

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. 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.

APPENDIX

PETITION FOR WRIT OF CERTIORARI

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



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TABLE OF CONTENTS

Record on Appeal	1
Final Brief of Respondents	142
Final Brief of Appellants.....	174
Final Reply Brief of Appellants.....	195
Brief of Amici Curiae	209
Opinion, Court of Appeals	229
Respondents' Petition for Rehearing	234
Respondents' Memorandum of Law in Support of Petition for Rehearing.....	244
Appellants Return to Petition for Rehearing	259
Respondents' Reply Memorandum in Support of Petition for Rehearing	274
Remittitur, Order, Letter, Envelopes, Advance Sheets	286
Order, South Carolina Supreme Court	295
Order Granting Motion to Recall Remittitur, South Carolina Court of Appeals	297
Motion to Recall Remittitur	298
Reply to Appellant's Return to Petition to Recall Remittitur	317
Appellant's Return to Petition to Recall Remittitur	320

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SC Court of Appeals

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

**APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas**

The Honorable Edward W. Miller, Circuit Court Judge

C.A. No.: 2013-002232

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

v.

The School District of Greenville County, ... Appellant.

AMENDED RECORD ON APPEAL

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Attorney for Respondents

TABLE OF CONTENTS

PAGES

ORDERS

Order of The Honorable Jean Hoefer Toal dated September 9, 2013,
denying motion to assign case to the Business Court Pilot Program.....1

Writ of Mandamus and Order of The Honorable Edward W. Miller dated
October 7, 2013.....2

PLEADINGS

Summons and Complaint dated June 21, 2013 7

Answer to Complaint dated August 9, 2013 12

TRANSCRIPT

Transcript of Record of Hearing on October 4, 2013 16

EXHIBITS

Riverside Military Transcript.....76

L.P. Southside High School Transcript dated October 3, 2012 77

Greenville County Schools Course Grading Guidelines 78

Greenville County Schools Uniform Grading Policy 81

South Carolina Uniform Grading Policy, including State Board of Education
Synopsis Agenda/Executive Summary 88

E-mail from Susan S. to Brooks, et al. dated October 4, 2012, 8:45 a.m. 111

E-mail from Brooks to Washington dated October 4, 2012, 3:40 p.m. 112

E-mail from Henderson to Rhodes dated October 4, 2012, 11:33 a.m. 113

E-mail from Brooks to Susan S. dated October 5, 2012, 8:05 a.m. 114

E-mail from Henderson to Rhodes dated November 9, 2012, 10:10 a.m. 115

E-mail from Henderson to Brooks dated November 27, 2012, 2:03 p.m. 116

E-mail from Henderson to Brooks dated November 29, 2012, 1:32 p.m. 117

E-mail from Henderson to Brooks dated December 4, 2012, 1:24 p.m. 118

E-mail from Henderson to Brooks dated January 23, 2013, 2:03 p.m. 119

Freedom of Information Request from Lee C.P. dated January 30, 2013 120

Letter from Brooks to Lee C.P. and Nelle S.P. dated February 6, 2013.....122

Southside High School Transcript dated February 8, 2013 123

Letter from Webb to Muller dated April 24, 2013.....124

E-mail from Daniel to Barlow and Nelle S.P. dated September 27, 2013, 6:39 p.m.	126
Numerical Average Grades from Riverside Military Academy for Honors and Advanced Placement Classes.....	128
State Board of Education Regulation 43-273	131
S.C. Code Ann. § 16-13-15.....	133
34 CFR § 99.30 Subtitle A, Subpart D	134

CERTIFICATE OF COUNSEL

Certificate of Appellant.....	136

The Supreme Court of South Carolina

Lee C. P. [REDACTED] and Nelle S. P. [REDACTED] as Guardians ad Litem
for L. [REDACTED] P. [REDACTED], a minor, Plaintiffs,

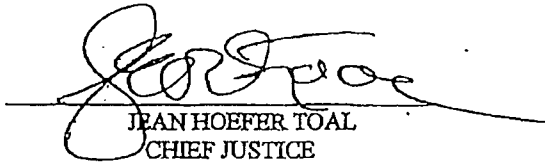
v.

The School District of Greenville, Defendant.

Lower Court Case No. 2013-CP-23-03447

ORDER

The motion to assign this case to the Business Court Pilot Program is denied. This case, however, is hereby assigned to the Honorable Edward W. Miller, circuit court judge. 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.



JEAN HOEFER TOAL
CHIEF JUSTICE

Columbia, South Carolina
September 9, 2013

cc: The Honorable Edward W. Miller
The Honorable Paul B. Wickensimer
Carl F. Muller, Esquire
Thomas Kennedy Barlow, Esquire
Kimberly Kelley Blackburn, Esquire

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FILED CLERK OF COURT
GREENVILLE CO. S.C.
STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE - 7 10 4:25 THIRTEENTH JUDICIAL CIRCUIT

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

CASE NO.: 2013-CP-23-03447

vs.

WRIT OF MANDAMUS AND ORDER

The School District of Greenville
County,

Defendant.

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

The Defendant answered on August 6, 2013. On August 8, 2013 the Plaintiff moved for expedited trial in the Business Court on the ground that the Plaintiff is a rising senior and will be applying to college this fall. On September 9, 2013, the Honorable 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 Honorable Edward W. Miller, Circuit Judge. She further ordered that "Judge Miller shall have jurisdiction over this case regardless

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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 on October 4, 2013. The facts were virtually undisputed.

In brief, the Plaintiff, L. [REDACTED] P. [REDACTED], is a rising senior at Southside High School. He transferred there at the beginning of his junior year from Riverside Military Academy in the State of Georgia. At the time of his transfer, his grades from Riverside Military Academy were transferred to Southside High School. They were initially accepted by Southside High School in accordance with the law of the State of South Carolina, the South Carolina Uniform Grading Policy issued by the South Carolina Department of Education and the Defendant's own grading policy. On October 3, 2012, Southside High School issued the Plaintiff his grades and rank. The next day, the parent of another student in the junior class at Southside High School complained to the school about the Plaintiff's grades. The administration at Southside High School initially informed the parent that the Plaintiff's grades had been determined correctly. Approximately two months later, in late November 2012, the Defendant reduced the Plaintiff's grades and rank after determining that, in its judgment, Plaintiff had received 5 to 10 bonus points for each honors and Advanced Placement class at Riverside Military. According to the Defendant, this would have created a "double bump" on his Southside transcript when the grades were transferred.

The Defendant may have made this change in a well-intentioned effort at what it considered to be fairness and equality in interpreting the Plaintiff's transcript from Riverside Military Academy. I assign no blame to anyone for the change. Nevertheless, the change was in violation of state law, the grading policy of the South Carolina Department of Education, and the Defendant's own grading policy. SC Code Section 59-5-68 directs the

2
Sum

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South Carolina State Board of Education to adopt a uniform grading policy. It further directs the school districts of the state to use that policy. This policy is as follows:

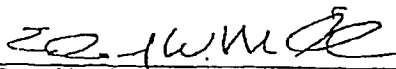
"When transcripts are received from accredited out-of-state schools (or in state from accredited sources other than the public schools) and numerical averages are provided, those averages *must* be used in transferring the grades to the student's record." [Emphasis added.]

That state policy is repeated verbatim in the Defendant's own grading policy, as required by SC Code Section 59-5-68.

Southside High School correctly followed policy when it initially determined the Plaintiff's grades and rank on October 3, 2012. The Defendant deviated from that policy when it did not accept the numerical averages provided on the official transcript by Riverside Military Academy and instead changed Plaintiff's grades and rank based on its interpretation of the grading policy and actions of Riverside Military Academy. The Court is further concerned this improper change was made without notice to the 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.

AND IT IS SO ORDERED.


Honorable Edward W. Miller
Circuit Judge
Thirteenth Judicial Circuit

October 7, 2013

FORM 4

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

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS, JR.

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2303447

IN C R

Nelle S Palms

School District Of
Greenville County

L

2013 OCT -7 P 4: 25

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ 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. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ ACTION STRUCKEN (CHECK REASON): ☐ Rule 40(j) SCRCP; ☐ 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 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

Judge Code

10/7/2013

Date

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

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For Clerk of Court Office Use Only

This judgment was entered on 7th day of October, 2013, and a copy mailed first class or placed in the appropriate attorney's box on 7th day of October, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Carl R. Muller 607 Pendleton St., Ste. 201 Greenville, SC
29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

Thomas Kennedy Barlow Childs & Halligan, P.A. P.O. Box
11367 Columbia, SC 29211
Kimberly Kelley Blackburn Childs & Halligan, P.A. P.O.
Box 11367 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

C. F. Muller and Nelle S. Muller, as Guardians ad
Litem for L. P. Muller, a minor

Plaintiff(s)

VS.

The School District of Greenville County

Defendant(s)

(Please Print)

Submitted By: Carl F. Muller

Address: PO Box 1717, Greenville, SC 29602

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2013-CP-

23-03447

SC Bar #:

4131

Telephone #: 864-991-8904

Fax #: 864-751-2831

Other:

E-mail: carl@carlmullerlaw.com

NOTE: The cover sheet 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 cover sheet 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- ☐ Notice/File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Battery/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accidents (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)
Ismate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lien Petitions (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Other (799)	Administrative Law/Relief ☐ Reinstatement Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☒ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	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) ☐ Other (999)
Special/Complex/Other ☐ Environmental (600) ☐ Automobile Acc. (610) ☐ Medical (620) ☒ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of-State Depositions (650) ☐ Motion to Quash Subpoena Is an Out-of-County Action (660) ☐ Sexual Predator (610)		
- Writ of
Mandamus

Submitting Party Signature:

Carl F. Muller

Date: June 21, 2013

SCCA / 234 (01/2011)

Page 1 of 3

000007

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Lee C. R. [REDACTED] and Nelle S. R. [REDACTED], as)
Guardians ad Litem for)
L. [REDACTED] R. [REDACTED], a minor)
Plaintiffs,)

CASE NO.: 2013-CP-23 03447

vs.)

SUMMONS

The School District of Greenville)
County,)
Defendant.)

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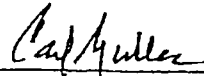
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YOU ARE HEREBY SUMMONED and required to answer the Complaint in this
action, a copy of which is hereby served upon you, and to serve a copy of your Answer upon
Plaintiffs through their attorney, as follows:

Carl F. Muller, Esq.
Carl F. Muller, Attorney at Law, P.A.
607 Pendleton Street, Suite 201
Greenville, South Carolina 29601

within thirty (30) days from the date of service, and if you fail to answer the Complaint, the
Plaintiffs will apply to the Court for the relief demanded in the Complaint.

Respectfully submitted,



Carl F. Muller SC Bar No. 4131
607 Pendleton Street, Suite 201
Greenville, SC 29601
864-991-8904
864-751-2831 (fax)
carl@carlmullerlaw.com

Greenville, SC

Dated: June 24, 2013

000008

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

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

CASE NO.: 2013-CP-23- 03447

vs.)

COMPLAINT

The School District of Greenville)
County,)
Defendant.)

NON-JURY

FILED
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The Plaintiffs, complaining of the Defendant, would respectfully show unto the Court:

1. The Plaintiffs are duly appointed Guardians ad Litem for their son, L. P. He and they are citizens and residents of Greenville County, South Carolina, and are domiciled there.
2. The Defendant is a governmental entity and the public school district of Greenville County, South Carolina. One of its schools is Southside High School.
3. L. P. is a rising senior at Southside High School. He transferred there at the beginning of his junior year from Riverside Military Academy in the State of Georgia.
4. At the time of his transfer, his grades from Riverside Military Academy were transferred to Southside High School. They were accepted by Southside High School in accordance with the laws of the State of South Carolina, the South

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Carolina Uniform Grading Policy issued by the South Carolina Department of Education, and the Defendant's grading policy and rules.

5. L. [REDACTED] H. [REDACTED] was then ranked by Southside High School as first in his class.
6. Shortly thereafter, the mother of another student in the Junior Class at Southside High School complained to the school about the grades and rank of I. [REDACTED] P. [REDACTED]
7. The administration at Southside High School informed her that his grades and rank had been determined correctly.
8. She continued her complaints and they reached the administrative level of the Defendant.
9. In violation of South Carolina law, the South Carolina Uniform Grading Policy issued by the South Carolina Department of Education and the Defendant's own grading policy and rules, the Defendant yielded to her demands and reduced the grades and rank of I. [REDACTED] H. [REDACTED]
10. As a result of this action, the rights of I. [REDACTED] P. [REDACTED] have been violated and his prospects for gaining admission to a college or university of his choice have been impaired.
11. L. [REDACTED] H. [REDACTED] is entitled to a Writ of Mandamus from this Court directing the Defendant forthwith to restore his grades and rank to the levels first determined by Southside High School at the beginning of his junior year, before reduction, and an injunction prohibiting the alteration of his grades and rank in a manner inconsistent with the Writ of Mandamus.

Wherefore, the Plaintiffs pray that the Court issue a Writ of Mandamus directing the Defendant forthwith to restore the grades and rank of I. [REDACTED] P. [REDACTED] to the levels first

determined by Southside High School at the beginning of his junior year, before reduction, and an injunction prohibiting the alteration of his grades and rank in a manner inconsistent with the Writ of Mandamus. The Plaintiffs pray also for such other and further relief as shall be right and proper, and the costs of this action.



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Greenville, SC

Dated: June 21, 2013

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Lee C. [REDACTED] and Nelle S. P. [REDACTED] as
Guardians ad Litem for L. [REDACTED]
P. [REDACTED], a minor,

C.A. No. 2013-CP-23-03447

Plaintiffs,

ANSWER AND AFFIRMATIVE
DEFENSES

vs.

The School District of Greenville County,

Defendant.

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS
2013 AUG - 9 A 4 5

Defendant, School District of Greenville County, by and through its undersigned counsel,
hereby responds to the Complaint of Plaintiffs in accordance with the numbered paragraphs
thereof, as follows:

1. Admitted on information and belief.
2. Admitted
3. Admitted.
4. Admitted in part and denied in part. Defendant admits only that weighted numerical grades were originally transferred from Riverside Military Academy for L. [REDACTED] P. [REDACTED] to Southside High School. The remaining allegations of this paragraph are denied.
5. Admitted in part and denied in part. Defendant admits only that, based upon the weighted numerical grades originally received from Riverside Military Academy, L. [REDACTED] P. [REDACTED] would have been ranked first in his class at the beginning of the 2013-14 school year.
6. Admitted in part and denied in part. Defendant admits only that a parent of another student pointed out disparities in the weighted numerical grades and actual numerical grades that L. [REDACTED] P. [REDACTED] received from Riverside Military Academy.

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7. Admitted in part and denied in part. Defendant admits only that employees of Southside High School initially believed that grades should have been transferred as Plaintiffs desired.

8. Admitted in part and denied in part. Defendant admits only that District-level administrators reviewed the transfer of L [REDACTED] P [REDACTED]'s grades and determined that the weighted numerical grades from Riverside Military Academy should not be accepted, and rather, the unweighted numerical grade averages from Riverside Military Academy were to be transferred to Southside High School and then weighted in accordance with the uniform grading scale for purposes of calculating his grade point average.

9. Admitted in part and denied in part. Defendant admits only that it did not accept weighted numerical grades from Riverside Academy and L [REDACTED] P [REDACTED] is not currently ranked first in his class at Southside High School.

10. Denied for lack of knowledge.

11. Denied.

FIRST AFFIRMATIVE DEFENSE

This Court lacks subject matter jurisdiction of this matter, and Plaintiffs' claims must be dismissed pursuant to Rule 12(b)(1).

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claim is barred because the action is premature, not ripe, and no actual controversy exists.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrines of estoppel and waiver.

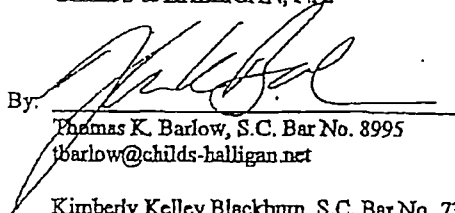
FOURTH AFFIRMATIVE DEFENSE

At all times, Defendant School District acted in good faith and had a reasonable and rational basis for its application of the Uniform Grading Scale as required by S.C. Code Ann. § 59-5-68 and implementing regulations.

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant School District of Greenville County respectfully requests that the Complaint be dismissed with prejudice and that Defendant School District of Greenville County be awarded the costs of this action, together with a reasonable attorney's fee as permitted by law or equity.

Respectfully submitted,

CHILDS & HALLIGAN, P.A.

By: 

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Kimberly Kelley Blackburn, S.C. Bar No. 73699
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(803) 254-4035

Attorneys for Defendant

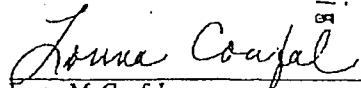
August 6, 2013

Columbia, South Carolina

CERTIFICATE OF SERVICE BY MAIL

The undersigned of Childs & Halligan, P.A., hereby certifies that she has served the following counsel of record with the foregoing ANSWER AND AFFIRMATIVE DEFENSES by mailing a copy of same, postage prepaid and return address clearly indicated, to the following on this 6th day of August, 2013:

Carl F. Muller, Esq.
Carl F. Muller, Attorney at Law, P.A.
607 Pendleton Street, Suite 201
Greenville, SC 29601


Lonna M. Coufal

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS/SHERR
2013 AUG -9 A 9 18

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF COMMON PLEAS
2013-CP-23-03447

LEE C. P. [REDACTED] AND NELLE S.
P. [REDACTED], AS GUARDIANS AD LITEM
FOR L. [REDACTED] P. [REDACTED],
A MINOR,
PLAINTIFFS,

vs.

THE SCHOOL DISTRICT OF
GREENVILLE COUNTY,
DEFENDANT.

TRANSCRIPT OF RECORD

ORIGINAL

October 4, 2013
Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, JUDGE.

A P P E A R A N C E S:

CARL F. MULLER, ESQ.
Attorney for the Plaintiffs

THOMAS K. BARLOW, ESQ.
R. DOUGLAS WEBB, ESQ.
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HOLLIE M. JENKINS
Circuit Court Reporter

000016

I N D E X

(There were no witnesses called.)

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
(Plaintiffs Exhibits)			
P-1	Transcript-Riverside Military Academy...	4	4
P-2	Standard High School Transcript.....	4	4
P-3	Greenville County Schools Grading Policy.....	5	5
P-4	South Carolina Uniform Grading Policy...	6	6
P-5	Section 59-5-68.....	8	8
P-6	E-Mail dated 10/4/12.....	9	9
P-7	E-Mail dated 10/4/12.....	9	9
P-8	E-Mail dated 10/4/12.....	10	10
P-9	E-Mail dated 10/5/12.....	11	11
P-10	E-Mail dated 11/9/12.....	13	13
P-11	E-Mail dated 11/27/12.....	14	14
P-12	E-Mail dated 11/29/12.....	14	14
P-13	E-Mail dated 12/4/12.....	16	16
P-14	E-Mail dated 1/23/13.....	17	17
P-15	E-Mail dated 1/30/13.....	17	17
P-16	Standard High School Transcript.....	17	17
P-17	Letter dated 2/6/13.....	29	29
P-18	Transfers and Withdrawals Document.....	21	21
P-19	Title 16.....	26	26
P-20	E-Mail dated 9/27/13.....	30	30
P-21	Untitled Document.....	49	49
(Defense Exhibits)			
D-1	Letter dated 4/24/13.....		
D-2	Defense Memo of Law in Opposition.....		

All Exhibits were retained by the Clerk of Court for
Greenville County.

000017

P R O C E E D I N G S

THE COURT: Okay. Tell me about it.

MR. MULLER: Your Honor, Carl Muller for the Plaintiff.

I don't know how Your Honor would like to proceed. Most, if not all, of the facts here are not in dispute. It's a question of the application of the law.

THE COURT: Yes.

MR. MULLER: It may be easier from just a management stand -- case management standpoint for me to go through the documents that I have and the law, and for Mr. Barlow to do the same thing. But if you wish for me to call witnesses, I can call them.

THE COURT: No. I don't -- I think -- you all agree that the facts are pretty much stipulated, aren't they, from what I can tell?

MR. BARLOW: Pretty much, not officially, but I don't think there's a factual dispute to a great degree.

THE COURT: Okay. Well, if it comes to a point where we need testimony, we'll do that. But, otherwise, let's just proceed as --

MR. MULLER: Thank you, Your Honor.

I represent [REDACTED], this young man who's seated to my left here. He's a senior at Southside High School. He previously was a student at Riverside Military Academy

1 for two years in the ninth and tenth grade. He
2 transferred in to Southside at the beginning of his
3 eleventh grade. And when he did, he sent his transcript
4 over. And here is a copy of his transcript.

5 THE COURT: All right. Let her mark it.

6 MR. MULLER: Which we should mark as Plaintiff's
7 Exhibit No. A [sic].

8 THE COURT: Any objection to that?

9 MR. BARLOW: No objection.

10 (WHEREUPON, Plaintiff's Exhibit No. 1 was marked for
11 identification and admitted into evidence.)

12 MR. MULLER: Southside High School then took his
13 transcript and -- from Riverside. And they created a
14 South Carolina high school transcript, which I would like
15 to introduce as Defendant's -- I'm sorry, as Plaintiff's
16 Exhibit No. 2.

17 THE COURT: Okay. No objection?

18 MR. BARLOW: No objection.

19 (WHEREUPON, Plaintiff's Exhibit No. 2 was marked for
20 identification and admitted into evidence.)

21 MR. MULLER: And if you'll note two things about that
22 transcript, in the lower right-hand corner is the date,
23 October the 3rd of 2012, which is important. And I'll get
24 to that in just a minute.

25 And then at the very bottom of the transcript, it

1 says, An official signature or seal is required for
2 manually-created transcripts. And we'll talk about that a
3 little bit later.

4 That transcript was correctly created by Southside
5 High School. That's the correct transcript. And that
6 transcript is correct under the Greenville County schools
7 grading policy, which I would like to introduce as
8 Plaintiff's Exhibit No. 3.

9 THE COURT: Okay.

10 (WHEREUPON, Plaintiff's Exhibit No. 3 was marked for
11 identification and admitted into evidence.)

12 MR. MULLER: There are two things that are important
13 to note on this policy. On the first page at the very
14 top, there's -- the very first sentence of the first page
15 says that the district complies with the State Board of
16 Education's policy regarding a statewide uniform grading
17 scale. It's the very first sentence.

18 If you go to the second page, in the middle of the
19 page, there's a section called Conversion Process. And
20 the second paragraph of that section reads, When
21 transcripts are received from accredited out-of-state
22 schools or in state from accredited sources other than
23 public schools and numerical averages are provided, those
24 averages must be used in transferring the grades to the
25 student's record. That's what Greenville County says they

1 do.

2 And if you look at the Riverside transcript that went
3 to Southside, it had numerical averages on it. And what
4 Southside did is they took those numerical averages and
5 transferred them. They complied with the Greenville
6 County school's grading policy.

7 And that policy originates from the State of South
8 Carolina policy adopted by the State Board of Education on
9 January the 9th, 2007. And I would like to introduce that
10 as Plaintiff's Exhibit No. 4.

11 (WHEREUPON, Plaintiff's Exhibit No. 4 was marked for
12 identification and admitted into evidence.)

13 MR. MULLER: At the very beginning of that, I'd like
14 to include a synopsis agenda and executive summary from
15 the South Carolina State Board of Education. And there
16 are a couple of things that are important about this.

17 If you look at the very first page of the synopsis
18 down at the bottom, there's a section called Timeline
19 Review Process. And the first entry is September of 2005.

20 And what that says is that a committee of 27 school
21 and district representatives statewide was formed to
22 review the 1999-2000 version of the uniform grading policy
23 and determine if provisions were needed. And the
24 committee included assistant superintendents of
25 instruction, guidance counselors, commission on higher

1 education members, curriculum coordinators, and South
2 Carolina Department of Education personnel. So this was
3 something that was carefully considered and put together
4 by a blue ribbon committee.

5 Then if you go over into the uniform grading policy
6 itself to Page -- if you look down at the bottom of the
7 pages, they're numbered in kind of an interesting way.
8 But if you go to Page 55-03-6 --

9 THE COURT: Okay.

10 MR. MULLER: -- it says, Converting grades on
11 transcripts. And it says, When transcripts are received
12 from accredited out-of-state schools or in state from
13 accredited sources other than public schools and numerical
14 averages are provided, those averages must be used in
15 transferring the grades to the student's records, which is
16 exactly the same as the --

17 THE COURT: Greenville County.

18 MR. MULLER: -- Greenville County policy.

19 And if you want to look at the General Assembly's
20 mandate for this, it is contained at the very beginning of
21 the policy on Page 55-03-1. And I've got -- well, that's
22 probably the best place to look at it. And if you look at
23 South Carolina Code Section 59-5-68, the last sentence
24 says, The State Board of Education shall then adopt and
25 the school districts of the state shall begin using the

1 adopted grade scale no later than the 2000-2001 school
2 year.

3 All of this began with a statute that was originally
4 passed, I think, in 1999 or a little bit earlier. And
5 I've got a copy of it right here. It references the same
6 thing, but it's just -- said that they were to get to work
7 earlier.

8 And I would like to introduce this as Plaintiff's
9 Exhibit --

10 THE COURT: No. 5.

11 MR. MULLER: -- No. 5.

12 (WHEREUPON, Plaintiff's Exhibit No. 5 was marked for
13 identification and admitted into evidence.)

14 MR. MULLER: And that's just an earlier version of
15 Section 59-5-68. And what it says is the State Board of
16 Education shall then adopt and the school districts of the
17 state shall begin using the adopted grading scale no later
18 than the 2000-2001 school year.

19 So it, basically, said get to work earlier. And then
20 the statute was updated simply just to change the date.
21 But the policy was the same here. So far so good.

22 Then on the morning of October the 4th, which is the
23 day after my client, [REDACTED], gets his grades, the
24 morning -- that morning at 8:45 a.m., the mother of
25 another student in Southside High School complains to the

1. school district and says that this is not right. And she
2. wants to remain anonymous. And her son, as it turns out,
3. is in the same class as Mr. P [REDACTED]

4. I'd like to mark this as Plaintiff's Exhibit No. 6.

5. THE COURT: Okay.

6. (WHEREUPON, Plaintiff's Exhibit No. 6 was marked for
7. identification and admitted into evidence.)

8. MR. MULLER: It's probably not the first time that a
9. parent has complained. So what the school does is
10. correct. The principal of the school, who is Carlos
11. Brooks, sends an e-mail to the district and says, We have
12. reservations about the methods the parent used. Because
13. the parent, according to her e-mail, called down to
14. Riverside Academy to find out about what was going on with
15. Mr. P [REDACTED].

16. Let's mark this as Plaintiff's Exhibit No. 7.

17. (WHEREUPON, Plaintiff's Exhibit No. 7 was marked for
18. identification and admitted into evidence.)

19. MR. MULLER: Now, the reason that Mr. Brooks had
20. reservations about that, undoubtedly, was not only because
21. of the privacy guidelines of the Greenville County School
22. District, but, also, because of the federal statute that
23. requires confidentiality to be maintained of students
24. records, a log known as FERPA, which is the Family
25. Educational Rights and Privacy Act.

1 Now, the guidance counselor at Southside High School
2 on Thursday morning, three hours after the complaint is
3 filed, looks into this.

4 And I'm sorry I left off the second page of the
5 e-mail to Plaintiff's Exhibit --

6 THE COURT: No. 7.

7 MR. MULLER: -- No. 7. So I need to give that to the
8 court reporter.

9 THE COURT: Any objection to just tacking it on?

10 MR. BARLOW: No objection.

11 THE COURT: Okay.

12 MR. MULLER: So three hours after the parent
13 complains, the guidance counselor at Southside High School
14 sends an e-mail to the district about --

15 THE COURT: Who is the guidance counselor?

16 MR. MULLER: The guidance counselor at Southside High
17 School, her name is Diamond Henderson. She sends this
18 e-mail on Thursday, October the 4th, at 11:30.

19 I'd like to mark this as Plaintiff's Exhibit No. 8.

20 (WHEREUPON, Plaintiff's Exhibit No. 8 was marked for
21 identification and admitted into evidence.)

22 MR. MULLER: And she does that three hours after the
23 mother of the other student complains.

24 And what she says -- she sends this e-mail to Rob
25 Rhodes and she says, Hey Rob, please see the below e-mail

1 from one of our parents regarding another student. And
2 then this is the critical part of this e-mail, she says,
3 We can't alter transcripts. We only enter what we
4 receive. She says, I called Dr. Childs and he agreed.
5 He, also, stated other students information is
6 confidential and shouldn't be discussed with other
7 parents. And then she says that her principal,
8 Mr. Brooks, asked that I e-mail you to verify what the
9 district policy is before he responds to the parent.

10 So she's stating what the policy is. And she's
11 asking for verification before the principal responds to
12 the parent. Well, the next day the principal responds to
13 the parent, which indicates that they have now obtained
14 verification from the school district on what the policy
15 is.

16 And the way the principal --

17 THE COURT: Is that -- you're introducing that as
18 Plaintiff's Exhibit No. 9?

19 MR. MULLER: I'm introducing that as Plaintiff's
20 Exhibit No. 9.

21 THE COURT: Okay.

22 (WHEREUPON, Plaintiff's Exhibit No. 9 was marked for
23 identification and admitted into evidence.)

24 MR. MULLER: That's an e-mail from Carlos Brooks
25 dated October the 5th, to Susan S████, who is the parent.

1 And he says, Ms. S [REDACTED], our guidance department has
2 followed the uniform grading policy as outlined by the
3 State Department of Education and the district. When a
4 transcript is received, we can only input the data as it
5 appears on the transcript.

6 So, now, what's happened is you have the parent
7 complained, immediately the guidance counselor says we
8 followed the policy and the law. She checked with the
9 principal, who says we followed the policy and the law.
10 She checked with the school district to confirm that. And
11 once she gets confirmation from the school district, the
12 principal then responds to the parent, we followed the
13 law.

14 But, apparently, the parent is not satisfied. The
15 way we know all this, by the way, I should mention to you,
16 is that we filed a Freedom of Information Act request to
17 get e-mails and any other information relating to this
18 case.

19 The next e-mail that we were able to obtain -- I
20 believe I'm right about this -- is a month later in
21 November, November the 8th, and it's an e-mail -- it's,
22 actually, a voice mail. It's a voice mail that I would
23 like to introduce. It's a transcript of a voice mail that
24 I would like to introduce as Plaintiff's Exhibit No. 10, I
25 believe.

1 (WHEREUPON, Plaintiff's Exhibit No. 10 was marked for
2 identification and admitted into evidence.)

3 MR. MULLER: So we don't know what's been going on
4 for a month. But, obviously, something has been going on
5 at some level. Because the next thing we find is a
6 transcript of a voice mail. And it is to Diamond
7 Henderson, who is the guidance counselor at Southside High
8 School. And it look like it is from Riverside Academy.
9 It says, Henderson, this is Pat. And Pat is a person at
10 Riverside Academy. And she says, Dr. Robinson, who is our
11 academic -- they said "bean," but I think that should have
12 been "dean" -- is not comfortable changing our
13 transcripts.

14 So it looks like -- I can't say for sure, but it
15 looks like somebody is asking Riverside to change the
16 transcript. And, obviously, the reason that they would be
17 asking Riverside to change the transcript is that they
18 know that they have to take the transcript as it is
19 presented to them by Riverside and not change it. That's
20 what the policy says. And that's what the law says. They
21 cannot change the transcript. But it looks like somebody
22 is trying to get them to do that.

23 The next thing we have is three weeks later. And, at
24 that point, it looks like there's been a discussion within
25 the school district by somebody -- some people and they

1 have decided to change the transcript on their own. And
2 this is an e-mail from Diamond Henderson, the guidance
3 counselor, to Carlos Brooks, the principal. And it's
4 dated November the 27th.

5 (WHEREUPON, Plaintiff's Exhibit No. 11 was marked for
6 identification and admitted into evidence.)

7 MR. MULLER: And the guidance counselor says to her
8 principal at the very end of that e-mail, she says, I
9 don't have the authority nor am I comfortable changing a
10 schools final grades, regardless of their policy.

11 So it's pretty clear that somebody has been nosing
12 around at [sic] what's been going on down at Riverside.
13 And they've tried to change the grades based on what they
14 consider to be the Riverside policy. And I'll get back to
15 that policy in a second, because I want to talk about
16 that. But right now, I want to keep going through these
17 documents.

18 The next thing we have is two days later, the
19 guidance counselor sends an e-mail, again, to the
20 principal. It looks like she's getting continuing
21 pressure to change the grades. This is November the 29th.

22 I'd like to mark this as Plaintiff's Exhibit No. 12.

23 (WHEREUPON, Plaintiff's Exhibit No. 12 was marked for
24 identification and admitted into evidence.)

25 MR. MULLER: And she says, The voice mail I received

1 and forwarded stated that the school was not comfortable
2 changing grades on their transcript. So it looks like
3 Plan A didn't work. Plan A that somebody at the school
4 district had concocted was to get Riverside to change the
5 grades on their transcript. Riverside refused to change
6 the grades on their transcript and said, This is the
7 transcript. We're not changing the grades.

8 So then the school district figures out, well, let's
9 go to Plan B. So what Plan B was, we'll alter the grades
10 that we say we received from Riverside. And we'll do that
11 in a way that is not official. And I'll talk about that
12 in a minute.

13 Meanwhile, I want to go through this e-mail. She
14 then says, The South Carolina uniform grading policy
15 states that when receiving grades from an out-of-district
16 school and numerical grades are provided, those averages
17 must be used in transferring the grades to the student
18 record. She then says, Of course, I will do as I have
19 been directed, which, obviously, means that she's been
20 told to do something different. She says, However, I
21 would like to get clarification on the recommendation. I
22 know this is an unusual situation, but this contradicts
23 everything I have been taught, everything I have been
24 taught.

25 And then she says -- and this is important -- Who

1 will notify the student and his parents? So what's been
2 going on here is there has been a behind the scenes effort
3 to lower this young man's grades without ever giving him
4 notice or his parents notice of what was going on. One of
5 the fundamental rules of doing anything in America is you
6 don't do things behind somebody's back.

7 So what was going on here is you have the complaining
8 parent, who was upset about her son and where he stood in
9 the class. And then you have pressure by that parent
10 resisted by the guidance counselor and the principal
11 confirmed by the school district, initially. And then she
12 puts so much pressure on them that they yield. But they
13 still don't tell the parents or the student.

14 So then what happens is this. On December the 4th,
15 the guidance counselor, Ms. Henderson, says, I have not
16 contacted Lee's parents.

17 This is Plaintiff's Exhibit No. 13.

18 (WHEREUPON, Plaintiff's Exhibit No. 13 was marked for
19 identification and admitted into evidence.)

20 MR. MULLER: So still, in December, the P[REDACTED] family
21 has no idea that any of this is going on. And, finally,
22 on January the 23rd, they notify the P[REDACTED] family after
23 all this has been put in concrete.

24 I'd like to mark this memo from Diamond Henderson,
25 the guidance counselor, to Carlos Brooks, the principal,

1 as Plaintiff's Exhibit No. 14.

2 (WHEREUPON, Plaintiff's Exhibit No. 14 was marked for
3 identification and admitted into evidence.)

4 MR. MULLER: Well, as you might imagine, the P [REDACTED]
5 family is not happy about this. She said, I would like to
6 meet with you tomorrow.

7 And then what happens is a week later, Mr. P [REDACTED]
8 sends a Freedom of Information Act request to the school
9 district, which is how I got these e-mails.

10 I'd like to mark his request as Plaintiff's Exhibit
11 No. 15.

12 (WHEREUPON, Plaintiff's Exhibit No. 15 was marked for
13 identification and admitted into evidence.)

14 MR. MULLER: Now, there is a meeting. And the
15 principal, undoubtedly, following orders from the district
16 says -- oh, let me back up. Let me give you a copy of the
17 revised transcript. This is the revised transcript. It's
18 dated February the 8th of 2013. But, as we can see from
19 the e-mails, the decision was made, at least, two months
20 earlier.

21 (WHEREUPON, Plaintiff's Exhibit No. 16 was marked for
22 identification and admitted into evidence.)

23 MR. MULLER: Interestingly, there's a letter to
24 Mr. P [REDACTED] from the principal dated two days before the
25 date on that transcript where he describes why that

1 transcript is what it is, which means that they had
2 already decided in the transcript -- the date on the
3 transcript of February the 8th is really kind of
4 meaningless. Because they'd already made the decision.
5 And Carlos Brooks had already met with Mr. P. And the
6 week before that, Ms. P. had been notified by the
7 guidance counselor.

8 What's important about this letter is what it does
9 not say. There have been arguments raised now by counsel
10 for the school district that do not appear in this letter.
11 So if you look at the letter, you sort of know what they
12 had in mind and what they were really doing. And it puts
13 in context the interesting arguments put forth by counsel
14 for the school district.

15 What this letter says in a nutshell is, look, we were
16 just trying to be fair. We wanted to "level the playing
17 field." And at Riverside, there's a grading policy that
18 assigns extra points for honors courses and AP courses.
19 And we didn't want your son to double dip.

20 Well, there are a couple responses to that. One of
21 which is that never mind all that, you follow the law.
22 The reason the law says what it does is to avoid disputes
23 like the one we're in today where you go back to look at
24 grading policies of institutions that students attended
25 before they transferred. Because there are all kinds of

000033

1 ways that schools grade.

2 I mean, I, for example, went to a small country high
3 school, Blythewood High School. It had 33 students. If I
4 got an A in that class, I'm sure that people who went to
5 Dreher would have said, well, an A at Blythewood High
6 School is not the equivalent of an A at Dreher High
7 School. Well, it turns out, under the South Carolina
8 uniform grading policy, it is. And if I had transferred
9 from Blythewood High School to Dreher, nobody at Dreher
10 would get a chance to go over to Blythewood and say to
11 Ms. Roar [phonetic], my English teacher, well, how did you
12 really grade Carl?

13 There are all sorts of nuances and factors that go
14 into grading. And that's why the grading policy that's
15 mandated by the South Carolina Department of Education
16 that's written down by them and the school district and
17 that's followed, according to all of these e-mails, says
18 you take the grade -- the numerical grade and you don't
19 look behind the screen. That's why you have the policy.
20 And it makes total sense. And a blue ribbon commission
21 set up the policy at the direction of the legislature.

