellectual/Academic Performance

Intellectual/academic performance as defined is the student's demonstration of a high degree of interest in and commitment to academic and/or intellectual pursuits. Students may also demonstrate intellectual characteristics such as curiosity/inquiry, reflection, and persistence/tenacity in the face of challenge and creative productive thinking. The acceptable

measures for placement in grades one through six are the verbal or nonverbal assessments by Project STAR. These test materials must be maintained and administered under S.C. Code Ann. § 59-1-445 (1990), "Violations of mandatory test security; penalties; investigations."

For placement in grades seven through twelve, the acceptable measure is the student's grade point average (GPA) in the academic disciplines: 3.75 points on a 4.0 scale.

NOTE: The only acceptable measures are those specified for each dimension. Private test results cannot be used for determining student eligibility, although they may be considered for referral purposes (24 S.C. Code Ann. Regs. 43-220.2(B)(7)(b)).

Students who meet the criteria in *two* of the three dimensions are eligible for gifted and talented services (24 S.C. Code Ann. Regs. 43-220.2(B)(5)(b)). Aptitude test results alone can qualify a student for placement. (See Dimension A). No single criterion, however, can eliminate a student from consideration for placement in a gifted and talented program (24 S.C. Code Ann. Regs. 43-220.2(B)(7)(c)(4)).

In addition to specifying eligibility requirements related to each of the three dimensions, R 43-220 states the following with regard to student eligibility for gifted and talented services:

- Students who were served and qualified by state regulations prior to 1999 are eligible for services (24 S.C. Code Ann. Regs. 43-220.2(B)(5)(a)).
- Students identified (by state criteria) in one South Carolina school district are eligible for services in any South Carolina school district (24 S.C. Code Ann. Regs. 43-220.2(B)(5)(d)).

STEPS IN THE SCREENING PROCESS

1. Administer an aptitude measure to all students at the district entry grade level (e.g., grade two-testing for grade-three placement). For all other grades, districts may use data from an aptitude test that has been administered within the past two years. If two-year-old data are not available, then the district must administer an aptitude test. The aptitude measure used may be either an individual aptitude test or a group aptitude test. These aptitude tests must have been nationally normed *within the past five years* and must render national *age* percentile scores for verbal/linguistic, quantitative/mathematical, and nonverbal components, as well as a composite score.

In accordance with R 43-220, districts must ensure that all assessment tests are reviewed for bias, that these tests accurately assess the abilities/skills/potentials intended to be measured, that these abilities/skills/potentials are consistent with the definition of giftedness, and that test administrators are properly trained (24 S.C. Code Ann. Regs. 43-220.2(B)(7)(a)).

2. Administer an *achievement measure* to all students at the district entry grade level (e.g., grade two for grade-three placement). For all other grades, districts may use achievement test data that has been obtained within the past two years. If the data test data are over two years old, then the district must administer an achievement test.

Achievement must be measured either by a nationally normed test or by the PACT, South Carolina's statewide assessment instrument. The nationally normed test must render national

percentile scores for reading comprehension and math concepts/problem solving. The approved tests for the PACT are the reading portion of the English language arts and the mathematics test. As with the aptitude tests, school districts must ensure that achievement instruments are reviewed for bias, that they provide valid measures of relevant abilities/skills/potentials, and that they are administered by trained personnel.

Ensure that all aptitude and achievement tests are accurately scored, and conduct a thorough review of test results. (See the “Assessment” section, below.)

Assessment

During the assessment phase, district personnel must review the data obtained from the screening and referral procedures to identify students who are eligible for gifted and talented placement. Some students will meet the eligibility criteria without further assessment; others, whose screening and/or referral information suggests that they are *potential* qualifiers, may require additional testing.

The table “Criteria Used in the Assessment Process” in the appendix delineates the criteria for placing students in the academically gifted and talented program. Note that within each dimension, the criteria may vary depending on the grade level of placement.

RECOMMENDED STEPS IN THE ASSESSMENT PROCESS

Step 1. Review screening test results—aptitude and achievement test data (Dimensions A and B)—for all students.

- 1a. Identify students who are eligible for placement on the basis of their *composite aptitude scores alone*. (See Dimension A in the table “Criteria Used in the Assessment Process” in the appendix.) These students do not have to satisfy any other eligibility requirements. Proceed to step 4.

