THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Opinion No. 5237 (S.C. Ct. App. filed May 30, 2014)

Lee C. Palms and Nelle S. Palms, as Guardians ad Litem for L.P., a minor .....Petitioners,

v.

The School District of Greenville County ..... Respondent.

PETITION FOR WRIT OF CERTIORARI AND RECISSION OF PREMATURE REMITTITUR

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INDEX

CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals; however, Counsel for Petitioners was not notified that a decision had been issued until it received the South Carolina Court of Appeals letter transmitting the Remittitur to the Greenville County Court of Common Pleas in a letter with a hand-corrected date of August 19, 2014. (App. 286)

The face of the Court's Order denying the Petition for Rehearing was stamped "FILED July 10, 2014"; however, Counsel for Petitioners did not receive the Appeals Court Order until it received the letter transmitting the Remittitur. (App. 287)

Because Counsel for Petitioners was eagerly awaiting the Appeals Court decision on both its Petition for Rehearing and Stay, Petitioners Counsel checked the Appeals Court web page for advance sheets every Wednesday, which is the day of the week updates and changes are posted. The Appeals Court's Advance Sheet web page showed the Petition for Rehearing as "Pending" through the week of August 13, 2014. (App. 291-292) Then, for the first time, during the week of August 20, 2014, the advance sheet web page shows the Petition for Rehearing as having been denied with a date of "July 10, 2014". (App. 293-294)

Because Counsel for Petitioners, whose Petition for Rehearing was at issue, was not provided notice that said Petition was denied, nor was the public provided notice via the Appeals Court's advance sheet web page, the Appeals Court prematurely remitted the case to the Greenville County Court of Common Pleas.

Accordingly, Petitioners seek both a Writ of Certiorari and Rescission of the Premature Remittitur.

QUESTIONS PRESENTED

1. Are South Carolina courts prohibited from correcting the intentional infliction of harm upon a student by the deliberate violation by a school district of a South Carolina statute, a South Carolina Department of Education regulation and the district's own regulation?

2. Are South Carolina courts prohibited from enforcing the doctrine of estoppel against a school district which has intentionally harmed one of its own students by deliberately violating a South Carolina statute, a South Carolina Department of Education regulation and one of the district's own regulations to change its decision about the student in secret after he had already enrolled in one of its schools in reliance upon the district's original decision, and withholding from him the second decision until six months after he had enrolled?

STATEMENT OF THE CASE

Petitioner L.P. was a student at Riverside Military Academy ("Riverside"), an accredited high school in Georgia, through the end of his sophomore year. During the summer before his junior year, he transferred to Southside High School ("Southside") within the Greenville County School District ("School District") boundaries. Before enrolling in Southside, School District transferred the numerical grades L.P. earned at Riverside to his Southside transcript exactly as they were reflected on the Riverside transcript as required by S.C. Code Ann. § 59-5-68, S.C. State Board of Education Policy 55-03-06, and Greenville County School District Policy (which is identical to 55-03-06).[1] Six months later, and after more than a full semester of school had passed, School District unilaterally lowered many of L.P.'s grades. Unbeknownst to L.P. School District had engaged in an almost four month

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[1] SC Code Section 59-5-68 directs the South Carolina State Board of Education to adopt a uniform grading policy. The South Carolina State Board of Education adopted a policy and directed the school districts of the state to use that policy. That policy is as follows:

> "When transcripts are received from accredited out-of-state schools (or in state from accredited sources other than the public schools) and numerical averages are provided, those averages ***must*** be used in transferring the grades to the student's record." [Emphasis added.]

That state policy is repeated verbatim in the School District's own grading policy, as required by S. C. Code Ann. § 59-5-68. (App. 87)

concerted effort to change his numerical grades – School District knowingly and deliberately kept secret its intention from L.P. until after School District made its decision to change L.P.'s grades. From August 2012 through January 23, 2013, L.P. did not even know his grades were an issue.[2]

This action was brought on June 21, 2013 by the filing of a Summons and Complaint in the Court of Common Pleas in Greenville County. The Complaint sought a Writ of Mandamus directing Appellant, School District forthwith to restore the grades and rank of the minor L.P., to the levels first determined by his school, Southside, at the beginning of his junior year, before the unlawful reduction by the School District. The Complaint also sought an injunction prohibiting the alteration of his grades and rank in a manner inconsistent with the Writ of Mandamus.