22 But if you want to talk about fairness, let's talk
23 about fairness. The policy is not -- the stated policy is
24 not the only factor that goes into grading. For example,
25 this young man took courses at Riverside where if he got

1 everything right, he still got less than 100. He got a 90
2 or a 95.

3 And when he would go to a teacher and say, why is
4 that, the teacher would say, well, you're going to get an
5 extra five or 10 points at the end, so what difference
6 does it make? If he got a perfect score in another class
7 of 100, he didn't get the points at all because there was
8 a cap of 100.

9 So if you look only at the grading policy and nothing
10 else at Riverside Academy and said you're double dipping,
11 you would be completely wrong. Because he didn't double
12 dip. The most he ever could have gotten was 100, even if
13 you gave him the full benefit of the cap. And in some
14 classes, they deliberately lowered his grade because they
15 knew he was going to get the additional points maybe.

16 So to say that he's double dipped and what they're
17 trying to do is level the playing field is completely
18 erroneous. And if they had asked us that, if they had
19 notified the parents, maybe they would have found that out
20 in advance, instead of charging off to bow to the pressure
21 of this mother.

22 The other thing they say is that you have to look at
23 South Carolina Regulation 43-273 in order to apply the
24 policy. Well, that is nothing that they told us in the
25 letter from Carlos Brooks. This is the first time we've

1 heard of that. But since they've mentioned that, let's
2 talk about that.

3 And here is a copy of regulation 43-273, which I'd
4 like to mark as Plaintiff's Exhibit No. 17.

5 THE COURT: Plaintiff's Exhibit No. 18.

6 MR. MULLER: Plaintiff's Exhibit No. 18.

7 (WHEREUPON, Plaintiff's Exhibit No. 18 was marked for
8 identification and admitted into evidence.)

9 MR. MULLER: They say you have to look at that in
10 order to -- and that that justifies what they did. That
11 does not justify what they did. That has nothing to do
12 with what they did. And I'll explain how this works.

13 If you will go back to the South Carolina Uniform
14 Grading Policy Page 5503-6.

15 THE COURT: That would be Plaintiff's Exhibit No. 4?

16 MR. MULLER: Probably.

17 THE COURT: Yes. Okay.

18 MR. MULLER: Page 5503-6, it says, See State Board of
19 Education Regulation 43-273 for complete information on
20 transfers and withdrawals. So I looked at that
21 regulation. And if you go over to that operative part of
22 that regulation, it's on the second page. And I'll kind
23 of skip all the names. What it says is it says, Units
24 earned by a student in an accredited high school of this
25 state -- and then you go all the way down to the last

1 sentence, it says, Will be accepted under the same value
2 which would apply to students in the school to which they
3 transferred.

4 Now, what the school district is saying is that you
5 need to read the word "value" to mean we're changing the
6 grading policy. But that's not what it says. This is
7 talking about units. This is not talking about grades.
8 And just to show you how it works, look at Page 5503-5 of
9 the South Carolina State Education Policy. And there,
10 you'll see an example of what they're talking about.
11 They've got a course name. They have a numerical average.
12 And then they have unit. And a unit, basically, is -- you
13 know, if you take one course, you get one unit. That's
14 what it is. They're not changing the grades.

15 So what you do in order to calculate grades in the
16 South Carolina system is you take the numerical average
17 which you're supposed to take directly from the transcript
18 of the prior school, you look at something called quality
19 points. And I'll show you how you calculate quality
20 points. If you'll go over to Page 5503-2, you'll see this
21 big chart.

22 THE COURT: Okay.

23 MR. MULLER: And just to kind of follow it through,
24 in the right -- left hand column is the numerical average.
25 If you pick up 91 there as the numerical average grade,

1 you'll see that a college prep course would be given a
2 3750. And if you look over at the example on Page 5,
3 that's where the quality points -- that's where the
4 quality points show up.

5 So what you do in South Carolina, the way this works
6 is you take the numerical grade from the school where the
7 student was, you put it into this formula, and then you
8 take the quality points from this chart and multiply it by
9 the unit. If it's one unit, that's fine. If it's two
10 units, that's another thing. And that gives you the grade
11 point average. But you don't change the numerical
12 average. That's why they use the word "must."

13 So the formula works. And don't take my word for it.
14 Take the word of the guidance counselor, the principal.
15 The school district, initially, they said that's the way
16 it works. And that's the way it works. All we're asking
17 is for this to be -- is for his grades to be restored to
18 what they were originally calculated to be by Southside.
19 We're not asking for them to be changed. We're just
20 asking for them to restore them to what they originally
21 were.

22 Now, they mentioned level the playing field. There
23 is no playing field here. This is not a competition.
24 He's worked hard for his grades. He's 17 years old. He's
25 applying to college. He worked for it. And all we're

1 asking for him to get is what he worked for. And we don't
2 know whether he's going to be first in his class or
3 hundredth in his class. We just want him to get what he
4 worked for. He worked for it, and he deserves it.

5 Counsel for the school district has said, look, you
6 can't consider this, Your Honor. This is outside your
7 purview because this is a case that is not judiciable.
8 This case is judiciable. And let me just put it in plain
9 and simple terms.

10 This is a case we know is judiciable because Jean
11 Toal has already put her stamp of approval on this case.
12 I had to get this case expedited by getting authorization
13 from her to do it. And in order to do that, I had to send
14 her copies of the complaint and the answer. And if she
15 thought this case was not judiciable, all she had to do
16 was to tell me no. But she said yes, and she expedited
17 the case. So we know that she thinks that this case is
18 judiciable.

19 Also, we know that the case is judiciable under the
20 law. Because, otherwise, this young man would be left
21 with absolutely no remedy whatsoever. And under the First
22 Amendment to the United States Constitution, every citizen
23 of this country has the right to petition his government
24 for a redress of grievances. And he's entitled to due
25 process. And that's what we're asking for here. There's

1 nothing unusual about that. This is fundamentally
2 different than seeking or trying to create a private cause
3 of action against a third party.

4 Counsel for the school district has said that there's
5 no private right of action under this statute. This is
6 not a private right of action against a third party. This
7 is a direct cause of action against the school district
8 for disobeying the law.

9 Mandamus is, also, entirely appropriate. Because
10 we're not asking the school district to do anything that
11 they haven't already done. They have already done it. So
12 we're simply asking them to perform a ministerial act,
13 which is to comply with the law. And they know full well
14 how to do it because they've already done it.

15 I might add as a final note, I've already mentioned
16 the federal statute that prohibits prying into another
17 students information by third parties, which was most
18 unfortunate in this case. I'd, also, mention -- I'd like
19 to hand up to the Court a copy of a South Carolina
20 criminal statute. I don't want to be too forward and
21 suggest that there was a criminal act here. But I do
22 think it underscores the policy of this state. And the
23 policy of this state is not to change transcripts.

24 And Section 16-13-15, actually, makes it a crime to
25 try to change a transcript. And I would like to hand this

1 up to the Court as well.

2 (WHEREUPON, Plaintiff's Exhibit No. 19 was marked for
3 identification and admitted into evidence.)

4 MR. MULLER: Because what all of these things do,
5 Your Honor, is point to one conclusion, and that is that
6 the entire policy of the State of South Carolina, the
7 entire policy of the federal government is to prevent the
8 occurrence of exactly what happened here, which is a
9 disgruntled mother of a student going in to another
10 student's academic file and changing it once it's already
11 been put in place by the school district for the
12 application of political, financial, or social pressure.

13 Thank you, Your Honor.

14 THE COURT: Okay. Thank you.

15 MR. BARLOW: May it please the Court.

16 THE COURT: Yes, sir.

17 MR. BARLOW: Your Honor, I'm Tom Barlow for the
18 school district of Greenville County.

19 And we e-mailed a memorandum of law --

20 THE COURT: We got it.

21 MR. BARLOW: You've got it?

22 THE COURT: I've read it.

23 MR. BARLOW: Okay. And I wanted to make sure you had
24 that. And I, also, e-mailed it to Mr. Muller as well.

25 We'd move, at this time, that our exhibits marked one

1 through five here just be admitted into evidence in the
2 case. It will make it a whole lot easier.

3 MR. MULLER: I do have one objection I'd like to make
4 for the record, Your Honor. There's e-mails that are from
5 Riverside -- somebody at Riverside to somebody at
6 Southside talking about his grades. That is not an
7 official transcript. That's the first time we've ever
8 seen these is in that e-mail -- not the first time, but, I
9 mean, it's not -- when Mr. Barlow sent it to me, I'd seen
10 it before.

11 MR. BARLOW: Sure.

12 MR. MULLER: But that's the first time that we've
13 seen that. We have no idea whether those grades are right
14 or not. And we would object to it on that basis.

15 THE COURT: Well, which part of this exhibit are you
16 referring to? Is that --

17 MR. BARLOW: He's referring to our Exhibit No. 3, I
18 believe, Your Honor.

19 THE COURT: Exhibit No. 3?

20 MR. BARLOW: Yes, sir.

21 THE COURT: Okay. Well, does that go to the
22 admissibility or the credibility?

23 MR. MULLER: I think it goes to both. I think it
24 goes to admissibility. Because if you look at the -- I'm
25 not -- I'm not saying -- I'm not making the objection

1 based on hearsay.

2 THE COURT: Okay.

3 MR. MULLER: Because -- I'm not going to do that.

4 But I am making the objection based on the fact that if
5 you look at even the South -- if you look at the -- if you
6 look at what's even at the bottom of the Southside
7 transcript, it says, you know, it's got to be an official
8 sealed transcript. And that's not an official sealed
9 transcript. We have no idea what went into that. We have
10 no idea how those grades were created.

11 So I think it goes very much to the admissibility.
12 It goes very much to the credibility, if the Court decides
13 to consider it.

14 MR. BARLOW: And I'd respond to that by saying, Your
15 Honor, I don't think there's any dispute to the underlying
16 grades that are referenced in the exhibit. We got notice
17 of this hearing on Monday. And if he's going to challenge
18 that, I'd appreciate some time for the Court to get an
19 affidavit from somebody to clarify that.

20 THE COURT: Okay. Well, I'll take --

21 MR. MULLER: I'm not -- just so we understand each
22 other, I'm not challenging that that's what the person
23 said. I'm simply challenging --

24 THE COURT: The underlying --

25 MR. MULLER: -- the underlying correctness of it, not

1 the authenticity of it.

2 THE COURT: Well, I'm going to note your objection
3 for the record.

4 And we'll accept this and mark it as -- this is a
5 stapled document with five parts to it -- or five listed
6 exhibits pursuant to your codification of it. We'll make
7 it Defendant's Exhibit No. 1.

8 MR. BARLOW: I think we can make the whole thing
9 Defendant's Exhibit No. 1.

10 THE COURT: Okay.

11 MR. BARLOW: I'd, also, like to mark Defendant's
12 Exhibit No. 2 based on counsel's --

13 THE COURT: Okay. Show it to him.

14 MR. BARLOW: All right.

15 MR. MULLER: Sure. That's fine. No objection.

16 (WHEREUPON, Defendant's Exhibit Nos. 1 and 2 were
17 marked for identification and admitted into evidence.)

18 THE COURT: And then before you get started, I'd like
19 to take about a five-minute recess.

20 MR. BARLOW: Certainly.

21 THE COURT: Thank you.

22 (WHEREUPON, a break was taken.)

23 (WHEREUPON, Plaintiff's Exhibit No. 17 was marked for
24 identification and admitted into evidence.)

25 THE COURT: Yes, Mr. Muller.

1 MR. MULLER: Your Honor, I overlooked one e-mail that
2 I need to bring to the Court's attention.

3 May I do that?

4 THE COURT: Yes.

5 Is everybody ready?

6 MR. BARLOW: I think we're waiting on a couple of
7 people to --

8 THE COURT: Okay. Just let them get back.

9 MR. BARLOW: But I have no objection to him doing
10 that.

11 THE COURT: Okay.

12 (Pause.)

13 THE COURT: Go ahead.

14 What is it?

15 MR. MULLER: It's an e-mail. In trying to get ready
16 for this hearing, both Mr. Barlow and Mr. P████ contacted
17 the academic dean at Riverside Academy --

18 THE COURT: Well, get her to mark it.

19 MR. MULLER: I'd like to mark this as --

20 THE COURT: Plaintiff's Exhibit No. 20.

21 MR. MULLER: -- Plaintiff's Exhibit No. 20.

22 (WHEREUPON, Plaintiff's Exhibit No. 20 was marked for
23 identification and admitted into evidence.)

24 MR. MULLER: It's about certain information. And the
25 interesting thing about his response here is that if you

1 look at the second page of that, the second paragraph, he
2 says, I believe that FERPA, which is a federal law,
3 prevents me from disclosing actual grades, which
4 underscores that what was going on here was really not
5 proper in any fashion.

6 Now, it turns out that those grades had already been
7 obtained by Southside High School, which he notes here and
8 says, I believe you already have those. But it's more
9 than of interest that he says the federal law prevents him
10 from disclosing actual grades. Undoubtedly, the school
11 district knew what they were doing was not right. And
12 this is simply -- this simply underscores that.

13 THE COURT: Okay.

14 MR. BARLOW: Thank you, Your Honor.

15 Like I said, I'm Tom Barlow. I'm here for the school
16 district. And we've heard these arguments previously. We
17 submitted a memo of law and exhibits.

18 Before I get into addressing the specifics of the
19 case, I think it's important to remember that the big
20 picture behind the uniform grading policy as set forth in
21 the statutory section is to level the playing field for
22 scholarships and financial aid to make sure students
23 aren't getting an unfair advantage over other students by
24 virtue of a school giving extra points that another school
25 has not given, or anything like that. And that's the main

1 purpose of that.

2 Another main purpose or point I'd like to make before
3 getting into things is that courts are very reluctant to
4 get into matters of students, and grades, and things like
5 that. I mean, there's a long history of South Carolina
6 decisions and from elsewhere that say courts stay out of
7 this, these are decisions for academic educational
8 officials. They're in the best position to make these
9 decisions.

10 Also, certainly, I'd point out immediately that
11 there's no private of -- right of action other than the
12 uniform grading policy, or the regulations, or any other
13 statute, or any other clear reason or way for these people
14 to be in court to argue that the Court should issue a
15 mandamus. And I'll talk a little bit more, certainly,
16 about the standards and some of our arguments that we've
17 made when we get to it.

18 And this is not a Constitutional case. I mean,
19 there's no First Amendment claim. There's no due process
20 claim in this case. It's not an estoppel case, Your
21 Honor. There's no claim for estoppel, or anything like
22 that. And there's no basis for the Court to grant this
23 mandamus on the basis of estoppel. And I'll talk about
24 that in a little bit, too.

25 First of all, I think there's nothing nefarious about

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1 what the school district did here. The school district
2 received some information that they weren't aware of
3 previously. And they did what a reasonable school
4 district would do and investigated that information, and
5 determined that Mr. P [REDACTED] grades at Riverside Military
6 Academy had already been bumped by five or 10 point for
7 each honors or AP course that he took at Riverside
8 Military Academy.

9 And just to illustrate kind of what happens here when
10 Riverside Military Academy gives a five or 10 point bump,
11 I'd like for you to turn to the -- Exhibit No. 3 [sic] in
12 my packet here. It's the page that has the South Carolina
13 uniform grading scale conversion. And that's the same as
14 the exhibit in the -- that Mr. Muller handed up as well
15 that has the grade conversion chart in it.

16 THE COURT: Exhibit No. 3 or Exhibit No. 2?

17 MR. MARLOW: Tab three, Exhibit No. 2. I'm sorry.

18 THE COURT: Okay. I'm -- we may have -- which page
19 in that one?

20 MR. BARLOW: It is the one, two, third page of the --
21 fourth page of the -- not counting the page that says
22 Exhibit No. 2, it would be the third page of Exhibit
23 No. 2.

24 THE COURT: So it's tab two of Exhibit No. 1; right?

25 MR. BARLOW: Correct.

1 THE COURT: All right.

2 MR. BARLOW: Tab three of Exhibit No. 1, Your Honor,
3 which, unfortunately, is Exhibit No. 2.

4 THE COURT: Is that what you're talking about?

5 MR. BARLOW: Yes, Your Honor.

6 THE COURT: Okay. We may have -- we've got that as
7 your -- under your codification as the third page of what
8 you've labeled as Exhibit No. 2; is that right?

9 MR. BARLOW: That's right, Your Honor.

10 THE COURT: Okay.

11 MR. BARLOW: As well as Mr. Muller has already put --
12 that's in several other things.

13 THE COURT: Yes.

14 MR. BARLOW: Every school district in the state has
15 this uniform grading conversion scale.

16 THE COURT: Okay.

17 MR. BARLOW: If you look at -- for example, I'm going
18 to look at numerical average 93 and follow that across.

19 THE COURT: Okay.

20 MR. BARLOW: If that's in a college prep course, you
21 get four quality points for that. If it's an honors
22 course, you get 4.5 points for that. In an AP/IB dual
23 credit course, you get five points for that 93. Okay. If
24 your grade is 100, however, you get 4.875, 5.375, or
25 5.875. All right. So, obviously, getting 100 gives you

1 a -- higher quality points and gives you more average.
2 Okay.

3 What we have here is when a Southside High School
4 international baccalaureate student scores a 93, they got
5 5.0 for that. Okay. The school district found out that
6 when Mr. P [REDACTED] got the same 93 at Riverside Military
7 Academy, they bump it up 10 points in an AP course. So
8 he's transferring not only the bumped -- the first bump to
9 100, but he gets the second bump when he comes to
10 Southside making it 5.875. That's what they would have
11 Your Honor understand. And that's what the argument is
12 that he should be entitled to two bumps. Okay.

13 His transcript from Riverside Military Academy which
14 is tab two of Exhibit No. 1 -- yes, tab two of Exhibit
15 No. 1 --

16 THE COURT: Okay.

17 MR. BARLOW: -- clearly says on it, Honors courses
18 in -- and this is on the right-hand side. It's a little
19 bit small typing. I apologize for the size of the type.
20 Honors courses in accelerated math receive an additional
21 five points. This is the lower right-hand corner under --

22 THE COURT: I see it.

23 MR. BARLOW: All right. AP courses receive an
24 additional five points. AP courses for academic year 2010
25 to 2011 only receive 10 points.

1 So what you have when you see 100, it could be
2 anywhere -- the actual grade could have been anywhere from
3 90 to 100. Because it got bumped up 10 points in an AP
4 course for that particular year. All right. If it were
5 an honors course and it's showing 100, the actual grade --
6 the actual numerical average for that grade could be
7 anywhere from 95 to 100. All right.

8 During the course of investigating this, the school
9 district found out that the actual numerical averages of
10 █████ P█████ were less than 100, less than what it was
11 showing on the transcript, and that he had received a bump
12 of five to 10 points to take it to 100 in some cases or
13 close to 100 in some cases.

14 THE COURT: Well, let me just ask you this.

15 MR. BARLOW: Sure.

16 THE COURT: There are no grades on this transcript
17 above 100. So if he had gotten 100 in one of those
18 classes, he would not have received a bump; is that right?

19 MR. BARLOW: Correct.

20 THE COURT: So how do we distinguish which ones get
21 what?

22 MR. BARLOW: Because they gave us the actual
23 numerical averages of his scores in those cases.

24 THE COURT: And where is that?

25 MR. BARLOW: That is Exhibit -- excuse me.

1 THE COURT: That's in the --
2 MR. BARLOW: Tab --
3 THE COURT: -- that he has objected to --
4 MR. BARLOW: -- four --
5 THE COURT: -- right?
6 MR. BARLOW: -- yes.
7 THE COURT: So --
8 MR. BARLOW: So it's not like, Your Honor, we're
9 subtracting 10 points from every hundred he got. We --
10 for example, in -- if you look at tab four, you'll see
11 that in Spanish IIT honors, he got a 99 and a 99.6.
12 THE COURT: You're confusing me with what you're
13 saying is a tab.
14 MR. BARLOW: All right.
15 THE COURT: Is that your Exhibit No. 3, page what?
16 MR. BARLOW: It's my Exhibit No. 1. All right. And
17 it's tab four of that exhibit.
18 THE COURT: Okay.
19 MR. BARLOW: I'm sorry.
20 THE COURT: Your Exhibit No. 1?
21 MR. BARLOW: My Exhibit No. 1 is the whole binder,
22 Your Honor.
23 THE COURT: Right.
24 MR. BARLOW: Right.
25 THE COURT: So that's your -- this is your Exhibit

1 No. 1?

2 MR. BARLOW: Yes, Your Honor.

3 THE COURT: But let's talk about -- when you say
4 "tab," what are you referring to?

5 MR. BARLOW: Let me hand you up a tabbed version. I
6 apologize.

7 THE COURT: Do you object to that? Have you seen it,
8 Mr. Muller?

9 MR. MULLER: No, no.

10 THE COURT: Okay.

11 MR. BARLOW: That will help us out a whole lot.
12 Thank you.

13 THE COURT: Okay. So you're on tab --

14 MR. BARLOW: Tab four.

15 THE COURT: Okay. Tab four.

16 MR. BARLOW: All right. Tab four is the e-mails from
17 the guidance counselor at Riverside Military Academy --

18 THE COURT: Okay.

19 MR. BARLOW: -- to the guidance counselor at
20 Southside High School.

21 THE COURT: Okay.

22 MR. BARLOW: The back part of that is just a little
23 chart extrapolating the information out of that. Because
24 some of the courses were not honors or AP courses.

25 THE COURT: Okay.

1 MR. BARLOW: All right. So looking at the chart, if
2 you would, Your Honor. For example, in chemistry honors,
3 Mr. P [REDACTED] -- young Mr. P [REDACTED] scored 100 both semesters in
4 that. That's what would have been transferred over on the
5 corrected transcript.

6 THE COURT: Okay.

7 MR. BARLOW: AP world history, for example, you'll
8 see in the 2010-2011 school year, the final numerical
9 average for AP world history for [REDACTED] P [REDACTED] was 93.4 the
10 first semester, 94.5 the second semester.

11 THE COURT: Now, on his transcript, it's 100?

12 MR. BARLOW: On his Riverside Military transcript, it
13 is 100. Okay. Based on their bumping it 10 points. All
14 right. So when he transfers to Southside, that 100 is
15 plugged into the conversions chart that we looked at,
16 5.875 versus whatever it would be for a 94 or a 95.

17 So that's where the school district has the problem
18 with the double bump. You know, there are 161 other
19 students at Southside High School who might have scored a
20 94 or a 95 in AP world history and they don't get a five
21 or 10 point bump. And that's where the fairness comes in,
22 Your Honor.

23 THE COURT: Well, here is my problem --

24 MR. BARLOW: Sure.

25 THE COURT: -- I think you're asking me to do exactly

1 what you've told me I should not do, which is to interpret
2 the grades. I don't think I'm qualified to do that. I
3 don't think the Court is qualified to do that. The
4 problem -- and, I mean, I've got some real questions about
5 this.

6 How did this other mother get ahold of his transcript
7 and complain about this -- Mr. P[REDACTED] transcript?

8 That is, to me, a real issue and a problem.

9 MR. WEBB: Judge, if I may.

10 THE COURT: Yes. Tell me about it.

11 MR. WEBB: Doug Webb, general counsel for the school
12 district.

13 To my knowledge, the mother who inquired with the
14 school district and first notified the school district
15 regarding Riverside Military Academy giving this numerical
16 bump to begin with is friends -- or was friends -- I don't
17 know the relationship now -- with the -- Mr. P[REDACTED]
18 parents.

19 Now, the school district never provided his
20 transcript to this parent -- the other parent. Okay. I
21 believe she heard about it -- heard about Riverside
22 Military Academy having a different grading policy, a
23 different bump, and, therefore, realized that if he
24 transferred in, he would receive this double bump.

25 And, you know, I will say that the school district

1 complied completely with the Family Educational Rights and
2 Privacy Act. To suggest otherwise is not accurate, Judge.
3 So I just want to clear that up. That the school district
4 has a right under the federal law to inquire with the
5 previous school -- the school in which he transferred to
6 make sure his grades are accurate. And we never provided
7 transcripts to this other parent.

8 THE COURT: Okay. Well, here is my -- you're exactly
9 right. Courts are loathed to get involved in this. We
10 don't like doing it. We're well aware of the -- I mean,
11 if there is a more vehement emotion than a parent with the
12 success of their child, I'm not aware of it. So, I mean,
13 that is the base line here.

14 What we're looking at is did the school district
15 follow their own regulations? It would be one thing if
16 the school district had said we need to check out, you
17 know, the background at Riverside before we issue a
18 transcript. And then -- but you -- but the transcript
19 came out. I don't know if -- how Ms. S [REDACTED] received the
20 notice that this young man was number one in the class. I
21 have no idea. But, you know, I'm not suggesting that the
22 school district announced it. But it happened.

23 And, I mean, it's -- there's some real questions
24 here. There's no -- I mean, the regulations say you must
25 accept the numerical average. You must. It doesn't say

1 you can go back and interpret how the other school came --
2 it doesn't -- I mean, y'all tell me --

3 MR. MULLER: Well, Your Honor --

4 THE COURT: -- does it say you can interpret what
5 another school did?

6 MR. BARLOW: Well, Your Honor, one thing is the
7 regulation doesn't define what the numerical average is.
8 We'd submit the numerical average is what he earned before
9 the bump. I mean, that's how it would apply in
10 Greenville.

11 THE COURT: Well, didn't you all base the first
12 transcript you got on the transcript you received from
13 Riverside High School?

14 MR. BARLOW: I think that they did. But then they
15 realized that there were some errors that somebody should
16 have caught with the bumping points --

17 THE COURT: Well, there are no errors. That is --
18 are there errors in the transcript, or is it just the
19 interpretation of the grade -- the final numerical grade
20 that we're talking about?

21 MR. BARLOW: I think there were errors in the
22 interpretation of the transcript, based on the five or 10
23 points that somebody might have overlooked, you know.
24 Certainly, government employees, school district employees
25 make mistakes and --

1 THE COURT: No. I'm not --

2 MR. BARLOW: -- they're entitled to correct that.

3 THE COURT: And I'm, certainly, not --

4 MR. BARLOW: When it gets to the end of the day, I
5 mean, to issue a mandamus, Your Honor, I think the case
6 law is really clear that this has to be a clear definite
7 legal right. The purpose of mandamus is not to adjudicate
8 what the legal right is whether the Plaintiff has a right
9 to double bump based on this, or, you know, what numerical
10 averages means, or the effect of the other regulation that
11 says accept the units as if they were earned at Southside
12 High School, which, of course, we submit that that's --
13 you've got to consider the fact that kids at Southside
14 High School don't have the benefit of the five or 10 point
15 bump.

16 So the fairest thing to do is to ignore the five or
17 10 point bump, apply the numerical average as if it
18 were --

19 THE COURT: Well, see, that's where -- you know, that
20 could be right. I'm not saying that's not right. But
21 that's not what the regulations and the law says. Because
22 there could be times -- I mean, just the opposite could be
23 true, too, that this Riverside High School is so demanding
24 that the grade he got there, the same amount of work and
25 input that he had in that class could have -- if he got a

1 93 in this one class at Riverside, he could have got 110
2 at Southside. That's why you can't, you know, go back and
3 interpret it.

4 MR. WEBB: If I may, Judge.

5 THE COURT: Yes.

6 MR. WEBB: I think this case is different. What is
7 different in this case is within the four corners of the
8 transcript that the district received from Riverside
9 Military Academy. There's an asterisk that says, these
10 inflated numerical grades -- inflated as a bump. And this
11 is completely different than other transcripts that the
12 district receives.

13 You're correct in your interpretation that when the
14 district receives a transcript absent this asterisk which
15 denotes specialized treatment, we don't inquire into the
16 validity of those grades from an accredited institution.
17 But this is different.

18 Within the four corners, we had knowledge, Judge.
19 And then from there, once we had knowledge, the district
20 through talking and looking into the situation looked at
21 the law, the regulation and what that said and how it
22 would affect not only this student, but other students at
23 Southside High School.

24 And I agree with Mr. Muller. I think that this
25 student is a bright student. We wish him all the success

1 in the world going forward. But what we care about here
2 as a school district is making sure that this situation is
3 treated in the most equitable fashion possible under the
4 law.

5 THE COURT: Well, and I -- Doug, I -- you know,
6 everybody wants that. And what my question from sitting
7 up here is, what kind of impact did this other mother
8 have? I mean, this is where there's -- I'm just telling
9 you, it's smokey.

10 MR. WEBB: Judge, I believe in all honesty that
11 there's no smoke.

12 What happened was this mother contacted Southside
13 High School with this belief. Now, again, I don't know
14 where she got this belief. I believe it's because she was
15 friends with the parents. But once we were informed of
16 it, Judge, it doesn't matter who contacted us, whether it
17 be Riverside Military Academy, this parent, another
18 parent, his parents, we would have done the same exact
19 thing, Judge. It doesn't matter who contacted us.

20 THE COURT: Well, it, certainly, looks like -- here
21 is another thing that bothers me is this young man got a
22 transcript. It's an official transcript. And all the
23 sudden the next then he hears, no, he's not party to any
24 of the -- there's no due process here where he's -- you
25 know, you're talking about changing somebody's transcript.

1 And he's got -- they've got no input. That is a concern.

2 MR. BARLOW: If I may, Your Honor.

3 THE COURT: Yes. Yes, please.

4 MR. BARLOW: Certainly, due process before today -- I
5 mean, as -- the Exhibit No. 2 I handed up was --
6 certainly, Doug met with Mr. Muller. They've had
7 opportunities to speak with the school district and try to
8 work this out and try to resolve it. So, in that sense,
9 there has been some due process.

10 Certainly, we're not here on a due process claim.

11 But I know it's certainly --

12 THE COURT: Well, I'm concerned about it.

13 MR. BARLOW: Certainly.

14 THE COURT: I mean, it just happens and he doesn't
15 know anything about it. He gets a transcript that's been
16 changed. I mean, you know, maybe -- I don't know when
17 Mr. Muller got involved in it. I don't know all that.

18 It, certainly, looks like there could be discoverable
19 information. You know, how many other transcripts of
20 transfer students are there that could be questioned, that
21 could be called into question?

22 I've got real concerns about it, that the school
23 district is -- even your argument is well taken that it is
24 okay in the four corners. But, you know, perhaps, the
25 reason they gave the bump is because of the demands in the

1 course. I have no idea about Riverside Military school,
2 none. I don't know that much about Southside.

3 What is the time frame on this?

4 The Chief Justice told me to get this done in a hurry
5 because of -- because it needs to be expedited.

6 MR. MULLER: Your Honor, Mr. P. [REDACTED] has to have his
7 entire application complete and in the hands of the school
8 to which he's applying by November 1st. And that includes
9 the transcript, the letters of recommendation, everything.
10 So, you know, it's a fairly short time frame.

11 But all we're asking for is restoration of the
12 transcript that they originally --

13 THE COURT: Okay. And let's say I do that, what's
14 the school -- I mean, this is going up. This is a policy
15 decision.

16 Am I right about that?

17 MR. WEBB: Judge, we have grave concerns with that.

18 THE COURT: Well, no, I'm talking -- I'm just talking
19 about from the legal footing of it. This is -- either way
20 I decide, it's going to the next level, isn't it?

21 MR. WEBB: We have concerns about the other students.
22 So, yes, you are correct, Judge.

23 THE COURT: Yes.

24 And, Mr. Muller, I would assume if I deny your
25 petition for a writ that you're not done?

1 MR. MULLER: We feel pretty strongly about it, Your
2 Honor. But we have not made any decision one way or the
3 other about the next step, if any.

4 But I do think that it's important for the transcript
5 to be changed in time for him to complete his college
6 applications that are due on November the 1st. Otherwise,
7 he'll suffer irreparable harm.

8 MR. WEBB: And, Judge, if I may, in all -- with
9 respect to you, Judge, if you changed his transcript, that
10 affects the other one hundred plus students and their
11 applications to college. And that's the concern here.

12 THE COURT: Well, how much -- I mean, we're talking
13 about the edge of a knife. I'm trying to split the baby.
14 I don't see it.

15 This is all, I guess, about class rank. Is that what
16 we're talking about, I mean, right at the bottom line?

17 MR. MULLER: It's really not, Your Honor. It's about
18 getting what he earned.

19 I mean, I don't know what his class rank will be.
20 He's a great student. But I don't know whether he's going
21 to be first, second, third, 10th or what he'll be. We'll
22 take whatever we get. Being valedictorian is no big deal
23 to him. And, frankly, it's a ban of law is what it is.

24 And on that point, Your Honor, let me just hand up,
25 if I could, the regulations under the federal statute.

1 The school district really had no right to ask Riverside
2 for these background grades. Because there's only a
3 handful of circumstances under which --

4 THE COURT: It's Plaintiff's Exhibit No. 21.

5 (WHEREUPON, Plaintiff's Exhibit No. 21 was marked for
6 identification and admitted into evidence.)

7 MR. MULLER: Because there are only a handful of
8 circumstances under which you can do that.

9 Item A on that page, which I'd like to -- on that
10 copy of the federal regulations, which I'd like to mark as
11 Plaintiff's Exhibit No. 22.

12 THE COURT: No. Plaintiff's Exhibit No. 21.

13 MR. MULLER: 21.

14 THE COURT: It's already marked.

15 MR. MULLER: Item A1-1A says that it's okay to
16 disclose it without consent if it's to somebody within the
17 school. Well, that didn't happen here. It wasn't
18 disclosed to somebody within the school. They went
19 outside the school.

20 And then if you go to two, which is on the next page,
21 you can disclose it, but only if it's to somebody
22 involving postsecondary education. This isn't
23 postsecondary education. This is secondary education.

24 So what they did is they violated the federal law by
25 going out to get these so-called background grades. And

1 that's just plain wrong. And it's illegal. They
2 shouldn't be rewarded for that.

3 MR. WEBB: Judge.

4 THE COURT: Yes.

5 MR. WEBB: Two things real quick. Our position is
6 99.34 allows institutions such as a school district to
7 contact, to speak with, to obtain transfer records from
8 other entities. That is the law under the Family
9 Educational Rights Privacy Act.

10 Secondly, if you would like, the superintendent of
11 the school district of Greenville County is here,
12 Mr. Burke Royster, and he may be able to shed some light
13 on this situation, if you would like to hear from him.

14 THE COURT: Well, sure. I'll be happy to hear
15 whatever y'all have got to say. I don't -- this is a very
16 difficult...

17 MR. BURKE ROYSTER: Your Honor, I don't know that I
18 can add a great deal that will give clarity to some of the
19 questions that were raised today. I wasn't involved in
20 this at the outset of the matter. I do know about it in
21 summary. I was made aware of it at some point during the
22 process what was going on by Mr. Webb and by our academics
23 staff.

24 I think -- you know, it was just very apparent to me
25 as I was sitting here listening, and watching, and hearing

1 what you had to say -- and I think you're faced with a
2 great dilemma. And it's a dilemma not unsimilar -- or not
3 dissimilar to the one that was faced by our folks in
4 interpreting the transcript.

5 I wish that this had been handled a little
6 differently from the outset. I think some good points
7 were made as far as the early involvement of the other
8 parent. I don't know how this came to the person's
9 attention that brought it forward.

10 But it seems to me that our counselor, initially, did
11 not pay attention to this note on the transcript. The
12 note on the transcript contained within the borders of
13 that transcript raised some question on the mind -- in the
14 minds of our academics division. And they sought clarity,
15 which is not unusual to seek clarity from another school
16 or another school district when you receive a transcript,
17 and particularly one that may have something on it that
18 you have a question about.

19 I wish they had raised that question, initially,
20 prior to ever issuing the transcript. Unfortunately, I
21 think either Mr. Webb or Mr. Barlow said, you know, people
22 sometimes act in a way that on review might have been
23 prudent to have acted a little more slowly.

24 THE COURT: We're all guilty of that.

25 MR. BURKE ROYSTER: Yes, sir. And, perhaps, not

1 issued the transcript so quickly.

2 But it does raise very difficult questions for all of
3 us. And that is how to deal with this transcript knowing
4 that the grade, actually, earned had a number added to it
5 at various points that's noted on the transcript. And how
6 do we include that and how do we enter that into the
7 consideration of not only that individual's attainment,
8 but how that relates to others within the class at
9 Southside High School.

10 And as you I'm sure are aware and remember from time
11 in school and hearing other people talk about it as well,
12 quite often, there's great competition for first, second,
13 third, fourth place in a particular class. And that,
14 oftentimes, students seek advantage in what they choose to
15 try to elevate that GPA. Because it, certainly, has a
16 meaning to them in college admission. It has a meaning in
17 earning scholarships. In fact, there are some
18 institutions that give full scholarships to those who are
19 first or second in their class. So it has great meaning
20 to a number of people.

21 And whatever decision was made about this young man's
22 transcript, obviously, effects that young man and it
23 effects other young men and young women in that class. So
24 it was not an easy issue for the school to address, nor
25 for the district to address.

1 There was never any intent, though, for anyone to
2 hide anything or for anyone to do anything behind
3 someone's back. I hate that there are any facts in the
4 matter that appear that way. And there was no -- there
5 may be some appearance there was some undue influence, but
6 there was no undue influence exerted.

7 As I think the point was already made, no matter who
8 brought this to our attention, it is a concern. It's an
9 issue. It's a problem. Once it was brought to our
10 attention, we couldn't ignore it simply because it might
11 have been brought by the parent of another student. We
12 had to address it.

13 And we believe, from a district standpoint, that we
14 addressed it in a manner prudent, that exercised good
15 judgment, and that we did the due diligence that we could
16 do in order to try to bring clarity to it to make the
17 right decision for all of those involved. And,
18 unfortunately, whatever decision we make -- whatever
19 decision you make will affect some people positively and
20 will affect some people negatively.

21 And we hope that we made the decision to the best of
22 our ability given the facts that we had. And we did it
23 only with the purpose of making the best decision and
24 making the decision we believe was right to make in that
25 particular case.

1 So I'm sorry that some of the facts appear, perhaps,
2 murky in review, but there was no intent to do it that
3 way.

4 THE COURT: Well, a couple things struck me. One is
5 you are talking about interpreting a transcript.

6 MR. BURKE ROYSTER: Yes, sir.

7 THE COURT: And then the other thing is it's -- there
8 is -- I mean, I just don't know that Georgia gives these
9 quality points. Isn't that what they're called?