Only aptitude tests that yield a composite score may be used for placement on the basis of aptitude alone. Aptitude tests such as Ravens and Naglieri, which do not yield composite scores, are inappropriate for this purpose.

- 1b. Identify students who are eligible for placement on the basis of *aptitude and achievement*. These are students who meet the criteria for Dimension A and Dimension B. (See the table “Criteria Used in the Assessment Process” in the appendix.) These students do not have to satisfy any other eligibility requirements. Proceed to step 4.

- 1c. Identify students who meet the criteria for Dimension B only. Consider the appropriateness of administering an additional aptitude measure to reassess those students. Students qualifying on the additional aptitude measure are eligible for placement. They do not have to satisfy any other eligibility requirements. Proceed to step 4.

- 1d. Determine which students meet the criteria for either Dimension A or B but not for both. Proceed to step 2.

Step 2: Review the academic performance data (Dimension C) for students who meet the criteria for either Dimension A or Dimension B but not for both.

- 2a. Identify students from step 1d who are eligible for placement on the basis of *aptitude and academic performance*. These are students who meet the criteria for both Dimension A and for Dimension C. (See the table “Criteria Used in the Assessment Process” in the appendix.) These students do not have to satisfy any other eligibility requirements. Proceed to step 4.

- 2b. Identify students from step 1d who are eligible for placement on the basis of *achievement and academic performance*. These are students who meet the criteria for Dimension B and for Dimension C. (See the table “Criteria Used in the Assessment Process” in the appendix.) These students do not have to satisfy any other eligibility requirements. Proceed to step 4.

NOTE: Districts must administer Project STAR to obtain verbal and nonverbal performance data for students entering grades three through six. All individuals who administer Project STAR must have received training in its administration. **South Carolina test security laws and guidelines apply to this assessment.**

Step 3: Review referrals.

- 3a. From the referrals, determine which students are eligible for placement on the basis of Dimensions A, B, and/or C—students identified in steps 1a, 1b, 2a, or 2b. These students do not have to satisfy any other eligibility requirements.
- 3b. From the remaining referrals, determine which students should be recommended for additional aptitude testing. These could be students who meet the criteria for one dimension only (either Dimension A, B, or C), as well as those whose referral information suggests that alternative measures should be used. Proceed to step 4 for these students.

Step 4: Forward to the evaluation and placement team the student profiles for all students identified as eligible for placement.

Send profiles for all students identified in steps 1a, 1b, 1c, 2a, 2b, 3a, and 3b.

NOTE: The assessment phase of the identification process must include a procedure for resolving disagreements between parents/guardians and the school district when a student is not identified as eligible for gifted and talented program services.

Evaluation and Placement

As described in 24 S.C. Code Ann. Regs. 43-220.2(B)(8)(a), the evaluation step of the identification process is the responsibility of an evaluation and placement team within the school or district. R 43-220 specifies that the team should be composed of a teacher, an administrator, and a psychologist (if employed by the district) at the least. It is highly recommended that the administrator be the district gifted and talented coordinator. The team may also include a guidance counselor and a community-related person whose training and expertise qualifies him or her to appraise the special competencies of students. Districts may choose either to have one team for the district as a whole or to have a team at every school. If the latter choice is selected, one team member should serve on all teams in order to ensure consistency within the district.

The evaluation and placement team is responsible for interpreting and evaluating student data in such a way that appropriate placement in the gifted and talented program is ensured (24 S.C. Code Ann. Regs. 43-220.2(B)(8)(b)). The team may require additional testing of a student before determining his or her placement in the gifted and talented program.

In addition, the evaluation and placement team must develop appropriate written procedures for removing a student from the gifted and talented program (24 S.C. Code Ann. Regs. 43-220.2(B)(8)(c)). The probation and removal policies of the district must conform to the state guidelines from the Office of Curriculum and Standards. Appropriate counseling with the student, as well as conferences with the student's parents/guardians and teachers, must precede his or her removal from the program. Records of any assessment and evaluative measures and other student information must be maintained in a confidential manner.