The School District answered on August 6, 2013 with a denial, challenge to the Court's subject matter jurisdiction and defenses of ripeness, lack of controversy, waiver, estoppel, and good faith. On August 8, 2013, L.P. moved for expedited trial in the Business Court on the ground that he was a rising senior and would be applying to college in the fall. On September 9, 2013, the Hon. Jean H. Toal, Chief Justice of the South Carolina Supreme Court, declined to assign the case to the Business Court Pilot Program but did assign it to the Hon. Edward W. Miller, Circuit Judge. She further ordered that "Judge Miller shall have jurisdiction over this case regardless of where he may be assigned and he shall insure that this case is resolved in an expedited manner." The case was tried to the Court without a jury

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[2] This case is not about the calculation of grades. It is not about how a teacher might have graded a test or a paper. It is not about whether L.P. should have had an A or a B in a class. In fact, it is not about anything that ever occurred in a School District classroom or even in a School District school. This case is about the transfer of grades from one accredited school to another. There is a law in South Carolina that specifically determines how that ministerial act is to be accomplished. (§ 59-5-68) (App. 93) It is simple. A grade of 97 in Honors Biology at School "A" transfers to a grade of 97 in Honors Biology at School "B".

on October 4, 2013. The Circuit Court found that the School District violated the law, denied L.P. notice or an opportunity to be heard, and entered a written Order on October 7, 2013, granting L.P.'s requested Writ of Mandamus and prohibitive injunction. The Court held that School District's action of changing L.P.'s numerical grades

> "was in violation of state law, the grading policy of the South Carolina Department of Education and the Defendant's own grading policy. . . . The Court is further concerned this improper change was made without notice to Plaintiff or an opportunity to be heard.
>
> What the Plaintiff seeks is that his grades and rank be restored as originally determined by Southside High School on October 3, 2012. I hereby grant his request and issue this Writ of Mandamus requiring the Defendant to do so immediately. Also, the Plaintiff has requested an injunction prohibiting the alteration of his grades and rank in a manner inconsistent with this Writ of Mandamus. I hereby grant that injunction."

(App. 6-7) The School District filed a notice of appeal on October 7, 2013, and an amended notice of appeal on October 10, 2013. Amici Curiae intervened and participated in briefing and oral argument.

The Appeals Court reversed the trial court's order without reaching the merits of the case. The Appeals Court stated, "We find the trial court should not have reached the merits of the issues raised in this case because these issues are not appropriate for judicial determination. Our supreme court has refused to interfere with the internal decisions of school administrators and school districts 'unless there is clear evidence of corruption, bad faith, or a clear abuse of power.'" The Appeals Court then stated that L.P.'s parents did not allege the School District acted corruptly or in bad faith, or abused its power, and they

presented no evidence that would support such an allegation." (App. 230-231) The Appeals Court did not reach the merits on any other argument proffered by Petitioners, including Petitioners' estoppel argument.

This is a case of first impression regarding a school district's deliberate and intentional violation of the law to inflict harm on one student.

The Appeal's Court decision nullifies and eviscerates SC Code Ann. § 59-5-68 and the mandated policies thereunder.

This is also a case of first impression in which the Court is asked to review the secret actions by a school district to intentionally harm one of its own students while deliberately keeping the student in the dark for many months and whether estoppel should bar such School District activities. The months of secret emails and phone calls paints a grim picture of fair dealing and due process, which concerned the trial court.

Petitioners seek a Writ of Certiorari because they believe the Appeals Court misapprehended the South Carolina Supreme Court's reluctance to interfere with school district decisions in circumstances in which a school district fails to comply with the law, State Board of Education mandated policies or the school district's own policies. This is a case about a school district refusing to perform the ministerial act of transferring grades from one accredited school to another in accordance with the law. There is no discretion, subjective evaluation, or behind the scene transcript review of an accredited school's transcript allowed under the law. A subsequent accredited school is not allowed to substitute its judgment for that of the classroom teachers in the prior accredited school. But, that is what School District did because one prominent family who held the PTA President position for the most recent four years pressured School District to change L.P.'s grades to improve their own son's class rank relative to L.P. And, they did it all in secret for many

months. (App. 150-157, 159, 162-163, 167 fn. 7 and 168) In this case, the law and the policies were violated and mandamus is the appropriate remedy to compel a school district to comply with the law. The trial court correctly ruled after hearing all the evidence and that court should be upheld because it did not abuse its discretion in issuing the Writ of Mandamus.

Petitioners also seek a Writ of Certiorari because Petitioners believe the Appeals Court misapprehended the law as it applies to a Writ of Mandamus. A writ of mandamus does not require a separate showing of bad faith, corruption, or abuse of power, as the Appeals Court held. When a school district violates a law, it may be compelled to comply with the law. Violation of the law is a sufficient condition for a Writ of Mandamus to be issued. Additionally, the School District's behavior in this case rises to the level of bad faith, corruption, or abuse of power nonetheless. Contrary to the Appeals Court's Opinion, Petitioners did present evidence that the School District acted in bad faith, corruptly, and abused its power. That is one of the central themes in this case. (App. 150-156, 159, 162-163, 167 fn. 7, and 168) When one acts in good faith, without corruption, and within the limits of ones power, one does not secretly behave in the manner the School District behaved in this case.