10 MR. BURKE ROYSTER: Yes, sir.

11 THE COURT: I don't know if they do that in their --
12 if their donation of quality points assigning quality
13 points for elevated more difficult classes is just exactly
14 what you're talking about with the grade bump. I mean,
15 that's why Mr. Muller's point is so well taken that the
16 law is clear, the regulations are clear about you must
17 take the numerical number.

18 MR. BURKE ROYSTER: Yes, sir.

19 And I think what -- if I might, Your Honor, what made
20 that murky to us was the fact that on that same page, it
21 said, and we added this many points in these cases. So
22 which grade is the transcript? Is it the grade that
23 appears, or is it the grade minus the notation?

24 THE COURT: Well, and then the other problem, I mean,
25 is if you made 100 in a class, he doesn't get any extra.

1 And we don't know -- I mean, it's -- we don't know the
2 accuracy of what's reported in these unofficial e-mails.
3 You've got the official transcript. And there's -- and
4 that's what we go by.

5 MR. WEBB: And, Judge, with the official transcript,
6 I would say that I'm not sure I agree with the fact that
7 we interpret the transcript. What we did is when we
8 became aware that there was an asterisk within the four
9 corners of the transcript, then we did our due diligence
10 to find the accurate numerical averages for young
11 Mr. Palms.

12 Then from there, we did what we thought was in the
13 best interest of everyone involved in accordance with the
14 law. Now, as far as the accuracy of the -- and the
15 authenticity of the e-mail from Riverside Military
16 Academy, we had short notice with regard to the hearing.
17 I think we would be happy to provide the Court with
18 additional materials to alleviate any concerns with that
19 accuracy. But, you know, we've only had a few days here
20 to -- before this hearing.

21 THE COURT: I know. I mean, it's got to be done on
22 short notice.

23 MR. WEBB: Sure.

24 THE COURT: I guess this most often comes up in
25 athletes transferring schools. Would that be a fair

1 statement?

2 MR. WEBB: Judge, I would say this is a unique
3 situation that I have not experienced. And our people
4 from my discussions have not experienced this asterisk on
5 a transcript before.

6 MR. BURKE ROYSTER: Your Honor, I was a high school
7 principal about 10 years ago. I don't recall ever seeing
8 a transcript like that with that sort of notation on it.

9 In fact, you know, one of the reasons that we have --
10 and I think Mr. Muller probably made that point. But one
11 of the reasons that we have the uniform grading scale in
12 South Carolina is to address those sorts of differences.
13 Prior to the uniform grading scale, individual school
14 districts would adopt their own grading schedules. For
15 example, maybe at one place, a 95 to 100 was an A. And in
16 another place, a 90 to 100 was an A.

17 So in trying to particularly deal with transfer
18 students, it was very difficult to bring them in and
19 accurately translate what that grade was where they came
20 from into the system that they were coming into.

21 And there is incredible competition for those top
22 slots. And it is not unusual without anyone in a school
23 ever saying anything to a student -- for those students in
24 that top 10, it's very normal for them to know exactly
25 where they stand amongst themselves. There's quite a lot

1 of conversation that goes on between and amongst them,
2 between and amongst their parents sometimes. They very
3 often know exactly where they stand and where others stand
4 without anybody from the school providing that
5 information.

6 THE COURT: Yes.

7 MR. BARLOW: Your Honor, just to bring this back to a
8 legal framework. Essentially, what's being made here is
9 an estoppel argument. You told them one thing and you've
10 got to stick with what you told them the first time. But,
11 you know, estoppel against the government requires you to
12 show reliance on it, and justifiable reliance on it, and
13 prejudicial reliance on it. And there's been no --
14 nothing offered that would show that he wouldn't have
15 transferred to Southside or that there was any prejudice
16 suffered by this back and forth. It's not the ideal
17 circumstance. But to make an estoppel claim against the
18 government, that's a key element. And that's not here.

19 THE COURT: Well, you know, I'm wondering how many
20 other transfer students received a bump in their grade and
21 just because that school that sent the transcript didn't
22 put an asterisk down there, no one knew to check it out.

23 And we've all suffered from -- well, I don't know.
24 Some of us, it probably wouldn't matter. But for some of
25 us who -- I think back to law school and the mean average

1 of the three different sections varied by a huge amount.
2 It just depended on who the professor was. Nobody got the
3 benefit of that by saying, well, look at the mean average
4 of the sections and so, you know, you should -- my work
5 was better because of me -- is better than it shows
6 because the mean of my section is lower than the mean of
7 that section so give me a job, instead of the guy that's
8 here because my section was tougher. I mean, that's a...

9 All right. Well, I wish -- I just need to -- I don't
10 do it lightly. I don't assign blame anywhere. But I'm
11 going to grant his writ just based on the fact that the
12 clear language of the regulations and the law is that it
13 must accept it. And I guess my finding would be that
14 the -- without assigning fault, and I'm really not, or
15 blame, or anything of that nature that the law is clear.
16 And that it would be my finding that the school district's
17 well intention efforts at fairness and equality which led
18 to them -- and I'm going to define it as interpreting --
19 to interpret the transcript to reduce the numerical number
20 was wrong. And I'll let y'all talk to somebody who's
21 smart enough to figure this out.

22 Would you do an order just as quickly as possible,
23 Mr. Muller?

24 MR. MULLER: Yes, sir. I'll do one this afternoon.

25 THE COURT: Okay. And would you like -- can I talk

1 to the lawyers up here for a second?

2 (WHEREUPON, a bench conference was held.)

3 THE COURT: I would say this just for pontificating
4 that it is a very dangerous thing to -- I mean, you've got
5 to -- I mean, you've got to be careful.. But to spread
6 around your success, academic, financial, athletic --
7 because as soon as you start to think you're the best
8 there is, you find out very quickly that there's somebody
9 else out there who is better. And so anything -- any
10 success that a person has needs to be tempered with
11 humanity.

12 But having said that, work hard.

13 MR. MULLER: Thank you, Judge.

14 MR. WEBB: Thank you, Judge.

15 THE COURT: I did not -- this is not an exhibit. So
16 would you prefer to substitute this for the other?

17 MR. MULLER: I would.

18 THE COURT: Hollie, will you just put Defendant's
19 Exhibit No. 1 on that.

20 THE COURT REPORTER: Yes, sir.

21 THE COURT: Thank you.

22 *****END OF TRANSCRIPT OF RECORD*****
23
24
25

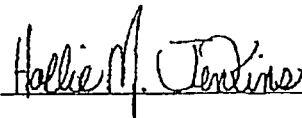
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 4th day of October, 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 14, 2014



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

000075

per Guidance manual
enter semester as received.
changed transcript to
reflect if grade is
different.



RIVERSIDE MILITARY ACADEMY

Math II Acc = Algebra
Math III Acc = Geometry

Address

called school - per Mr. Lowery - with official letter & transcript
- Military Academy - 2010
- Math II Acc = Algebra
- Math III Acc = Geometry

SSN
Gender
Date of Birth
Date of Birth
Registration Date
Birth Date
SSN

Special
Grade
Date
Date

Year	Course/Topic	Sem	Gr	Sem	Gr	Year	Gr	Sem	Gr	Notes
09-10	Riverside Military Academy									Advanced Awards
	Spanish I 36310700	95	0.5	-99						Award
	English 9 36310700	95	0.5							9th Grade - 1st Sem Gold Star Award
	Algebra I 411103700	95	0.5							Award
										9th Grade - 1 Hour Community Service Award
	Riverside Military Academy									Award
	UK 40 Comp (9th) 1			100	0.5					9th Grade - 2nd Sem Gold Star Award
	Math 4 Accelerated 411103700			100	0.5					Award
	American History 1			100						10th Grade - 1st Sem Gold Star Award
	Physical Science 1			100						Award
	Computer Science 1			100						10th Grade - Nat'l Honor Society Award
	Spanish II			100	0.5					10th Grade - 2nd Sem Gold Star Award
	Computer Science II			100						
	Distance Sports & Fitness			27						Appropriate Grade Conversion
										A-20-100
										B-10-99
										C-10-99
										D-10-99
10-11	Riverside Military Academy									Recommendation given for credit in project 10th level in subject.
	Multicultural Literature II 36310700	100	0.5							Agreement
	Multicultural Literature II			100	0.5					Southern Association of Colleges and Schools
	Math II Accelerated 411103700	100	0.5							Explanatory Notes
	Math II Accelerated			100	0.5					1st Honor Section
	AP World History 36310700	100	0.5							AP Advanced Placement
	AP World History			100	0.5					Honors courses and accelerated math receive an additional 5 points.
	Biology I 36310700	96	0.5							AP courses receive an additional 5 points.
	Biology II 36310700	99	0.5							AP courses for students from 2010-2011 only receive 10 points.
	Spanish II 36310700	100	0.5							Students are not allowed to take more than 2 AP courses without approval by Academic Dean.
	Spanish II H			100	0.5					Transcript is unofficial unless signed by a school official and received in a sealed Academy envelope.
	Military Science I J.P.O.T.C.	98	0.5							
	Military Science II 36310700	99	0.5							
	Community Service Hours			99	0.5					
										Qualitative Credits
										10
11-12	Riverside Military Academy									
	AP English Language 36310700	98	0.5							
	AP English Language			100	0.5					
	Math III Accelerated 411103700	100	0.5							
	Math III Accelerated			100	0.5					
	US History Honors 36310700	100	0.5							
	US History Honors			100	0.5					
	Chemistry I 36310700	100	0.5							
	Chemistry I			100	0.5					
	Spanish III H 36310700	100	0.5							
	Spanish III H			100	0.5					
	Computer Science II 50020004	99	0.5							
	Military Science II J.P.O.T.C.	100	0.5							
	Military Science II 36310700	99	0.5							
	Community Service Hours			99	0.5					

Signature: [Signature] Title: Registrar Date: 8/12/10

2001 Riverside Drive, Gainesville, Georgia 32601
TEL: 352.532.6251 FAX: 352.532.6251

000076

State of South Carolina
Standard High School Transcript

Graduation Date:

Class Of: 2014

Diploma Type: None

Student Name F. [REDACTED]		
Student ID [REDACTED]	Grade 11	Gender M
State ID [REDACTED]	Date of Birth [REDACTED] 1996	Ethnic Code W
Parent Guardian P. [REDACTED] S. [REDACTED], Lect [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]		

School Name/Address
Southside High School
5530 Frontage Road
Greenville, SC 29605
Tel: 864-355-8700 Fax: 864-355-8788

District Name/Address
Greenville County Schools
301 E. Camperdown Way
Greenville, SC 29601
Tel: (864) 355-3100 Fax: (864) 355-1080

[illegible]

To determine the course academic level refer to the seventh character in each course ID.

If graduation date is a future date,
current year reflects Work in Progress.

Official Signature _____ Date: _____
 Carlos Brooks, Principal or Designer

An official signature and/or seal is required for manually created transcripts. Information about the South Carolina Uniform Grading Policy can be found at: http://ed.sc.gov/topics/curriculumstds/scu_ggp.html

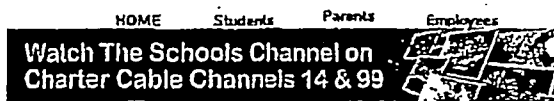
000077

Home > Parents > Grading Criteria



The Essentials
Schools
Bus Updates
Board of Trustees
Sports and More
Departments
Calendar
Policies
Contact Us

Greenville County Schools
301 E. Carpenter Way
Greenville, South Carolina 29601
Phone: 854-355-3100
Email: info@greenvilleschools.k12.sc.us
Hours: Monday-Friday 8:00 am-5:00 pm
Help?



Welcome Get Started Policy FAQs Get Involved Resources Forms Media and More

Greenville County Schools Grading

Course Grading

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

A = 90-100
B = 80-89
C = 70-79
D = 60-69
F = 50-59

Grading Scales

Kindergarten

Student progress in kindergarten is reported for South Carolina kindergarten standards as follows:

- Language and literacy - Mathematics - Science - Physical and social development	- Scale = + Completely demonstrates + Somewhat demonstrates + Rarely or never demonstrates + Not yet demonstrated

Grade One

Student progress in grade one is reported for South Carolina first grade standards as follows:

- Reading and Social Growth - Reading - Language Arts - Physical Arts - Mathematics - Science - Social Studies - Physical Education	- Scale = + Completely demonstrates + Somewhat demonstrates + Rarely or never demonstrates + Not yet demonstrated

Grades Two through Twelve Grading Scales

Student progress in grades two through twelve is reported for all subjects as follows:

The South Carolina Uniform Grading Scale and the system for calculating grade point averages (GPAs) and class rank will be effective for all students in the 2007-2008 school year. The policy requires that the lowest grade given to a student at the end of a course is a D. This grade would be considered a "floor" grading.

Elementary (grades 2-5) and middle schools will have a floor of D for each grading period. High schools will have a floor of D for all students with one exception. Ninth graders will have a floor of D at the end of 1st and 3rd quarters (block schedule) or 1st semester (traditional schedule). Interim progress reports will show all grades, including those below D. Teachers will contact parents when a student receives a failing progress report.

Grading values are:

- 81-100 = all elementary and middle schools
- 60-80 = all high schools (exception of 9th graders 1st and 3rd block schedules, 1st semester traditional schedule)
- 70-79: D
- 77-84: C
- 63-72: B
- 53-62: A

State Uniform Grading Scale

Conversion process:

All report cards and transcripts will use numerical grades for courses carrying Carnegie units. Transcripts and report cards will show course title and level/type of course taken. The grading scale must be printed on the report card.

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. If letter grades with no numerical averages are provided, the following equivalents will be used to transfer the grades into the student's record.

- A=95
- B=85
- C=75
- D=65
- F=55

If the transcript indicates that the student has earned a passing grade in any course with a numerical average lower than 70, the average will be converted to a 70 numerical grade.

If the transcript shows that the student has earned a grade of "P" (passing), that grade will be converted to a numerical grade based upon information secured from the sending institution as to the appropriate numerical value of the "P." If no numerical average can be obtained from the sending institution, the receiving school will calculate the student's cumulative transfer GPA and the corresponding number equivalent will be assigned to replace the "P."

End-of-course testing and the credit recovery option

In courses requiring state end-of-course testing, the district will apply the mandatory 20 percent weighting of the end-of-course test to the student's final grade. The student will be allowed to take the examination only once, at the end of the regular course duration and not at the end of an extended period granted through the credit recovery option. The school will treat students who repeat the course as though they were taking the course for the first time and all requirements will apply.

Honors courses

Honors courses are intended for students exhibiting superior abilities in the particular course content area. The honors curriculum places emphasis on critical and analytical thinking, rational decision-making, and inductive and deductive reasoning. Honors courses should not encourage a student to graduate early, but should extend course opportunities at the high school level.

The district may designate honors courses and give the assigned weighting under the following conditions:

- An honors course must have a published syllabus that verifies rigor sufficiently beyond the College Preparatory (CP) requirement.
- Textbooks and/or other course materials must be differentiated and more rigorous than those used in CP courses.
- Honors courses may be offered in English, mathematics, science and social studies. Additionally, honors courses may be designated in other content areas for the third or fourth level of the courses provided the first criteria listed above are met. Honors weighting may not be designated in any physical education courses.

One-half of a quality point (.5) will be added to the CP weighting for honors courses that meet all three criteria listed above. These criteria apply to all courses, including those offered online and in other nontraditional settings as well as those recorded on a transcript from an out-of-state school accredited under the board of education of that state or the appropriate regional accrediting agency.

Advanced Placement (AP) and International Baccalaureate (IB) Courses

The following criteria apply to the College Board's AP courses and to IB courses, including those offered online and in other nontraditional settings as well as those recorded on a transcript from an out-of-state school accredited under the board of education of that state or the appropriate regional accrediting agency.

- AP or IB courses will be awarded a full quality point above the CP weighting. Seminar or support courses for AP or IB may be weighted as honors but not as AP or IB courses.
- A standard-level (SL) IB course will carry only one quality point. However, two quality points of IB credit will be granted for higher-level (HL) courses in the IB program that require a minimum of 240 hours of instruction.

Dual credit courses

Dual credit courses, whether the course is taken at the school site where the student is enrolled or at a post-secondary institution, are defined as those courses for which the student has received permission from his/her home school to earn both Carnegie units and credit for those particular courses. One quality point will be added to the CP weighting for dual credit courses that are applicable to baccalaureate degrees or associate degrees offered by accredited institutions.

College orientation classes for dual credit will be weighted as CP.

Grade point averages (GPA)

The uniform grading scale and system for figuring GPA and class rank will apply to all courses carrying Carnegie units, including units earned at the middle/junior high school level.

As applicable, the district will recalculate GPAs already earned by students based on the three-credit-point scale as outlined in this administrative rule. Increased quality points for dual credit courses and full credit for dual credit courses will not be figured into recalculation.

Grade point averages will be figured uniformly in all schools using the following formula. The formula will yield each student's GPA which can then be ranked from highest to lowest rank in class. Computations will not be rounded to a higher number. All diploma candidates are included in the ranking.

$$GPA = \frac{\text{sum (quality points x units)}}{\text{sum of units attempted}}$$

Class Rankings

Class rankings will be determined based on the grade point ratios ("GPRs") of students in grade twelve at the conclusion of the seventh semester of high school in order:

- To determine honor graduates and select a valedictorian and salutatorian.
- The high school will determine the manner of recognition of honor graduates, i.e., honor cords, special recognition in the graduation program, assembly, etc.
- To provide information students need for applications for admission to post-secondary programs and
- To provide information students need for scholarships and other awards.

However, class rank for LIFE Scholarships is determined at the conclusion of the spring semester of the senior year.

Course Withdrawals

With the first day of enrollment as the baseline, students who withdraw from a course within three days in a 45-day course, five days in a 90-day course or 10 days in a 180-day course will do so without penalty.

Students who withdraw from a course after the specified time of three days in a 45-day course, five days in a 90-day course or 10 days in a 180-day course will be assigned a WF and the F (as a 0.1) will be calculated in

The student's overall grade point average.

The three, five and 10-day limitations for withdrawing from a course without penalty do not apply to course or course level changes approved by the administration of a school. The district will establish withdrawal limitations for distance learning courses.

Students who drop out of school or are expelled after the allowed period for withdrawal but before the end of the grading period will be assigned grades in accordance with the following:

- The student will receive a WF if he/she was passing the course. The grade of WF will carry no Carnegie units and no safety points to be factored into the student's GPA.
- The student will receive a WF if he/she was failing the course. The grade of WF will carry no Carnegie units but will be factored into the student's GPA as a 0.

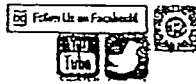
If a student fails a course due to successive absences, the school will record an FA on his/her transcript. The grade of FA will carry no Carnegie units but will be factored into the student's GPA as a 0.

Retaking courses

Students in grades nine through 12 may retake a course of the same level of difficulty if they earned a D or F in the course. The student's record will reflect all courses taken and the grades earned.

The student may retake the course either during the current school year or during the next school year but no later than that second year. In addition, the student must retake the course before he/she has enrolled in the next sequential course (unless granted approval by the school administration to do so).

A student who has taken a course for a Carnegie unit prior to his/her ninth grade year may retake that course regardless of the grade earned. In this case, only the retake grade will be used in figuring the student's GPR and only the retake attempt will show on the transcript. This rule will apply whether the retake grade is higher or lower than the grade previously earned by the student.



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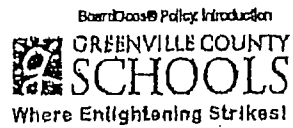
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10/1/13



Book	Policies
Section	I - Instructional Program
Title	Academic Achievement; Grading Systems
Number	IHA
Status	Active
Legal	
Adopted	October 10, 2000
Last Revised	May 22, 2007

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

The Uniform Grading Policy is effective for all students beginning in the 2007-2008 school year and is set out below.

A = 100-93
B = 92-85
C = 84-77
D = 76-70
F = 69-61

The administration will develop regulations and procedures necessary to implement this policy.

Rule: IHA

10/1/13

BoardDocs® Policy IHA Academic Achievement Grading Systems



GREENVILLE COUNTY
SCHOOLS

Where Enlightening Strikes!

Book	Rules
Section	I - Instructional Program
Title	Academic Achievement: Grading Systems
Number	IHA
Status	Active
Legal	
Adopted	May 1, 1981
Last Revised	October 1, 2007

Grading scales *Kindergarten*

Student progress in kindergarten is reported for South Carolina kindergarten standards as follows.

- language and literacy
- mathematics readiness
- motor skills
- personal and social development

Scale =

- + Consistently demonstrates
- ✓ Sometimes demonstrates
- Rarely or never demonstrates
- * Not yet demonstrated

Grade one

Student progress in grade one is reported for South Carolina first grade standards as follows:

- Personal and Social Growth
- Reading
- Language Arts
- Related Arts
- Mathematics
- Science
- Social Studies
- Penmanship

Scale =

- + Consistently demonstrates
- ✓ Sometimes demonstrates
- Rarely or never demonstrates
- * Not yet demonstrated

Grades two through twelve

Student progress in grades two through twelve is reported for all subjects as follows.

www.boarddocs.com/sc/greenville/BoardDocs/gde/openfile.cfm?id=875KTQ7BE3E1

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Elementary (grades 2 – 5) and middle schools will have a floor of 61 for each grading period. High schools will have a floor of 50 for all students with one exception. Ninth graders will have a floor of 61 at the end of 1st and 3rd quarters (block schedule) or 1st semester (traditional schedule). Interim progress reports will show all grades, including those below 61. Teachers will contact parents when a student receives a failing progress report.

61 - 69: F - all elementary and middle schools
50 - 69: F - all high schools (exception of 9th graders: 1st and 3rd block schedules, 1st semester traditional schedules)
70 - 76: D
77 - 84: C
85 - 92: B
93 - 100: A

Numerical breakes for letter grades, weightings for specified courses and a conversion chart for computing grade point ratios follow.

Numerical average	Letter grade	College Prep	Honors	AP/IB/Dual Credit
100	A	4.875	5.375	5.875
99	A	4.750	5.250	5.750
98	A	4.625	5.125	5.625
97	A	4.500	5.000	5.500
96	A	4.375	4.875	5.375
95	A	4.250	4.750	5.250
94	A	4.125	4.625	5.125
93	A	4.000	4.500	5.000
92	B	3.875	4.375	4.875
91	B	3.750	4.250	4.750
90	B	3.625	4.125	4.625
89	B	3.500	4.000	4.500
88	B	3.375	3.875	4.375
87	B	3.250	3.750	4.250
86	B	3.125	3.625	4.125
85	B	3.000	3.500	4.000
84	C	2.875	3.375	3.875

10/1/18

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83	C	2.750	3.250	3.750
82	C	2.625	3.125	3.625
81	C	2.500	3.000	3.500
80	C	2.375	2.875	3.375
79	C	2.250	2.750	3.250
78	C	2.125	2.625	3.125
77	C	2.000	2.500	3.000
76	D	1.875	2.375	2.875
75	D	1.750	2.250	2.750
74	D	1.625	2.125	2.625
73	D	1.500	2.000	2.500
72	D	1.375	1.875	2.375
71	D	1.250	1.750	2.250
70	D	1.125	1.625	2.125
69	F	1.000	1.500	2.000
68	F	0.875	1.375	1.875
67	F	0.750	1.250	1.750
66	F	0.625	1.125	1.625
65	F	0.500	1.000	1.500
64	F	0.325	0.875	1.375
63	F	0.250	0.750	1.250
62	F	0.125	0.625	1.125
0-61	F	0.000	0.000	0.000
61	FA	0.000	0.000	0.000
61	WF	0.000	0.000	0.000
—	WP	0.000	0.000	0.000

Conversion process

All report cards and transcripts will use numerical grades for courses carrying Carnegie units. Transcripts and report cards will show course title and level/type of course taken. The grading scale must be printed on the report card.

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. If letter grades with no numerical averages are provided, the following equivalents will be used to transfer the grades into the student's record.

A=89

B=88

C=80

D=73

www.boarddocs.com/sc/greenfield/BoardDocs/open.cfm?id=676K1Q79E3E1

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F=61

If the transcript indicates that the student has earned a passing grade in any course with a numerical average lower than 70, the average will be converted to a 73 numerical grade.

If the transcript shows that the student has earned a grade of "P" (passing), that grade will be converted to a numerical grade based upon information secured from the sending institution as to the approximate numerical value of the "P." If no numerical average can be obtained from the sending institution, the receiving school will calculate the student's cumulative transfer GPA and the corresponding number equivalent will be assigned to replace the "P."

End-of-course testing and the credit recovery option

In courses requiring state end-of-course testing, the district will apply the mandatory 20 percent weighting of the end-of-course test to the student's final grade. The student will be allowed to take the examination only once, at the end of the regular course duration and not at the end of an extended period granted through the credit recovery option. The school will treat students who repeat the course as though they were taking the course for the first time and all requirements will apply.

Honors courses

Honors courses are intended for students exhibiting superior abilities in the particular course content area. The honors curriculum places emphasis on critical and analytical thinking, rational decision-making, and inductive and deductive reasoning. Honors courses should not encourage a student to graduate early, but should extend course opportunities at the high school level.

The district may designate honors courses and give the assigned weighting under the following conditions.

- An honors course must have a published syllabus that verifies rigor sufficiently beyond the College Preparatory (CP) requirements.
- Textbooks and/or other course materials must be differentiated and more rigorous than those used in CP courses.
- Honors courses may be offered in English, mathematics, science and social studies. Additionally, honors courses may be designated in other content areas for the third or fourth level of the courses provided the two criteria listed above are met. Honors weighting may not be designated in any physical education courses.

One-half of a quality point (.5) will be added to the CP weighting for honors courses that meet all three criteria listed above. These criteria apply to all courses, including those offered online and in other nontraditional settings as well as those recorded on a transcript from an out-of-state-school accredited under the board of education of that state or the appropriate regional accrediting agency.

Advanced Placement (AP) and International Baccalaureate (IB) Courses

The following criteria apply to the College Board's AP courses and to IB courses, including those offered online and in other nontraditional settings as well as those recorded on a transcript from an out-of-state-school accredited under the board of education of that state or the appropriate regional accrediting agency.

- AP or IB courses will be awarded a full quality point above the CP weighting. Seminar or support courses for AP or IB may be weighted as honors but not as AP or IB courses.
- A standard-level (SL) IB course will carry only one quality point. However, two quality points of IB credit will be granted for higher-level (HL) courses in the IB program that require a minimum of 240 hours of instruction.

Dual credit courses

Dual credit courses, whether the course is taken at the school site where the student is enrolled or at a post-secondary institution, are defined as those courses for which the student has received permission from his/her home school to earn both Carnegie units and credit for those particular courses. One quality point will be added to the CP weighting for dual credit courses that are applicable to baccalaureate degrees or associate degrees offered by

accredited institutions.

College orientation classes for dual credit will be weighted as CP.

Grade point averages (GPA)

The uniform grading scale and system for figuring GPA and class rank will apply to all courses carrying Carnegie units, including units earned at the middle/junior high school level.

As applicable, the district will recalculate GPAs already earned by students based on the three-decimal-point scale as outlined in this administrative rule. Increased quality points for dual credit courses and full credit for dual credit courses will not be figured into recalculations.

Grade point averages will be figured uniformly in all schools using the following formula. The formula will yield each student's GPA which can then be ranked from highest to lowest rank in class. Computations will not be rounded to a higher number. All diploma candidates are included in the ranking.

$$\text{GPR} = \frac{\text{sum (quality points X units)}}{\text{sum of units attempted}}$$

Class Rankings

Class rankings will be determined based on the grade point ratios ("GPRs") of students in grade twelve at the conclusion of the seventh semester of high school in order:

1. To determine honor graduates and select a valedictorian and salutatorian.
- The high school will determine the manner of recognition of honors graduates, i.e., honor cords, special recognition in the graduation program/ceremony, etc.;
2. To provide information students need for applications for admission to post-secondary programs; and
3. To provide information students need for scholarships and other awards.

However, class rank for LIFE Scholarships is determined at the conclusion of the spring semester of the senior year.

Course withdrawals

With the first day of enrollment as the baseline, students who withdraw from a course within three days in a 45-day course, five days in a 90-day course or 10 days in a 180-day course will do so without penalty.

Students who withdraw from a course after the specified time of three days in a 45-day course, five days in a 90-day course or 10 days in a 180-day course will be assigned a WF and the F (as a 61) will be calculated in the student's overall grade point average.

The three, five and 10-day limitations for withdrawing from a course without penalty do not apply to course or course level changes approved by the administration of a school. The district will establish withdrawal limitations for distance learning courses.

Students who drop out of school or are expelled after the allowed period for withdrawal but before the end of the grading period will be assigned grades in accordance with the following.

- The student will receive a WP if he/she was passing the course. The grade of WP will carry no Carnegie units and no quality points to be factored into the student's GPA.
- The student will receive a WF if he/she was failing the course. The grade of WF will carry no Carnegie units but will be factored into the student's GPA as a 61.

If a student fails a course due to excessive absences, the school will record an FA on his/her transcript. The grade of FA will carry no Carnegie units but will be factored into the student's GPA as a 61.

Retaking courses

Students in grades nine through 12 may retake a course at the same level of difficulty if they earned a D or F in that course. The student's record will reflect all courses taken and the grades earned.

The student may retake the course either during the current school year or during the next school year but no later

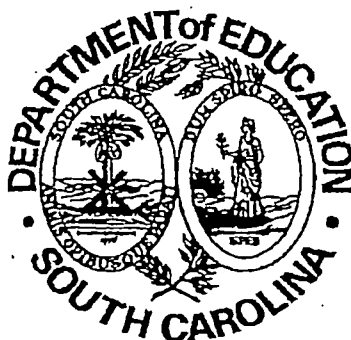
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than that second year. In addition, the student must retake the course before he/she has enrolled in the next sequential course (unless granted approval by the school administration to do so).

A student who has taken a course for a Carnegie unit prior to his/her ninth grade year may retake that course regardless of the grade earned. In this case, only the retake grade will be used in figuring the student's GPR and only the retake attempt will show on the transcript. This rule will apply whether the retake grade is higher or lower than the grade previously earned by the student.

South Carolina Uniform Grading Policy



**Issued by the
South Carolina Department of Education**

**Inez Moore Tenenbaum
State Superintendent of Education**

January 9, 2007

000088

Contents

The Legislative Mandate	1
Grade Point Conversion Chart	2
Courses Carrying Carnegie Units	3
Honors Courses	3
Dual Credit Courses	3
Advanced Placement and International Baccalaureate Courses	4
End-of-Course Examination Program (EOCEP) Courses and the Credit Recovery Option	4
Computing Grade Point Averages	5
Converting Grades on Transcripts	6
Withdrawing from a Course	7
Retaking a Course	8

The Legislative Mandate

S.C. Code Ann. § 59-5-68 (2004) reads as follows:

The General Assembly finds that given the fact the State provides substantial financial academic assistance to students of 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 State Board of Education adopted a uniform grading policy for South Carolina's public schools in December 1999. That policy, which applied to all students who first enrolled in the ninth grade in the 2000-01 school year, has now been revised. The particulars of the state's revised uniform grading policy are set forth in the pages that follow here.

The new uniform grading scale and the system for calculating grade point averages (GPAs) and class rank will be effective for all students in the 2007-08 school year. Recalculations will be limited to the use of the three-decimal-place conversion factors specified in the South Carolina uniform grading policy's grade point conversion chart. Increased quality points for dual credit courses and full credit for dual credit courses will not be figured into recalculations.

Grade Point Conversion Chart

South Carolina Uniform Grading Scale Conversions				
Number Average	Letter Grade	4-Point Scale	5-Point Scale	Weighted Average
100	A	4.875	5.375	5.875
99	A	4.750	5.250	5.750
98	A	4.625	5.125	5.625
97	A	4.500	5.000	5.500
96	A	4.375	4.875	5.375
95	A	4.250	4.750	5.250
94	A	4.125	4.625	5.125
93	A	4.000	4.500	5.000
92	B	3.875	4.375	4.875
91	B	3.750	4.250	4.750
90	B	3.625	4.125	4.625
89	B	3.500	4.000	4.500
88	B	3.375	3.875	4.375
87	B	3.250	3.750	4.250
86	B	3.125	3.625	4.125
85	B	3.000	3.500	4.000
84	C	2.875	3.375	3.875
83	C	2.750	3.250	3.750
82	C	2.625	3.125	3.625
81	C	2.500	3.000	3.500
80	C	2.375	2.875	3.375
79	C	2.250	2.750	3.250
78	C	2.125	2.625	3.125
77	C	2.000	2.500	3.000
76	D	1.875	2.375	2.875
75	D	1.750	2.250	2.750
74	D	1.625	2.125	2.625
73	D	1.500	2.000	2.500
72	D	1.375	1.875	2.375
71	D	1.250	1.750	2.250
70	D	1.125	1.625	2.125
69	F	1.000	1.500	2.000
68	F	0.875	1.375	1.875
67	F	0.750	1.250	1.750
66	F	0.625	1.125	1.625
65	F	0.500	1.000	1.500
64	F	0.375	0.875	1.375
63	F	0.250	0.750	1.250
62	F	0.125	0.625	1.125
61	F	0.000	0.000	0.000
61	FA	0.000	0.000	0.000
61	WF	0.000	0.000	0.000
—	WP	0.000	0.000	0.000

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Courses Carrying Carnegie Units

The uniform grading scale and the system for calculating GPAs and class rank will apply to all courses carrying Carnegie units, including units earned at the middle or junior high school level.

All report cards and transcripts will use numerical grades for courses carrying Carnegie units. Transcripts and report cards will specify the course title and the level or type of course the student has taken (e.g., English 1, Algebra 2 honors, AP U.S. History). The grading scale must be printed on the report card.

Honors Courses

Honors courses, which extend and deepen the opportunities provided by courses at the high school level, are designed for students exhibiting superior abilities in the particular content area. The honors curriculum places emphasis on critical and analytical thinking, rational decision making, and inductive and deductive reasoning.

School districts may designate honors courses and give the assigned weighting under the following conditions:

- A. An honors course must have a published syllabus that verifies rigor sufficiently beyond the College Preparatory (CP) requirements.
- B. Textbooks and other course materials must be differentiated and more rigorous than those used in CP courses.
- C. Honors courses may be offered in English, mathematics, science, and social studies. Honors weighting may be designated in other content areas for the third and fourth level of the courses, provided that the two above standards are met. Honors weighting may not be designated in any physical education courses.

One half of a quality point (.5) is added to the CP weighting for honors courses that meet the three criteria listed above. These criteria apply to all courses, including those offered online and in other nontraditional settings and those recorded on a transcript from an out-state-school that is accredited under the regulations of the board of education of that state or the appropriate regional accrediting agency: the New England Association of Colleges and Schools, the Middle States Association of Colleges and Schools, the Southern Association of Colleges and Schools, the North Central Association of Colleges and Schools, the Western Association of Colleges and Schools, or the Northwest Association of Colleges and Schools (as specified in State Board Regulation 43-273, Transfers and Withdrawals).

Dual Credit Courses

Dual credit courses—whether they are taken at the school where the student is enrolled or at a postsecondary institution—are those courses for which the student has been granted permission by his or her home school to earn both Carnegie units and college credit for those particular courses.

One quality point is added to the CP weighting for dual credit courses that are applicable to baccalaureate degrees or to associate degrees offered by accredited institutions (see State Board of Education Regulation 43-234, Defined Program, Grades 9–12, and Regulation 43-259, Graduation Requirements).

College orientation courses offered by postsecondary institutions carry CP weighting and do not receive honors or dual credit quality points.

Advanced Placement and International Baccalaureate Courses

The following criteria apply to the College Board's Advanced Placement (AP) courses and to International Baccalaureate (IB) courses—including those offered online and in other nontraditional settings and those recorded on a transcript from an out-state-school that is accredited under the regulations of the board of education of that state or the appropriate regional accrediting agency: the New England Association of Colleges and Schools, the Middle States Association of Colleges and Schools, the Southern Association of Colleges and Schools, the North Central Association of Colleges and Schools, the Western Association of Colleges and Schools, or the Northwest Association of Colleges and School (as specified in State Board Regulation 43-273, Transfers and Withdrawals).

- Only AP or IB courses can be awarded a full quality point above the CP weighting. Seminar or support courses for AP or IB may be weighted as honors but not as AP or IB courses.
- An AP course can carry only *one* quality point.
- A standard-level (SL) IB course can carry only *one* quality point. However, two quality points of IB credit can be granted for higher-level (HL) courses in the IB program that require a minimum of 240 hours of instruction.

End-of-Course Examination Program (EOCEP) Courses and the Credit Recovery Option

Students who are enrolled in courses requiring state end-of-course examinations must take the examinations and fulfill all requirements outlined in Regulation 43-262.4. Students will be allowed to take the examination only *once*, at the end of the regular course duration and not at the end of an extended period granted through the credit recovery option. Students who repeat the course must be treated as though they are taking the course for the first time, and all requirements will apply.

Computing Grade Point Averages

GPA's already earned by students will be recalculated on the basis of the revised policy's three-decimal-point scale.

All South Carolina public schools will use the following formula to compute all GPA's:

$$\text{GPA} = \frac{\text{sum (quality points x units)}}{\text{sum of units attempted}}$$

STUDENT EXAMPLE

Course Taken	Numerical Average	Quality Points	Unit
English 1	91	3.750	1
Algebra 1	87	3.250	1
Physical Science	94	4.125	1
World Geography, Honors	83	3.250	1
Physical Education	92	3.875	.5
French 1	84	2.875	1

COMPUTATION

Quality Points		Units		
3.750	x	1.0	=	3.750
3.250	x	1.0	=	3.250
4.125	x	1.0	=	4.125
3.250	x	1.0	=	3.250
3.875	x	.5	=	1.9375
2.875	x	1.0	=	2.875
sum of units attempted →		5.5		19.1875 ← sum of quality points x units

$$\frac{\text{sum of quality points x units}}{\text{divided by sum of units attempted} \rightarrow} \quad 19.1875 \div 5.5 = 3.488636 \rightarrow \text{student's GPA}$$

Computations will not be rounded to a higher number.

The establishment of criteria for determining honors graduates, including the valedictorian or salutatorian, is a local decision. Local boards may establish earlier cutoffs (e.g., the seventh semester of high school, the third nine weeks of the senior year) when ranking students for any local purpose. However, class rank for LIFE Scholarships is determined at the conclusion of the spring semester of the senior year.