Chapter 9 - Monitoring and Reporting

Introduction

Monitoring—defined here as data collection and analysis, examination of written evidence, and interviews and observation—ensures that a district’s gifted and talented program is in compliance with Regulation 43-220. The areas to be monitored include curriculum, program models, identification process (including notification and referral procedures), personnel endorsement, professional training, and student services (both support and instructional).

To ensure compliance, reporting of specific information is required annually to the State Department of Education (SDE). All South Carolina school districts must collect and maintain on a continuous basis the written evidence specified in R43-220 (24 S.C. Code Ann. Regs. 43-220.2(D)). Records may be maintained as hard copy files and/or in computer databases. Districts will be informed annually by the SDE concerning processes and timelines for submitting required data and reports.

Three Year Plan with Annual Updates

Districts must develop a three-year plan for district gifted and talented programs (academic and artistic) and report annually on their progress using templates that are provided by the SDE. The SDE is responsible for these reviewing plans and providing districts with written feedback. Three-year plans must be approved by the district’s Board of Education and annual updates of the plan must be provided as information. The plan and updates will include a signed assurance by the District Superintendent that the gifted and talented program is in compliance with Regulation 43-220.

Data Collection and Analysis

Districts must report to the SDE information that includes, but is not limited to, student eligibility, screening, referrals, and students served. These data must be maintained using G.I.F.T. software, which is provided to the districts. The SDE is responsible for maintaining these data and for reporting these data to the Office for Civil Rights when requested. Districts must annually collect and maintain statistical data for the district on the following:

- ◆ Number, by race, of students referred during the identification process;

- ◆ Number, by race, of students determined eligible for gifted and talented education services;
- ◆ Number, by race, of students actually served during the school year;
- ◆ Number, by school, by grade, by program model, of students actually served during the school year.
- ◆ Artistically gifted and talented programs require similar data as above reported by arts area.

To facilitate the reporting process, districts should collect and maintain the following:

- ◆ Written notification of the identification process as communicated to students, parents, and teachers annually;
- ◆ Evidence of census screening with aptitude and achievement measures;
- ◆ All referral forms, specifying the race and gender of the student referred and the referring party;
- ◆ Student profiles on all students screened (including those who were placed and those not placed);
- ◆ Evaluation/Placement Team documentation;
- ◆ Student assessment and evaluation data (for students being served);
- ◆ Program evaluation data.

Examination of Written Evidence

For purposes of providing written evidence about the gifted and talented program, the district should have the following documentation readily available:

- ◆ Mission statement and rationale;
- ◆ Written program goals and objectives;
- ◆ Written program design (describing program models/services);
- ◆ Written scope and sequence;
- ◆ Written description of support services;
- ◆ Professional development plan;
- ◆ Policy on trial placement and removal of students;
- ◆ Program brochures, handbooks, newsletters;
- ◆ Financial records (available in district).

Interviews and Observations at Classroom Level

Interview and observations conducted at the classroom level should yield evidence about various aspects of the gifted and talented program, including the following:

- ◆ Differentiated curriculum and instructional strategies;
- ◆ Acceleration and enrichment;
- ◆ Hands-on activities;
- ◆ High student involvement.

Chapter 10 - Roles and Responsibilities of School Boards and Administrative and Instructional Staffs

Administrative support is as important to [the] success [of a gifted and talented program] as a well-chosen teacher.

—Barbara Clark
Growing Up Gifted

Introduction

The legislative mandate in South Carolina necessitates that all individuals whose duties or offices have an impact on services for gifted and talented students clearly understand and conscientiously execute their roles and responsibilities. A successful gifted and talented program depends upon collaboration and cooperation. Also, key to the program's success is a designated gifted and talented coordinator for the district. Listed in this chapter are the roles and responsibilities of school boards and administrative/instructional staffs at both the state and district level.