Petitioners also seek a Writ of Certiorari because the Appeals Court did not reach the merits of Petitioners' estoppel argument. School District should be estopped from changing L.P.'s grades almost six months after the School District initially provided L.P. his Southside transferred grades. Changing his grades almost six months later, after final grades were entered and credits earned for the first full semester of the school year, and after months of secret maneuvers, is simply unfair and not what South Carolina students should expect from governmental leaders. Because the School District hid their actions and intent from L.P.

until after he had enrolled in Southside, selected his junior year courses based on his Riverside courses having transferred, completed and earned grades for the first full semester and attended more than half the school year at Southside, School District deprived L.P. of the opportunity to return to Riverside with his grades intact.

The Appeals Court did not reach the merits as to any issue.

Statement of Facts

At the time this case was filed in the Circuit Court, L.P. was a rising senior at Southside. He transferred to Southside at the beginning of his junior year from Riverside where L.P. worked diligently while at Riverside and received high marks reflective of his efforts. Often he would get everything correct on an assignment or test, yet only receive a 95 or a 90 as his grade. When he asked about that, his teachers would tell him it did not matter because the nature of the course would add five or ten points, respectively, for him at the end of the semester. (App. 37, lines 22-p.38, lines 1-15) In other words, some of his teachers at Riverside actually lowered his earned grades artificially.

At the time of L.P.'s transfer to Southside, his grades from Riverside were provided to Southside in an official Riverside transcript dated August 1, 2012, and provided to School District at that time as part of L.P.'s initial enrollment papers. (App. 79) Southside correctly accepted these transferred grades and issued L.P. his grades and class rank in a Southside transcript, which was continuously available to L.P. via the schools "parent portal" - the "parent portal" allows parents and students to access a students past and current grades simply by logging into their online account. Later, on October 3, 2012, every Southside student was provided a *paper* or hard copy transcript that included grade-point averages and class rank. Southside High School pushes to students in hard copy their transcript twice during the school year, (October and February) and at the end of the school year. The

October 3, 2012 hard copy transcript is the transcript in the Record on Appeal at page 77. (App. 80) Grades are electronically available continually. In the bottom right-hand corner the transcript shows L.P.'s GPA as 5.215, reflecting the SC Uniform Grading Policy. *Id.* Southside accepted and transferred the Riverside grades in accordance with S. C. Code Ann. § 59-5-68 mandated both the South Carolina State Board of Education Policy, and the School District's policy, which is required to be identical. (App. 81) The statute is as follows:

> "The General Assembly finds that given the fact the State provides substantial financial academic assistance to students to the State based on cumulative grade point averages and districts currently use a variety of grading scales, it is in the best interest of the students of South Carolina for a uniform grading scale to be developed and adopted by the State Board of Education to be implemented in all public schools of the State. Therefore, the State Board of Education is directed to establish a task force comprised of superintendents, principals, teachers, and representatives of school boards and higher education no later than June 30, 1999. The task force shall make recommendations to the board including, but not limited to, the following: consistent numerical breaks for letter grades; consideration of standards to define an honors course; appropriate weighting of courses; and determination of courses and weightings to be used in the calculation of class rank. The task force shall report its findings to the State Board of Education no later than December 1, 1999. The State Board of Education shall then adopt and school districts of the State shall begin using the adopted grading scale no later than the 2000-2001 school year."

The South Carolina Department of Education Uniform Grading Policy was adopted as follows:

"When transcripts are received from accredited out-of-state schools . . . and numerical averages are provided, those averages *must* be used in transferring the grades to the student's record. . . ."

South Carolina State Board of Education Policy, at Page 55-03-06, (App. 98)

The School District's policy states under the heading Course Grading:

"The district complies with the State Board of Education policy regarding a Statewide uniform grading scale."

(App. 84) The policy continues in the section titled "Conversion Process" to direct schools in the manner in which they convert grades for transfer students, as follows:

"When transcripts are received from accredited out-of-state schools . . . and numerical averages are provided, those averages *must* be used in transferring the grades to the student's record. . . ."