Converting Grades on Transcripts

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. If letter grades with no numerical averages are provided, this conversion will apply: A = 96, B = 88, C = 80, D = 73, F = 61. If the transcript indicates that the student has earned a passing grade in any course in which he or she had a numerical average lower than 70, that average will be converted to a 73 numerical grade on the new scale. See State Board of Education Regulation 43-273 for complete information on transfers and withdrawals. The criteria for accepting transcripts from homeschools are a local decision.

If the transcript shows that the student has earned a grade of P (passing), that grade will be converted to a numerical designation on the basis of information secured from the sending institution as to the appropriate numerical value of the P. If no numerical average can be obtained from the sending institution, the student's cumulative transfer GPA will be calculated and the corresponding number equivalent will be assigned to replace the P. (For example, if a student transfers with a cumulative GPA of 3.5 on the CP scale, the grade of P would be converted to an 89. A grade of P, in other words, will neither positively nor negatively impact the student's transfer GPA.)

Withdrawing from a Course

With the first day of enrollment in the course as the baseline, students who withdraw from a course within three days in a 45-day course, five days in a 90-day course, or ten days in a 180-day course will do so without penalty.

Students who withdraw from a course after the specified time of three days in a 45-day course, five days in a 90-day course, or ten days in a 180-day course shall be assigned a WF, and the F (as a 61) will be calculated in the student's overall grade point average.

The three-, five-, and ten-day limitations for withdrawing from a course without penalty do not apply to course or course-level changes approved by the administration of a school. Withdrawal limitations for distance learning courses will be established by local districts.

Students who drop out of school or are expelled after the allowed period for withdrawal but before the end of the grading period will be assigned grades in accordance with the following policies:

- The student will receive a WP if he or she was passing the course. The grade of WP will carry no Carnegie units and no quality points to be factored into the student's GPA.
- The student will receive a WF if he or she was failing the course. The grade of WF will carry no Carnegie units but will be factored into the student's GPA as a 61.

If a student fails a course due to excessive absences, an FA will be recorded on his or her transcript. The grade of FA will carry no Carnegie units but will be factored into the student's GPA as a 61.

Retaking a Course

Students in grades nine through twelve may retake a course at the same level of difficulty if they have earned a D or an F in that course. The student's record will reflect all courses he or she has taken and the grades he or she has earned.

The student may retake the course either during the current school year or during the next school year but no later than that second year. In addition, the student must retake the course before he or she has enrolled in the next sequential course (unless the student is granted approval by school administration to do so).

A student who has taken a course for a Carnegie unit prior to his or her ninth-grade year may retake that course regardless of the grade he or she has earned. In such a case, only the retake grade will be used in figuring the student's GPA, and only the retake attempt will show on the transcript. This rule will apply whether the retake grade is higher or lower than the grade the student previously earned.

STATE BOARD OF EDUCATION
SYNOPSIS AGENDA/EXECUTIVE SUMMARY

CODE:	55-03
COMMITTEE:	Curriculum & Instruction
DATE:	January 9, 2007

SUBJECT/TITLE

Revision to the 2006 South Carolina Uniform Grading Policy (First Reading)

PURPOSE OF REPORT/REGULATION/ITEM

Revisions to this policy require approval by the State Board of Education.

CRITICAL FACTS

In September, the State Board of Education approved the revised uniform grading policy to ensure its alignment with recommendations in the Report of the South Carolina High School Redesign (March 2006) and the Education and Economic Development Act (2006). Following the November 8, 2006, State Board of Education study session on the revised policy, the State Department of Education has determined that additional revisions are needed. Under *The Legislative Mandate*, third paragraph, page 55-03-01, we are proposing to add the following sentences: Recalculations will be limited to the three-decimal-place conversion factors specified in the South Carolina uniform grading policy's grade point conversion chart. Increased quality points for dual credit courses and full credit for dual credit courses will not be figured into recalculations. On page 55-03-4, please add the following sentence: College orientation courses for dual credit will be weighted as College Prep. On page 55-03-5, we are recommending the addition of this sentence: Computations will not be rounded to a higher number.

TIMELINE/REVIEW PROCESS

- September 2005 A committee of 27 school and district representatives statewide was formed to review the 1999-2000 version of the uniform grading policy and determine if revisions were needed. The committee included assistant superintendents of instruction, guidance counselors, Commission on Higher Education members, curriculum coordinators, and SDE personnel.
- October 2005-
January 2006 The committee continued to meet to revise the policy. Input was sought from instructional leaders throughout the state.

000098

- January 2006–
March 2006 The policy was distributed via the Web for public input.
- April 2006 The revised draft was presented to technology coordinators at a statewide meeting for input.
- June 2006 The revised draft was presented at two sessions at the 2006 Summer Leadership Institute for principals, assistant superintendents, and superintendents for input. The final revised draft incorporates statewide input.
- August 9, 2006 The State Board of Education received the policy for first reading.
- September 13, 2006 The State Board of Education considered and approved the policy on second reading.
- November 8, 2006 The State Board of Education conducted a study session on the revised policy.
- January 9, 2007 The State Board of Education is receiving the policy for approval on first reading concerning revisions recommended by the State Department of Education.
- February 2006–
May 2007 Districts will communicate new policy and incorporate changes.
- August 2007 The new policy will be effective for all students.

ECONOMIC IMPACT

COST: None

FUND/SOURCE: _____

RECOMMENDATION

The State Department of Education recommends that the State Board of Education approve the 2006 South Carolina uniform grading policy, as revised, for first reading.

000099

ACTION REQUEST

FOR APPROVAL: ☒

FOR INFORMATION ONLY: ☐

REVIEW REQUIRED BY EDITOR: Yes ☒ No ☐

Signature of Editor (If Required) _____ Date _____

APPROVED BY:

Signature of Deputy Superintendent _____ Date _____

*Signature of General Counsel _____ Date _____

**Signature of State Superintendent of Education _____ Date _____

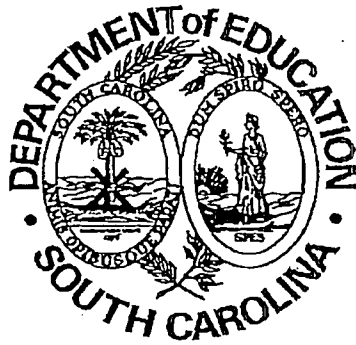
ATTACHMENT: ☒

*The Office of General Counsel must approve any action that requires the promulgation, amendment, or repeal of State Board of Education regulations.

**The State Superintendent of Education must approve all item(s) before the item(s) is placed on the State Board of Education agenda.

When signature is not required, please put N/A in Signature block

South Carolina Uniform Grading Policy



**Issued by the
South Carolina Department of Education**

**Inez Moore Tenenbaum
State Superintendent of Education**

January 9, 2007

000101

Contents

The Legislative Mandate.....	1
Grade Point Conversion Chart.....	2
Courses Carrying Carnegie Units.....	3
Honors Courses.....	3
Dual Credit Courses.....	3
Advanced Placement and International Baccalaureate Courses	4
End-of-Course Examination Program (EOCEP) Courses and the Credit Recovery Option.....	4
Computing Grade Point Averages.....	5
Converting Grades on Transcripts.....	6
Withdrawing from a Course.....	7
Retaking a Course.....	8

The Legislative Mandate

S.C. Code Ann. § 59-5-68 (2004) reads as follows:

The General Assembly finds that given the fact the State provides substantial financial academic assistance to students of 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 State Board of Education adopted a uniform grading policy for South Carolina's public schools in December 1999. That policy, which applied to all students who first enrolled in the ninth grade in the 2000-01 school year, has now been revised. The particulars of the state's revised uniform grading policy are set forth in the pages that follow here.

The new uniform grading scale and the system for calculating grade point averages (GPAs) and class rank will be effective for all students in the 2007-08 school year. Recalculations will be limited to the use of the three-decimal-place conversion factors specified in the South Carolina uniform grading policy's grade point conversion chart. Increased quality points for dual credit courses and full credit for dual credit courses will not be figured into recalculations.

Grade Point Conversion Chart

South Carolina Uniform Grading Scale Conversions				
Numerical Average	Letter Grade	College Prep	Honors	AP/IB/ (Dual Credit)
100	A	4.875	5.375	5.875
99	A	4.750	5.250	5.750
98	A	4.625	5.125	5.625
97	A	4.500	5.000	5.500
96	A	4.375	4.875	5.375
95	A	4.250	4.750	5.250
94	A	4.125	4.625	5.125
93	A	4.000	4.500	5.000
92	B	3.875	4.375	4.875
91	B	3.750	4.250	4.750
90	B	3.625	4.125	4.625
89	B	3.500	4.000	4.500
88	B	3.375	3.875	4.375
87	B	3.250	3.750	4.250
86	B	3.125	3.625	4.125
85	B	3.000	3.500	4.000
84	C	2.875	3.375	3.875
83	C	2.750	3.250	3.750
82	C	2.625	3.125	3.625
81	C	2.500	3.000	3.500
80	C	2.375	2.875	3.375
79	C	2.250	2.750	3.250
78	C	2.125	2.625	3.125
77	C	2.000	2.500	3.000
76	D	1.875	2.375	2.875
75	D	1.750	2.250	2.750
74	D	1.625	2.125	2.625
73	D	1.500	2.000	2.500
72	D	1.375	1.875	2.375
71	D	1.250	1.750	2.250
70	D	1.125	1.625	2.125
69	F	1.000	1.500	2.000
68	F	0.875	1.375	1.875
67	F	0.750	1.250	1.750
66	F	0.625	1.125	1.625
65	F	0.500	1.000	1.500
64	F	0.375	0.875	1.375
63	F	0.250	0.750	1.250
62	F	0.125	0.625	1.125
0-61	F	0.000	0.000	0.000
61	FA	0.000	0.000	0.000
61	WF	0.000	0.000	0.000
—	WP	0.000	0.000	0.000

55-03-2

000104

Courses Carrying Carnegie Units

The uniform grading scale and the system for calculating GPAs and class rank will apply to all courses carrying Carnegie units, including units earned at the middle or junior high school level.

All report cards and transcripts will use numerical grades for courses carrying Carnegie units. Transcripts and report cards will specify the course title and the level or type of course the student has taken (e.g., English 1, Algebra 2 honors, AP U.S. History). The grading scale must be printed on the report card.

Honors Courses

Honors courses, which extend and deepen the opportunities provided by courses at the high school level, are designed for students exhibiting superior abilities in the particular content area. The honors curriculum places emphasis on critical and analytical thinking, rational decision making, and inductive and deductive reasoning.

School districts may designate honors courses and give the assigned weighting under the following conditions:

- A. An honors course must have a published syllabus that verifies rigor sufficiently beyond the College Preparatory (CP) requirements.
- B. Textbooks and other course materials must be differentiated and more rigorous than those used in CP courses.
- C. Honors courses may be offered in English, mathematics, science, and social studies. Honors weighting may be designated in other content areas for the third and fourth level of the courses, provided that the two above standards are met. Honors weighting may not be designated in any physical education courses.

One half of a quality point (.5) is added to the CP weighting for honors courses that meet the three criteria listed above. These criteria apply to all courses, including those offered online and in other nontraditional settings and those recorded on a transcript from an out-state-school that is accredited under the regulations of the board of education of that state or the appropriate regional accrediting agency: the New England Association of Colleges and Schools, the Middle States Association of Colleges and Schools, the Southern Association of Colleges and Schools, the North Central Association of Colleges and Schools, the Western Association of Colleges and Schools, or the Northwest Association of Colleges and School (as specified in State Board Regulation 43-273, Transfers and Withdrawals).

Dual Credit Courses

Dual credit courses—whether they are taken at the school where the student is enrolled or at a postsecondary institution—are those courses for which the student has been granted permission by his or her home school to earn both Carnegie units and college credit for those particular courses.

One quality point is added to the CP weighting for dual credit courses that are applicable to baccalaureate degrees or to associate degrees offered by accredited institutions (see State Board of Education Regulation 43-234, Defined Program, Grades 9–12, and Regulation 43-259, Graduation Requirements).

College orientation courses offered by postsecondary institutions carry CP weighting and do not receive honors or dual credit quality points.

Advanced Placement and International Baccalaureate Courses

The following criteria apply to the College Board's Advanced Placement (AP) courses and to International Baccalaureate (IB) courses—including those offered online and in other nontraditional settings and those recorded on a transcript from an out-state-school that is accredited under the regulations of the board of education of that state or the appropriate regional accrediting agency: the New England Association of Colleges and Schools, the Middle States Association of Colleges and Schools, the Southern Association of Colleges and Schools, the North Central Association of Colleges and Schools, the Western Association of Colleges and Schools, or the Northwest Association of Colleges and Schools (as specified in State Board Regulation 43-273, Transfers and Withdrawals).

- Only AP or IB courses can be awarded a full quality point above the CP weighting. Seminar or support courses for AP or IB may be weighted as honors but not as AP or IB courses.
- An AP course can carry only *one* quality point.
- A standard-level (SL) IB course can carry only *one* quality point. However, two quality points of IB credit can be granted for higher-level (HL) courses in the IB program that require a minimum of 240 hours of instruction.

End-of-Course Examination Program (EOCEP) Courses and the Credit Recovery Option

Students who are enrolled in courses requiring state end-of-course examinations must take the examinations and fulfill all requirements outlined in Regulation 43-262.4. Students will be allowed to take the examination only *once*, at the end of the regular course duration and not at the end of an extended period granted through the credit recovery option. Students who repeat the course must be treated as though they are taking the course for the first time, and all requirements will apply.

Computing Grade Point Averages

GPA's already earned by students will be recalculated on the basis of the revised policy's three-decimal-point scale.

All South Carolina public schools will use the following formula to compute all GPA's:

$$\text{GPA} = \frac{\text{sum (quality points x units)}}{\text{sum of units attempted}}$$

STUDENT EXAMPLE

Course Taken	Numerical Average	Quality Points	Unit
English 1	91	3.750	1
Algebra 1	87	3.250	1
Physical Science	94	4.125	1
World Geography, Honors	83	3.250	1
Physical Education	92	3.875	.5
French 1	84	2.875	1

COMPUTATION

Quality Points		Units		
3.750	x	1.0	=	3.750
3.250	x	1.0	=	3.250
4.125	x	1.0	=	4.125
3.250	x	1.0	=	3.250
3.875	x	.5	=	1.9375
2.875	x	1.0	=	2.875
sum of units attempted →		5.5		19.1875 ← sum of quality points x units

$\frac{\text{sum of quality points x units}}{\text{divided by sum of units attempted}} \rightarrow 19.1875 \div 5.5 = 3.488636 \rightarrow \text{student's GPA}$

Computations will not be rounded to a higher number.

The establishment of criteria for determining honors graduates, including the valedictorian or salutatorian, is a local decision. Local boards may establish earlier cutoffs (e.g., the seventh semester of high school, the third nine weeks of the senior year) when ranking students for any local purpose. However, class rank for LIFE Scholarships is determined at the conclusion of the spring semester of the senior year.

Converting Grades on Transcripts

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. If letter grades with no numerical averages are provided, this conversion will apply: A = 96, B = 88, C = 80, D = 73, F = 61. If the transcript indicates that the student has earned a passing grade in any course in which he or she had a numerical average lower than 70, that average will be converted to a 73 numerical grade on the new scale. See State Board of Education Regulation 43-273 for complete information on transfers and withdrawals. The criteria for accepting transcripts from homeschools are a local decision.

If the transcript shows that the student has earned a grade of P (passing), that grade will be converted to a numerical designation on the basis of information secured from the sending institution as to the appropriate numerical value of the P. If no numerical average can be obtained from the sending institution, the student's cumulative transfer GPA will be calculated and the corresponding number equivalent will be assigned to replace the P. (For example, if a student transfers with a cumulative GPA of 3.5 on the CP scale, the grade of P would be converted to an 89. A grade of P, in other words, will neither positively nor negatively impact the student's transfer GPA.)

Withdrawing from a Course

With the first day of enrollment in the course as the baseline, students who withdraw from a course within three days in a 45-day course, five days in a 90-day course, or ten days in a 180-day course will do so without penalty.

Students who withdraw from a course after the specified time of three days in a 45-day course, five days in a 90-day course, or ten days in a 180-day course shall be assigned a WF, and the F (as a 61) will be calculated in the student's overall grade point average.

The three-, five-, and ten-day limitations for withdrawing from a course without penalty do not apply to course or course-level changes approved by the administration of a school. Withdrawal limitations for distance learning courses will be established by local districts.

Students who drop out of school or are expelled after the allowed period for withdrawal but before the end of the grading period will be assigned grades in accordance with the following policies:

- The student will receive a WP if he or she was passing the course. The grade of WP will carry no Carnegie units and no quality points to be factored into the student's GPA.
- The student will receive a WF if he or she was failing the course. The grade of WF will carry no Carnegie units but will be factored into the student's GPA as a 61.

If a student fails a course due to excessive absences, an FA will be recorded on his or her transcript. The grade of FA will carry no Carnegie units but will be factored into the student's GPA as a 61.

Retaking a Course

Students in grades nine through twelve may retake a course at the same level of difficulty if they have earned a D or an F in that course. The student's record will reflect all courses he or she has taken and the grades he or she has earned.

The student may retake the course either during the current school year or during the next school year but no later than that second year. In addition, the student must retake the course before he or she has enrolled in the next sequential course (unless the student is granted approval by school administration to do so).

A student who has taken a course for a Carnegie unit prior to his or her ninth-grade year may retake that course regardless of the grade he or she has earned. In such a case, only the retake grade will be used in figuring the student's GPA, and only the retake attempt will show on the transcript. This rule will apply whether the retake grade is higher or lower than the grade the student previously earned.

Brooks, Carlos

From: Susan S [REDACTED]
Sent: Thursday, October 04, 2012 8:45 AM
To: Brooks, Carlos; Berman, Leigh; Henderson, Dyamond; rstalk@greenvilleforward.com
Subject: Grading Policy for Riverside Military Academy

Mr Brooks, Ms. Berman and Ms. Henderson,

I just got off the phone with a delightful guidance counselor at Riverside Military Academy in Gainesville, GA, Corwynn Sylvester.

She confirmed a grading policy that C [REDACTED] who transferred to Southside as a Junior, has mentioned to our son.

Currently all AP and Honors course grades at Riverside Military are given a 5 point bump - so if a student makes a 93 at the end of the grading period their grade is bumped to a 98.

In the year 2010/2011 (for that year only) all honors courses received a 5 point bump and all AP courses received a 10 point bump.

Ms. Sylvester says that on the right hand side of the transcript from Riverside Military it should list the 5 and 10 point "bumps"

This is their way of weighting advanced courses.

So, when [REDACTED] transferred into Southside, his already weighted courses got another "weighting" since we weight ours a different way.

I do not believe that [REDACTED]'s GPA is accurately reflected because it seems he has been double-bumped.

Our son, [REDACTED] 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.

[REDACTED] and I would like to know what can be done to "level the playing field."

Thanks you!

Susan S [REDACTED]
[REDACTED]

000111

Brooks, Carlos

From: Brooks, Carlos
Sent: Thursday, October 04, 2012 3:40 PM
To: Washington, Dee Dee
Cc: Rhodes, Rob
Subject: FW: Grading Policy for Riverside Military Academy

Dr. Washington,

Please read the email below. We have contacted Rob Rhodes, but he is in Columbia today and tomorrow. Although we have reservations as to the methods the parent used, we are still following up on her concerns. Our questions are:

- If a transcript is received, we can only input the data as it appears on the transcript?
- If the grade was inflated at the previous school, we cannot make changes or verify the authenticity of the scores (other than contacting the school to make sure the transcript is accurate)?

Respectfully,

Carlos Brooks
Principal,
Southside High School
An International Baccalaureate High School
Celebrating diversity. United in Learning.

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From: Susan S. [mailto: [REDACTED]]
Sent: Thursday, October 04, 2012 8:45 AM
To: Brooks, Carlos; Berman, Leigh; Henderson, Diamond; rstall@greenvilleforward.com
Subject: Grading Policy for Riverside Military Academy

Mr Brooks, Ms. Berman and Ms. Henderson,

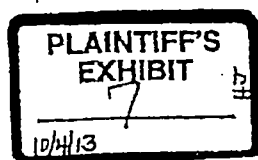
I just go off the phone with a delightful guidance counselor at Riverside Military Academy in Gainesville, GA, Corwynn Sylvester.

She confirmed a grading policy that C. [REDACTED] who transferred to Southside as a Junior, has mentioned to our son.

Currently all AP and Honors course grades at Riverside Military are given a 5 point bump - so if a student makes a 93 at the end of the grading period their grade is bumped to a 98.

In the year 2010/2011 (for that year only) all honors courses received a 5 point bump and all AP courses received a 10 point bump.

Ms. Sylvester says that on the right hand side of the transcript from Riverside Military it should list the 5 and 10 point "bumps"



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000112

This is their way of weighting advanced courses.

So, when C. transferred into Southside, his already weighted courses got another "weighting" since we weight ours a different way.

I do not believe that C.'s GPA is accurately reflected because it seems he has been double-bumped.

Our son, H., 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.

Russell and I would like to know what can be done to "level the playing field."

Thanks you!

Susan S.

Rhodes, Rob

From: Henderson, Dyanmond
Sent: Thursday, October 04, 2012 11:33 AM
To: Rhodes, Rob
Subject: FW: Grading Policy for Riverside Military Academy

Hey Rob! Please see the below e-mail from one of our parents (regarding another student),

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.

Thanks,

Dyanmond Henderson, M.Ed.
School Counselor-9th-11th (L-Z)
Southside High School
6630 Frontage @ White Horse Road
Greenville, SC 29605
dyhender@greenville.k12.sc.us
Phone: 864-355-8722
E-Fax: 864-355-9791

We must not, in trying to think about how we can make a big difference, ignore the small daily differences we can make which, over time, add up to big differences that we often cannot foresee."

-Martin Wright Edelman

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From: Susan S [mailto: [REDACTED]]
Sent: Thursday, October 04, 2012 8:45 AM
To: Brooks, Carlos; Berman, Leigh; Henderson, Dyanmond; rsall@greenvilleforward.com
Subject: Grading Policy for Riverside Military Academy

Mr Brooks, Ms. Berman and Ms. Henderson,

I just go off the phone with a delightful guidance counselor at Riverside Military Academy in Gainesville, GA, Corwynn Sylvetser.

She confirmed a grading policy that [REDACTED] P [REDACTED] who transferred to Southside as a Junior, has mentioned to our son.

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000113

Brooks, Carlos

From: Brooks, Carlos
Sent: Friday, October 05, 2012 8:05 AM
To: Susan [REDACTED] NEXUS Center ([REDACTED])
Cc: Berman, Leigh; Henderson, Dymond
Subject: re: Transcripts

Ms. [REDACTED],

District policy prevents us from discussing the confidential information of other students with you, but our guidance department has followed the uniform grading policy as outlined by the State Department of Education and the District. When a transcript is received, we can only input the data as it appears on the transcript. If we have questions regarding a transcript, our only recourse is to contact the school that student transferred from to verify the authenticity of the scores reported on the transcript.

I hope this information is helpful.

Respectfully,

Carlos Brooks 
Principal,
Southside High School
An International Baccalaureate High School
Celebrating diversity. United in Learning.

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Rhodes, Rob

From: Henderson, Dymond
Sent: Friday, November 09, 2012 10:10 AM
To: Rhodes, Rob
Cc: Brooks, Carlos
Subject: FW: Voice Mail from 7705326251 (39 seconds)
Attachments: 7705326251 (39 seconds) Voice Mail.mp3

This is the response from Riverside Military Academy. How would like for me to proceed?

Dymond Henderson, M.Ed.
School Counselor-9th-11th (L-Z)
Southside High School
6630 Frontage @ White Horse Road
Greenville, SC 29605
dyhender@greenville.k12.sc.us
Phone: 864-355-8722
E-Fax: 864-355-9791

"We must not, in trying to think about how we can make a big difference, ignore the small daily differences we can make which, over time, add up to big differences that we often cannot foresee."

-Marian Wright Edelman

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From: Microsoft Outlook On Behalf Of 7705326251
Sent: Thursday, November 08, 2012 4:31 PM
To: Henderson, Dymond
Subject: Voice Mail from 7705326251 (39 seconds)

Voice Mail Preview:

Henderson this is pat when you're riverside I spoke to you on Dr. Robinson who is our call academic being and he is not comfortable changing our transcripts and I'm sorry ~~delus~~ took a.

~~██████████~~ Is it is a great student and well -- wish we could do something to assist you but -- you know we just raised a lot of other issues of us -- changing our transcripts and then somebody else tracking five other points and so I'm gonna have to say no but.

Thank you and I'm sorry bye bye.

Created by Microsoft Speech Technology. [Learn More...](#)

You received a voice mail from 7705326251

Caller-Id: 7705326251

Brooks, Carlos

From: Henderson, Dyanmond
Sent: Tuesday, November 27, 2012 2:03 PM
To: Brooks, Carlos
Subject: Riverside Military Academy

Mr. Brooks,

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 [REDACTED]'s parents will have questions regarding this situation. I would like to speak to 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 school's final grades regardless of their policy.

Thanks in advance for your help!

Dyanmond Henderson, M.Ed.
School Counselor 200 North 4th St.
Riverside High School
6630 Frontage Rd White Horse road
Greenville, SC 29605
dyhender@greenville.k12.sc.us
Phone: 864-355-1777
Fax: 864-355-2751

"We must not, in trying to think about how we can make a big difference, ignore the small daily differences we can make which, over time, add up to big differences that we often cannot foresee."

Atarah Wright Wolfman

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Brooks, Carlos

From: Henderson, Dyanmond
Sent: Thursday, November 29, 2012 1:32 PM
To: Brooks, Carlos
Subject: FW: Scan from MFP
Attachments: SC Uniform Grading Policy.pdf

Mr. Brooks,

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 change.

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?

I've contacted Riverside Military Academy again because the grades sent does not include 8th grade year.

Thanks for your help and clarification.

Dyanmond Henderson, M.Ed.
School Counselor-9th-11th (L-Z)
Southside High School
6630 Frontage @ White Horse Road
Greenville, SC 29605
dyhender@greenville.k12.sc.us
Phone: 864-355-8722
E-Fax: 864-355-9791

We must not, in trying to think about how we can make a big difference, ignore the small daily differences we can make which, over time, add up to big differences that we often cannot foresee."

-Marian Wright Edelman

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Brooks, Carlos

From: Henderson, Dyanmond
Sent: Tuesday, December 04, 2012 1:24 PM
To: Brooks, Carlos
Subject: RE: Scan from MFP

Mr. Brooks,

When we spoke yesterday you instructed that I enter the grades and notify the parents. I just wanted to provide you with an update. I sent an e-mail on 11/29 to Riverside Military Academy requesting grades from 8th grade. I have not contacted [REDACTED]'s parents yet because I don't have his complete record. If you would like for me to contact them to make them aware now, just let me know.

Thanks.

Dyanmond Henderson, M.Ed.
School Counselor-01h-11th (A-2)
Southside High School
6530 Frontage @ White Horse Road
Greenville, SC 29605
dyhender@greenville.k12.sc.us
Phone: 864 355-3723
Fax: 864 355-5791

"We must not, in trying to think about how we can make a big difference, ignore the small daily differences we can make which, over time, add up to big differences that we often cannot foresee."
Aurora Wright Williams

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From: Brooks, Carlos
Sent: Monday, December 03, 2012 2:42 PM
To: Henderson, Dyanmond
Subject: FW: Scan from MFP

FYI

Respectfully,

Carlos Brooks 
Principal,
Southside High School
An International Baccalaureate High School

000118

Brooks, Carlos

From: Henderson, Dyanmond
Sent: Wednesday, January 23, 2013 2:03 PM
To: Brooks, Carlos
Subject: [REDACTED] P [REDACTED]

Mr. Brooks,

I spoke with [REDACTED] P [REDACTED] mother today and she would like to meet with us tomorrow. She is not pleased with the decision to change his grades.

Dyanmond Henderson, M.Ed.
School Counselor (919) 411 71
Southside High School
6630 Frontage @ White Horse Road
Greenville, SC 29605
dyhender@greenville.k12.sc.us
Phone: 864-355-8722
E-Fax: 864-355-9740

"We must not, in trying to think about how we can make a big difference, ignore the small daily differences we can make which, over time, add up to big differences that we often cannot foresee."

William W. Purcell

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RECEIVED

FEB 1 2013

COMMUNICATION

January 30, 2013

Communications Department
The School District of Greenville County
P.O. Box 284
Greenville, SC 29602

Subject: L [REDACTED] P [REDACTED], 11th grade Southside High School -- Grade conversion, transcripts, SC Uniform Grading and Conversion Policy, grade changes, class ranking, GPA conversion, and Initial Inquiry.

To whom it may concern,

Pursuant to South Carolina Freedom of Information Act, §30-4-10 et seq., I am requesting an opportunity to inspect or obtain copies of any and all public records, including but not limited to: emails, notes, minutes, letters, transcripts, grade conversion documents, etc. applicable to L [REDACTED] P [REDACTED] and/or his transfer from the Riverside Military Academy.

Please include any and all correspondence by and between the School District of Greenville County ("District"), Riverside Military Academy, Southside High School, the S.C. State Department of Education and any other persons or entities with regard to L [REDACTED] P [REDACTED] transfer, grades, recordation and/or conversion of grades, or other correspondence regarding class ranking and/or the affect thereto. Moreover, such should include any and all documentation related to correspondence involving Doug Webb, Mr. Brooks and Dymond Henderson on or around 1/29/13 with relation to the above referenced matters.

This request is not meant to be exclusive of any other records which, though not specifically requested, would have a reasonable relationship to the subject matter of this request.

In the event that access to any of the requested records is denied, please note that the FOIA provides that if only portions of a requested file are exempted from release, the remainder must still be released. I therefore request that I be provided with all non-exempt portions which are reasonably severable. I further request that you describe the deleted material in detail and specify the statutory basis for the denial as well as your reasons for believing that the alleged statutory justification applies in this instance. Please separately state your reasons for not invoking your discretionary powers to release the requested documents in the public interest. Such statements will be helpful in deciding whether to appeal an adverse determination, and in formulating arguments in case an appeal is undertaken. The District's written justification might also help to avoid unnecessary litigation. I of course reserve my right to appeal the withholding or deletion of any information and expect that you will list the office and address where such an appeal can be sent.

If there are any fees for searching or copying these records, please inform me if the cost will exceed \$150. This information is not being sought for commercial purposes.

000120

The South Carolina Freedom of Information Act requires a response time within 15 business days. If access to the records I am requesting will take longer than this amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you for considering my request.

Sincerely,



Lee C. P.



000121



Southside High School

An International Baccalaureate High School

6630 Frontage @ White Horse Rd - Greenville, SC 29605-8644-355-8700

Celebrating Diversity. United in Learning.

Fax 864-355-8798

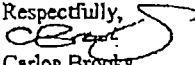
February 6, 2013

M/M L [REDACTED]
[REDACTED]
[REDACTED]

M/M. P [REDACTED]

Thank you for taking the time to meet with me and Ms. Henderson on Monday, January 28, 2013. This letter will serve as a summary of our meeting. During our meeting you all expressed concerns regarding [REDACTED]'s transcript that was received from Riverside Military Academy. Per Riverside Military's grading policy, extra credit is awarded in the school's system to reflect AP/Honor weighting. In performing the necessary due diligence on the part of Southside High School, [REDACTED]'s authentic grades earned from Riverside Military Academy (minus points added due to weighting) have been entered into PowerSchool. The changes will be reflected in [REDACTED]'s transcript effective as of Friday, February 8, 2013. The authentic grades received from Riverside Military that have been entered in PowerSchool will be weighted based on the SC Uniform Grading Policy.

If you have questions or concerns, please feel free to contact me.

Respectfully,

Carlos Brooks
Principal

000122

Student Name F. [REDACTED]		
Student ID [REDACTED]	Grade 11	Gender M
State ID [REDACTED]	Date of Birth [REDACTED] 1998	Ethnic Code W
Parent/Guardian F. [REDACTED] Nels B & F. [REDACTED] Leo C		

**State of South Carolina
Standard High School Transcript**
Graduation Date:
Class Of: 2014
Diploma Type: State of SC Diploma

School Name/Address Southside High School 6630 Frontage Road Greenville, SC 29606 Tel: 864-355-8700 Fax: 864-355-8788
District Name/Address Greenville County Schools 301 E. Campground Way Greenville, SC 29601 Tel: (864)355-3100 Fax: (864)355-1088

Crs ID	Course Title	Term	Grd	Mark	Credit	Crs ID	Course Title	Term	Grd	Mark	Credit
03-10 Beck Academy											
301135HW	Eng 1H:Genre Analysis	YR	8	85	0.50						
365107CW	Spanish 1 CP	YR	8	85	0.50						
411103HW	Algebra 1 H	YR	8	85	0.50						
09-10 Riverside Military Academy											
301135HW	Eng 1H:Genre Analysis	YR	8	96	0.50						
350112CH	Art 1	YR	8	89	0.50						
365107CW	Spanish 1 CP	YR	8	100	0.50						
411103HW	Algebra 1 H	YR	8	88	0.50						
510002CH	Keyboarding	YR	8	88	0.50						
10-11 Riverside Military Academy											
	Spanish 2 H	YR	9	98	0.50						
	Spanish 2H	YR	9	97	0.50						
301435HW	Eng 4H:World Lit Analysis	YR	9	87	0.50						
		YR	9	96	0.50						
322103HW	Biology 1 H	YR	9	94	0.50						
		YR	9	91	0.50						
337705AW	AP World History	YR	9	93	0.50						
		YR	9	95	0.50						
378930CW	JROTC Raider Challenge 1	YR	8	89	0.50						
		YR	9	88	0.50						
411203HW	Algebra 2 H	YR	9	97	0.50						
		YR	9	98	0.50						
11-12 Riverside Military Academy											
307105AW	AP Eng Lang/Comp	YR	10	95	0.50						
		YR	10	83	0.50						
323103HW	Chemistry 1 H	YR	10	100	1.00						
332003HW	US History H	YR	10	95	0.50						
		YR	10	87	0.50						
365303HW	Spanish 3 H	YR	10	100	0.50						
		YR	10	99	0.50						
379942CW	JROTC Raider Challenge 2	YR	10	100	0.50						
		YR	10	99	0.50						
413103HW	Pre-Calculus H	YR	10	100	0.50						
		YR	10	98	0.50						
500802CH	Computer Apps1	YR	10	100	0.50						
12-13 Southside High School											
333014HH	US Government H	S1	11	98	0.50						
338G08IH	IB Theory of Knowl 1	S1	11	97	0.50						
						Work In Progress					
						12-13 Southside High School					
						417205AW	AP Calculus BC				
						477105AW	AP Computer Science				
						307005AW	AP Eng Lit/Comp				
						327605AW	AP Physics C Mech				
						437105AW	AP Psychology				
						335004HH	Economics H				
						08660700	HSHomeroomGr11				
						365A17TW	IB Spanish 1 SL				
						338G08HH	IB Theory of Knowl 1				
						333014HH	US Government H				
						Mid Year GPA					
						GPA Summary					
						Class Rank					
						Date Calculated					
						Credit Summary					
						Total Credit Attempted: 17.50					
						Total Credits Earned: 17.50					
						3.048					
						6 out of 182					
						February 8, 2013					

To determine the course academic level refer to the course character in each course ID.

If graduation date is a future date, current year reflects Work In Progress.

Official Signature _____ Date: _____
Carlos Brooks, Principal or Designee

An official signature and/or seal is required for manually created transcripts.
Information about the South Carolina Uniform Grading Policy can be found at:
<http://ed.sc.gov/topics/curriculumstandards/ugp.html>

000123



The School District of Greenville County

R. Douglas Webb
General Counsel

April 24, 2013

VIA US MAIL & EMAIL

Carl F. Muller, Esquire
607 Pendleton Street
Suite 201
Greenville, SC 29601

RE: L. [REDACTED] P [REDACTED]

Dear Carl:

I enjoyed sitting down with you on Monday to discuss your clients' concerns regarding their son's transcript. The District has thoroughly considered the concerns you shared with me as well as the support you provided for the belief that the transcript received by the District should contain both an inflated numerical grade and an increase in GPA allocation based upon the courses taken by Mr. P [REDACTED]. After considering all relevant considerations and sources of support for these considerations, the District has decided to uphold the decision to treat Mr. P [REDACTED] in the same manner as any similarly situated student enrolled in the District.

By the way of background, it was brought to the District's attention that Mr. P [REDACTED] received a "bump" in his numerical grades while attending Riverside Military Academy. This school-specific increase in his numerical grades was due to him taking advanced placement courses and honors classes while attending Riverside Military Academy. Once notified of this bump in his numerical grades, the District reviewed the student's transcript and contacted Riverside Military Academy to receive his original numerical grades absent any bump. The District then transferred these original numerical grades over to his official transcript with the District. The student was then provided the same GPA bump given to other students in the District who take advanced courses.

The District's decision is supported by both equity and law. First, the District believes that the most just and equitable resolution to this situation is by treating Mr. P [REDACTED] in the same manner as any other student in the District, including those students who have transferred into this school district. The District has no knowledge of any student who has ever received two bumps for taking advanced placement courses. Treating Mr. P [REDACTED] differently than every other student by giving him both a bump for his numerical grades as well as a bump for the GPA associated with the advanced placement courses would not be a fair result. Instead, providing Mr. P [REDACTED] with the same

301 Camperdown Way • P.O. Box 2848 Greenville, South Carolina 29601-2848
864-355-8866 • FAX 864-355-8864

000124

increase of weighted GPA as all other students who take advanced placement courses is the most equitable result.

Second, the law supports the decision reached by the District. South Carolina Regulation 43-273 states in relevant part that "units earned by a student in an accredited high school of this state or in a school of another state which is accredited under the regulations of the board of education of that state, or the appropriate regional accrediting agency, will be accepted under the same value which would apply to students in the school to which they transferred." The District has complied with this regulation. The District believes that a reasonable interpretation of the term "value" means both the number of units awarded for taking a course as well as the grade provided for that course. This interpretation is supported by the fact that there is not a distinction contained in the regulation between the number of units earned by transfer students and the grades earned for these units. Therefore, the District has awarded Mr. F. [REDACTED] the same "value" for his courses which would apply to students who attend Southside High School.