State Level

State Board of Education

- ◆ Recognizes the need to provide gifted and talented education services to identified students in grades 1–12
- ◆ Promulgates Regulation 43-220

State Department of Education (SDE)

State Superintendent of Education

- ◆ Recognizes the importance of and supports programs for gifted and talented students
- ◆ Ensures the implementation of R43-220

- ◆ Educates the public about the need for gifted education, as well as the roles and responsibilities of the various educational offices
- ◆ Seeks and ensures adequate funding for programs for the gifted and talented

Division of Curriculum and Assessment, Office of Curriculum and Standards

- ◆ Serves as advocate/spokesperson for gifted and talented education within the SDE
- ◆ Interprets R43-220 and guidelines to appropriate audiences
- ◆ Provides districts with pertinent information on R43-220 and guidelines in a timely manner
- ◆ Provides opportunities for open dialogue with district representatives
- ◆ Monitors districts for compliance with R43-220
- ◆ Reviews and responds to district gifted and talented plans and annual updates
- ◆ Provides technical assistance to districts
- ◆ Provides for professional development for teachers and administrators
- ◆ Serves as liaison between the SDE and the South Carolina Consortium for Gifted Education

Office of Finance

- ◆ Allocates gifted and talented program funds in accordance with laws and R43-220
- ◆ Provides funding projections in a timely manner
- ◆ Notifies districts of changes in funding in a timely manner
- ◆ Audits districts for appropriate expenditures of state funds

Office of School Quality

- ◆ Provides opportunities for study and experimentation for the purpose of gifted and talented program improvement
- ◆ Provides information and consultation to districts as they implement initiatives for program improvement

District Level

Local School Board

- ◆ Establishes policy based on law and R43-220 to provide for gifted and talented education services to identified students in grades 1–12

District Office

Superintendent

- ◆ Recognizes the need to provide gifted and talented education services to identified students in grades 1–12
- ◆ Assumes legal responsibility for the operation of the district's state-mandated gifted and talented program
- ◆ Assigns responsibility for ensuring that R43-220 and guidelines are met:
 - Delegates program oversight to personnel who have appropriate training and skills
 - Ensures that adequate administrative, instructional, guidance, and clerical support staff are assigned to the gifted and talented program
- ◆ Seeks public support for the gifted and talented program

Assistant Superintendent for Instruction

- ◆ Recognizes and communicates the role of the gifted and talented program as an essential component of the district's total instructional program
- ◆ Communicates the role of the gifted and talented program within the district's total instructional program to district instructional leaders
- ◆ Ensures the implementation of R43-220 and guidelines

Financial Officer

- ◆ Informs the district gifted and talented program coordinator of state and local funding projections in a timely manner
- ◆ Assists with budgetary concerns

District Gifted and Talented Program Coordinator

- ◆ Supervises implementation of the district gifted and talented program to ensure compliance with R43-220 regarding program components/procedures:

- Identification process
 - Service and delivery models
 - Curriculum and instruction
 - Student assessment
 - Professional development
 - Program evaluation
 - Reporting and monitoring
- ◆ Serves on the Evaluation/Placement Team
 - ◆ Coordinates a district curriculum for gifted and talented students based on state recommendations and best practices
 - ◆ Develops and guides implementation of district gifted and talented three-year plan
 - ◆ Communicates current trends and appropriate gifted education practices
 - ◆ Maintains active involvement in professional gifted education organizations at state and national levels
 - ◆ Participates in professional development related to gifted education
 - ◆ Provides professional development related to gifted education for administrative and instructional staff
 - ◆ Provides parent education related to the gifted and talented program
 - ◆ Maintains accurate records for accountability purposes
 - ◆ Prepares and submits annual reports as required by Regulation 43-220

Staff Development Coordinator

- ◆ Recognizes and communicates the role of the gifted and talented program as an essential component of the district's total instructional program
- ◆ Works with the district gifted and talented program coordinator in planning and providing appropriate staff development on gifted education for total district staff and for teachers of the gifted and talented
- ◆ Informs staff about professional development opportunities in gifted education

School Psychologist

- ◆ Recognizes and communicates the role of the gifted and talented program as an essential component of the district's total instructional program
- ◆ Serves on the Evaluation/Placement Team as mandated in R43-220
- ◆ Advises in selection and administration of appropriate testing instruments
- ◆ Administers individual aptitude tests as needed
- ◆ Advises gifted and talented program personnel regarding gifted students who have special needs
- ◆ Participates in staff development pertaining to gifted education