(App. 87) (emphasis added). The State Board of Education Policy was adopted on January 9, 2007. (App. 91-103) It was the result not only of legislative mandate, but also careful study. (*See also,* the synopsis agenda and executive summary that details the process and the blue ribbon committee who participated in developing that policy, including assistant superintendents of instruction, guidance counselors, Commission on Higher Education members, curriculum coordinators and South Carolina Department of Education personnel).

On October 4, 2012, the very next morning after L.P. and the other Southside students received their October hard copy Southside transcripts, the mother of another student in the junior class at Southside complained to the school about L.P.'s grades in an email to the school. The complaining mother, Susan S., went so far as to call Riverside the morning of October 4, 2012 to inquire about L.P.'s grades and their calculation *without L.P.'s knowledge or consent.* (App. 114) Susan S., writing for herself and her husband Russell S., asked

that the school keep her complaint anonymous because "[o]ur son, [name redacted] [H.S.], has NO IDEA we are looking into this grading issue and would be horrified to find out. We do not want him involved in this discussion in any way and we would prefer that we remain anonymous as well. Please keep this communication in utmost confidentiality." (App. 114)

Southside's Principal, Carlos Brooks, immediately sent an email to the School District stating that he had reservations about the methods Susan S. had used. (App. 115-116)[3] His concerns are not surprising. The Federal Family Education Rights and Privacy Act protects a student's right of privacy.

Both Brooks and a Southside guidance counselor, Dyamond Henderson, promptly sought and received confirmation from the School District that Southside had correctly transferred L.P.'s grades. Ms. Henderson sent an email to Rob Rhodes, Director of School Counseling Services at the School District, as follows:

> "A student transferred from another school and this parent is upset because the school he transferred from weights honors and AP courses and doesn't feel this is fair. I explained to our IB Coordinator that we can't alter transcripts, we only enter what we receive. I called Dr. Childs to see how they would handle this and he agreed. He also stated that other students information is confidential and shouldn't be discussed with other parents.
>
> Mr. Brooks asked that I e-mail you to verify what the district policy is before he responds to the parent."

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[3] Petitioners received the emails and other information referenced herein only after filing a request for the records in this matter pursuant to the South Carolina Freedom of Information Act on January 30, 2013. (App. 124-125)

(App. 117) The next morning, Principal Brooks wrote to Susan S. via an email that "our guidance department has followed the uniform grading policy as outlined by the State Department of Education and the District." (App. 118)

As of October, 5, 2012, the day after Susan S.'s complaint, the Southside principal and guidance counselor, Dr. Childs, and Mr. Rhodes at the School District, confirmed that the Southside transcript issued to L.P. on October 3, 2012 was correctly prepared. They had taken account of Susan S.'s argument about the so-called "extra points" and dismissed it.

Susan S. would not take "No" for an answer, continued to apply pressure to Southside and the School District, and then she and her husband inserted themselves into the appeal by filing an Amici Brief. Who are they? Russell S. is serving a two-year term as *President* of the Southside PTSA and Susan S. served a two-year term as President before him. Russell S.'s email address on Southside's website directs one to an organization called "Greenville Forward", which he founded and serves as executive director. His biography on its website portrays him as a part of the local power structure and says that "his wife, Susan, is even more awesome".

More than one month after Principal Brooks' October 5, 2012 email to Susan S. advising her that the transcript had been properly prepared, on November 8, 2012, Ms. Henderson, the Southside guidance counselor, received a phone message from a "Pat" at Riverside. Although we do not know exactly what transpired from October 5th to November 8th because the School District has not provided anything for that time period in response to L.P.'s Freedom of Information Request, we do know that <u>something</u> was being done without L.P.'s knowledge or consent because Ms. Henderson received a call from Riverside in response to a request she had made to that school. The transcript of the voice message left by Pat makes it clear that Riverside had been asked to change L.P.'s transcript.

Ms. Henderson had registered her disagreement with the efforts to change L.P.'s grades and was just following orders in her communication about this with Riverside. She and Riverside's academic dean saw eye-to-eye on the matter. He said, no, he is "not comfortable changing our transcripts." (App. 119)

Why did the School District go to the trouble of asking Riverside to change L.P.'s official transcript? There are two answers. First, it is a crime in South Carolina to change a transcript; S.C. Code Ann. § 16-13-15. Second, the School District knew that the Uniform Grading Policy required it to accept the official transcript as given by Riverside. The School District was stymied.