The District believes that the intent behind the guidance provided by the State Department of Education in the Uniform Grading Policy, which has also been incorporated in the District's administrative rules, is to treat transfer students in the same manner as students who attend the District. This belief is supported by the Uniform Grading Policy referencing Regulation 43-273, which stands for this principle. The numerical averages actually earned by Mr. F. [REDACTED] were provided by Riverside Military Academy and then transferred over to the student's District transcript in accordance with both Regulation 43-273 and the Uniform Grading Policy.

The District has transferred the grades in an equitable, objective and reasonable manner. The District strives to create a level and fair environment as it pertains to student competition, and its actions here have done just that.

I am hopeful that your clients will understand the reasoning behind the District's actions. Please do not hesitate to contact me should you wish to discuss this further.

Sincerely,



Doug Webb

000125

GM ii

Carl Muller <carl@carlmullerlaw.com>

Fwd: Request for Documents

1 message

Nelle Palms <nellepalms@me.com>

Fri, Sep 27, 2013 at 7:46 PM

To: Carl Muller <carl@carlmullerlaw.com>, "Donna P. Holtz" <donna@carlmullerlaw.com>

FYI

It sounds to me like Mr. Daniels has proven our point. Cannon's FERPA rights were violated when the school released unofficial grades via email to Southside High School.

NellePalms

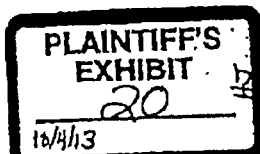
Begin forwarded message:

From: "Daniel, Britt" <bdaniel@riversidemilitary.com>
Date: September 27, 2013 at 6:39:23 PM EDT
To: "tbarlow@childs-halligan.net" <tbarlow@childs-halligan.net>, "nellepalms@me.com" <nellepalms@me.com>
Cc: "Loewen, Emily" <ELOewen@riversidemilitary.com>
Subject: Request for Documents

Mr. Barlow and Mrs. Palms:

In response to your nearly simultaneous requests for documents in this pending litigation, I am attaching three files:

1. A copy of the Grading Scale and Explanatory Comments that are displayed on the Riverside Military Academy Transcript for L. Cannon Palms, Jr.
2. A copy of the 2010-2011 edition of the *RMA Faculty Handbook: Policies and Procedures*
 - a. Page 6 indicates that the Syllabus Template contained therein was revised in March of 2011.
 - i. This fact is not relevant to the case.
 - ii. It merely serves to help substantiate that this otherwise undated copy of the Handbook was in effect for the 2010-2011 school year.
 - b. The section labeled "GRADING POLICIES" near the bottom of page 13 addresses Riverside Military Academy's treatment of grades in Honors and AP classes during the 2010-2011 school year.
 - c. The footer on each page reads "Last edited: 9/19/2013." This text is a regrettable function of an auto-text field built into the document.



000126

I printed the document on 9/19/2013. I did not edit it. I could probably remove the field, but I thought it best not to alter the file in any way.

3 A copy of the RMA FACULTY HANDBOOK 2011-2012 POLICIES AND PROCEDURES

- a. The first sentence on page 14 addresses Riverside Military Academy's treatment of grades in Honors and AP classes during the 2011-2012 school year.
- b. The footer on each page is accurate. I found an old hard copy and did not have to reprint this document.

While Mr. Barlow requested "weighted and pre-weighted end of semester and end of course grades," I am not providing that information here. I believe both parties already have that information as it is routine for schools to require transcripts from previous schools. I also believe that FERPA prevents me from disclosing actual grades, weighted or un-weighted, to Mr. Barlow without a "judicial order or lawfully issued subpoena." If both parties have a copy of the transcript, and I believe they do, the Grading Scale and Explanatory Comments on the transcript indicate which courses received an additional 5 or 10 points.

For what it is worth, Mr. Palms' transcript from Riverside Military Academy is transparent and seemingly not at issue in this case. While I am happy to answer whatever questions I can about our transcript, I am wholly unqualified to speak to Greenville County's own rules or policies or the application of those rules or policies as they relate to the interpretation of our transcript.

If I may be of further assistance to either party, please let me know.

Very respectfully,

Britt Daniel, J.D.

Academic Dean

Riverside Military Academy

678.696.2085 (Office)

678.291.3377 (Fax)

bdaniel@riversidemilitary.com

Watch our Academy video.

RMA Virtual Tour.

000127

Mission Critical Defense

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From: Ware, Pat [mailto:PWare@k12sc.us/military.com]
Sent: Monday, November 12, 2012 1:42 PM
To: Henderson, Dyanmond
Subject: RE: [REDACTED] P [REDACTED]

Hi. Here are his grades before any points were added.

First Semester	Second Semester
US History 95	97.4
Spanish III H 99	99.6
Math III Acc 98.2	99.8
AP Language 93.4	95
Chem H 100	100
Comp Sci II 100	
Military Science 99.6	99

Hope this helps resolve things!

Good luck and you are most welcome.

Pat

From: Henderson, Dyanmond [mailto:dyhender@greenville.k12.sc.us]
Sent: Monday, November 12, 2012 9:53 AM
To: Ware, Pat
Subject: [REDACTED] P [REDACTED]

Good Morning Mrs. Ware! I appreciate your help with our request regarding [REDACTED] P [REDACTED]. I left you a message on Friday and just wanted to follow up. Is it possible to provide authentic grades that he earned prior to their weighting factor was added?

Again I greatly appreciate your assistance.

Dyanmond Henderson

Dyanmond Henderson, M.Ed.
School Counselor-9th-11th (L-2)
Southside High School
6630 Frontage @ White Horse Road
Greenville, SC 29605
dyhender@greenville.k12.sc.us
Phone: 864-355-8722
E-Fax: 864-355-9701

2

000128

Henderson, Dymond

From: Ware, Pat <PWare@riversidemilitary.com>
Sent: Monday, November 26, 2012 1:04 PM
To: Henderson, Dymond
Subject: FW: [REDACTED] P [REDACTED] - Correction

Hi. Spanish III H was corrected to II H.

Thanks,

From: Ware, Pat
Sent: Monday, November 26, 2012 1:01 PM
To: Henderson, Dymond
Subject: RE: [REDACTED] P [REDACTED]

Hi. Here are his final grades for the ninth grade before points were added.

First Semester	Second Semester
Spanish III H 97.6	97.4
Bio H 91	93.8
AP W. His. 93.4	94.5
Math II Acc 97	95.8
Multi Lit H 96.8	95.6
Military Sci I 98.4	98.5

Thank you,

Pat

From: Henderson, Dymond (mailto:dymond@greenville.k12.sc.us)
Sent: Monday, November 12, 2012 1:48 PM
To: Ware, Pat
Subject: RE: [REDACTED] P [REDACTED]

It does help! Thanks. Are grades available from previous years?

Dymond Henderson, M.Ed.
School Counselor-9th-11th (L & J)
Southside High School
6630 Frontage @ White Horse Road
Greenville, SC 29605
dymond@greenville.k12.sc.us
Phone: 864-355-8722
E-Fax: 864-355-9791

"We must not, in trying to think about how we can make a big difference, ignore the small daily differences we can make which, over time, add up to big differences that we often cannot foresee."

000129

NUMERICAL AVERAGE GRADES FROM RIVERSIDE MILITARY
FOR HONORS/AP CLASSES BEFORE EXTRA POINTS ADDED

2011-2012	
Spanish III H 99	99.6
AP Language 93.4	95
Chem H 100	100

2010-2011	
Multicultural Lit H 96.8	95.6
AP World History 93.4	94.5
Spanish II H 97.6	97.4
Bio H 91	93.8

000130

Title of Regulation:

Regulation No.: R 43-273

TRANSFERS AND WITHDRAWALS

Effective Date: 12/26/83

Constitutional and Statutory Provisions:

Section(s):

59-19-90(10).	General powers and duties of school trustees.
59-63-30.	Qualifications for attendance.
59-63-420.	Effect of transfer on enrollment lists.
59-63-470.	Transfer of pupils when enrollment of such pupil threatens to disturb peace.
59-63-480.	Attendance in schools in adjacent county.
59-63-490.	Transfer to adjoining school district.
59-63-500.	Transfer without consent of school district of residence.
59-63-510.	County board of education authorized to order transfer.
59-63-520.	Consent required for transfer.
59-63-530.	Credit on tuition for taxes paid.
59-65-30.	Exceptions [to Compulsory Attendance].
59-65-90.	Rules and regulations

Code of Laws of South Carolina, 1976.

20 U.S.C. 7165

No Child Left Behind Act (NCLB)

U. S. Code of Laws

State Board Regulation:

Transfers and Withdrawals.

Kindergarten, Grades 1-6; 7-8:

Transfer of Students

Each student transferring shall be given a transfer form showing name, date of birth, grade placement, and attendance record to present to the principal of the school where he or she is enrolling. Appropriate additional data shall be furnished by the school on request.

School must transfer a student's disciplinary record of suspensions and expulsions to the public or private school to which the student is transferring.

Grades 9-12:

Transfer of Students

1. Accurate accounting records shall be developed and maintained for student transfers and withdrawals. Comprehensive transcripts shall be submitted directly to the receiving school. A permanent record of the transferred student shall be retained in the school from which the student is transferred. School must transfer a student's disciplinary record of suspensions and expulsions to the public or private school to which the student is transferring.

000131

2. Units earned by a student in an accredited high school of this state or in a school of another state which is accredited under the regulations of the board of education of that state, or the appropriate regional accrediting agency (New England Association of Colleges and Schools, Middle States Association of Colleges and Schools, Southern Association of Colleges and Schools, North Central Association of Colleges and Schools, Western Association of Colleges and Schools, and the Northwest Association of Colleges and Schools), will be accepted under the same value which would apply to students in the school to which they transferred.

3. If a student transfers from a school, which is not accredited, he or she shall be given tests to evaluate prior academic work and/or be given a tentative assignment in classes for a probationary period.

Code of Laws of South Carolina 1976 Annotated

Title 16. Crimes and Offenses

Chapter 13. Forgery, Larceny, Embezzlement, False Pretenses and Cheats

Article 1. Miscellaneous Offenses

Code 1976 § 16-13-15

§ 16-13-15. Falsifying or altering transcript or diploma; fraudulent use of falsified or altered transcript or diploma; penalty.

Current version

(A) It is unlawful for any person to falsify or alter a transcript, a diploma, or the high school equivalency diploma known as the GED from any high school, college, university, or technical college of this State, from the South Carolina Department of Education, or from any other transcript or diploma issuing entity.

(B) It is also unlawful for any person to use in this State a falsified or altered transcript, diploma, or high school equivalency diploma known as the GED from the South Carolina Department of Education, or from any in-state or out-of-state high school, college, university, or technical school, or from any other transcript or diploma issuing entity with the intent to defraud or mislead another person.

(C) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than one year, or both.

Credits

HISTORY: 1982 Act No. 295; 2002 Act No. 219, § 1, eff April 22, 2002.

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Code 1976 § 16-13-15, SC ST § 16-13-15

Current through End of 2013 Reg. Sess.

End of Document

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(c) The hearing may be conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.

(d) The educational agency or institution shall give the parent or eligible student a full and fair opportunity to present evidence relevant to the issues raised under §99.21. The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.

(e) The educational agency or institution shall make its decision in writing within a reasonable period of time after the hearing.

(f) The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

(Authority: 20 U.S.C. 1232g(a)(2))

Subpart D—May an Educational Agency or Institution Disclose Personally Identifiable Information From Education Records?

§99.30 Under what conditions is prior consent required to disclose information?

(a) The parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records, except as provided in §99.31.

(b) The written consent must:

(1) Specify the records that may be disclosed;

(2) State the purpose of the disclosure; and

(3) Identify the party or class of parties to whom the disclosure may be made.

(c) When a disclosure is made under paragraph (a) of this section:

(1) If a parent or eligible student so requests, the educational agency or institution shall provide him or her with a copy of the records disclosed; and

(2) If the parent of a student who is not an eligible student so requests, the agency or institution shall provide the

student with a copy of the records disclosed.

(d) "Signed and dated written consent" under this part may include a record and signature in electronic form that—

(1) Identifies and authenticates a particular person as the source of the electronic consent; and

(2) Indicates such person's approval of the information contained in the electronic consent.

(Authority: 20 U.S.C. 1232g (b)(1) and (b)(2)(A)-(C))

(53 FR 11943, Apr. 11, 1988, as amended at 58 FR 3189, Jan. 7, 1993; 69 FR 21671, Apr. 21, 2004)

§99.31 Under what conditions is prior consent not required to disclose information?

(a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by §99.30 if the disclosure meets one or more of the following conditions:

(1)(IXA) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

(B) A contractor, consultant, volunteer, or other party to whom an agency or institution has outsourced institutional services or functions may be considered a school official under this paragraph provided that the outside party—

(1) Performs an institutional service or function for which the agency or institution would otherwise use employees;

(2) Is under the direct control of the agency or institution with respect to the use and maintenance of education records; and

(3) Is subject to the requirements of §99.33(a) governing the use and redisclosure of personally identifiable information from education records.

(11) An educational agency or institution must use reasonable methods to ensure that school officials obtain access to only those education records in which they have legitimate educational interests. An educational



agency or institution that does not use physical or technological access controls must ensure that its administrative policy for controlling access to education records is effective and that it remains in compliance with the legitimate educational interest requirement in paragraph (a)(1)(i)(A) of this section.

(2) The disclosure is, subject to the requirements of §99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer.

NOTE: Section 4155(b) of the No Child Left Behind Act of 2001, 20 U.S.C. §1655(b), requires each State to assure the Secretary of Education that it has a procedure in place to facilitate the transfer of disciplinary records with respect to a suspension or expulsion of a student by a local educational agency to any private or public elementary or secondary school in which the student is subsequently enrolled or seeks, intends, or is instructed to enroll.

(3) The disclosure is, subject to the requirements of §99.35, to authorized representatives of—

- (i) The Comptroller General of the United States;
- (ii) The Attorney General of the United States;
- (iii) The Secretary; or
- (iv) State and local educational authorities.

(4)(i) The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to:

- (A) Determine eligibility for the aid;
- (B) Determine the amount of the aid;
- (C) Determine the conditions for the aid; or
- (D) Enforce the terms and conditions of the aid.

(ii) As used in paragraph (a)(4)(i) of this section, *financial aid* means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution.

(Authority: 20 U.S.C. 1232g(b)(1)(D))

(5)(i) The disclosure is to State and local officials or authorities to whom this information is specifically—

(A) Allowed to be reported or disclosed pursuant to State statute adopted before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and the system's ability to effectively serve the student whose records are released; or

(B) Allowed to be reported or disclosed pursuant to State statute adopted after November 19, 1974, subject to the requirements of §99.38.

(ii) Paragraph (a)(5)(i) of this section does not prevent a State from further limiting the number or type of State or local officials to whom disclosures may be made under that paragraph.

(6)(i) The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to:

(A) Develop, validate, or administer predictive tests;

(B) Administer student aid programs;

or

(C) Improve instruction.

(ii) An educational agency or institution may disclose information under paragraph (a)(6)(i) of this section only if—

(A) The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization that have legitimate interests in the information;

(B) The information is destroyed when no longer needed for the purposes for which the study was conducted; and

(C) The educational agency or institution enters into a written agreement with the organization that—

(1) Specifies the purpose, scope, and duration of the study or studies and the information to be disclosed;

(2) Requires the organization to use personally identifiable information from education records only to meet the purpose or purposes of the study as stated in the written agreement;

(3) Requires the organization to conduct the study in a manner that does not permit personal identification of parents and students, as defined in this part, by anyone other than representatives of the organization with legitimate interests;

§ 99.34 What conditions apply to disclosure of information to other educational agencies or institutions?

(a) An educational agency or institution that discloses an education record under § 99.31(a)(2) shall:

(1) Make a reasonable attempt to notify the parent or eligible student at the last known address of the parent or eligible student, unless:

(i) The disclosure is initiated by the parent or eligible student; or

(ii) The annual notification of the agency or institution under § 99.6 includes a notice that the agency or institution forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll;

(2) Give the parent or eligible student, upon request, a copy of the record that was disclosed; and

(3) Give the parent or eligible student, upon request, an opportunity for a hearing under subpart C.

(b) An educational agency or institution may disclose an education record of a student in attendance at another educational agency or institution if:

(1) The student is enrolled in or receives services from the other agency or institution; and

(2) The disclosure meets the requirements of paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(b)(1)(B))

[53 FR 11943, Apr. 11, 1988, as amended at 61 FR 59297, Nov. 21, 1996]

§ 99.35 What conditions apply to disclosure of information for Federal or State program purposes?

(a) The officials listed in § 99.31(a)(3) may have access to education records in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements which relate to those programs.

(b) Information that is collected under paragraph (a) of this section must:

(1) Be protected in a manner that does not permit personal identification of individuals by anyone except the officials referred to in paragraph (a) of this section; and

(2) Be destroyed when no longer needed for the purposes listed in paragraph (a) of this section.

(c) Paragraph (b) of this section does not apply if:

(1) The parent or eligible student has given written consent for the disclosure under § 99.30; or

(2) The collection of personally identifiable information is specifically authorized by Federal law.

(Authority: 20 U.S.C. 1232g(b)(3))

§ 99.36 What conditions apply to disclosure of information in health and safety emergencies?

(a) An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(b) Nothing in this Act or this part shall prevent an educational agency or institution from—

(1) Including in the education records of a student appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community;

(2) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials within the agency or institution who the agency or institution has determined have legitimate educational interests in the behavior of the student; or

(3) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials in other schools who have been determined to have legitimate educational interests in the behavior of the student.

(c) Paragraphs (a) and (b) of this section will be strictly construed.

(Authority: 20 U.S.C. 1232g(b)(1)(F) and (h))

[53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988, as amended at 61 FR 59297, Nov. 21, 1996]

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Edward W. Miller, Circuit Court Judge

C.A. No.: 2013-002232

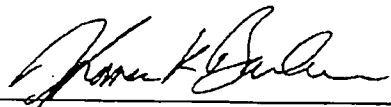
Lee C. P. and Nelle S.P., as Guardians ad Litem for L.P., a minor, ... Respondents.

v.

The School District of Greenville County, ... Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Amended Record On appeal contains all material proposed to be included by any of the parties and not any other material.


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April 22, 2014

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

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

v.

The School District of Greenville County Appellant.

Appellate Case No. 2013-002232

Appeal from Greenville County
Court of Common Pleas
Edward W. Miller, Circuit Court Judge
Case No. 2013-CP-23-03447

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TABLE OF CONTENTS

Statement of Issues on Appeal.....	1
Statement the Case	1
Statement of the Facts	2
Standard of Review	12
Arguments:	
A. Did the Circuit Court lack subject matter jurisdiction to correct the School District's refusal to follow state law?	13
B. Did the Circuit Court err in interpreting the Uniform Grading Policy and Conversion Process, mandated by state law, to require the School District to use the numerical averages on L.P.'s official transcript from Riverside Military Academy?	16
C. Did the Circuit Court abuse its discretion in issuing a Writ of Mandamus to compel the School District to follow state law and accept the official transcript of L.P.'s grades conforming to the Uniform Grading Policy and Conversion Process, originally issued to him by Southside High School on October 3, 2012, and later re-affirmed by the school and School District itself?	21
D. Should the Court affirm the Circuit Court pursuant to Rule 220(c), SCACR, upon any grounds appearing in the Record on Appeal, including L.P.'s argument that the School District is estopped from changing his grades?	24
Amici Made Arguments Appellants Did Not Preserve For Appeal	25
Conclusion	26

TABLE OF AUTHORITIES

CASE LAW:

<i>Brown v. Board of Education</i> , 348 U.S. 483 (1954)	14
<i>Hardwick ex rel. Heyward</i> , 711 F.3d 426 (4 th Cir. 2002)	14
<i>Jolly v. Marion Nat'l Bank</i> , 267 S.C. 681, 685-86, 231 S.E.2d 206, 208 (1976)	12, 21
<i>Regents of the University of Michigan v. Ewing</i> , 474 U.S. 214 (1985)	14
<i>Riverwoods, LLC v. County of Charleston</i> , 349 S.C. 378, 388, 563 S.E.2d 651, 657 (2002)	21
<i>Singleton v. Horry County School District</i> , 345 S.E.2d 751 (S.C.App. 1986)	14
<i>Tri-County Ice and Fuel Co., v. Palmetto Ice Co.</i> , 303 S.C. 237, 242, 399 S.E.2d 779,782 (1990)	12, 21

STATUTES:

S.C. Code Ann. § 59-5-68	3, 5, 11, 12, 17
S.C. Code Ann. § 16-13-15	8, 14
Federal Family Education Rights and Privacy Act, 20 U.S.C. § 1232(g), 34 CFR Part 99	6, 22
S. C. Freedom of Information Act, S.C. Code Ann. § 30-41-10	6, 7, 25

OTHER AUTHORITIES:

S.C. Code Ann. Regs. § 43-273	21
South Carolina State Board of Education Policy 55-03-06	3, 4
.....	5, 6, 8, 9, 11, 12, 13, 15, 16, 17, 19, 20, 22, 23, 25
Greenville County School District Uniform Grading Policy	3, 4
.....	5, 11, 12, 15, 17, 22
Rule 220(c), SCACR	24

CONSTITUTIONS:

U.S. Constitution, Amendment 1	13
U.S. Constitution, Amendments 5 and 14	13, 14, 24

STATEMENT OF ISSUES ON APPEAL

- A. Did the Circuit Court lack subject matter jurisdiction to correct the School District's refusal to follow state law?
- B. Did the Circuit Court err in interpreting the Uniform Grading Policy and Conversion Process, mandated by state law, to require the School District to use the numerical averages on L.P.'s official transcript from Riverside Military Academy?
- C. Did the Circuit Court abuse its discretion in issuing a Writ of Mandamus to compel the School District to follow state law and accept the official transcript of L.P.'s grades conforming to the Uniform Grading Policy and Conversion Process, originally issued to him by Southside High School on October 3, 2012, and later re-affirmed by the school and School District itself?
- D. Should the Court affirm the Circuit Court pursuant to Rule 220(c), SCACR, upon any grounds appearing in the Record on Appeal, including L.P.'s argument that the School District is estopped from changing his grades?

STATEMENT OF THE CASE

This action was brought on June 21, 2013 by the filing of a Summons and Complaint with the Court of Common Pleas in Greenville County. The Complaint sought a Writ of Mandamus directing Appellant, the School District of Greenville County ("School District"), forthwith to restore the grades and rank of the minor L.P., to the levels first determined by his school, Southside High School, 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. Southside High School ("Southside") is a high school in Greenville County under the direction and control of the School District.

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 on October 4, 2013. The Circuit Court entered a written Order on October 7, 2013, granting L.P.'s requested Writ of Mandamus and prohibitive injunction, as follows:

"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."

(Writ of Mandamus at R. p.4) The School District filed a notice of appeal on October 7, 2013, and an amended notice of appeal on October 10, 2013.

STATEMENT OF FACTS

L.P. is a senior at Southside. At the time this case was filed in the Circuit Court, he was a rising senior. He transferred to Southside at the beginning of his junior year from Riverside Military Academy ("Riverside") in the State of Georgia. L.P. completed his freshman and sophomore years at Riverside. He 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. (R. pp. 34, lines 22-p.35, 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. The transcript date is on the lower right-hand corner of the Exhibit. (Plf. Exh. 1 at R. p.76) Southside correctly accepted these transferred grades and issued L.P. his grades and class rank in a Southside transcript. (Plf. Exh. 2 at R. p.77) The Southside transcript is dated October 3, 2012 and in the bottom right-hand corner, it shows GPA of 5.215, reflecting the SC Uniform Grading Policy. *Id* Southside accepted and transferred the grades in accordance with a statute passed by the General Assembly of the State of South Carolina, the South Carolina Uniform Grading Policy issued by the South Carolina Department of Education and the School District's own grading policy and rules. (Plf. Exh. 3 at R. p.78)

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. 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 is 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, (Plf. Exh. 4, p. 55-03-06, R. p.95)

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."

Id. at page 1. 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. . . ."

Id. at page 2 (emphasis added). The State Board of Education Policy was adopted on January 9, 2007. (Plf. Exh. 4 at R. pp.88-100) 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).

S. C. Code Ann. § 59-5-68 mandated the South Carolina State Board of Education Policy. The South Carolina State Board of Education Policy is *identical* to the School District policy. The transcript delivered by Southside to L.P. on October 3, 2012 was properly prepared according to this Statute and both policies.¹

On October 4, 2012, the very next morning after L.P. received his Southside transcript, 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*.² (Plf. Exh. 6 at R. p.111) 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

¹ L.P. and his parents relied upon the October 3, 2012 Southside transcript and did not learn until after more than a full semester of coursework was completed and graded at Southside, that the 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 L.P. to return to Riverside.

² Thus far, no one at Southside or the School District has told L.P. or his parents how Susan S. knew about L.P.'s grades on his Southside transcript or how they had been calculated. While the School District attempted to attribute it to L.P.'s parents telling Susan S., there is no basis or evidence in the record to support that assertion.

discussion in any way and we would prefer that we remain anonymous as well. Please keep this communication in utmost confidentiality.” (Plf. Exh. 6 at R. p.111)

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. (Plf. Exh. 7 at R. p.112)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, Dyanmond 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.”

(Plf. Exh. 8 at R. p.113) 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.” (Plf. Exh. 9 at R. p.114)

³ Respondents 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. (Plf. Exh. 15 at R. pp. 120-121)

As of October, 5, 2012, two days after L.P. received his grades and the day after Susan S.'s complaint, the Southside principal and guidance counselor, Dr. Childs, and Mr. Rhodes at the School District, all 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 now she and her husband have inserted themselves into this appeal. 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". (R. pp.136-139)

Perhaps this explains why all of the transcript changing activities persisted for months *even after* Susan S. was advised by Southside on October 5, 2012, that L.P.'s grades were properly converted, and why neither L.P. nor his parents were informed of what was occurring. Perhaps, also, this explains why the School District is using scarce education resources to pursue this appeal.

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 something 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." (Plf. Exh. 10 at R. p.115)

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. (Plf. Exh. 11 at R. p.116) 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. (Plf. Exh. 12 at R. p.117)

"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. 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. (Plf. Exh. 13 at R. p.118) 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 from him and his parents.

Not until January 22, 2013, in a voice-mail message, were L.P. or 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." (Plf. Exh. 14 at R. p.119) 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. (Plf. Exh. 10-13 at R. pp. 115-118) 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. (Plf. Exh. 16 at R. p.123)

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. (Plf. Exh. 17 at R. p.122). The letter says in essence that the school wanted to level the playing field. (R. p.33, 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. (R. pp. 34-35) 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.

The changes to L.P.'s transcript were in violation of state law, the grading policy of the South Carolina Department of Education, and the School District's own grading policy. SC Code Section 59-5-68 directs the South Carolina State Board of Education to adopt a uniform grading policy. It further directs 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. L.P. provided to Southside an official Riverside transcript with numerical averages for each class taken. Southside initially performed its ministerial act of transferring L.P.'s grades from Riverside as required by law. That was correct.

STANDARD OF REVIEW

The Circuit Court granted L.P.'s request for a Writ of Mandamus. Whether to issue a writ of mandamus lies within the sound discretion of the trial court. An appellate court will not overturn that decision unless the trial court abused its discretion. *Jolly v. Marion Nat'l Bank*, 267 S.C. 681, 685-86, 231 S.E.2d 206, 208 (1976). An abuse of discretion arises where the trial court was controlled by an error of law or where its order is based on factual conclusions that are without evidentiary support. *Tri-County Ice and Fuel Co., v. Palmetto Ice Co.*, 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990). The Circuit Court did not abuse its discretion.

A. DID THE CIRCUIT COURT LACK SUBJECT MATTER JURISDICTION TO CORRECT THE SCHOOL DISTRICT'S REFUSAL TO FOLLOW STATE LAW?

Appellant argues that the Court does not have subject matter jurisdiction to hear this case. Appellant's argument in simple terms is that no court may hear this case, that L.P. simply has to accept whatever the School District chooses to do to him regardless of the laws they fail to follow. Taken to its logical end, Appellant's position would mean that the School District could alter the Riverside transcript and issue L.P. a Southside transcript with all C's on it, or any other grades they chose to use. Appellant argues that L.P. would just have to live with that despite all the effort he put into his education and the grades he earned because the School District may do whatever it chooses to do even if that means it violates the law, the South Carolina Department of Education policies and their own policies. That is simply wrong and we know it is wrong for several reasons.

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

Second, it has to be justiciable because otherwise L.P. would have absolutely no remedy at all. The First Amendment to the United States Constitution grants every citizen the right to petition his government for a redress of grievances. L.P. is here petitioning his government for a redress of the wrong done him by the School District, a governmental entity.

Third, L.P. is entitled to due process. This case is fundamentally different from one in which a litigant seeks to create a private right of action against a third party. This is a direct action against the School District for disobeying the law. The state requires L.P. to attend school. The law requires the School District to obey the law regarding the transfer of his grades. That is why L.P. sought a Writ of Mandamus.

Fourth, the State of South Carolina has made it a crime to alter a school transcript. S.C. Code Ann. § 16-13-15. School transcripts shall not be changed by anyone. Guidance Counselor Henderson knew this and she repeatedly expressed her concern that the School District and Southside were requiring her to do something to this young man's transcript that she knew was wrong, unlike anything she had done before and contrary to what she had been taught and understood to be the law.

The School District has stated that this case is "novel and unique." (App. Brief p. 11) The only thing that is "novel and unique" is the way L.P. was treated. The underlying facts are not unusual. All students have all sorts of factors go into their grades. It is clear from Appellant's position and handling throughout this matter that the School District does not ever look behind a transfer student's transcript to evaluate how that student was taught and graded. (R. p.59, lines 13-16) But that is exactly what it did in this case. L.P. was singled out by the School District because an influential parent became upset and he was thereafter treated differently than any other transfer student. L.P. is not the first student ever to transfer from an out-of-state school to a South Carolina school or to a Greenville County School District school. He is simply the one the School District chose to single out and alter his transcript in violation of South Carolina law, due process, and equal protection.

The School District and Amici argue that courts are reluctant to enter the realm of discretionary school decision-making. This case is not in that realm. They cite to cases that discuss the reluctance of courts to intrude into the areas of teacher performance evaluations and dismissals.⁴ See e.g. *Singleton v. Horry County School District*, 345 S.E.2d 751 (S.C.App. 1986). They also cite to cases in which Courts decline to substitute their judgment for a

⁴ Amici argue that parents and students should not have to litigate school issues and that grades should be decided by schools; yet it was Amici's interference and insistence that L.P.'s grades be lowered that led to this action. Amici caused this lawsuit.

teacher's judgment of a student's work. Those cases are different because they involve a high degree of subjectivity. South Carolina law and policy concerning the transfer of grades, on the other hand, are entirely objective. Indeed, the transfer calculation is purely mechanical. Moreover, even in the areas cited by the School District and Amici, Courts will overturn a school's judgment when it includes an illegal or improper purpose, such as discrimination or a claimed violation of a constitutional right. *See e.g., Hardwick ex rel. Heyward*, 711 F.3d 426 (4th Cir. 2002).

The School District and Susan S. and Russell S. cite in support of their position, *Regents of the University of Michigan v. Ewing*, 474 U.S. 214 (1985), but completely misunderstand and misapply that case. It is precisely because of that case - - because the student's teachers and school are in the best position to judge a student's work - - that the School District should have left Riverside alone and not tried to look behind its final official transcript. The School District and Amici argue that courts should not interfere with the judgment of schools, yet inconsistently argue that they should be allowed to interfere with the judgment of Riverside. L.P. engaged in the coursework at Riverside based on the grading policies there and he was evaluated based on that. The School District cannot substitute its judgment for Riverside's judgment. South Carolina law and State Department of Education and School District policy all confirm that the School District is prohibited from doing so.

Finally, the cases Appellants and Amici cite do not stand for the proposition that the Courts lack subject jurisdiction in any 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). The cases Appellants and Amici cite merely 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 so that no student has to justify his grades to a transferee school or suffer a diminishment of his accomplishments.

The cases cited by both Appellant and Amici regarding subject matter jurisdiction in school cases and regarding courts giving school decisions deference *all* involve a school applying discretion in a subjective evaluation of a student or teacher's behavior or performance. That is not this case. This case is about not allowing one school to pass judgment on the grades given to a student by another school. This is a case about an objective standard mandated by state law.

B. DID THE CIRCUIT COURT ERR IN INTERPRETING THE UNIFORM GRADING POLICY AND CONVERSION PROCESS, MANDATED BY STATE LAW, TO REQUIRE THE SCHOOL DISTRICT TO USE THE NUMERICAL AVERAGES ON L.P.'S OFFICIAL TRANSCRIPT FROM RIVERSIDE MILITARY ACADEMY?

The Court did not err in interpreting the Uniform Grading Policy and Conversion Process. The Circuit Court entered a written Order on October 7, 2013, granting L.P.'s requested Writ of Mandamus and prohibitive injunction, as follows:

"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. In addition, 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.”

(Writ of Mandamus at R. p.4)

The changes to L.P.’s transcript were in violation of state law, the grading policy of the South Carolina Department of Education, and the School District’s own grading policy. SC Code Section 59-5-68 directs the South Carolina State Board of Education to adopt a uniform grading policy. It further directs 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. L.P. provided to Southside an official Riverside transcript with numerical averages for each class taken. Southside initially performed its ministerial act of transferring L.P.’s grades from Riverside as required by law. The law is clear and leaves no room for discretion. Southside and the School District both concurred that the law is clear and was properly applied when Southside issued the original transcript to L.P. on October 3, 2012. At least four professionals reviewed the situation and unanimously agreed.

Then, due to continued pressure by the parents of a student who was moved in class rank from second to third when L.P. transferred to Southside, the School District and Southside back-pedaled and secretly engaged in activities to treat L.P. unfairly and in violation of law. Guidance Counselor Henderson, who has been trained in how to issue

transfer grades from one school to another, never waived in her commitment to do what was prescribed by law and what was right.

The School District's attempted justification for reversing itself and later lowering L.P.'s grades violates the clear mandate of the law. The law says one does not look behind the grades if the grades were obtained at an accredited school, which Riverside is. The law says one does not look behind the grade, period.

This makes sense. Students and parents need certainty in deciding when and where a student will transfer. L.P. and his parents believed that he had that certainty until they learned months later that everything was changed. Had the School District timely alerted L.P. that it would not follow state law and policy, and that his grades could be diminished, based on its subjective view of Riverside, he might have stayed at Riverside. He was denied a similar opportunity when the School District waited until a full semester passed and another semester was underway before telling him that his grades had been lowered. Discretion in transferring grades can lead to arbitrary and capriciousness and a clear abuse of power on the part of school districts, as was evidenced here.⁵ That is why it is forbidden in South Carolina.

Schools in South Carolina are not allowed to look behind a transfer student's grades when that student transfers from an accredited school. Schools often think their classes are the most challenging and their teachers the fairest graders. Students from small high schools are often dismissed as scholars, even with perfect grades, because there is a perception that such a school could not be as rigorous as a large high school. In the past, schools and

⁵ Amici's Motion for Leave to File a Brief Amici Curiae confirms that L.P. is ranked first in the class as of February 10, 2014. He was correctly ranked first when he transferred to Southside and his performance there has been such as to continue him to be ranked first. His grades and rank reflect his own efforts. It is a slap in the face to suggest that he obtained them because of a so-called "uneven playing field".

school districts may have had discretion to look behind a student's grades when considering whether to accept the grades provided by another school. If that was ever allowed in South Carolina, it is no longer allowed here, and has not been allowed since the Uniform Grading Policy was enacted. Schools are not given any basis to exercise discretion in transferring grades when the school has provided numerical averages. That is what occurred here. Riverside prepared L.P.'s official transcript and Southside accepted that transcript. Southside prepared and delivered L.P.'s transcript to him on October 3, 2012, with the exact same numerical averages as those on the Riverside transcript. It did it right the first time. The Writ of Mandamus and injunction should stand.

The School District now attempts ungraciously to blame Guidance Counselor Henderson when it says that she overlooked the notation on L.P.'s Riverside transcript regarding honors and AP courses. There is no basis for that argument. When Susan S. first complained to Southside about L.P.'s grades, she made the argument about points for honors and AP courses. It is in her October 4, 2012 email. The School District received that email twice. It was forwarded to the School District once by Principal Brooks, and once by Ms. Henderson. That was *before* every administrator involved in the decision-making at Southside and the School District confirmed that neither Southside nor the School District could legally do what Susan S. was requesting. It is wrong for the School District to attempt to blame Ms. Henderson.

It is also important to note what School District did not do. The School District did not look into every course and every grade provided to every transfer student and review how their prior schools and teachers graded those students; nor did the School District review every Southside student's transcript and review every course for every student to eliminate any and all "extra credit" points awarded to those students. For all we know, the

son of Susan S. and Russell S. received an unfair increase in his grades. We have all been to school and many of us have children in school and know that teachers award extra credit throughout the year in a variety of ways. Some award points in the form of test corrections so that students earn half or all of the points back on a test if they correct their errors. Some award points for extra work. Some award points for bonus questions on tests. Some award points if one simply shows up to class every day. Every teacher implements his or her own grading policies within a course and awards extra points based on what that teacher thinks is fair and reasonable for the course. Looking into each course and grade is what courts are loath to get involved in; but that is what School District is asking the Court of Appeals to sanction. By looking behind the official transcript, the School District is inviting endless argument about grades. That is exactly what the Uniform Grading Policy is designed to prevent.⁶

The School District also attempts to obfuscate the issue by directing the Court's attention to "units." (App. Br. p.9) "Units" are not grades. "Units" are simply what some of us might remember as "credits" in college and high school. Each course is awarded a number of units (or credits) based on the number of instructional hours. "Units" have nothing to do with the numerical averages that Southside was required to transfer. "Units" are only a factor when one reviews a student's transcript to verify that he has earned a sufficient number of total units to graduate and a sufficient number of units in each discipline area (science, social studies, math, etc.) to meet State graduation requirements. Units are also a factor in weighting courses to calculate the cumulative grade point average of a student. The Uniform Grading Policy gives an example of how to do that. (Plf. Exh. 4

⁶ School District also argues that it will be inundated with lawsuits challenging grades if the court affirms the Circuit Court; however, the School District is more likely to receive numerous complaints about transfer grades if the Uniform Grading Policy is not enforced.

at p. 55-03-5 at R. p.94) In the Student Example, English 1 shows a numerical average of 91 and 1 Unit and quality points of 3.750. Compare English 1 to Physical Education, which receives ½ Unit. The difference is due to English being a class with twice the weight of P.E. To compute the weighted GPA for the courses, one would use the formula at the top of the page: $GPA = \frac{\text{sum (quality points x units)}}{\text{sum of units attempted}}$. “Units” have nothing to do with the transfer of the numerical grade averages. S.C. Code Ann. Regs. § 43-273.