District Test Coordinator

- ◆ Conducts and/or provides training for gifted and talented program personnel in administration, security, and interpretation of statewide assessments
- ◆ Advises and provides training for gifted and talented program personnel in procedures for achievement testing
- ◆ Provides achievement and aptitude test scores and reports in a timely manner

Building Level Personnel

Administrator

- ◆ Recognizes and communicates the role of the gifted and talented program as an essential component of the school's total instructional program
- ◆ Provides administrative support to the district gifted and talented program coordinator and to teachers of the gifted
- ◆ Communicates knowledge of curriculum and instructional practices in the gifted and talented program
- ◆ Observes instructional practices in gifted and talented classrooms
- ◆ Adheres to the requirements in R43-220
- ◆ Participates in professional development on gifted education
- ◆ Ensures that building staff members participate in appropriate professional development activities related to gifted education

Guidance Counselor

- ◆ Recognizes and communicates the role of the gifted and talented program as an essential component of the total instructional program
- ◆ Provides support and counseling services appropriate to the special needs of gifted and talented students
- ◆ Assists, as needed, in the multi-step process of gifted and talented identification and placement
- ◆ Communicates special needs and concerns to teachers of the gifted and the district gifted and talented program coordinator
- ◆ Provides accurate information about the gifted and talented program for parents
- ◆ Maintains accurate records for the gifted and talented program as needed for accountability
- ◆ Participates in professional development activities related to the identification process, characteristics and needs of gifted and talented students, and appropriate educational and career counseling practices for these students

Classroom Teacher

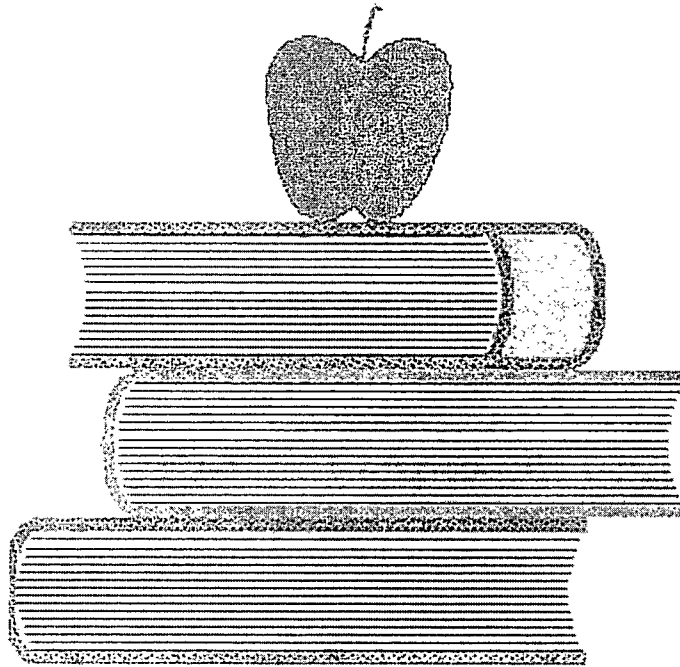
- ◆ Recognizes and communicates the role of the gifted and talented program as an essential component of the school's total instructional program
- ◆ Is knowledgeable about characteristics of gifted and talented students
- ◆ Communicates on a regular basis with the teacher of the gifted
- ◆ Provides differentiated curriculum to meet the needs of gifted and talented students in the regular program
- ◆ Participates in staff development on gifted education
- ◆ Refers students, as appropriate, for determination of eligibility for gifted and talented program services

Teacher of the Gifted

- ◆ Provides appropriately challenging instruction as defined by the district curriculum for gifted and talented students
- ◆ Designs instructional units to implement the district curriculum for gifted and talented students
- ◆ Assesses, evaluates, and reports student achievement of district gifted and talented curriculum goals
- ◆ Keeps accurate records of student progress and attendance
- ◆ Participates in staff development on gifted education
- ◆ Applies knowledge of the nature and needs of gifted and talented students
- ◆ Stays informed about current trends and issues in gifted education through the following activities:
 - attending conferences on the gifted and talented at the state, regional, and/or national level
 - maintaining membership and actively participating in related, appropriate professional organizations
 - reading professional literature
- ◆ Assists in the multi-step process of gifted and talented identification and placement
- ◆ Communicates about the gifted and talented program with school and district personnel and with parents and community members

GIFTED STUDENTS:

Who Are They?