When Riverside refused to change L.P.'s official transcript from its end, the School District decided to change his transcript from the Southside end. It did this by a directive from Rob Rhodes of the School District to Ms. Henderson, instructing her to go behind the official final Riverside transcript to get unofficial preliminary uncorrected grades. These unofficial preliminary grades would have been lower because, among other reasons, some teachers artificially lowered preliminary grades in anticipation of later adjustment in the final official transcript. In an email to Principal Brooks on November 27, 2012, Ms. Henderson advises him that she has done as requested. (App. 120) Also, she expresses her concern about what she is being asked to do:

> "I received the grades that Rob Rhodes asked that I request from Riverside Military. Now that we have the grades I am not sure of how to proceed. As I explained I am very uncomfortable with this situation. This is a sensitive issue and I am certain [name redacted] L.P.'s parents will have questions regarding this situation. I would like to speak with you when you are available for instructions on how to proceed. If at all possible, I would

like your intervention because this issue has gone above my head. *I don't have the authority nor am I comfortable changing a schools final grades regardless of their policy."* *Id.* (emphasis added).

Two days later, on November 29, 2012, Ms. Henderson sent another email to the Southside Principal and again expressed her concern about the situation and what she had been asked to do. (App. 121)

> "I would like to note my concern as I foresee this as a future issue. The voice mail I received and forwarded stated that the school was not comfortable changing grades on their transcript. I was then instructed to ask them to send grades without changing their transcript. As you are aware the SC Uniform Grading Policy states when receiving grades from an out of district school and numerical grades are provided, those averages must be used in transferring the grades to the student record (attached). Of course I will do as I have been directed, however I would like to get clarification on the recommendation. I know this is an unusual situation, but this contradicts everything I've been taught and would like to be clear of the request before I made the changes.
>
> Also, is there a plan in place for dealing with the student this affects? He has already been given a copy of his transcript and I anticipate his parents questioning the change. Who will notify the student and his parents?"

Id. These emails confirm that initially, the School District wanted Riverside to change its official transcript. When Riverside said "No", the School District required the Southside guidance counselor to do something that violated everything she had been taught, everything she had done in other transfer situations, official policy and the law. She again expressed her

deep concern. The latter email also confirms that as of the end of November, almost two months after the School District started this secret process, L.P. and his parents were still completely unaware of what was being done to him and School District **knew** they had kept L.P. ignorant of their actions. Unaware, he continued to attend Southside relying on the October 3, 2012 transcript provided to him by Southside and approved by the School District.

The next disturbing email is dated December 4th. (App. 122) In that email, Guidance Counselor Henderson writes once again to Principal Brooks about what is happening:

> "When we spoke yesterday you instructed that I enter the grades and notify the parents. I sent an email on 11/29 to Riverside Military Academy requesting grades from the 8th grade. I have not contacted L.P.'s parents yet because I don't have his complete record. If you would like me to contact them to make them aware now, just let me know."

Id. This is further confirmation that Ms. Henderson has been following orders, that she has been told to change L.P.'s grades, that she has been contacting Riverside without L.P.'s knowledge or consent, in violation of his right to privacy, and that all information about this behind-the-scenes process continues to be kept secret from him and his parents.

Not until January 22, 2013, in a voice-mail message, were L.P. and his parents provided notice that the school had any issue whatsoever with his official Riverside transcript. The next day Ms. Henderson advised Principal Brooks that she "spoke with L.P.'s mother and she would like to meet with us tomorrow." (App. 123) The decision to change L.P.'s grades had been made at least as far back as November 9, 2012 when the School District asked Riverside to change L.P.'s original transcript. (App. 119-122) The

meeting with L.P's mother was merely to inform her of a decision long ago made. L.P.'s altered Southside transcript of grades is dated February 8, 2013, but that is not when the decision was made. (App. 127)

Principal Brooks sent a letter to L.P.'s parents on February 6, 2013 in an attempt to justify the changes to L.P.'s transcript. (App. 126) The letter says in essence that the school wanted to level the playing field. (App. 36, lines 15-17) It did no such thing. It looked at only one of many factors in Riverside's grading practices. The only factor that the School District considered was the one that Susan S. wanted it to consider, the one that benefitted her son. As mentioned previously, some Riverside teachers deliberately gave L.P. only a 90 or 95 for perfect answers, so that he would not get above 100, even after weighting for course difficulty. (App. 37-38) There was no unlevel playing field or "double dipping." Southside and the School District missed this because they excluded L.P. and his parents from the process and made their decisions in secret before ever alerting them that there was even an issue.