C. DID THE CIRCUIT COURT ABUSE ITS DISCRETION IN ISSUING A WRIT OF MANDAMUS TO COMPEL THE SCHOOL DISTRICT TO FOLLOW STATE LAW AND ACCEPT THE TRANSCRIPT OF L.P.’S GRADES ORIGINALLY ISSUED TO HIM BY SOUTHSIDE HIGH SCHOOL ON OCTOBER 3, 2012?

Whether to issue a writ of mandamus lies within the sound discretion of the trial court, and an appellate court will not overturn that decision unless the trial court abused its discretion. *Jolly v. Marion Nat’l Bank*, 267 S.C. 681, 685-86, 231 S.E.2d 206, 208 (1976). An abuse of discretion arises where the trial court was controlled by an error of law or where its order is based on factual conclusions that are without evidentiary support. *Tri-County Ice and Fuel Co., v. Palmetto Ice Co.*, 303 S.C. 237, 242, 399 S.E.2d 779,782 (1990). The Circuit Court did not abuse its discretion.

The standard of the Circuit Court to determine if a petitioner has met its burden to obtain a Writ of Mandamus is whether the applicant has shown “(1) a duty of the respondent to perform the act, (2) the ministerial nature of the act, (3) the petitioner’s specific legal right for which discharge of the duty is necessary, and (4) a lack of any other legal remedy.” *Riverwoods, LLC v. County of Charleston*, 349 S.C. 378, 388, 563 S.E.2d 651, 657 (2002). Appellant has conceded element number (4). App. Br. P. 10. fn 1.

The Court was provided with sufficient facts and evidence to reach its decision to grant the Writ of Mandamus. In fact, the parties were in substantial agreement with what

the facts were and which documents were admissible into the record with the exception of one document.⁷ The Court was also provided the law and S.C. State Department of Education and Greenville County School District policies, which require school districts to adhere to the Uniform Grading Policy, of which the Conversion Process is a part. Because the School District refused to adhere to the Uniform Grading Policy and Conversion Process and required the guidance counselor, Ms. Henderson, to unlawfully alter L.P.'s transcript contrary to everything she had been taught and trained to do, the Circuit Court did not abuse its discretion in issuing the Writ of Mandamus to restore to L.P. the original transcript Southside had issued to him. L.P. showed that the School District had a duty to accept and transfer the Riverside numerical averages on his official Riverside transcript, so he met criteria (1). Even the School District, Principal Brooks, Guidance Counselor Henderson, Dr. Childs and Rob Rhodes all agreed that the initial Southside transcript was correctly prepared in accordance with the law and School District policy and Principal Brooks so informed Susan S.

⁷ L.P. objected to admission of Appellant's Exhibit 1, tab 3, which purports to be an unofficial list of grades for courses taken at Riverside. The document is not an official transcript nor was it signed by anyone at Riverside and the grades on that document are not the grades on L.P.'s official Riverside transcript. It is unclear where that document came from, who prepared it, how it was generated or what it shows. In fact, Riverside's academic dean refused School District's request for an unofficial preliminary uncorrected transcript. (Plf. Exh. 20, p. 2, R, pp. 126-127). Additionally, if those grades were provided to School District, they were provided in violation of L.P.'s federal right to privacy regarding his education records, which Plaintiff's Exhibit 20 confirms. *Id.* The records are private and 34 CFR Subtitle A, Subpart D, § 99.30 (a) prohibits disclosure of educational records without a parent's consent except in limited circumstances *not present in this case*. Neither L.P. nor his parents consented. Neither L.P. nor his parents were even aware this unofficial preliminary uncorrected transcript was demanded by School District or that Riverside (if Riverside provided that document) had been pressured to provide that document after declining to do so. The Circuit Court also expressed concern as to the accuracy of the grades on that unofficial list of grades. (R. p.70, lines 1-4) School District replied it lacked sufficient time to provide verified grades, (R. p.70, lines 16-20); however, the School District had four months to obtain official grades to provide the Court. Instead, School District based L.P.'s grades and future success on college applications on unverified and unofficial preliminary uncorrected grades.

Transferring grades from one transcript to another when the former school provides numerical averages is ministerial. Likewise, had Riverside provided "letter grades" there is a process set forth for transferring those grades, as well. For example, the Conversion Policy requires the transferee school to assign a numerical grade for each letter grade, such as a 96 numerical average for an A being transferred. The Conversion Policy removes discretion from the schools and School District in the matter of transferring grades from one school to another. The blue ribbon committee commissioned to examine the question of grading and transferring grades studied the issues, debated them, and provided a solution that *must* be used in all situations. No exceptions were listed. There is no discretion to treat one student differently from another student.

Removing discretion from the schools and school districts as to transferring grades makes sense. Doing otherwise opens the door to abuse. This case is a perfect example of abuse. The School District in this case is attempting to use the concept of "discretion" to excuse months of secret emails, phone calls, and meetings all designed to lower a student's grades in violation of official policy and law, without his or his parents' knowledge. Yielding to power and influence, the School District arbitrarily and capriciously singled L.P. out for "novel and unique" treatment and surreptitiously lowered his grades and class rank.

The third criteria requires a showing that petitioner has a specific legal right for which the discharge of the duty is necessary. L.P. has a specific legal right to have the School District follow the law regarding his grades. Every student needs a transcript to graduate from high school and to apply to college. L.P. is a senior and his transcript being in flux is what compelled him to seek the Court's assistance because it hindered him from applying to college. The School District is legally obligated to provide him an accurate

transcript prepared in accordance with the law and due process. The School District's legal obligation is not doubtful; nor is L.P.'s need for the transcript in dispute.

The School District and Amici have attempted to portray this entire issue as one of fairness to other students who did not attend Riverside. In fairness, L.P. should not have been singled out for mistreatment. L.P. has not asked the School District to lower the grades of any other students. Almost no other students are affected by L. P.'s grades anyway, and even then it is only one class rank. L.P. simply wants to receive what he deserves and what he worked hard to achieve.

L.P. is asking the Court simply to require School District to follow the law of South Carolina that requires the School District to transfer his courses and grades as it did on October 3, 2012. A Writ of Mandamus was and remains entirely appropriate to compel the School District to do what it already did when it issued the original Southside transcript. The injunction was also entirely appropriate to prohibit the School District from engaging in any further illegal actions regarding his transcript and class standing.

D. SHOULD THE COURT AFFIRM THE CIRCUIT COURT PURSUANT TO RULE 220(C), SCACR, UPON ANY GROUNDS APPEARING IN THE RECORD ON APPEAL, INCLUDING L.P.'S ARGUMENT THAT THE SCHOOL DISTRICT IS ESTOPPED FROM CHANGING HIS GRADES?

Pursuant to Rule 220(c), SCACR, the Court may affirm the Circuit Court decision on any ground appearing in the Record on Appeal; L.P. requests that the Court affirm on any ground available to the Court. In particular, L.P. presented substantial evidence that the School District is estopped from altering the initial Southside transcript issued to him on October 3, 2012 because the School District denied him due process and equal protection of

the law while he relied upon that transcript.⁸ L.P. and his parents relied upon the October 3, 2012 Southside transcript and did not learn until after more than a full semester of coursework was completed and graded at Southside, that the 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 L.P. to simply return to Riverside. L.P. justifiably relied on the Southside transcript he was 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.

AMICI MADE ARGUMENTS APPELLANTS DID NOT PRESERVE FOR APPEAL

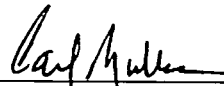
Amici have made several arguments that were not argued in the Circuit Court and that Appellant did not preserve for appeal. Amici argues that (i) the Uniform Grading Policy is only a guidepost. (Amici Br., p.8, fn 1); the School District is free to prescribe rules and regulations not inconsistent with South Carolina statute law, (Amici Br. pp. 8-9); the Family Education Rights and Privacy Act, 20 U.S.C. § 1232g has no bearing on this case, (Amici Br. p.11, fn. 2); and they make a lengthy argument about class rank and about students and families having an interest in having academic decisions being made by their teachers and principals and not in the courts culminating in their assertion that "*students and parents are entitled to have their grades and class ranks determined, without having to go to court*" (Amici Br. pp. 4-8)

⁸ The School District acknowledged that L.P. made an estoppel argument in the Circuit Court when School District's Attorney Webb asserted "[e]ssentially, what's being made here is an estoppel argument. (R. p.72, lines 8-9)

Appellant did not make any of the foregoing arguments in the Circuit Court nor did Appellant preserve those issues for appeal. It is improper for Amici to make such arguments and the Court should not consider them.

CONCLUSION

When she made her initial complaint to Southside, on October 4, 2012, Susan S. wrote that if her son found out what she was doing he would be "horrified". He is not the only one. She should not have embarked on her regrettable quest to lower another student's grades behind his back. He was not the only one harmed by her actions. She and her family have been harmed. Southside has been harmed. The School District has been harmed. When Southside and the School District first told her "No", she should have stopped. She should not have continued to apply pressure, and she and her husband, Russell S., should not have inserted themselves into this appeal. It is time for this matter, which never should have begun, to come to an end. The order of the Trial Judge should be affirmed.



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March 28, 2014

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

v.

The School District of Greenville County Appellant.

Appellate Case No. 2013-002232

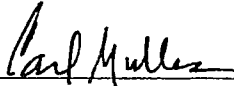
Appeal from Greenville County
Court of Common Pleas
Edward W. Miller, Circuit Court Judge
Case No. 2013-CP-23-03447

PROOF OF SERVICE

I certify that I have served Respondents' Final Brief by depositing a copy of it in the
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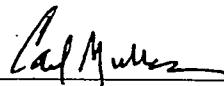
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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

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APR 04 2014

The Honorable Edward W. Miller, Circuit Court Judge

SC Court of Appeals

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The School District of Greenville County, ... Appellant.

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TABLE OF CONTENTS

	<u>PAGES</u>
Statement of Issues on Appeal.....	1
Statement of the Case.....	1
Statement of Facts.....	2
Arguments:	
A. The Circuit Court Erred In Exercising Subject Matter Jurisdiction Over This Case.....	5
B. The Circuit Court's Interpretation and Application of the Uniform Grading Policy Was Erroneous.....	7
C. The Circuit Court Erred In Issuing A Writ of Mandamus and Injunction in Support of the Writ.....	10
Conclusion	12

TABLE OF AUTHORITIES

<u>CASE LAW:</u>	<u>PAGES</u>
✓ <i>Blalock v. Johnston</i> , 180 S.C. 40, 185 S.E. 51 (1936).....	11
✓ <i>Brackenbrook N. Charleston, LP v. Cnty. of Charleston</i> , 360 S.C. 390, 602 S.E.2d 39 (2004).....	10
✓ <i>Byrd v. Irmo High Sch.</i> , 321 S.C. 426, 468 S.E.2d 861 (1996)	6
✓ <i>Charleston Cnty. Sch. Dist. v. Charleston Cnty. Election Comm'n</i> , 336 S.C. 174, 519 S.E.2d 567 (1999)	10, 11, 12
✓ <i>Davis v. Greenwood Sch. Dist. 50</i> , 365 S.C. 629, 620 S.E.2d 65 (2005)	5
✓ <i>Ex parte Littlefield</i> , 343 S.C. 212, 540 S.E.2d 81 (2000)	10
✓ <i>Gardner v. Blackwell</i> , 167 S.C. 313, 166 S.E. 338 (1932)	10, 11
✓ <i>Goss v. Lopez</i> , 419 U.S. 565 (1975)	6
✓ <i>Laws v. Richland Cnty. Sch. Dist. No. 1</i> , 270 S.C. 492, 243 S.E.2d 192 (1978)	5
✓ <i>Pressley v. Lancaster Cnty.</i> , 343 S.C. 696, 542 S.E.2d 366 (Ct. App. 2001)	10
✓ <i>Riverwoods, LLC v. Cnty. of Charleston</i> , 349 S.C. 378, 563 S.E.2d 651 (2002)	10
✓ <i>Sanford v. S.C. State Ethics Comm'n</i> , 385 S.C. 483, 685 S.E.2d 600 (2009)	12
✓ <i>Singleton v. Horry Cnty. Sch. Dist.</i> , 289 S.C. 223, 345 S.E.2d 751 (Ct. App. 1986)	5
✓ <i>State ex rel. Irvine v. Brooks</i> , 14 Wyo. 393, 84 P. 488 (1906)	11
✓ <i>Willimon v. City of Greenville</i> , 243 S.C. 82, 132 S.E.2d 169 (1965)	10, 12
✓ <i>Zachary M. v. Bd. of Educ. of Evanston Twp. High School Dist. No. 202</i> , 829 F. Supp. 2d 649 (N.D. Ill. 2011)	5
<u>STATUTES:</u>	
S.C. Code Ann. § 1-23-10(4)	12
S.C. Code Ann. § 59-5-68	7, 12

OTHER AUTHORITIES:

S.C. Code Regs. § 43-273.....	8, 9, 12
New Webster's Dictionary & Thesaurus, 66 (2d Ed. 1992).....	8

STATEMENT OF ISSUES ON APPEAL

- 1) Did the Circuit Court err in exercising subject matter jurisdiction over this matter?
- 2) Did the Circuit Court err in interpreting the Uniform Grading Policy to require Greenville County Schools to accept a student's enhanced numerical grades from an out-of-state school even if a student's transcript from that school denoted and identified the grade enhancement?
- 3) Did the Circuit Court err in issuing a writ of mandamus to compel the School District to apply L.P.'s enhanced numerical grades from Riverside Military Academy to his Southside High School transcript per the Circuit Court's interpretation of the Uniform Grading Policy?

STATEMENT OF THE CASE

This action was brought on June 21, 2013, by the filing of a Summons and Complaint with the Court of Common Pleas in Greenville County. The Complaint sought a Writ of Mandamus directing the Appellant, the Greenville County Schools (the "School District"), to restore the grades and class rank of the minor Respondent, L.P. ("Student"), to the levels first determined by his current school, Southside High School ("SHS"), at the beginning of his junior year, (before his grades from his prior school were reviewed and his grade point average (GPA) corrected by the School District). (Am. R. p. 10.) The Complaint also sought an injunction prohibiting the alteration of Student's grades and rank in a manner inconsistent with the Writ of Mandamus.

The School District answered on August 6, 2013. On August 8, 2013, Student moved for expedited trial in the Business Court, with the consent of the School District, on the ground that Student was a rising senior and would be applying to college in the Fall of 2013. On September 9, 2013, the Honorable 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 Honorable Edward W. Miller, Circuit Judge. (Am. R. p. 1.) Justice Toal 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." (*Id.*) The case was scheduled for hearing on September 30, 2013, and tried to the Circuit Court without a jury on October 4, 2013. (Am. R. p. 18.) By Order dated October 7, 2013, the Circuit Court issued a writ of mandamus requiring the School District to restore Student's grades and rank as originally determined by Southside High School on October 3, 2012. (Am. R. p. 4.) The Circuit Court also granted an injunction prohibiting the School District from altering the Student's grades and rank in a manner inconsistent with the Writ of Mandamus. (Am. R. p. 4.)

The School District timely filed a notice of appeal on October 7, 2013, and an amended notice of appeal on October 10, 2013. By Order of October 28, 2013, Judge Geathers of the Court of Appeals granted Appellant's motion to expedite resolution of the appeal.

STATEMENT OF FACTS

Student is currently a senior at SHS. (Compl. ¶ 3 at Am. R. p. 9.) SHS operates under the direction and control of the School District. (Compl. ¶ 2 at Am. R. p. 9.) Student transferred to SHS from Riverside Military Academy ("RMA") in Gainesville, Georgia at the beginning of his junior year (the 2012-2013 school year). (Compl. ¶ 3 at Am. R. p. 9.) Student's RMA transcript was forwarded to SHS on October 3, 2012; his reported transcript grades were transferred and his GPA and class rank calculated pursuant to the South Carolina Uniform Grading Policy ("UGP") adopted by SHS and the School District. (Am. R. p. 77; Compl. ¶¶ 4-5 at Am. R. pp. 9-10.) SHS did not originally observe that Student's transcript showed enhanced numerical grades in Advanced Placement ("AP") and honors courses. (Am. R. p. 122.)

Soon thereafter, the School District learned that Student's final grades in honors AP and classes taken at RMA included extra points that students at SMS and the School District's other high schools do not receive for directly comparable classes. (Am. R. p. 65, line 17 – p. 69, line 23.) RMA's grading policy for honors and AP classes, as shown on the face of Student's transcript, is to award five extra points to the student's numerical grade average for each honors or AP class. (Am. R. p. 76.) In addition, during the 2010-2011 school year only, RMA awarded ten extra points for AP classes (five points for honors classes). (Am. R. pp. 76.) For example, Student's final numerical grade average for Fall 2010 in AP World History at RMA was 93. (Am. R. pp. 128-130.) Pursuant to its grading policy, RMA awarded Student 10 extra points for the AP course, making his RMA transcript grade 100 for AP World History. (Am. R. p. 76.)

Unlike RMA's policy, the UGP provides that students receive GPA quality points for honors and AP courses, rather than extra points added to final grade averages. (Am. R. pp. 104-108.) Under the UGP, students receive extra GPA points for AP, Honors, and International Baccalaureate/Dual Credit courses in accordance with the "Grade Point Conversion Chart." (Am. R. p. 104.) For example, a 97 in a college preparatory class would receive 4.5 grade points on the conversion chart. (*Id.*) A final grade average of 97 in an AP course would receive 5.5 grade points on the conversion chart. (*Id.*) Grade points earned in each class are then averaged to determine a student's overall GPA and class rank. (Am. R. p. 107.)

Accordingly, when the School District initially calculated Student's GPA and class rank in October 2012, Student had inadvertently received a "double bump." (Am. R. pp. 124-125.) Specifically, as denoted by an asterisk and explanation on Student's RMA transcript, honors and AP final course grades from RMA received an initial five to ten point numerical course grade bump from RMA. In addition, Student received a

second bump when his RMA final transcript grades were converted to grade points via the UGP chart. (Am. R. pp. 122, 124-125.) No other student at SHS received a 5 or 10 point numerical grade bump to his or her final grades in honors or AP courses like Student. (Am. R. p. 122.) Likewise, RMA students received only the 5 to 10 point final course grade bump, as described above, and not a second GPA bump. The following illustrates the mechanics of the "double bump" to Student's advantage:

- Student's final numerical average for Fall 2010 in AP World History at RMA was 93. RMA awarded him 10 extra points for the AP course, making his RMA transcript grade 100.
- The difference between the Student's numerical average in the RMA course and his RMA transcript grade, after the UGP was applied upon transfer to the School District, would be:

93 (unweighted average) = 5.00 Grade Points
100 (weighted grade) = 5.875 Grade Points

(Am. R. pp. 76; 128-130.)

When the School District realized that Student received a double bump for honors and AP courses he took at RMA upon transfer, the School District communicated with RMA's guidance office to determine Student's actual numerical course averages prior to the five to ten point weighting. (Am. R. pp. 128-130.) The School District then recalculated Student's grades and class rank under South Carolina's UGP using grade averages without the RMA honors/AP weighting. (Am. R. p. 122.) From the School District's perspective, this change placed the Student in equal standing with all other students at SHS. (Am. R. p. 65, line 17 – p. 69, line 25.) The recalculation changed Student's class rank at SHS from first to sixth. (Am. R. p. 123.) Counsel for Student and counsel for the School District were unable to resolve the matter. (Am. R. pp. 124-125.) Student then filed this action in Circuit Court.

The Court's October 7, 2013 Order restored Student's ranking to first in his class, thereby reducing the class ranks of students one through five as of the date of the Order. The Circuit Court specifically "assigned no blame to anyone for the change," and found that, the School District made the change in a well-intentioned effort at what it considered to be fairness and equality in translating Student's RMA grades to SHS. (Am. R. p. 3; p. 73, lines 9-20.)

ARGUMENTS

A. The Circuit Court Erred In Exercising Subject Matter Jurisdiction Over This Case.

South Carolina Appellate Courts have not decided the precise issue of whether, in the absence of a statute conferring a right of action or appeal, courts have subject matter jurisdiction over cases involving students' grade calculations. However, a federal district court recently held that courts cannot grant relief in purely academic matters such as grade calculations. *See Zachary M. v. Bd. of Educ. of Evanston Twp. High School Dist. No. 202*, 829 F. Supp. 2d 649, 661 (N.D. Ill. 2011).

Additionally, South Carolina appellate courts have consistently declined to intervene in educational matters unless there is clear evidence that a school district acted corruptly, in bad faith, or in clear abuse of its powers. *See Davis v. Greenwood Sch. Dist.* 50, 365 S.C. 629, 635, 620 S.E.2d 65, 68 (2005) ("[C]ourts will not disturb matters within the school board's discretion unless there is clear evidence of corruption, bad faith, or a clear abuse of power.") (citing *Singleton v. Horry Cnty. Sch. Dist.*, 289 S.C. 223, 227-28, 345 S.E.2d 751, 753-54 (Ct. App. 1986)); *Laws v. Richland Cnty. Sch. Dist. No. 1*, 270 S.C. 492, 495, 243 S.E.2d 192, 193 (1978) ("An appellate court will not substitute its judgment for that of school boards in view of the powers, functions and discretion which must necessarily be vested in such boards if they are to execute the duties imposed upon them."); *Singleton v. Horry Cnty. Sch. Dist.*, 289 S.C. 223, 227-28, 345 S.E.2d 751, 753-

54 (Ct. App. 1986) (explaining that courts do not interfere with the exercise of discretion by school boards in selecting and employing teachers unless there is clear evidence that the board acted corruptly, in bad faith, or in clear abuse of its powers).

Further, in holding that courts do not have subject matter jurisdiction over school district decisions involving student suspensions, the Supreme Court of South Carolina extensively discussed the public policy supporting its holding:

[B]rief disciplinary suspensions are almost countless. If students and parents were allowed to appeal every short-term suspension, then circuit courts could be flooded potentially with thousands of such cases. Not only would this place a severe strain on an already overburdened judicial system, but perhaps more importantly, the limited financial and human resources of schools and school districts would be deleteriously affected if every student suspension had to be defended through the court system. Imposing even truncated trial-type procedures might well overwhelm administrative facilities in many places and, by diverting resources, cost more than it would save in educational effectiveness.

Byrd v. Irmo High Sch., 321 S.C. 426, 435-36, 468 S.E.2d 861, 866-67 (1996) (quoting *Goss v. Lopez*, 419 U.S. 565 (1975)) (internal quotations and citations omitted).

Here, the four corners of Student's RMA transcript, at a minimum, created an ambiguity. Neither South Carolina law nor the UGP directly addresses which grades (actual or bumped) the School District should use in calculating Student's GPA under the UGP. The School District, rather than the Circuit Court, clearly was in the best position to determine the fairest way to achieve the UGP's goal of uniformity in grading among the students attending SHS. There is no evidence that the School District acted corruptly, in bad faith, or in clear abuse of its powers under State law, State regulations, or the UGP. Instead, the evidence showed, and the Circuit Court found, that the School District acted in good faith in attempting to deal with a unique situation in a manner equitable to all students at SHS. If the School District's exercise of discretion in this matter is subject to court intervention, a flood of grade challenges can be expected to follow.

Accordingly, the Circuit Court erred in exercising subject matter jurisdiction over Student's grade calculation claim.

B. The Circuit Court's Interpretation and Application of the Uniform Grading Policy Was Erroneous.

The School District properly applied the UGP to the transfer of Plaintiff's grades from RMA. The legislative basis and purpose of the UGP is set forth in S.C. Code Ann. § 59-5-68, which provides as follows:

Uniform grading scale.

The General Assembly finds that given the fact the State provides substantial financial academic assistance to students of 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.

S.C. Code Ann. § 59-5-68 (2010). Thus, the goal of the UGP is to put students competing for scholarships and financial aid on equal footing by ensuring that schools in this State use the same grading scale. Nothing in the statute requires or suggests that schools using the UGP should conform to or adopt the grading scheme of a school from another state that does not apply or follow the UGP.

The School District has adopted the current (2007) version of the South Carolina Department of Education's UGP. (Am. R. pp. 81-87.) As applied to transfer students, the UGP provides the following:

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

(*Emphasis added*) (Am. R. p. 108.)

Nothing in the above-quoted language in the UGP requires the School District to accept the final grades from Plaintiff's RMA transcript without considering RMA's built-in grade enhancement for honors or AP classes noted on the face of that transcript. The face of Student's transcript shows that, depending upon the academic year, RMA awarded five or ten extra points to each actual "numerical grade average" for honors and AP courses. The UGP requires the School District to accept "numerical averages" when they are provided – it does not require the School District to accept "final weighted grades" which include bonus points reflected on the transcript itself. An "average" is defined as "the arithmetic mean, the value arrived at by adding the quantities in a series and dividing the total by their number, the average of 20, 18, and 4 is 14." New Webster's Dictionary & Thesaurus, 66 (2d Ed. 1992). Under that definition, the honors/AP transcript grades from RMA may be "numerical," but they do not represent "numerical averages." The School District's decision to exclude additional weighting or bonus points from Student's RMA grades and obtain final numerical averages for honors and AP courses from RMA was thus imminently reasonable and well within its discretion.

In addition, State Board of Education Regulation § 43-273 supports this interpretation and should have guided the Circuit Court's interpretation of the UGP. Section 43-273 provides, in relevant part the following:

Units earned by a student in an accredited high school of this state or in a school of another state which is accredited under the regulations of the board of education of that state, or the appropriate regional accrediting agency (New England Association of Colleges and Schools, Middle States Association of Colleges and Schools, Southern Association of Colleges and Schools, North Central Association of Colleges and Schools, Western Association of Colleges and Schools, and the Northwest Association of Colleges and Schools), *will be accepted under the same value which would apply to students in the school to which they transferred.*

S.C. Code Regs. § 43-273. (*Emphasis added.*)

Under § 43-273, which is an actual Board of Education regulation and not a policy, the School District is required to accept units earned under the same values which would apply if they had been earned at a school in the School District. Nothing in that section suggests that grades earned in another state should be accepted without question when the four corners of a student's transcript show grades calculated differently than they would be in South Carolina. Since SHS does not automatically apply an increase of five or ten points to its own students' numerical grade averages in honors or AP courses, the School District properly accepted Student's true and original numerical grade averages from RMA "under the same value which would apply" to students taking the same courses at SHS. (*Id.*)

In short, pursuant to the School District's application of the UGP, Student received *exactly the same weight* for the courses that he would have received if he had taken all of his high school courses at SHS. The Circuit Court's interpretation would not put Student on the same footing as other SHS students, but instead raise him above his similarly-situated peers. The School District's interpretation of the UGP, in light of its authorizing statute and Board of Education regulations, is rational, reasonable, consistent with the plain meaning and purpose of the UGP, and avoids a patently unfair result.

**C. The Circuit Court Erred In Issuing A Writ of Mandamus and
Injunction in Support of the Writ.**

Mandamus is the highest judicial writ and is issued only when there is a specific right to be enforced, a positive duty to be performed, and no other specific remedy. *Ex parte Littlefield*, 343 S.C. 212, 222, 540 S.E.2d 81, 86 (2000) (citing *Willimon v. City of Greenville*, 243 S.C. 82, 132 S.E.2d 169 (1963)). "It is axiomatic that mandamus, 'the highest judicial writ known to the law,' lies only to compel the performance of a ministerial act and 'is limited . . . to the protection of a plain, admitted, and unquestioned legal right that has been arbitrarily or without due warrant of law denied.'" *Brackenbrook N. Charleston, LP v. Cnty. of Charleston*, 360 S.C. 390, 602 S.E.2d 39 (2004) (quoting *Gardner v. Blackwell*, 167 S.C. 313, 166 S.E. 338, 341 (1932)). Where the duty is not clearly and directly prescribed, the writ of mandamus will not lie. *Pressley v. Lancaster Cnty.*, 343 S.C. 696, 705, 542 S.E.2d 366, 371 (Ct. App. 2001). An applicant seeking a writ of mandamus must establish "(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."¹ *Riverwoods, LLC v. Cnty. of Charleston*, 349 S.C. 378, 388, 563 S.E.2d 651, 657 (2002).

To satisfy the first element, Student was required to show an "indisputable and plainly defined" duty to interpret and apply his transferred RMA grades in a manner that would lead to his desired outcome. See *Charleston Cnty. Sch. Dist. v. Charleston Cnty. Election Comm'n*, 336 S.C. 174, 182-83, 519 S.E.2d 567, 572 (1999). Student's evidence did not satisfy this element, as it is not "indisputable and plainly defined" that the School District was required to apply his bumped grades, rather than his actual numerical course averages, from RMA upon his transfer. As noted, the UGP itself does not directly confer

¹ The School District does not dispute that Plaintiff can show the fourth mandamus element.

any legal rights to Student, and even if it did, such rights are hardly "clearly prescribed."
See Gardner v. Blackwell, 167 S.C. 313, 321, 166 S.E. 338, 341 (1932).

Second, Student did not show that his desired interpretation and application of the UGP to his enhanced RMA grades was merely a "ministerial act" the School District was required to perform. A ministerial act, for purposes of a writ of mandamus, has been defined as "one in respect to which nothing is left to discretion . . . [w]here the law prescribes and defines the duties to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment, the act is ministerial." *Blalock v. Johnston*, 180 S.C. 40, 185 S.E. 51, 54 (1936) (quoting *State ex rel. Irvine v. Brooks*, 84 P. 488, 490 (Wyo. 1906) (internal citations omitted)). As applied to Student's claims, the UGP term "numerical averages" is not defined and capable of several meanings. The School District was in the best position to decide how to apply the UGP to this situation and nothing in the text of the UGP prevented the School District from exercising its discretion to resolve the novel and unique grade transfer issue Student's RMA transcript presented.

Third, Student did not show a specific legal right that could be enforced by mandamus. If the specific legal right a plaintiff seeks to enforce is doubtful, the writ cannot be issued. *See Charleston Cnty. Sch. Dist.*, 336 S.C. at 182-83, 519 S.E.2d at 572. "[W]here for any reasons the duty to perform the act is doubtful, the obligation is not regarded as imperative, and the applicant will be left to his other remedies. So when the statute prescribing the duty does not clearly and directly create it, the writ will not lie Mandamus will not issue to enforce doubtful rights. The duty to perform an act must be indisputable and plainly defined." *Charleston Cnty. School Dist. v. Election Comm'n*, 336

S.C. at 182-83, 519 S.E.2d at 572 (citations and internal quotation marks omitted). "The 'principal function' of mandamus is to command and execute, and not to inquire and adjudicate; therefore, it is not the purpose of the writ to establish a legal right, but to enforce one which has already been established." *Sanford v. S.C. State Ethics Comm'n*, 385 S.C. 483, 493-94, 685 S.E.2d 600 (2009), *opinion clarified*, 386 S.C. 274, 688 S.E.2d 120 (2009) (quoting *Willimon v. City of Greenville*, 243 S.C. 82, 86-87, 132 S.E.2d 169, 171 (1963)).

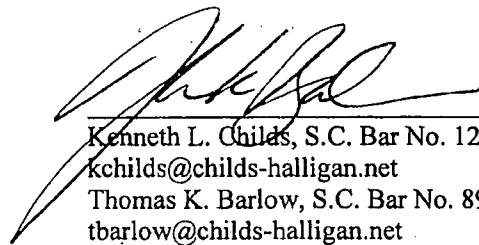
Student's action was not to enforce a definite, certain, and admitted right, but rather, to "inquire and adjudicate" as to whether Student had a unique and special right to double-bumped grades unavailable to either his former peers at RMA or his current peers at SHS. The Student's desired interpretation of the UGP, in light of S.C. Code Ann. § 1-23-10(4) S.C. Code Ann. § 59-5-68 and Board of Education Regulation § 43-273, requires inquiry and adjudication. In no way do these provisions create a specific and obvious legal duty for the School District to refrain from reviewing, interpreting, and applying its discretion in resolving discrepancies in Student's grades that were obvious from the four corners of his RMA transcript. As such, the Circuit Court's issuance of a writ of mandamus and supporting injunction was erroneous.

CONCLUSION

The School District had discretion to apply the Uniform Grading Policy to Student's transferred grades in a manner equitable to Student and all of his classmates at SHS. The Circuit Court erred by entertaining judicial review over that decision, by its contrary interpretation of the available guidance for the School District's application of the UGP, and in using a writ of mandamus as a vehicle to inquire, adjudicate, and compel

a doubtful and highly disputed, discretionary act of the School District. For all of these reasons, the Circuit Court's order should be reversed.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Edward W. Miller, Circuit Court Judge

C.A. No.: 2013-002232

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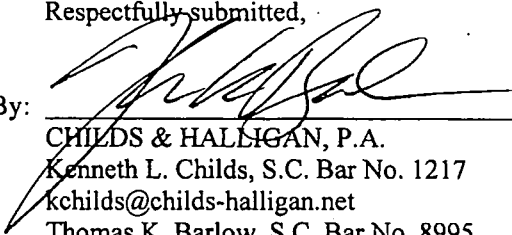
The School District of Greenville County, ... Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that Appellant's Final Brief complies with Rule 211(b),
SCACR.

Respectfully submitted,

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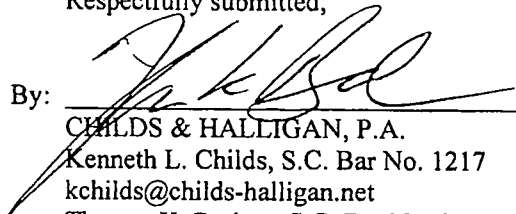
The School District of Greenville County, ... Appellant.

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I certify that I have served FINAL BRIEF OF APPELLANT on counsel for Respondents, by depositing a copy of it in the U.S. Mail, postage prepaid, on April 4, 2014, addressed to Carl F. Muller, Esq., 607 Pendleton Street, Suite 201, Greenville, SC 29601.

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TABLE OF CONTENTS

	<u>PAGES</u>
ARGUMENT	1
A. Respondents' Personal Attacks On Parents Of Other Students And Conspiracy Theories Were Properly Rejected By The Circuit Court And Are Irrelevant To The School District's Appeal Of The Circuit Court's Writ Of Mandamus	1
B. Subject Matter Jurisdiction Cannot Be Premised Upon An Order Denying Business Court Jurisdiction And Respondents Made No Showing Of Corruption, Bad Faith, Or Clear Abuse Of Power By The School District.....	2
C. Respondents' Incorrect Interpretation of The Text And Purpose Of The Uniform Grading Policy Does Not Support The Circuit Court's Writ of Mandamus.....	3
D. Respondents' Belated Estoppel Argument Is Unsupported By Either The Record Or The Law	6
CONCLUSION.....	7

TABLE OF AUTHORITIES

PAGES

Case Law:

✓ <i>Brackenbrook N. Charleston, LP v. Cnty. of Charleston</i> , 360 S.C. 390, 602 S.E.2d 39 (2004).....	5
✓ <i>Byrd v. Irmo High Sch.</i> , 321 S.C. 426, 468 S.E.2d 861 (1996)	2
✓ <i>Davis v. Greenwood Sch. Dist. 50</i> , 365 S.C. 629, 620 S.E.2d 65 (2005)	2
— <i>Geoway v. United States</i> , 866 F. Supp. 1268 (D.S.C. 1995)	3
✓ <i>Pressley v. Lancaster Cnty.</i> , 343 S.C. 696, 542 S.E.2d 366 (Ct. App. 2001).....	5, 6
— <i>Quail Hill, LLC v. Cnty. of Richland</i> , 387 S.C. 223, 692 S.E.2d 499 (2010).....	6
✓ <i>S. Carolina Dep't of Transp. v. Horry Cnty.</i> , 391 S.C. 76, 705 S.E.2d 21 (2011).....	6

Statutes:

Family Education Rights Privacy Act, 34 C.F.R. §§ 99.31(a)(2) and 99.34(a).....	4
S.C. Code Ann. § 59-5-68.....	1, 4
S.C. Code Ann. § 59-25-480.....	2

I. ARGUMENT

A. Respondents' Personal Attacks On Parents Of Other Students And Conspiracy Theories Were Properly Rejected By The Circuit Court And Are Irrelevant To The School District's Appeal Of The Circuit Court's Writ Of Mandamus.

While the Circuit Court erred in exercising jurisdiction and issuing its writ of mandamus, the Circuit Court properly viewed the controversy as a narrow legal issue involving interpretation of the Uniform Grading Policy ("UGP") mandated by S.C. Code Ann § 59-5-68. At the conclusion of the hearing, Judge Miller noted,

I don't assign blame anywhere. But I'm going to grant his writ just based on the fact that the clear language of the regulations and the law is that it must accept it. And I guess my finding would be that the – without assigning fault, and I'm really not, or blame, or anything of that nature that the law is clear. And that it would be my finding that the school district's well intention efforts at fairness and equality which led them to – and I'm going to define it as interpreting – to interpret the transcript to reduce the numerical number was wrong.

(Am. R. p. 73, lines 10-20.) The Order echoes this language. (Am. R p. 3.)

Contrary to Respondents' arguments, there is simply nothing sinister or unusual about an employee and her supervisor within a particular school or other governmental agency having different opinions about the interpretation and application of a broad, legally untested policy to a unique situation. Similarly, it is not unusual for school employees to follow up on concerns raised by parents, and there is absolutely no evidence in the record to support Respondents' imagined conspiracy to cause L.P. harm between school officials and parents.

More than a year after SHS reviewed the four corners of L.P.'s RMA transcript, saw that his grades had been bumped 5-10 points, and instead applied his final RMA course averages, and almost six months after the Circuit Court's writ of mandamus directing otherwise, L.P. is still currently ranked first in his class. (Respondents' Brief, p. 18, fn. 5.) This is clear evidence refuting Respondents' unsupported claim that L.P. was somehow singled out and given lower grades to satisfy the alleged wishes of others outside SHS. L.P. has been properly and fairly

judged on the merits of his academic record and, as the Circuit Court found, the School District's decision was motivated only by the need to reconcile his nonconforming RMA grades with those of other SHS students under the UGP. Respondents' efforts to shift this Court's attention beyond the narrow legal issue decided by the Circuit Court should be rejected.