Created by:
Dr. Nancy Breard
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Tonia Jeray
Bethel Elementary
Greenville School District

For the South Carolina Department of Education
Inez Moore Tenenbaum, State Superintendent of Education
August, 1999

#1

R487

***Regulation 43-220,
Gifted and Talented***

(Amended June, 2004)

Section II. B. 6. b. (3)

Provide training/guidance regarding the characteristics of academic giftedness for teachers and other district staff involved in the identification process.

Approved by the South Carolina
General Assembly in June of 2004.

General Characteristics of Gifted & Talented Students

Cognitive Characteristics

Possible Classroom Behaviors

- | | |
|--|--|
| 1. Learns rapidly & easily; retains extraordinary quantity of information <u>when interested</u> | Easily bored; impatient with others; exhibits off task behavior |
| 2. High level of verbal ability | Dominates discussions with extra information and questions deemed negative by teachers and fellow students |
| 3. May be lopsided intellectually | Exceptional abilities and interest in one subject area, with only average or below average performance in others |

(Characteristics)

(Classroom Behaviors)

4. Average to poor in ...

- Arithmetic computations
- Spelling
- Handwriting

Rejects or omits detail; considers linear tasks boring; makes numerous “careless errors” in homework assignments or lengthy tests

May have attempted writing words before seeing them in print

May have pursued writing before fine motor skills developed

5. Capable of deep concentration and persistence when interested

Refuses to attend to assignments that are perceived as uninteresting or as unimportant “busy work”

(Characteristics)

(Classroom Behaviors)

- | | |
|---|---|
| 6. Above average reasoning ability | Questions others' logic—including the teacher's; frustrated with others' lack of understanding |
| 7. Varied interests and curiosity | Asks lots of questions, often not related to current topic; has difficulty staying focused on current task |
| 8. Creative; playful; imaginative; original | May "zone-off" into imaginary world; ideas may be considered wild or silly; may be perceived as off task when asking "But what if..." |

Both Cognitive and Affective Characteristics

- | | |
|-------------------|---|
| 9. Sense of humor | May be gentle or hostile; "class clown"; makes puns and sees the humor in abstract situations |
|-------------------|---|

Affective Characteristics

Possible Classroom Behaviors

- | | |
|--|--|
| 10. High expectations of self and others | Perceived as highly critical; becomes discouraged from high levels of self-criticism |
| 11. Sensitive to world problems, moral issues | Lack of understanding from peer group |
| 12. Heightened self-awareness and emotional depth | Feeling “different” or isolated; moody |
| 13. Early development of an inner locus of control | Difficulty conforming; rejection of external evaluation |
| 14. Seeks intellectual peers | “Teacher’s shadow” at recess; enjoys older students and adults |

**Characteristics Often Attributed to
Gifted and Talented
Minority and/or Disadvantaged Students**

1. Use non-standard English
with standard English as a second language
2. Prefer visual and kinesthetic learning styles
3. Learn quickly with experience
4. Solve problems in resourceful and ingenious ways
5. Do not perform well on standardized measures
6. Perform better on non-verbal measures
7. Possess social intelligence with a feeling of
responsibility for community
8. Exhibit alertness and curiosity
9. Perform better orally than in writing, using humor
and metaphorical language
10. Demonstrate the ability to bridge two cultures
successfully

**Conditions Negatively Affecting
the Referral and Identification of
Minority and/or Disadvantaged Students
for Gifted and Talented Programs**

1. Low socioeconomic status
2. Minority group membership
3. Non-standard English
4. Limited competency in English
5. Emphasis on remediation

Stereotypes based on 1-5 above

Case Studies

Directions: Read the case studies carefully. Based on your professional judgment and experience, answer the following question for each case:

“How likely is the individual to be gifted and talented?”

Circle the number that best matches your response.