There are all kinds of factors that go into grades. For example, some schools are harder than others. Some teachers are harder than others. Some courses are harder than others. Some teachers give extra credit. Some do not. Some give extra credit for some things and not for others. The list is endless. *South Carolina's law and policy for converting grades upon transfer is designed to avoid looking at these factors. That is why one is to take the grades from the official transcript, period.* School District relied upon and changed L.P.'s grades based on unofficial grades sent in an email that were never officially vetted or issued. The Trial Court was concerned about this as well. (App. 73, lines 1-4)

Had L.P. been told in August 2012 that his transfer to Southside would result in his grades being lowered, he could have returned to Riverside. Indeed, had he even been told in

October 2012 that his grades were being lowered – or even challenged - he could have returned to Riverside. Instead, School District deliberately kept him and the Petitioners in the dark about everything until after his final grades for the first half of the year were finalized and entered on his transcript. At that point, it was too late for L.P. to return to Riverside with his grades unchanged.

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

The Appeals Court also did not reach the merits of Petitioners' estoppel argument.

ARGUMENT

1. South Carolina courts are not prohibited from correcting the intentional infliction of harm upon a student by the deliberate violation by a school district of a South Carolina statute, a South Carolina Department of Education regulation and the district's own regulation.

The Appeals Court held that it was prohibited from reaching the merits in this case. However, not a single case was cited by any party or the Appeals Court stands for the proposition that a South Carolina court is prohibited from reaching the merits of a case when the School District has deliberately violated the law and intentionally harmed a student in the process. Petitioners ask this Court to grant a Writ of Certiorari because Petitioners believe the Appeals Court misapprehended the boundaries of the South Carolina Supreme Court's reluctance to interfere with school decisions. That reluctance applies only to cases that involve internal subjective judgments. It does not apply to a case that involves the performance of a ministerial act according to a bright line objective standard mandated by a South Carolina statute and official State and local government rules, as is the case here. It does not apply to violations of the law, as is the case here. When this happens, redress must

be available. Without redress, the law and official government rules have no meaning. Parents and students must comply with the law and rules. School districts must also comply with the law and rules. The State Board of Education itself determined that a transfer student's grades would transfer in a uniform, *non-discretionary* manner. As this case demonstrates, transfer students need the protection of this law.[4] Before passage of the statute and adoption of the statewide uniform grading policy, school districts did have discretion in transferring grades. That discretion was removed. The Court of Appeals decision nullifies and eviscerates SC Code Ann. § 59-5-68 and the policies mandated thereunder.

The Complaint in this case is not a challenge to a teacher's grade on a student's papers or tests. It is not a challenge about something that happened in the classroom. It is about the transfer from one accredited school to another of grades that already exist. That is a purely ministerial function that does not involve student/teacher interaction. The cases uniformly counsel against allowing outside intervention to supplant the judgment of a student's classroom teachers and his or her own school. *See, e.g., Regents of the University of Michigan v. Ewing*, 474 U.S. 214 (1985). Even the cases cited by the School District and Amici say this. The decisions are based on the sensible proposition that the persons in the best position to judge a student's performance are his own teachers. The Court of Appeals misapplied these decisions because it did not respect the judgment of Riverside and its teachers. Riverside was L.P's own school, its teachers were his own teachers, and they gave him the grades that he deserved. Those grades were entered on an official Riverside transcript. The Court of Appeals decision has allowed the School District to intervene from

[4] School District actively harmed student even after graduation. L.P. requested a stay of the Appeals Court decision after graduation had passed but before he was required to provide final grades to his chosen college. School District objected to the stay even though agreeing to it would have not harmed anyone. (App. 269-270)

the outside – even across state lines – to ignore Riverside's teachers and their grades and substitute its own judgment for L.P.'s performance. That is the exact opposite of what the cases uniformly stand for.[5] (App. 160)

The Court of Appeals also misunderstands the effect of affirming the writ of mandamus. Because SC Code Ann. § 59-5-68 is based upon a bright line objective standard, it will not encourage litigation. Under the writ, grades are transferred exactly as they are received. That is simple. There is nothing to litigate. By undermining this bright line objective standard and giving in to pushy parents, the Court of Appeals has encouraged endless complaints to schools about so called "unfairness", and also set the stage for litigation, which will surely follow. Moreover, the School District has said that this case is unique. It is not worried about a floodtide of similar situations. (App. 165, fn. 6) Petitioners are worried, however, that school districts across the state may now willfully violate the § 59-5-68 with impunity because the Appeals Court decision bars judicial review.

The United States Supreme Court's cases quoted by the Appeals Court involve subjective judgments; none involves the performance of a ministerial act according to a bright line objective standard mandated by statute and official state and local government rules. Also, in those cases, except for *Epperson v. Arkansas*, neither laws nor official rules or policies were violated; and in *Epperson*, the United States Supreme Court accepted jurisdiction and ruled against the government. 393 U.S. 97 (1968) (the United States Supreme Court will most certainly intervene in school matters where fundamental "freedoms is nowhere more vital than in the community of American schools").