B. Subject Matter Jurisdiction Cannot Be Premised Upon An Order Denying Business Court Jurisdiction And Respondents Made No Showing Of Corruption, Bad Faith, Or Clear Abuse Of Power By The School District.

Respondents attempt to rely on Justice Toal's Order of September 9, 2013, denying Business Court jurisdiction and assigning the case to Judge Miller for the proceedings, as a legal ruling on the School District's subject matter jurisdiction defense. However, that issue was not before the Supreme Court and the September 9 Order does not address the School District's jurisdictional argument in any way, shape, or form. Respondents have never contended that the School District has somehow waived its jurisdictional defense. Accordingly, Respondents cannot rely on the denial of business court jurisdiction and assignment to Judge Miller as tacit approval of L.P.'s future subject matter jurisdiction arguments.

As analyzed in the School District's Initial Brief, courts in this state will not intervene in matters committed to the discretion of school districts absent a showing of "clear evidence of corruption, bad faith, or a clear abuse of power." *Davis v. Greenwood Sch. Dist.* 50, 365 S.C. 629, 635, 620 S.E.2d 65, 68 (2005). Respondents incorrectly seek to limit this discretion to employment matters, but student academic and discipline matters are quintessential topics within the oversight, management, and discretion of school districts, not the courts. See *Byrd v. Irmo High Sch.*, 321 S.C. 426, 435-36, 468 S.E.2d 861, 866-67 (1996). In addition, the legislature has provided a vehicle for Circuit Courts to review claims involving the employment and dismissal of teachers, see S.C. Code Ann. § 59-25-480, but not for student suspensions or grade disputes.

The evidence showed, and the Circuit Court found, that the School District's efforts were a well-intended attempt to deal with a unique situation in a manner equitable to all students at

SHS. Contrary to Respondents' argument, the School District does not contend that it has unfettered discretion to assign transfer students whatever grades it sees fit, or to give L.P. "all Cs." Such grades would have no rational basis to L.P.'s RMA transcript and assigning L.P. "all Cs" would have been arbitrary, capricious, and an abuse of power.

The School District obviously is in the best position to determine the proper method to assess and transfer grades when the face of a student's transcript directly references extra points added to final numerical course averages. These extra points were unavailable to SHS students taking the same courses. Resolving that discrepancy by obtaining L.P.'s actual, pre-bumped numerical average grades from RMA is inherently rational and reasonable within the letter and spirit of the UGP.

Further, relieving lower courts of the burden of hearing general academic grade and class rank challenges would not leave potentially wronged students without a remedy, provided the allegedly wronged students could show corruption, bad faith, or abuse of power. Moreover, the Circuit Court would have had concurrent jurisdiction with the U.S. District Court over a procedural or substantive due process claim under the U.S. Constitution had L.P. pleaded such claims. Respondents cannot retroactively establish jurisdiction by now attempting to raise such claims on appeal. In summary, because Respondents did not establish subject matter jurisdiction, the Circuit Court improperly ruled that it had jurisdiction to hear and decide the case. *See Geowey v. United States*, 886 F. Supp. 1268, 1274 (D.S.C. 1995), *aff'd sub nom. Goewey By Goewey v. United States*, 106 F.3d 390 (4th Cir. 1997) (Plaintiff bears the burden of persuasion when subject matter jurisdiction is challenged under Rule 12(b)(1)).

C. Respondents' Incorrect Interpretation Of The Text And Purpose Of The Uniform Grading Policy Does Not Support The Circuit Court's Writ Of Mandamus.

Contrary to Respondents' arguments, the primary purpose of the UGP is not to reward or protect students who transfer from out-of-state public or private schools with grading systems

that are not equivalent to the UGP. S.C. Code Ann. § 59-5-68 expresses the direct rationale for the UGP:

The General Assembly finds that given the fact the State provides substantial financial academic assistance to students of 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.

Respondents are not asking this Court to level the playing field. Rather, they seek to exalt grades obtained at an out-of-state, private school that does not comply with the UGP over and above the grades earned by SHS students, in the same courses, pursuant to the same uniform standards as other South Carolina students.

Respondents attempt to equate the School District's further inquiry into a clear RMA transcript notation referencing built-in bonus points for AP and Honors courses to "looking behind L.P.'s grades" to determine whether individual teachers properly assessed his mastery of the subject matter or graded too strictly or leniently. This argument is unsupported and fatally overbroad. The only evidence in the record was that the SHS guidance department requested and obtained L.P.'s pre-bumped grade averages from the RMA guidance department based upon the transcript notation that L.P.'s final grades included up to 5-10 bonus points for AP and Honors courses. This was a normal and proper school-to-school communication under the federal Family Education Rights Privacy Act (FERPA). *See* 34 C.F.R. § 99.31(a)(2); 34 C.F.R. § 99.34(a). Although counsel for Respondents made a vague, unspecific, non-hearsay objection to the admissibility or evidentiary weight of L.P.'s original numerical averages at the hearing, Respondents offered no evidence or argument that the grades provided to SHS by the RMA guidance department were incorrect in any respect. (Am. R. p. 42, line 3 – p. 44, line 7.) Regardless of L.P.'s objection, and most importantly, it was undisputed that without the 5 or 10

point bump added to L.P.'s numerical grade averages for each course, most of his transcript grades would have been excellent, but slightly lower.

Likewise, there is no support in the record for Respondents' claim that L.P.'s RMA teachers artificially lowered his grades with an eye toward the 5-10 point transcript bump at the end of the course.¹ In fact, the numerical course averages RMA provided SHS suggest otherwise. In 2011-12, for example, L.P. scored 100 in both semesters of Chemistry Honors at RMA without the 5-10 point bump, and 99 and 99.6 in two semesters of Spanish II Honors at RMA without the bump. (Am. R. pp. 128-130.)

Respondents do not challenge the School District's argument that the UGP's use of the term "numerical averages" invites further scrutiny when a school district receives a transcript that reveals final grades that do not represent the numerical course averages, but instead, expressly include a bump or weighting factor. Nothing in the UGP states that a School District must accept the grades shown on an out-of-state transfer student's transcript when the transcript itself reveals a weighting factor inconsistent with the UGP. Otherwise, the UGP's purpose of fair, uniform grading for scholarship competition would be frustrated. Taken to its logical extreme, the Circuit Court's interpretation would require a South Carolina school district to simply transpose grades of "100" from an out-of-state transcript bearing an explanatory asterisk stating: "Any student transferring to a South Carolina high school shall receive a grade of '100' for any advanced placement, honors, science, or math course."

For those reasons, the UGP does not provide a sufficiently clear, nondiscretionary legal duty to merely transpose grades from an out-of-state transfer student's transcript when the face of the transcript reveals grading practices inconsistent with the UGP. This is not simply a ministerial duty that can be enforced through a writ of mandamus. See *Brackenbrook N. Charleston, LP v. Cnty. of Charleston*, 360 S.C. 390, 602 S.E.2d 39 (2004); *Pressley v.*

¹ Even if Respondents' objections were valid, this factually unsupported assertion opens the door to proof

Lancaster Cnty., 343 S.C. 696, 542 S.E.2d 366 (Ct. App. 2001). Accordingly, the Circuit Court erroneously determined otherwise.

D. Respondents' Belated Estoppel Argument Is Unsupported By Either The Record Or The Law.

Respondents now attempt to formalize their incorrect, overriding suggestion that once any school employee has spoken, any change in that employee's original interpretation or application of a rule is legally invalid. However, to prove estoppel against the School District, Respondents would have to show:

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

S. Carolina Dep't of Transp. v. Horry Cnty., 391 S.C. 76, 83, 705 S.E.2d 21, 25 (2011). As a general rule, estoppel does not lie against the government to prevent the due exercise of its police power or to thwart the application of public policy. *Quail Hill, LLC v. Cnty. of Richland*, 387 S.C. 223, 236, 692 S.E.2d 499, 506 (2010).

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

Second, Respondents did not show any prejudicial change of position based on the initial interpretation of Ms. Henderson, the guidance counselor, regarding the application of the UGP to L.P.'s RMA grades. Respondents were clearly aware that SHS had reevaluated L.P.'s transcript

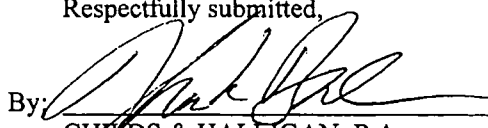
of L.P.'s actual, pre-bumped RMA grade averages.

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

II. CONCLUSION

For the foregoing reasons and those set forth in Appellant's Final Brief, the Circuit Court's Writ of Mandamus was erroneously granted and should be reversed.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Edward W. Miller, Circuit Court Judge

C.A. No.: 2013-002232

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

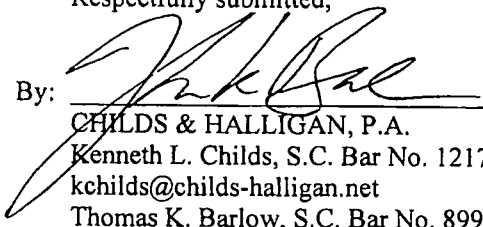
v.

The School District of Greenville County, ... Appellant.

PROOF OF SERVICE

I certify that I have served FINAL REPLY BRIEF OF APPELLANT on counsel for Respondents, by depositing a copy of it in the U.S. Mail, postage prepaid, on April 4, 2014, addressed to Carl F. Muller, Esq., 607 Pendleton Street, Suite 201, Greenville, SC 29601.

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

v.

The School District of Greenville County..... Appellant.

Appellate Case No. 2013-002232

**BRIEF OF AMICI CURIAE IN SUPPORT OF
APPELLANT, THE SCHOOL DISTRICT
OF GREENVILLE COUNTY,
SUBMITTED BY
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TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT	2
ARGUMENT	4
I. Courts Routinely Defer to Educators Concerning Academic Decisions.	4
II. Southside High School's Class Rank Determination Was Not Infected by Corruption, Bad Faith, or Clear Abuse of Power.	8
III. The Extraordinary Remedy of Mandamus Was Inappropriate.	10
CONCLUSION.....	12

TABLE OF AUTHORITIES

CASES

✓ <i>Anderson v. State of South Carolina</i> , 338 S.C. 629, 527 S.E.2d 398 (Ct. App. 2000).....	11
✓ <i>Board of Curators of the University of Missouri v. Horowitz</i> , 435 U.S. 78 (1978).....	5
✓ <i>Charleston Cnty. Sch. Dist. v. Charleston Cnty. Election Comm'n</i> , 336 S.C. 174, 519 S.E.2d 567 (1999).....	11
✓ <i>Davis v. Greenwood County School District 50</i> , 365 S.C. 629, 620 S.E.2d 65 (2005).....	6, 8
✓ <i>Deleka v. Memphis Cmty. Sch.</i> , No. 249325, 2004 WL 2290462 (Mich. Ct. App. Oct. 12, 2004).....	7
✓ <i>Epperson v. Arkansas</i> , 393 U.S. 97 (1968).....	4
✓ <i>Ex Parte Littlefield</i> , 343 S.C. 212, 540 S.E.2d 81 (2000).....	10
✓ <i>Gonzaga University v. Doe</i> , 536 U.S. 273 (2002).....	12
✓ <i>Goss v. Lopez</i> , 419 U.S. 565 (1975).....	4
✓ <i>Hardwick ex rel. Hardwick v. Heyward</i> , 711 F.3d 426 (4th Cir. 2013).....	5
✓ <i>Hingel v. Bd. of Educ. of Austintown Local Sch. Dist.</i> , No. 08 MA 258, 2009 WL 4547721 (Ohio Ct. App. Nov. 23, 2009).....	7
✓ <i>Keefe v. New York Law Sch.</i> , 71 A.D.3d 569 (2010).....	7
✓ <i>Keys v. Sawyer</i> , 353 F. Supp. 936 (S.D. Tex. 1973).....	7
✓ <i>Laws v. Richland Cnty. Sch. Dist. No. 1</i> , 270 S.C. 492, 243 S.E.2d 192 (1978).....	6

— <i>Paulson v. Golden State Univ.</i> , 602 P.2d 778 (Cal. 1979)	7
✓ <i>Regents of the University of Michigan v. Ewing</i> , 474 U.S. 214 (1985)	5
✓ <i>Singleton v. Horry County School District</i> , 289 S.C. 223, 345 S.E.2d 751 (Ct. App. 1986)	6, 7, 8, 10

STATUTES

20 U.S.C. § 1232g	11
S.C. Code Ann. § 1-23-10(4)	9
S.C. Code Ann. § 59-19-110	9, 10
S.C. Code Ann. § 59-5-68	8

TREATISES

52 AM. JUR. 2D <i>Mandamus</i> § 226	11

REGULATIONS

S.C. Code Ann. Reg. 43-273	8, 9

STATEMENT OF ISSUES ON APPEAL

GeriAnn B. and David B., together with their son Jeremy B., and Susan S. and Russell S., together with their son Harrison S., (collectively “Amici”) adopt the Statement of Issues on Appeal presented in the Brief of Appellant.

STATEMENT OF THE CASE

Amici adopt the Statement of the Case presented in the Brief of Appellant. As set out in Amici’s Motion for Leave to File a Brief Amici Curiae, Jeremy B. and Harrison S. are both students at Southside High School. Their respective parents are GeriAnn B. and David B., and Susan S. and Russell S. Prior to the Circuit Court’s entry of mandamus against the Appellant, Jeremy B. had the highest grade point ratio (“GPR”) in the Southside High School class of 2014 and was therefore ranked first in his class. Harrison S. had the second highest GPR and was ranked second. Following the Circuit Court’s entry of mandamus, Respondent Lee P. became first in the Southside class, Jeremy B. fell to second, and Harrison S. fell to third.

SUMMARY OF ARGUMENT

Academic decisions, such as grades and class rankings, are within the particular expertise of educators. Courts have, everywhere and at all times, given the highest level of deference to school authorities when students have attempted to litigate such core academic matters. Federal courts, from the United States Supreme Court down, have overwhelmingly agreed that a court may override an academic decision only if that decision was arbitrary and capricious. South Carolina courts apply an even higher bar, holding that only clear evidence of bad faith, corruption, or an abuse of power will lead a court to overturn an academic decision. There is good reason for this deference; literally millions of academic decisions are made every day, and judicial review of them would be utterly impractical — both for the judiciary and for an educational system already strained to its limits.

Far from being “arbitrary” or “capricious,” the challenged decision of Southside was both carefully reasoned and consistent with South Carolina law and regulations. Southside officials recognized — and carefully exercised their discretion to avoid — a particular problem. When a student transfers in with Honors or AP credits, he can receive a “double bump” — one grant of “extra credit” from his old school, and a second grant from the new school. Southside’s decisions were designed to avoid that unfairness, and they were consistent with all applicable law.

Particularly given these facts and the discretion available to schools under the very general guidance provided by South Carolina law, mandamus was improper here. The decision at issue here was not purely ministerial, and Respondents had no clear right that a court could enforce. Instead, Southside had and exercised appropriate discretion.

The Circuit Court should not have engaged in reviewing Southside's class rank determination in the first place, and it certainly should not have disturbed Southside's correct application of the rules. The writ of mandamus issued below should be vacated.

ARGUMENT

I. Courts Routinely Defer to Educators Concerning Academic Decisions.

Amici represent students and their families, who have an interest in having academic decisions made by their teachers and principals, and not in the courts. Local teachers and administrators have far greater insights into grades and class ranks, and into the underlying accomplishments that these measurements indicate. Grades and class ranks can have a substantial impact on students and their parents; students should not have to go into court to have these things determined. And, with respect, courts are not well situated to resolve such academic questions.

Courts both in South Carolina and across the nation have recognized this concern, and they routinely decline to adjudicate academic questions. Courts — up to and including the United States Supreme Court — give great deference to school authorities. The United States Supreme Court has articulated the rationale for this deference in two key decisions. In *Epperson v. Arkansas*, 393 U.S. 97 (1968), the Court recognized that

Judicial interposition in the operation of the public school system of the Nation raises problems requiring care and restraint. . . . By and large, public education in our Nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values.

Id. at 104. *Epperson* involved a teacher's challenge to her dismissal for violation of a state statute that forbade teaching the theory of evolution, but the Supreme Court reiterated the same principle of deference seven years later in *Goss v. Lopez*, 419 U.S. 565, 578 (1975), which involved a student's challenge to a school's disciplinary decision.

Against this backdrop, the Supreme Court has declined numerous invitations to engage in judicial oversight of a school's academic decision making. In *Board of*

Curators of the University of Missouri v. Horowitz, 435 U.S. 78 (1978), for example, a student challenged her dismissal on academic grounds from a degree program of a public university. In rejecting that challenge and reversing a lower court decision, the Supreme Court relied on the high level of deference articulated in *Epperson* and *Goss*. Indeed, the Court questioned whether the judiciary could even review under an “arbitrary and capricious” standard, or whether academic decisions are entitled to even greater deference. See *Board of Curators*, 435 U.S. at 85, 91-92 (quoting from *Epperson* and *Goss* and noting that “[e]ven assuming that the courts can review under such a[n] [arbitrary and capricious] standard an academic decision of a public institution, we agree with the District Court that no showing of arbitrariness or capriciousness has been made in this case”). “Courts are *particularly ill-equipped*,” the Supreme Court concluded, “to evaluate academic performance.” *Id.* at 91 (emphasis added). Similarly, in *Regents of the University of Michigan v. Ewing*, 474 U.S. 214 (1985), the Court turned back a student’s challenge to his dismissal after he failed to pass a key examination. The Court reasoned that

When judges are asked to review the substance of a genuinely academic decision, . . . they should show great respect for the faculty’s professional judgment. Plainly, they may not override it unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment.

Ewing, 474 U.S. at 225 (footnote omitted). At least one decision of the Fourth Circuit has recognized the same basic principle. See *Hardwick ex rel. Hardwick v. Heyward*, 711 F.3d 426, 440 (4th Cir. 2013) (“Because school officials are far more intimately involved with running schools than federal courts are, ‘[i]t is axiomatic that federal courts should

not lightly interfere with the day-to-day operation of schools.” (citing *Augustus v. School Bd. of Escambia Cnty., Fla.*, 507 F.2d 152, 155 (5th Cir.1975))).

Indeed, South Carolina courts have set forth an extremely deferential standard, declining to review academic decisions in the absence of “*clear evidence of corruption, bad faith, or a clear abuse of power.*” *Davis v. Greenwood County School District 50*, 365 S.C. 629, 635, 620 S.E.2d 65, 68 (2005) (emphasis added) (“In general, courts will not disturb matters within the school board’s discretion unless there is clear evidence of corruption, bad faith, or a clear abuse of power.”)

This is an extraordinarily deferential standard, and our appellate courts have invoked this standard and deferred to the decisions of educators on several occasions. In *Laws v. Richland County School District No. 1*, our Supreme Court rejected a teacher’s challenge to a school district’s decision not to renew his contract, holding that

Consistency with relevant precedent requires that the scope of judicial review be a limited one. In view of the powers, functions, and discretion which must necessarily be vested in educational authorities if they are to execute the duties imposed upon them, this Court cannot substitute its judgment for that of these authorities.

Laws v. Richland Cnty. Sch. Dist. No. 1, 270 S.C. 492, 495, 243 S.E.2d 192, 193 (1978).

This Court relied on the *Laws* decision in *Singleton v. Horry County School District*, 289 S.C. 223, 345 S.E.2d 751 (Ct. App. 1986), turning back a teacher’s attempt to expunge a two-day suspension from his records and collect back pay for the suspension. This Court explained:

Courts will not interfere with the exercise of discretion by school boards in matters committed by law to their judgment *unless there is clear evidence that the board has acted corruptly, in bad faith, or in clear abuse of its powers.* An appellate court will not substitute its judgment for that of school board’s in view of the powers, functions and discretion which must

necessarily be vested in such boards if they are to execute the duties imposed upon them.

Singleton, 289 S.C. at 227-28, 345 S.E.2d at 753-54 (emphasis added; citations omitted).

Courts from a variety of jurisdictions have routinely rejected challenges to a school's determinations about a student's grade or grade point ratio. As one court observed, "[t]here is a widely accepted rule of judicial non-intervention into the academic affairs of schools." *Paulson v. Golden State Univ.*, 602 P.2d 778, 781 (Cal. 1979). *See also Keys v. Sawyer*, 353 F. Supp. 936, 940 (S.D. Tex. 1973) (applying arbitrary and capricious standard of review in rejecting former law school student's challenge to one of his grades and observing that "[t]here is a compelling need and very strong policy consideration in favor of giving local school officials the widest possible latitude in the management of school affairs"); *Keefe v. New York Law Sch.*, 71 A.D.3d 569, 571 (2010) (applying arbitrary and capricious standard of review and rejecting challenge to grade and grading system); *Deleka v. Memphis Cmty. Sch.*, No. 249325, 2004 WL 2290462 (Mich. Ct. App. Oct. 12, 2004) (affirming summary judgment for school district in student's challenge to the recording and weighting of a grade); *Hingel v. Bd. of Educ. of Austintown Local Sch. Dist.*, No. 08 MA 258, 2009 WL 4547721 (Ohio Ct. App. Nov. 23, 2009) (affirming trial court's denial of mandamus to plaintiff seeking to change grades that student received in two advanced classes and noting that "[i]n the context of public school systems, courts are historically deferent to a school board's decision making process, presuming that decisions are made in good faith and declining to substitute judgment absent a gross abuse of discretion, clear demonstration of bad faith, or fraud").

The "widely accepted rule of judicial non-intervention into the academic affairs of schools" recognized by the Supreme Court of California is recognized in South Carolina.

Under *Davis* and *Singleton*, students and parents like Amici are entitled to have their grades and class ranks determined, without having to go to court, unless there is “clear evidence” of corruption, bad faith, or clear abuse of power.

II. Southside High School’s Class Rank Determination Was Not Infected by Corruption, Bad Faith, or Clear Abuse of Power.

The Circuit Court should have deferred to Southside’s calculation of class ranks. Far from being “corrupt” or “in bad faith,” Southside’s decision was, as the Circuit Court itself assumed, “a well-intentioned effort at what it considered to be fairness and equality in interpreting Plaintiff’s transcript,” (R. p. 3, lines 19–20), and — more critically — one completely in conformity with South Carolina statutes and regulations. Given this, the Circuit Court should not have substituted its judgment for that of Southside High.

The South Carolina law addressing transfer of student grades is sparse, leaving considerable room for school authorities to exercise discretion. First, S.C. Code Ann. Reg. 43-273 provides that when a student transfers to a South Carolina school from an accredited school in another state, course credits “will be accepted *under the same value which would apply to students in the school to which they transferred.*” (emphasis added). Second, under the State Board of Education’s Uniform Grading Policy (“UGP”) — which the Board was required to adopt by S.C. Code Ann. § 59-5-68: “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.” (R. p. 95, lines 1–3). Aside from these two guideposts,¹ school authorities

¹ The status of the UGP under South Carolina law is itself unclear. It is not officially codified among the other regulations issued by the State Board of Education. See S.C. Code Ann. Regs. Chapter 43. Instead, it is a state policy adopted by the Greenville County School Board. Accordingly, it is uncertain whether there is any law here to apply at all. See S.C. Code Ann. § 1-23-10(4) (providing that “[p]olicy or

exercise their discretion as they see fit to regulate and administer the transfer of student grades. Cf. S.C. Code Ann. § 59-19-110 (“The boards of trustees of the several school districts may prescribe such rules and regulations *not inconsistent with* the statute law of this State as they may deem necessary or advisable to the proper disposition of matters brought before them.” (emphasis added)).

As explained in detail in Appellant’s brief, the UGP states only that “numerical averages” should be used to calculate a transfer student’s GPR. The marks on Lee P.’s Riverside Military Academy (“RMA”) transcript were not, however, the *numerical averages* from his classes. Instead, they were *weighted grades*, which included up to a 5 or 10 point “bump” in certain courses to reflect that those courses were taught at, respectively, the Honors or Advanced Placement level. Nothing in the UGP requires school authorities to blindly accept any numbers provided on a transfer student’s transcript without any inquiry into how those numbers were calculated. Grading systems are many and varied. What the record shows in this case is that Southside authorities appropriately determined what Lee P.’s true *numerical averages* were and then recalculated his GPR according to the standards in the UGP.

In addition, school authorities were required to comply with, and did in fact comply with, Regulation 43-273, which mandates that classes transfer “under the same value which would apply to students in the school to which they transferred.” Students at Southside do not receive a 5 or 10 point bump in their numerical averages in classes that are taught at the Honors or Advanced Placement levels. Instead, classes at Southside are

guidance issued by an agency other than in a regulation does not have the force or effect of law” and that “[t]he term regulation . . . does not include . . . policy statements or rules of local school boards”).

weighted only when the GPR is calculated. Lee P.'s grades from RMA were therefore given "the same value which would apply to students in [Southside]" once school authorities at Southside learned how Lee P.'s RMA grades had been calculated.

The decisions of Southside's administrators in transferring Lee P.'s grades were plainly not, therefore, made "corruptly, in bad faith, or in clear abuse of [their] powers." *Singleton*, 289 S.C. at 227, 345 S.E.2d at 753. Nor were they "inconsistent with the statute law of this State." *See* S.C. Code Ann. § 59-19-110. Instead, those decisions were a good-faith application of neutral principles, in recognition of the interests not only of Lee P. but also the other students at Southside High School. Amici Jeremy B. and Harrison S. received only a single "bump" for Honors and AP courses; Respondents are asking the Courts to give Lee P. two "bumps." Southside High appropriately interpreted the rules and exercised its discretion to avoid such an unfair outcome.

III. The Extraordinary Remedy of Mandamus Was Inappropriate.

The Circuit Court's decision to interject itself into Southside's grading practices is even more unfortunate because of the *manner* in which it was executed — through issuance of a writ of mandamus. Respondents did not make the showing necessary for mandamus relief, and use of this extraordinary remedy in the educational setting was particularly inappropriate given the deference due school authorities when making academic decisions.

This Court and the Supreme Court have recognized on many occasions that a writ of mandamus "is the highest judicial writ and is issued only when there is a specific right to be enforced, a positive duty to be performed, and no other specific remedy." *Ex Parte Littlefield*, 343 S.C. 212, 222, 540 S.E.2d 81, 86 (2000). The required showing for issuance of a writ is correspondingly high: "A petitioner seeking a writ of mandamus to

require the performance of an act must show (1) a duty of 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." *Anderson v. State of South Carolina*, 338 S.C. 629, 631-32, 527 S.E.2d 398, 399 (Ct. App. 2000).

Doubtful cases do not merit mandamus:

[W]here for any reasons the duty to perform the act is doubtful, the obligation is not regarded as imperative, and the applicant will be left to his other remedies. So when the statute prescribing the duty does not clearly and directly create it, the writ will not lie Mandamus will not issue to enforce doubtful rights. The duty to perform an act must be *indisputable and plainly defined*.

Charleston Cnty. Sch. Dist. v. Charleston Cnty. Election Comm'n, 336 S.C. 174, 182-83, 519 S.E.2d 567, 572 (1999) (citations and internal quotation marks omitted; emphasis added).

Given the wide latitude typically shown to school authorities, courts will rarely if ever interfere with the operation of school affairs through issuance of mandamus. As a leading secondary source concludes,

Although their authority is not without limit, a wide range of judgment and discretion is vested in school directors and officers in the matter of the government and details of conducting schools, and the courts will not ordinarily interfere by mandamus to direct or control the exercise of their powers or authority.

52 AM. JUR. 2D *Mandamus* § 226 (footnotes omitted).

The high bar required to justify mandamus relief is plainly not met here.² For the reasons set out above, Plaintiff's right to have his weighted grades from RMA transferred

² The transcript of the hearing before the Circuit Court reveals substantial discussion of FERPA, the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g. (R. p. 24, lines 19-25; p. 40, lines 15-18; p. 45, line 24-p. 46, line 12; p. 63, line 24-p. 65, line 9). FERPA has no bearing on this case for at least three reasons. First,

to Southside in a particular manner so as to effect a “double-bump” in his grade point ratio is hardly “indisputable and plainly defined.” Consequently the determination of class ranks was not “ministerial,” and school officials appropriately exercised their expertise and discretion. The Circuit Court was wrong to treat this as a matter in which mandamus is available.

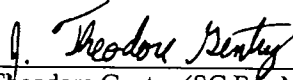
CONCLUSION

Educators make decisions each day that have an impact on thousands of individual students across this State. If these academic decisions were, as Respondents urge, subject to judicial review, the courts could be flooded with the concerns of disgruntled parents and students. Suits like this would draw teachers and administrators away from the primary task of educating students, to deal instead with the burden of defending their decisions in the courts. Upholding the writ of mandamus issued below would ensure more such challenges, and would remove academic discretion from the place where it should reside – with teachers and local administrators.

For the reasons set out above and in the Brief of Appellant, Amici respectfully request this court reverse the decision of the Circuit Court and vacate the writ of mandamus.

it was not pled as a basis for relief. Second, it has nothing to do with grade calculations. Third, it is absolutely settled that there is no private right of action available under FERPA. *Gonzaga University v. Doe*, 536 U.S. 273 (2002).

Respectfully submitted,



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April 3, 2014

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

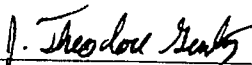
v.

The School District of Greenville County Appellant.

Appellate Case No. 2013-002232

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Amici Curiae complies with Rule
211(b), SCACR.



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PROOF OF SERVICE

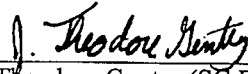
The undersigned counsel hereby certifies that on April 3, 2014, he served a copy of the foregoing **Brief of Amici Curiae** on all counsel of record by depositing copies of the same in the United States mail, first-class postage prepaid, and addressed as follows:

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

v.

The School District of Greenville County, Appellant.

Appellate Case No. 2013-002232

Appeal From Greenville County
Edward W. Miller, Circuit Court Judge

Opinion No. 5237
Heard May 20, 2014 – Filed May 30, 2014

REVERSED

Thomas Kennedy Barlow and Kenneth L. Childs, Childs
& Halligan, PA, both of Columbia, and Rodney Douglas
Webb, of Greenville, for Appellant.

Carl F. Muller, of Greenville, for Respondents.

J. Theodore Gentry and Wade S. Kolb III, Wyche, P.A.,
both of Greenville, for amici curiae GeriAnn Bell and
David Bell, as Guardians ad Litem for J.B., a minor, and
Susan Stall and Russell Stall, as Guardians ad Litem for
H.S., a minor.

FEW, C.J.: In this appeal, we hold it is not appropriate for courts to review the decisions of school administrators and school districts regarding how a student's grade point average (GPA) and class rank should be calculated, except on allegations of corruption, bad faith, or a clear abuse of power. We reverse.

I. Facts and Procedural History

In the fall of 2012, L.P. transferred from Riverside Military Academy in Georgia to Southside High School in Greenville County to begin his junior year. School administrators at Southside calculated L.P.'s GPA using the grades shown on his transcript from Riverside. According to this initial calculation, L.P. was the highest ranked student in Southside's junior class. Another student's mother expressed concern to Southside's administrators that Riverside's grading policy required some of L.P.'s grades to be inflated, and thus Southside incorrectly calculated L.P.'s GPA. Southside's administrators initially informed the student's mother they calculated L.P.'s GPA according to the School District's grading policy, and they would not change the calculation. Eventually, however, Southside recalculated L.P.'s GPA from 5.215 to 5.048, which reduced his class rank from first to sixth.

L.P.'s parents met with school administrators at Southside and expressed their dissatisfaction with the recalculation, but Southside refused to restore L.P.'s original GPA and class rank. L.P.'s parents then filed this lawsuit, asserting the School District violated South Carolina law and its own grading policy in recalculating L.P.'s GPA. They sought a writ of mandamus directing the School District to restore L.P.'s GPA and class rank to their original values, and an injunction prohibiting the School District from altering his GPA in a manner inconsistent with the writ. The trial court issued an order granting the writ of mandamus and injunction.

II. Justiciability

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." *Davis v. Greenwood Sch. Dist.* 50, 365 S.C. 629, 635, 620 S.E.2d 65, 68 (2005); *accord Singleton v. Horry Cnty. Sch. Dist.*, 289 S.C. 223, 227-28, 345 S.E.2d 751, 753-54 (Ct. App. 1986). The court has

recognized that judicial review of such decisions must be limited to allow educational authorities to exercise the discretion necessary to carry out the duties imposed upon them. See *Laws v. Richland Cnty. Sch. Dist. No. 1*, 270 S.C. 492, 495, 243 S.E.2d 192, 193 (1978) ("In view of the powers, functions, and discretion which must necessarily be vested in educational authorities if they are to execute the duties imposed upon them, this Court cannot substitute its judgment for that of these authorities.").

Here, 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. The trial court commented in its order it "assign[ed] no blame to anyone for the change" in L.P.'s GPA, and stated the School District may have made the change "in a well-intentioned effort at what it considered to be fairness and equality in interpreting [L.P.'s] transcript from [Riverside]." We find no basis to question the trial court's characterization that the School District acted with a good-faith desire to place its students on equal footing academically.

We acknowledge that the cases cited above setting the standard for court involvement in school affairs are not factually identical to this case. In *Davis*, the decision at issue involved financial incentives for school district employees who obtained national board certification. 365 S.C. at 632-33, 620 S.E.2d at 66-67. *Singleton* involved an employment dispute, where the plaintiff sought to expunge a two-day suspension from his record and recover lost pay for those days. 289 S.C. at 224-26, 345 S.E.2d at 752-53. However, we believe the restraint the courts exercised in those cases is even more appropriate here, where we are asked to intervene in an even more fundamental function of a school district—grade calculation.

We also find support for our decision in several opinions of the Supreme Court of the United States. In *Epperson v. Arkansas*, the Court cautioned that judicial intervention in the operation of the public school system requires "care and restraint." 393 U.S. 97, 104, 89 S. Ct. 266, 270, 21 L. Ed. 2d 228, 234 (1968). It further noted, "Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values." *Id.* In subsequent cases, the Court has exercised caution in deciding cases involving decisions of academic institutions. See *Bd. of Curators of Univ. of Missouri v. Horowitz*, 435 U.S. 78, 92, 98 S. Ct. 948, 956, 55 L. Ed. 2d 124, 136 (1978) ("Courts are particularly ill-equipped to evaluate academic performance."); *Regents of Univ. of Michigan v.*

Ewing, 474 U.S. 214, 225, 106 S. Ct. 507, 513, 88 L. Ed. 2d 523, 532 (1985) ("Considerations of profound importance counsel restrained judicial review of the substance of academic decisions.").

The circumstances of this case demonstrate that courts should not intervene in academic disputes. This conflict appears to have arisen when L.P. informed another Southside student that Riverside's grading policy provided that five points be added to a student's grade for honors courses, and ten points be added for certain advanced placement courses. The other student's mother contacted Riverside and verified these provisions of its grading policy. She then emailed administrators at Southside to explain Riverside's policy and complain that "when [L.P.] transferred into Southside, his already weighted courses got another 'weighting' since we weight ours a different way." She wrote, "I do not believe that [L.P.'s] GPA is accurately reflected because it seems he has been double-bumped." After a series of emails between school administrators, district officials, and Riverside that lasted three months, Southside changed the grades L.P. received in honors and advanced placement classes at Riverside and recalculated his GPA. This sparked another series of emails, letters, and meetings lasting an additional three months and ending only when the School District's lawyer wrote L.P.'s parents' lawyer to inform him the decision was final.

L.P.'s parents then filed this lawsuit claiming the School District's grading policy, which is actually a State policy that section 59-5-68 of the South Carolina Code (2004) mandates the districts follow, required Southside to accept the grades shown on the Riverside transcript and incorporate those grades into the formula Southside uses to calculate the GPA for a transferring student. The School District disagreed, contending "the four corners of [L.P.'s Riverside] transcript, at a minimum, create[] an ambiguity," and "[n]either South Carolina law nor the [grading policy] directly addresses which grades (actual or bumped) the School District should use in calculating [L.P.'s] GPA." L.P.'s parents dispute that his grades were "bumped," arguing Riverside teachers actually *deflate* students' grades in honors and advanced placement classes in anticipation of the points Riverside's policy provides will be added. They also argue the other parent's inquiry was improper in the first place because she had no access to L.P.'s grades and no right to contact Riverside or discuss the grades with Southside.

These questions of law and disputed facts are not part of our analysis, except to the extent they illustrate the difficulties courts and schools would face if we were to intervene in the academic decisions of schools and school districts. The necessity

of addressing these and many other points of law and disputes of fact in order to resolve a lawsuit between parents as to whose child gets to be valedictorian demonstrates why our supreme court has kept the judiciary out of the internal affairs of schools and school districts. Our supreme court addressed these policy concerns in *Byrd v. Irmo High School*, 321 S.C. 426, 468 S.E.2d 861 (1996):

If students and parents were allowed to appeal every short-term suspension, then circuit courts could be flooded potentially with thousands of such cases. Not only would this place a severe strain on an already overburdened judicial system, but perhaps more importantly, the limited financial and human resources of schools and school districts would be deleteriously affected if every student suspension had to be defended through the court system. Imposing even truncated trial-type procedures might well overwhelm administrative facilities in many places and, by diverting resources, cost more than it would save in educational effectiveness.

321 S.C. at 435-36, 468 S.E.2d at 866-67 (internal quotation marks omitted). We find the *Byrd* court's reasoning to be even stronger when applied to the question of whether courts should intervene in decisions regarding the calculation of a student's grades and GPA.

III. Conclusion

We find the trial court erred in reaching the merits of this case. The trial court should have dismissed the case because it does not present a justiciable controversy. We therefore **REVERSE** the trial court's order. In addition, we **SUPERSEDE** the trial court's injunction and specifically permit the School District to immediately recalculate L.P.'s GPA in accordance with its own interpretation of its grading policy as applied to the facts of this case.

SHORT and GEATHERS, JJ., concur.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

v.

The School District of Greenville County Appellant.