(1=extremely likely to be gifted; 5=not at all likely to be gifted)

CASE #1: 1 2 3 4 5

Mary, age 14, an orphan, was willed to the custody of her grandmother by her late mother. (Mary’s mother was separated from alcoholic husband, now also deceased.) Her mother rejected the homely child who was known to lie and to steal sweets. Mary swallowed a penny at age five to attract attention. Her father was fond of the child. Mary fantasized about living as the mistress of her father’s household for years. Mary’s grandmother, who is widowed, cannot manage the girl’s four young uncles and aunts living in the household. Grandmother resolves to be stricter with granddaughter since she fears she has failed with her children. Dresses granddaughter oddly and puts her in braces to keep back straight. Refuses to let her have playmates. Did not send her to grade school. At 15, Mary is sent to a boarding school in England where, mentored by the headmistress, she exhibits academic achievement and leadership skills.

CASE #2: 1 2 3 4 5

William, a junior in high school, is a popular athlete who has already been approached by a number of colleges offering basketball scholarships. His life goal is to make a personal contribution to society. William is an excellent student, enrolling in many honors classes while maintaining a GPA of 3.8. He plays first string on the school basketball team and holds offices in several school organizations. His hobbies include chess, reading, and swimming.

CASE #3: 1 2 3 4 5

Victoria is an African American student in the fourth grade at a small rural school. One parent finished high school and the other completed grade eight. Both work—the father holding two jobs to provide the necessities for Victoria and her three siblings. The family home is a small two-bedroom bungalow. Victoria is very articulate. Her facial expressions, word choice (though not always appropriate in a school setting), and gestures hold the attention of others when she tells stories or sings the songs she has created out of her imagination. Her performance in the classroom is lackluster at best. Her homework is often missing or incomplete, as is her classwork. Victoria's teacher is impatient with her performance and behavior in the classroom. Victoria has requested information on Shakespeare and a copy of his play, *Romeo and Juliet*.

CASE #4: 1 2 3 4 5

Sam, a high school senior, has obtained a certificate from his physician stating that a nervous breakdown makes it necessary for him to leave school for six months. He is not a good student and has no friends. Sam's teachers find him to be a problem. As a child, he spoke late and adjusted poorly at school. His father is ashamed of his son's lack of athletic ability. Sam has odd mannerisms, makes up own religion, and chants hymns to himself—his parents regard him as "different." He often walks about oblivious to weather conditions. His academic aptitude is way above average, but his performance in school ranges from low average to below average—except in math, his primary interest.

CASE #5: 1 2 3 4 5

Thomas is a clean-cut seventh grader with a sunny disposition. In the classroom he sometimes has difficulty focusing on the assigned tasks. He tends to lose his homework and classwork in the black hole of his desk or book bag. His school performance tends to be erratic—sometimes great, sometimes not. Transition from one subject to the next poses a problem for him. There is a gap between his potential and his achievement. His teachers seem to like him, but they constantly have to remind him to finish his work and hand it in. Thomas enjoys working on complex math problems and is usually the first one in his class to solve the "problem of the week."

Debriefing

CASE #1: This is Eleanor Roosevelt. Remember—giftedness is a dynamic quality that can only be enhanced by learning experiences that challenge and extend the person's ability, talent, and/or interest. Placed in the challenging, yet supportive environment of the boarding school, Eleanor's gifted behaviors emerged.

CASE #2: This is Bill Bradley—Rhodes scholar, professional basketball player for the New York Knicks, and former U.S. senator. He was the type of student easily recognized as gifted—one who exhibits many of the characteristics. (He is running for the Democratic nomination for President.)

CASE #3: This is the same Victoria you saw briefly on the tape. She would not have been identified as gifted and talented based on standardized aptitude and achievement scores. Using alternative measures that tapped her strengths—oral and written communication and creativity—and placing her in a challenging and supportive environment, she exhibits gifted and talented behaviors.

- CASE #4:** Sam is actually Albert Einstein. His giftedness was not obvious until adulthood. He created his own challenging environment to extend his mathematical ability.
- CASE #5:** Thomas represents a composite of several underachieving gifted students. He may have a mild learning disability in writing (dysgraphia) and/or he may have an attention deficit disorder. (Notice the disorganization and distractibility.) Thomas is gifted mathematically.

Case 4 and Case 5 are lopsided, not gifted and talented in all areas. Only Case 2 is easily identified. All other cases have problem areas that may mask their giftedness. We as teachers, must look beyond the problem behaviors to identify students' strengths and talent areas.

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