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[5] L.P.'s Riverside teachers did not miss the mark when they gave L.P. high marks. In fact, the Southside teachers gave him even higher marks and his GPA increased while at Southside. As of February 14, 2014, after three full semesters at Southside, L.P. remained first in the class, as Amici confirmed. (App. 163, fn 5).

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

The cases Appeals Court relied upon do not stand for the proposition that the Courts lack subject jurisdiction in every case involving schools or school districts. *See e.g., Hardwick ex rel. Heyward*, 711 F.3d 426 (4th Cir. 2002). Every high school U.S. History student would raise his hand to point out that some of the most famous cases in the United States have involved school districts. *See e.g., Brown v. Board of Education, 348 U.S. 483 (1954).* Instead, the cases advise courts to enter the school realm with caution in areas in which discretion has been properly exercised. The standard in this case is *not* one of discretion. Even if it were, School District acted arbitrarily and capriciously and with clear abuse of power in treating L.P.'s transfer differently from every other student's transfer, and differently from every student at Southside who received any extra credit points for any class. The Uniform Grading Policy was enacted to provide uniformity in grading and grade transfers from an accredited school so that no student has to justify his grades to a transferee school or suffer a diminishment of his accomplishments.

A writ of mandamus is the proper remedy when a public official disobeys the law. It requires no additional proof of bad faith, corruption, or clear abuse of power. *See e.g., Lovell v. Tinsley,* 236 S.W. 2d 24, 29 (Mo. App. 1951) ("Where a public officer disobeys the law, no exercise of discretion in good faith is involved. His wrongful act constitutes an abuse of

discretion, which is controllable by mandamus."); *Parents Against Abuse in Schools v. Williamsport Area School District*, 594 A.2d 796, 802 (Pa.Cmwlth.1991) ("a mandamus action is proper to enforce a mandatory legal duty imposed on school authorities" without requiring any additional burden on a student to also show bad faith, corruption, or clear abuse of power). When a school district adopts policies, it must strictly adhere to those policies; otherwise a writ of mandamus is the appropriate remedy. *See, Richie v. Board of Education of Lead Hill School District*, 933 S.W.2d 375 (Ark. 1996)

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

Id. at 379. When school districts violate the law, rules, or policies of superior governmental departments, or their own rules and policies, courts are not reluctant to provide justice.

The standard to determine if a petitioner has met its burden to obtain a writ of mandamus is whether the applicant has shown "(1) a duty of the respondent to perform the act, (2) the ministerial nature of the act, (3) the petitioner's specific legal right for which discharge of the duty is necessary, and (4) a lack of any other legal remedy." *Riverwoods, LLC v. County of Charleston*, 349 S.C. 378, 388, 563 S.E.2d 651, 657 (2002). Appellant has conceded element number (4). (App. 187, fn. 1) Petitioners demonstrated in their presentation to the Trial Court and in their brief on appeal that they met each of the writ of mandamus criteria.

There is no additional burden upon Petitioners to show other instances of bad faith, corruption, or abuse of power beyond what is inherent when a governmental authority or school district violates the law, or official rules or policies governing its behavior. The violation itself suffices. That was alleged and proven.

The trial court agreed with Petitioners that the School District was required to transfer the numerical grades from L.P.'s official transcript [6] The trial court did not abuse its discretion. Absent an abuse of discretion, the trial court's decision *must* be affirmed. *Jolly v. Marion Nat'l Bank*, 267 S.C. 681, 685-86, 231 S.E.2d 206, 208 (1976).

Contrary to the Court of Appeal's Opinion, the Respondents respectfully state that they did allege and present evidence that the School District acted in bad faith, corruptly,

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

Grades that are *not* numerical averages exist and are accounted for within the State policy: letter grades in the form of "A", "B", etc., are not in the form of "numerical averages." In the case of non-numerical averages, the State policy requires that a school district must assign numerical averages for those letter grades equal to those prescribed by the State policy. (App. 111) For example, an "A" would be assigned the numerical average of "96." This would be true even if the student had in fact earned only a "90," which is the lowest "A" in most grading scales outside of South Carolina. In such a case, a student would benefit from a 6-point increase in his actual grade by virtue of transferring with only letter grades. A student with a 90 in every course would receive substantial benefit from the State policy. The S.C. State Board of Education considered the myriad possible outcomes of its policy before passing it and mandating all school districts comply with it. A blue ribbon committee of educators at all levels participated in the process of devising the policy.

L.P.'s transcript contained numerical averages, which the School District then improperly lowered. We know that this action was arbitrary and capricious because the School District said it did this only to L.P. out of all the transfer students it has ever admitted into the Greenville County School District since 2007, when the State decided that numerical averages *must* transfer. The School District resorted to sophistry to escape its dilemma, made a strained argument about the definition of "numerical averages". It knows full well that an average includes everything. One cannot pick and choose what to average. Yet, that is what the School District did. That defies the plain meaning of the word, common sense and the intent of the statute, policy and grading system at issue here.

and abused its power – although, such a showing is not required for a Writ of Mandamus. That is one of the central themes in this case. If the School District had been acting in good faith, without corruption, within the boundaries of its power and in fairness to L.P., then why did the School District deliberately hide what it was doing from L.P. and L.P.'s parents? When one acts in good faith, without corruption, and within the limits of one's power, one does not secretly behave in the manner the School District did in this case.

The Statement of Facts, infra, highlight the manner in which School District acted in bad faith, corruptly, and abused its powers, all of which were included in the Respondents' presentation before the trial court and in its brief and oral argument in the Court of Appeals. (App. 150-157, 159, 162-163, 167 fn. 7, and 168) Secret emails, phone calls, meetings and decisions discussed and made behind a students back for four months and not communicated to him at all until after a full semester and final grades had been determined underscore School District's bad faith, corruption and abuse of powers.

2. South Carolina courts are not prohibited from enforcing the doctrine of estoppel against a school district which has intentionally harmed one of its own students by deliberately violating a South Carolina statute, a South Carolina Department of Education regulation and one of the district's own regulations to change its decision about the student in secret after he had already enrolled in one of its schools in reliance upon the district's original decision, and withholding from him the second decision until six months after he had enrolled?

Pursuant to Rule 220(c), SCACR, the Court may affirm the Circuit Court decision on any ground appearing in the Record on Appeal; Petitioners requested that the Appeals Court affirm on any ground available to the Court. (App. 169-170) Petitioners are not aware of any South Carolina case law that prohibits South Carolina courts from enforcing the doctrine of estoppel against a school district which has engaged in the pattern of behavior seen in this case.

When the School District hid its actions and intent from L.P. until after he had enrolled in Southside, selected his junior year courses based on his Riverside courses having transferred, completed and earned grades for the first full semester and attended more than half the school year at Southside, the School District deprived L.P. of the opportunity to return to Riverside with his grades intact. When L.P. received his transcript from Southside – which was correctly determined in August 2012 before L.P. enrolled - he relied on it. His grades were transferred as they had been provided by Riverside. That is what every transcript and all information he had received from School District confirmed until late January 2013 when L.P. learned for the first time that his transcript would be adversely changed. At the time Southside finally informed L.P. of the changes, more than half the school year was over and it was too late for him to simply return to Riverside. L.P. justifiably relied on the Southside transcript he was initially issued and the School District's failure to advise him that there was any issue at all with his transcript prejudiced him because it denied him the opportunity to timely return to Riverside where his grades were not subject to diminishment.

South Carolina courts should not be prohibited from enforcing the doctrine of estoppel in a case such as this one, because failure to enforce the doctrine would result in our State's most vulnerable citizens being harmed without judicial review. The School District should be estopped from changing L.P.'s grades almost six months after the School District initially provided L.P. his Southside transcript. That is simply unfair and not what South Carolina students should expect from its governmental leaders.

Because one family was obsessed with their son's class rank as second in the class, all of this was done to another student behind his back and without knowledge. It shocks the conscience that the School District, which is entrusted with our children's futures, and to teach them fairness and justice, would engage in such secret maneuvers against a new

student to appease the PTA president. Class rank has never been the issue to L.P. or his parents. This case is about the fundamental right to keep what one has earned, and for L.P. that means having the use of the grades he earned as he applies for higher education, employment, and governmental positions. L.P. earned his grades and he should have those grades available to him. That is why this Petition for a Writ of Certiorari is being filed even after he has graduated.

CONCLUSION

For the reasons stated, Petitioners ask the Court to grant the Petition for Writ of Certiorari.

September 16, 2014

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Opinion No. 5237 (S.C. Ct. App. filed May 30, 2014)

Lee C. Palms and Nelle S. Palms, as Guardians ad Litem for
L.P., a minor .....Petitioners,

v.

The School District of Greenville County ..... Respondent.

PROOF OF SERVICE

I certify that I have served Petitioner's Petition for a Writ of Certiorari to the **South Carolina Court of Appeals, Jenny Abbott Kitchings, Clerk, P.O. Box 11629, Columbia, S.C. 29211** and I have served Petitioner's Petition for a Writ of Certiorari and accompanying Appendix by depositing a copy of them in the U.S. Mail, postage prepaid, on September 16, 2014, addressed to:

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