Appellate Case No. 2013-002232
Opinion No. 5237

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

RECEIVED
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SC Court of Appeals

RESPONDENTS' PETITION FOR REHEARING

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Respondents hereby file this Petition for Rehearing. Respondents seek rehearing because they respectfully believe the Court overlooked or misapprehended Respondents' arguments, the law, the facts, and the posture of this case. In support therefore, and in compliance with Rule 221(a), SCACR, the Respondents offer the following points for particular reconsideration.

1. The Court of Appeals overlooked or misapprehended the correct standard of appellate review applicable to a writ of mandamus. That standard is abuse of discretion.

2. The Court of Appeals misapprehended the boundaries of the South Carolina Supreme Court's reluctance to interfere with school administrator and school district decisions. That reluctance applies only to cases that involve subjective judgments. It does not apply to a case that involves the performance of a ministerial act according to a bright line objective standard mandated by a South Carolina statute and official state and local government rules, as is the case here. It does not apply to violations of the law.

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

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

5. The cases uniformly counsel against allowing outside intervention to supplant the judgment of a student's classroom teachers and his or her own school. Even the cases cited by the Appellant School District and Amici say this. The decisions are based on the sensible proposition that the persons in the best position to judge a student's performance are his own teachers. The Court of Appeals misapplied these decisions because

it did not respect the judgment of Riverside Military Academy and its teachers. Riverside was L.P.'s own school, its teachers were his own teachers, and they gave him the grades that he deserved. Those grades were entered on an official Riverside transcript. The Court of Appeals decision has allowed the School District to intervene from the outside – even across state lines – to ignore Riverside's teachers and their grades and substitute its own judgment for L.P.'s performance. That is the exact opposite of what the cases uniformly stand for.

6. This same proposition is behind S. C. Code Ann. § 59-5-68, the South Carolina State Department of Education Uniform Grading Policy mandated by that statute, and the School District's own Grading Systems mandated by that statute and that state policy. Grades from one school are to be transferred to another school without adjustment, period. That is because the persons in the best position to judge a student's performance are his own teachers. They are the persons who gave him the grades. The grades that they gave him *must* stand.

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

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

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

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

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

9. The United States Supreme Court’s cases quoted by the Court of Appeals all involve subjective judgments; none involves the performance of a ministerial act according to a bright line objective standard mandated by statute and official state and local government rules.

10. The Court of Appeals reversed the trial court’s order granting Respondents a writ of mandamus to compel the School District to transfer their son’s grades in accordance with a South Carolina statute mandating a state-wide uniform grading system, the official South Carolina Uniform Grading Policy adopted by the South Carolina State Department of Education in compliance with that statute, and the School District’s own official Grading Systems likewise adopted to comply with that legislative mandate.

11. The Court stated, “We find the trial court should not have reached the merits of the issues raised in this case because these issues are not appropriate for judicial determination. Our supreme court has refused to interfere with the internal decisions of school administrators and school districts ‘unless there is clear evidence of corruption, bad faith, or a clear abuse of power’”.

12. 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.

13. The posture of this case is distinguishable from the cases the Court of Appeals cited in its opinion. In those cases, except for *Epperson v. Arkansas*, *supra*, neither laws nor policies were violated; and in *Epperson*, the United States Supreme Court accepted jurisdiction and ruled against the government. That is exactly what the Respondents requested in this case, and it is what the trial judge correctly did. For the reasons previously stated, the other cases do not share the special -- and perhaps unique -- posture of the pending case.

14. Because the School District was required to transfer the numerical averages provided to it -- and did not -- it disobeyed the law, a State rule based on that law, and its own rule likewise based on that law.

15. A writ of mandamus is the proper remedy when a public official disobeys the law and violates applicable governmental rules, including its own. It requires no additional proof of other bad faith, corruption, or clear abuse of power. Disobedience itself suffices. That was alleged and proven.

16. The trial court agreed with the Respondents that the School District violated the law, a State Department of Education grade transfer rule, and the School District's own grade transfer rule when it reversed its earlier decision and refused to transfer the numerical averages from L.P.'s official transcript.

17. The trial court did not abuse its discretion. Absent an abuse of discretion, the trial court's decision must be affirmed.

18. Although a writ of mandamus does not require a separate showing of bad faith, corruption, or abuse of power, the School District's behavior in this case rises to those levels.

19. The Respondents respectfully suggest that the Court of Appeals overlooked or misapprehended allegations and evidence of bad faith, corruption, and/or abuse of power on the part of the School District. That is one of the central themes presented by the Respondents in this case.

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

- a) From October 5, 2012 through January 23, 2013, almost four months, the School District worked in secret to change L.P.'s grades. The emails irrefutably show that the School District knew throughout this time-period that neither L.P. nor his parents were aware that this was happening behind their backs. (*See e.g.*, December 4, 2012 email from Ms. Henderson to Principal Brooks that L.P.'s parents had not been notified and stated that "[I]f you would like me to contact them to make them aware now, just let me know."). (Respondents' Brief p. 10). The record is replete with evidence that the School District deliberately kept the parents and L.P. completely in the dark.
- b) Only after the School District had already lowered L.P.'s grades, were the Respondents told. (Respondents' Brief p. 11).

- c) The School District required a Southside guidance counselor – over her objection --to convince a clerk at Riverside Military Academy to send unofficial and unverified grades in an email after Riverside Military Academy's Dean had already refused to change the transcript. (Respondents' Brief p. 9). School districts should not be in the business of violating a student's privacy rights or pressuring other schools to change an official transcript; yet that is exactly what the Appellant School District did. The trial court expressed legitimate concern: "we don't know the accuracy of what's reported in these unofficial e-mails. You've got the official transcript. . . . that's what we go by." (R. p. 77, lines 1-4).
- d) The School District changed L.P.'s grades in violation of the law, the official South Carolina Department of Education Uniform Grading Policy and its own Grading Systems mandated by the law and statewide policy. The trial court agreed with L.P. that the school district wrongfully "interpreted" his transcript in violation of the law and stated that, "the law is clear, the regulations are clear about you must take the numerical number." (R. p. 69, lines 15-17).
- e) The School District initially transferred L.P.'s grades correctly. Moreover, it told Mrs. S. that the transfer was correct even *after* reviewing the official transcript in light of Mrs. S.'s complaining. The Southside principal, Mr. Carlos Brooks, Dr. Childs, and Mr. Rhodes at the School District all reviewed the Riverside transcript and considered Mrs. S.'s complaint. Each and every one of them confirmed that the October 4, 2012 Southside transcript was correct. (Respondents' Brief p. 7). Only after continued

pressure from Mr. and Mrs. S, the current and past presidents of the school's PTA, did the School District embark on a means to appease them. (Respondents' Brief p. 7).

f) The School District waited until after an entire semester had passed and final grades for that semester were entered and the next semester was started before first telling the Respondents that they were changing L.P.'s grades. From August 2012 until January 23, 2013, L.P. had no idea that anything was amiss. (Respondents' Brief p. 10).

g) The School District acted deliberately, secretly, in concert with and at the behest of a powerful family who held the PTA presidency for the past four years, and violated the law, the official State Department of Education Uniform Grading Policy, and its own official Grading Systems. L.P. and his parents were excluded from the process and discussion – it is difficult to be part of either when everything is done in secret. (Respondents' Brief p. 11). While there may be a more egregious set of facts in some other case, the Respondents find it difficult to imagine what that would entail.

21. Pursuant to Rule 220(c), SCACR, the Court may affirm the trial court's decision on any ground appearing in the Record on Appeal. The Respondents request that the Court of Appeals affirm on any ground available, including estoppel. The Respondents made this request in their brief and renew it here. (Respondents' Brief pp. 24-25).

22. This case is not moot. L.P. must provide the college to which he hopes to matriculate in the fall his final grades this summer. His acceptance and scholarships at that college may be put in jeopardy because of his grades being changed. Also, he will need his grades for future applications, whether in higher education or employment.

23. The School District has lowered L.P.'s grades despite Respondents having advised the School District that a motion for rehearing and, if necessary, a writ of certiorari to the South Carolina Supreme Court would be filed.

24. The two parties to this action are the School District and the Respondents. There is no party whose relief would be rendered moot or who would be harmed in the event the Order of the Court of Appeals is stayed pending the final outcome of this appeal.

25. Respondents request that the automatic stay of appellate orders typically in effect during appeals be applied in this case for the duration of the appeal.

26. Respondents request that the Court of Appeals specifically stay its Order pending this request for rehearing, the time period for remittitur, the time period for petitioning to the South Carolina Supreme Court for writ of certiorari and the time period for appeal in the South Carolina Supreme Court should the writ of certiorari be accepted.

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

Respectfully submitted,



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June 12, 2014

Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

v.

The School District of Greenville County Appellant.

Appellate Case No. 2013-002232
Opinion No. 5237

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

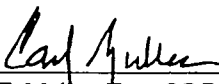
PROOF OF SERVICE

I certify that I have served Respondents' Petition for Rehearing and accompanying
Memorandum by depositing a copy of them in the U.S. Mail, postage prepaid, on
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RESPONDENTS' MEMORANDUM OF LAW IN SUPPORT OF
PETITION FOR REHEARING

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

The Court's Ruling

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

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

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

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

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

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

That state policy is repeated verbatim in the School District's own official Grading Systems, as required by S. C. Code Ann. § 59-5-68.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A writ of mandamus is the proper remedy when a public official disobeys the law. It requires no additional proof of bad faith, corruption, or clear abuse of power. *See e.g., Lovell v. Tinsley*, 236 S.W. 2d 24, 29 (Mo. App. 1951) ("Where a public officer disobeys the law, no exercise of discretion in good faith is involved. His wrongful act constitutes an abuse of discretion, which is controllable by mandamus."); *Parents Against Abuse in Schools v. Williamsport Area School District*, 594 A.2d 796, 802 (Pa.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. *See also*, the discussion of mandamus in Respondents’ Brief. When school districts violate the law, rules, or policies of superior governmental departments, or their own rules and policies, courts are not reluctant to provide justice.

The standard to determine if a petitioner has met its burden to obtain a writ of mandamus is whether the applicant has shown “(1) a duty of the respondent to perform the act, (2) the ministerial nature of the act, (3) the petitioner’s specific legal right for which discharge of the duty is necessary, and (4) a lack of any other legal remedy.” *Riverwoods, LLC v. County of Charleston*, 349 S.C. 378, 388, 563 S.E.2d 651, 657 (2002). Appellant has conceded element number (4). App. Br. P. 10. fn 1. Respondents demonstrated in their brief that they met each of the writ of mandamus criteria. *See* Respondents’ Brief. There is no additional burden upon Respondents to show other instances of bad faith, corruption, or abuse of power beyond what is inherent when a governmental authority or school district violates the law, or official rules or policies governing its behavior. The violation itself suffices. That was alleged and proven.

What L.P. asked the School District to do was simple, required by law, and not discretionary: transfer his numerical averages from his former school to his current school in compliance with the law. The trial court agreed with Respondents that the School District was required to transfer the numerical grades from L.P.'s official transcript.³ The trial court did not abuse its discretion. Absent an abuse of discretion, the trial court's decision *must* be affirmed. *Jolly v. Marion Nat'l Bank*, 267 S.C. 681, 685-86, 231 S.E.2d 206, 208 (1976). An abuse of discretion arises where the trial court was controlled by an error of law or where its order is based on factual conclusions that are without evidentiary support. *Tri-County Ice and Fuel Co., v. Palmetto Ice Co.*, 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990). The circuit court did not abuse its discretion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. The Case is Not Moot.

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

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

V. **The Court of Appeals Should Stay Its Decision.**

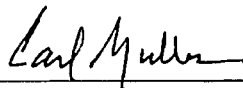
The Court of Appeals' Opinion was issued on Friday, May 30, 2014. The very next day, a Saturday, the School District notified the Respondents that it would immediately strip L.P. of his grades during the weekend. The School District did this despite the Respondents having advised it that a petition for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

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

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

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

Respectfully submitted,



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June 12, 2014

Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

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Appellate Case No. 2013-002232
Opinion No. 5237

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

APPELLANT'S RETURN TO PETITION FOR REHEARING

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JUN 23 2014

SC Court of Appeals

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TABLE OF CONTENTS

	<u>PAGES</u>
Table of Authorities	ii
I. INTRODUCTION	1
II. ARGUMENT	1
A. This Court Articulated The Proper Standard Of Judicial Review Of A School District's Resolution Of A Grade Transfer Dispute	1
B. This Court Properly Accepted The Circuit Court's Findings That L.P. Did Not Allege Or Show Corruption, Bad Faith, Or Abuse Of Power	3
C. L.P. Made No Showing Supporting A Writ Of Mandamus And The Circuit Court's Issuance Of The Writ Was An Error Of Law	4
D. This Court Properly Rejected L.P.'s Estoppel Argument	6
E. Respondents' Request For A Stay Of This Court's Ruling Superseding The Circuit Court's Writ Of Mandamus And Injunction Should Be Denied	7
F. L.P.'s Graduation Has Mooted This Appeal	8
III. CONCLUSION	9

TABLE OF AUTHORITIES

PAGES

Case Law:

<i>Blalock v. Johnston</i> , 180 S.C. 40, 185 S.E. 51 (1936).....	5
<i>Brackenbrook N. Charleston, LP v. Cnty. of Charleston</i> , 360 S.C. 390, 602 S.E.2d 39 (2004).....	4
<i>Byrd v. Irmo High Sch.</i> , 321 S.C. 426, 468 S.E.2d 861 (1996).....	2, 8
<i>Charleston Cnty. Sch. Dist. v. Charleston Cnty. Election Comm'n</i> , 336 S.C. 174, 519 S.E.2d 567 (1999).....	2
<i>Cole v. Oroville Union High Sch. Dist.</i> , 228 F.3d 1092 (9th Cir. 2000), <i>cert. denied</i> , 532 U.S. 905	8
<i>Davis v. Greenwood Sch. Dist. 50</i> , 365 S.C. 629, 620 S.E.2d 65 (2005).....	1
<i>In re Decker</i> , 322 S.C. 212, 471 S.E.2d 459 (1995).....	7
<i>Laws v. Richland Cnty. Sch. Dist. No. 1</i> , 270 S.C. 492, 243 S.E.2d 192 (1978).....	1
<i>Pressley v. Lancaster Cnty.</i> , 343 S.C. 696, 542 S.E.2d 366 (Ct. App. 2001).....	4
<i>Riverwoods, LLC v. Cnty. of Charleston</i> , 349 S.C. 378, 563 S.E.2d 651 (2002).....	4
<i>Singleton v. Horry Cnty. Sch. Dist.</i> , 289 S.C. 223, 345 S.E.2d 751 (Ct. App. 1986).....	1
<i>S. Carolina Dep't of Transp. v. Horry Cnty.</i> , 391 S.C. 76, 705 S.E.2d 21 (2011).....	6

Other Authorities:

<i>New Webster's Dictionary & Thesaurus</i> , 66 (2d Ed. 1992).....	5

I. INTRODUCTION

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

II. ARGUMENT

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

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

This Court's May 30, 2014 opinion properly analogized the case at bar to prior decisions in which the South Carolina appellate courts have refused to interfere with the internal decisions of school districts absent "clear evidence of corruption, bad faith, or a clear abuse of power." *Davis v. Greenwood Sch. Dist.* 50, 365 S.C. 629, 635, 620 S.E.2d 65, 68 (2005); accord *Singleton v. Horry Cnty. Sch. Dist.*, 289 S.C. 223, 227-28, 345 S.E.2d 751, 753-54 (Ct. App. 1986); *Laws v. Richland Cnty. Sch. Dist. No. 1*, 270 S.C. 492, 495, 243 S.E.2d 192, 193 (1978). This Court's analysis was also consistent with decisions of the U.S. Supreme Court counseling restraint in reviewing academic and operational decisions of schools.

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

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

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

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

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

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

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

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

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

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

Even assuming *arguendo* that a different standard could apply to a request for a writ of mandamus, L.P. did not make any showing that would support the writ. "[M]andamus is 'the highest judicial writ known to the law,' lies only to compel the performance of a ministerial act and 'is limited . . . to the protection of a plain, admitted, and unquestioned legal right that has been arbitrarily or without due warrant of law denied.'" *Brackenbrook N. Charleston, LP v. Cnty. of Charleston*, 360 S.C. 390, 602 S.E.2d 39 (2004) (quoting *Gardner v. Blackwell*, 167 S.C. 313, 166 S.E. 338, 341 (1932)). Where the duty is not clearly and directly prescribed, the writ of mandamus will not lie. *Pressley v. Lancaster Cnty.*, 343 S.C. 696, 705, 542 S.E.2d 366, 371 (Ct. App. 2001). Respondents failed to establish, as they must, the elements required for writ of mandamus to issue: "(1) a duty of the [District] to perform the act, (2) the ministerial nature of the act, (3) [the student's] specific legal right for which discharge of the duty is necessary, and (4) a lack of any other legal remedy." *Riverwoods, LLC v. Cnty. of Charleston*, 349 S.C. 378, 388, 563 S.E.2d 651, 657 (2002). Ultimately, even without reference to the standard of deference and limited review recognized by this Court, Respondents could not show that the Uniform Grading Policy set forth a clear ministerial duty associated with a definite, certain, and admitted right for which inquiry or adjudication would be unnecessary.

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

consistent with its common and usual meaning. As applied to transfer students, the UGP provides the following:

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

(*Emphasis added*) (Am. R. p. 108).

An “average” is defined as “the arithmetic mean, the value arrived at by adding the quantities in a series and dividing the total by their number, the average of 20, 18, and 4 is 14.” *New Webster's Dictionary & Thesaurus*, 66 (2d Ed. 1992). Under that definition, the honors/AP transcript grades L.P. transferred from RMA were “numerical,” but they did not represent “numerical averages.” The UGP requires the School District to accept “numerical averages” when they are provided – it does not require the School District to accept “final weighted grades” which include bonus points reflected on the transcript itself. The UGP does not purport to resolve every possible grading issue, and the School District’s decision to exclude additional weighting or bonus points from L.P.’s Riverside Military Academy (“RMA”) grades and obtain final numerical averages for honors and AP courses from RMA was imminently reasonable and well within its discretion in implementing the UGP.

Nothing in the UGP or other law compels the mere ministerial transposition of grades that Respondents urge. A ministerial act, for purposes of a writ of mandamus, has been defined as “one in respect to which nothing is left to discretion . . . [w]here the law prescribes and defines the duties to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment, the act is ministerial.” *Blalock v. Johnston*, 180 S.C. 40, 185 S.E. 51, 54 (1936) (quoting *State ex rel. Irvine v. Brooks*, 84 P. 488, 490 (Wyo. 1906) (internal citations omitted)). The School District was in the best

position to decide how to apply the UGP to this situation and nothing in the text of the UGP prevented the School District from exercising its discretion to resolve issues L.P.'s RMA transcript presented.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. CONCLUSION

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

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

v.

The School District of Greenville County, ... Appellant.

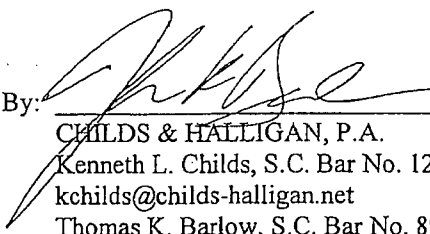
Appellate Case No. 2013-002232
Opinion No. 5237

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

PROOF OF SERVICE

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

Respectfully submitted,

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JUN 23 2014

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

v.

The School District of Greenville County Appellant.

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Opinion No. 5237

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

RESPONDENTS' REPLY MEMORANDUM OF LAW IN SUPPORT OF
PETITION FOR REHEARING

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JUN 30 2014
SC Court of Appeals

TABLE OF CONTENTS

Table of Authorities	ii
Arguments	
A. The Case Is Not Moot.....	1
B. The Court of Appeals Should Stay Its Decision	2
C. Respondents Request That Their Other Arguments In Favor Of Upholding The Trial Court's Decision Also Be Considered	3
D. Appellant's Argument That Courts May Not Review A School District's Violation of the Law Misapplies South Carolina Law	4
E. A Writ Of Mandamus Is the Appropriate Remedy To Compel a School District to Perform a Ministerial Act According to a Bright Line Objective Standard Mandated by a South Carolina Statute and Official State and Local Government Rules	5
F. A Writ of Mandamus Does Not Require A Showing of Bad Faith, Corruption or Abuse of Power, But the School District's Actions Demonstrated Months of Bad Faith, Abuse of Power, and Corruption	7

TABLE OF AUTHORITIES

CASE LAW:

<i>Byrd v. Irmo High School</i> , 468 S.E. 2d 861, 321 S.C. 426 (S.C. 1996).....	1
<i>Lovell v. Tinsley</i> , 236 S.W. 2d 24, 29 (Mo. App. 1951).....	6
<i>Parents Against Abuse in Schools v. Williamsport Area School District</i> , 594 A.2d 796, 802 (Pa.Cmwlth.1991).....	6
<i>Richie v. Board of Education of Lead Hill School District</i> , 933 S.W.2d 375 (Ark. 1996).....	6
<i>Jolly v. Marion Nat'l Bank</i> , 267 S.C. 681, 685-86, 231 S.E.2d 206, 208 (1976).....	6

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

A. The Case is Not Moot.

This case is not moot. L.P. needs his correct grades soon to send his final transcript to the college to which he hopes to matriculate this fall. Also, he will need his correct grades if his admission or financial aid to college this fall is jeopardized by the School District's action, to transfer later to another college, for graduate and professional schools, and for future jobs. Additionally, the issues raised in this case are capable of repetition yet evading review. *Byrd v. Irmo High School*, 468 S.E. 2d 861, 321 S.C. 426 (S.C. 1996).

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

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

B. The Court of Appeals Should Stay Its Decision.

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

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

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

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

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

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

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

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

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

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

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

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

There is a bright line objective standard to protect transfer students so that the grades their former schools gave them are retained after transfer. The School District says that "internal school" decisions should be respected. The "internal school" decision here is the one made by Riverside Military Academy; that is the school that evaluated L.P.'s performance. That bright line objective standard is mandated by a South Carolina statute, the official South Carolina Uniform Grading Policy adopted by the South Carolina State Department of Education in compliance with that statute, and the School District's own official Grading System likewise adopted to comply with the law.

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

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

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

This case involves the School District's refusal to perform a ministerial act according to a bright line objective standard mandated by a South Carolina statute and official State and local government rules. That purely ministerial function does not involve discretion.³ If the Court condones the School District's actions in this case, then it should expect that lack of regard for the law, uneven treatment, and secret machinations will become routine. Lawsuits will follow.

Because the trial judge did not abuse his discretion, the writ of mandamus should not be reversed. Because the School District was required to transfer the numerical averages provided to it, the School District disobeyed the law, the State rule and policy, and its own rule and policy, when it refused to do so. Just because the School District does not prefer the way Riverside Military Academy assigns its numerical averages does not mean the School District can violate the law and change a student's grades.⁴ The School District treated L.P. unfairly and differently from every other School District student and every other transfer

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

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

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

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

A writ of mandamus is the proper remedy when a public official disobeys the law. It requires no additional proof of bad faith, corruption, or clear abuse of power. *See e.g., Lovell v. Tinsley*, 236 S.W. 2d 24, 29 (Mo. App. 1951); *Parents Against Abuse in Schools v. Williamsport Area School District*, 594 A.2d 796, 802 (Pa.Cmwth.1991); *Richie v. Board of Education of Lead Hill School District*, 933 S.W.2d 375 (Ark. 1996).

What L.P. asked the School District to do was simple, required by law, and not discretionary: transfer his numerical averages from his former school to his current school in compliance with the law. The trial court agreed with the Respondents that the School District was required to transfer the numerical grades from L.P.’s official transcript. It did not abuse its discretion. Absent an abuse of discretion, the trial court’s decision *must* be affirmed. *Jolly v. Marion Nat’l Bank*, 267 S.C. 681, 685-86, 231 S.E.2d 206, 208 (1976).

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

In this case, the School District acted for months in deliberate secrecy and at the behest and pressure of a powerful family at the school, the current and former presidents of the PTA, for the direct benefit of their own son. A writ of mandamus does not require a separate showing of bad faith, corruption, or abuse of power, but the School District's behavior in this case rises to those levels nonetheless.⁵

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

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

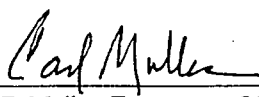
If the School District had believed it was acting in good faith, within its powers, and not corruptly, it would not have deliberately hidden its actions for half the school year.

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

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

Respectfully submitted,

Greenville, SC
June 30, 2014



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Carl F. Muller, Attorney at Law, P.A.
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864-991-8905
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Attorney for Respondents

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

v.

The School District of Greenville County Appellant.

Appellate Case No. 2013-002232
Opinion No. 5237

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

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JUN 30 2014

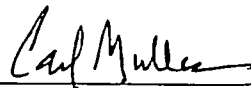
SC Court of Appeals

PROOF OF SERVICE

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

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

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



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Attorney for Respondents



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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August 19, 2014

The Honorable Paul B. Wickensimer
Courthouse
305 E North St
Greenville SC 29601-2121

REMITTITUR

Re: Lee C. Palms v. The School District of Greenville County
Lower Court Case No. 2013CP2303447
Appellate Case No. 2013-002232

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

Enclosure

cc: Kenneth L. Childs, Esquire
Thomas Kennedy Barlow, Esquire
Carl F. Muller, Esquire
Rodney Douglas Webb, Esquire
James Theodore Gentry, Esquire
Wade Stackhouse Kolb, III, Esquire

The South Carolina Court of Appeals

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

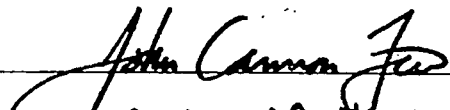
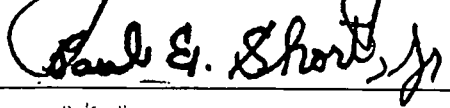
v.

The School District of Greenville County, Appellant.

Appellate Case No. 2013-002232

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.
 J.
 J.

Columbia, South Carolina

cc: Kenneth L. Childs, Esquire
Thomas Kennedy Barlow, Esquire
Carl F. Muller, Esquire
Rodney Douglas Webb, Esquire
James Theodore Gentry, Esquire

FILED

July 10, 2014

2

Wade Stackhouse Kolb III, Esquire
The Honorable Edward W. Miller

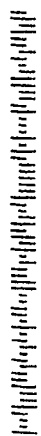
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South Carolina Court of Appeals
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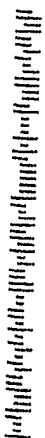
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South Carolina Court of Appeals
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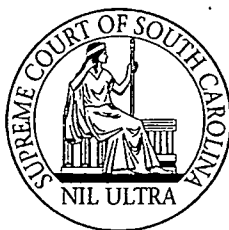
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**OPINIONS
OF
THE SUPREME COURT
AND
COURT OF APPEALS
OF
SOUTH CAROLINA**

**ADVANCE SHEET NO. 32
August 13, 2014
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org**

The South Carolina Court of Appeals

PUBLISHED OPINIONS

None

UNPUBLISHED OPINIONS

2014-UP-320-Ralph Thomas and Nancy Thomas v. Gulf Stream Coach, Inc., et al.

2014-UP-321-In the matter of the care and treatment of Richard Dean Capps

2014-UP-322-Christopher Lee v. Wendy Lee

2014-UP-323-SCDSS v. Rubi Bertaud-Cabrera

PETITIONS FOR REHEARING

5219-Moorhead Construction Inc. et al. v. Pendleton Station et al. Pending

5229-Coleen Mick-Skaggs v. William Skaggs Pending

5232-State v. Clarence Jenkins Pending

5237-Palms v. School District of Greenville County Pending

5242-Patricia Fore v. Griffco of Wampee, Inc. Pending

5243-Kerry Levi v. Northern Anderson County EMS Pending

5244-Clifford Thompson v. State Pending

5245-Allegro, Inc. v. Emmett J. Scully et al. Pending

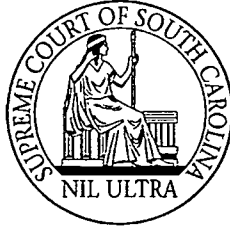
5246-State v. Jason Alan Johnson Pending

5247-State v. Henry Haygood Pending

5248-Demetrius Mack v. Leon Lott Pending

5250-Precision Walls v. Liberty Mutual Fire Ins. Pending

2014-UP-200-Branch Banking and Trust v. Luquire Pending



**OPINIONS
OF
THE SUPREME COURT
AND
COURT OF APPEALS
OF
SOUTH CAROLINA**

**ADVANCE SHEET NO. 33
August 20, 2014
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org**

The South Carolina Court of Appeals

PUBLISHED OPINIONS

5261-The State v. Roderick Pope	88
5262-Bloody Point Property Owners Assoc. Inc. v. William A. Ashton, Jr.	99
5263-The Milton P. Demetre Family Limited Partnership v. Harry Beckmann, III	107
5264-Prakash and Urmila Solanki v. Wal-Mart Store #2806	123
5265-The State v. Wayne McCombs	134
5266-The State v. Anthony K. Blakney	142

UNPUBLISHED OPINIONS

2014-UP-324-State v. Randy Jarrod Crosby	
2014-UP-325-Madeleine R. Arata and Kenneth C. Arata v. Village West Owners' Association, Inc. d/b/a Village West Horizontal Property Regime	

PETITIONS FOR REHEARING

5219-Moorhead Construction Inc. et al. v. Pendleton Station et al.	Pending
5229-Coleen Mick-Skaggs v. William Skaggs	Denied 08/01/14
5232-State v. Clarence W. Jenkins	Pending
5237-Palms v. School District of Greenville County	Denied 07/10/14
5241-Richard A. Fisher v. Shipyard Village Council	Pending
5242-Patricia Fore v. Griffco of Wampee, Inc.	Pending
5243-Kerry Levi v. Northern Anderson County EMS	Pending
5244-Clifford Thompson v. State	Pending

The Supreme Court of South Carolina

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

v.

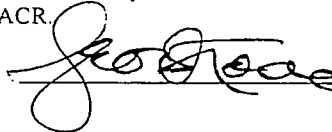
The School District of Greenville County, Respondent.

Appellate Case No. 2014-001955
Lower Court Case No. 2013-CP-23-03447

ORDER

On May 30, 2014, the Court of Appeals issued an opinion in this matter. *Palms v. School Dist. of Greenville Cty.*, 408 S.C. 576, 758 S.E.2d 919 (Ct. App. 2014). Petitioners' petition for rehearing was denied on July 10, 2014. On August 18, 2014, no petition for a writ of certiorari having been filed in this Court within the thirty day period following the issuance of the order denying the petition for rehearing, the remittitur was sent to the lower court. Rule 221(b), SCACR; Rule 242(c), SCACR.

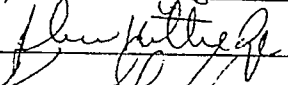
On September 16, 2014, petitioners filed a Petition for Writ of Certiorari and Rescission of Premature Remittitur in this Court. We dismiss the petition without prejudice to petitioners' ability to file a motion to recall the remittitur in the Court of Appeals, which is in the best position to determine if the remittitur was sent down by mistake, error or inadvertence on the part of the appellate court,¹ and following a ruling on the motion, to re-file a petition for a writ of certiorari in this Court pursuant to Rule 242, SCACR.

 C.J.

¹ See *Wise v. S.C. Dep't of Corr.*, 372 S.C. 173, 642 S.E.2d 551 (2007) (when the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter; the only exception is when the remittitur is sent down by mistake, error or inadvertence of the Court).









J.
J.
J.
J.

Columbia, South Carolina

October 8, 2014

cc:

James Theodore Gentry, Esquire
Wade Stackhouse Kolb, III, Esquire
Carl F. Muller, Esquire
Kenneth L. Childs, Esquire
Thomas Kennedy Barlow, Esquire
Rodney Douglas Webb, Esquire
Paul B. Wickensimer
The Honorable Jenny Kitchings

The South Carolina Court of Appeals

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

v.

The School District of Greenville County, Appellant.

Appellate Case No. 2013-002232

ORDER

Respondents' motion to recall the remittitur is granted. The Clerk of Greenville County is directed to return the remittitur to the Clerk of the South Carolina Court of Appeals within ten days.

 C.J.
FOR THE COURT

Columbia, South Carolina

cc:

Kenneth L. Childs, Esquire
Thomas Kennedy Barlow, Esquire
Carl F. Muller, Esquire
Rodney Douglas Webb, Esquire
James Theodore Gentry, Esquire
Wade Stackhouse Kolb, III, Esquire
Paul B. Wickensimer

FILED
12/2/14

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

v.

The School District of Greenville County Appellant.

Appellate Case No. 2013-002232

Appeal from Greenville County
Court of Common Pleas
Edward W. Miller, Circuit Court Judge
Case No. 2013-CP-23-03447

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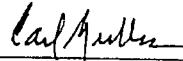
OCT 20 2014

SC Court of Appeals

MOTION TO RECALL REMITTITUR

Lee C. Palms and Nelle S. Palms, as Guardians ad Litem for L.P., a minor,
Respondents, through their undersigned counsel, hereby move the Court of Appeals to
recall the Remittitur for the reason that it was sent down by mistake, error or inadvertence of
the Court. The facts and law in support of the Motion are stated in an accompanying
Memorandum.

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



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

Greenville, SC

October 17, 2014

Attorney for Respondents

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

v.

The School District of Greenville County Appellant.

Appellate Case No. 2013-002232

Appeal from Greenville County
Court of Common Pleas
Edward W. Miller, Circuit Court Judge
Case No. 2013-CP-23-03447

MEMORANDUM IN SUPPORT OF
MOTION TO RECALL REMITTITUR

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

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

Attorney for Respondents

A remittitur should be recalled when it has been "sent down by mistake, error or inadvertence of the Court." Wise v. S.C. Dept. of Corrections, 372 S.C. 173, 642 S.E.2d 551 (2007). That is what occurred here. The remittitur was sent down before counsel for the Respondents was notified of the Court of Appeals' decision on their Petition for Rehearing. This has deprived them of their right to petition the South Carolina Supreme Court for a Writ of Certiorari.

Counsel for the Respondents was not notified that a decision had been rendered on their Petition for Rehearing until receipt of a letter from the Clerk of the Court of Appeals transmitting the remittitur to the Greenville County Clerk of Court. The letter bore a hand-corrected date of August 19, 2014. (Exhibit 1) The face of the Court of Appeals' Order denying the Petition for Rehearing was stamped "FILED July 10, 2014"; however, Counsel for the Respondents did not receive notice of the Court of Appeals' Order until arrival of the letter transmitting the remittitur. (Exhibit 1)

The Petition for Rehearing was filed following reversal by the Court of Appeals of the trial court's decision in favor of the Respondents. Its filing was required in order for the Respondents to petition the Supreme Court for a Writ of Certiorari. Rule 242(c), SCACR

Because the Petition for Rehearing included a request for a stay, Counsel for the Respondents was especially watchful for a decision. The Respondents' law firm checked the mail daily for an Order, and checked the Court of Appeals' web page for advance sheets every Wednesday, which is the day of the week when updates and changes are posted. The Court of Appeals' advance sheet web page showed the Petition for Rehearing as "Pending" through the week of August 13, 2014. (Exhibit 2) Then, for the first time, during the week of August 20, 2014, the advance sheet web page showed the Petition for Rehearing as having

been denied, with a date of "July 10, 2014." (Exhibit 3) The Respondents themselves also routinely monitored the Court of Appeals' website and saw the same thing.

Because Counsel for the Respondents was not provided timely notice that their Petition for Rehearing was denied, the remittitur was prematurely sent to the Greenville County Clerk of Court.

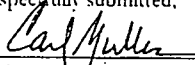
The Respondents filed a Petition for Writ of Certiorari and Rescission of Premature Remittitur with the South Carolina Supreme Court, seeking further appeal and rescission of the remittitur due to the lack of notice. The Supreme Court issued an Order directing the Respondents to file this Motion with the Court of Appeals and dismissing the Petition for Writ of Certiorari *without prejudice*, thereby allowing the Respondents to re-file after the remittitur is recalled. (Exhibit 4).

The Respondents seek to recall the remittitur because otherwise they will have been denied their right to appeal, which would be unjust. "The core of due process is the right to notice and a meaningful opportunity to be heard." Lachance v. Erickson, 522 U.S. 262, 266; 118 S.Ct. 753, 756; 139 L.Ed. 2d 695 (1998)

Accordingly, the Respondents respectfully seek a recall of the remittitur so that the case can proceed to the South Carolina Supreme Court.

October 17, 2014

Respectfully submitted,



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Carl F. Mullet, Attorney at Law, P.A.
607 Pendleton Street, Suite 201
Greenville, SC 29601
864-991-8905
carl@carlmullerlaw.com
Attorney for Respondents

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

v.

The School District of Greenville County Appellant.

Appellate Case No. 2013-002232

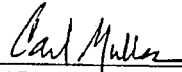
Appeal from Greenville County
Court of Common Pleas
Edward W. Miller, Circuit Court Judge
Case No. 2013-CP-23-03447

PROOF OF SERVICE

I certify that I have served Respondents' Motion to Recall Remittitur and Memorandum in Support of Motion to Recall Remittitur by depositing a copy of them in the U.S. Mail, postage prepaid, on October 17, 2014, addressed to:

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

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



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864-991-8905
carl@carlmullerlaw.com
Attorney for Respondents

EXHIBIT 1



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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August 19, 2014

The Honorable Paul B. Wickensimer
Courthouse
305 E North St
Greenville SC 29601-2121

REMITTITUR

Re: Lee C. Palms v. The School District of Greenville County
Lower Court Case No. 2013CP2303447
Appellate Case No. 2013-002232

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

Enclosure

cc: Kenneth L. Childs, Esquire
Thomas Kennedy Barlow, Esquire
Carl F. Muller, Esquire
Rodney Douglas Webb, Esquire
James Theodore Gentry, Esquire
Wade Stackhouse Kolb, III, Esquire

The South Carolina Court of Appeals

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

v.

The School District of Greenville County, Appellant.

Appellate Case No. 2013-002232

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

John Cannon, Jr. J.
Paul E. Short, Jr. J.
John D. Bostrom J.

Columbia, South Carolina

cc: Kenneth L. Childs, Esquire
Thomas Kennedy Barlow, Esquire
Carl F. Muller, Esquire
Rodney Douglas Webb, Esquire
James Theodore Gentry, Esquire

FILED

July 10, 2014

Wade Stackhouse Kolb III, Esquire
The Honorable Edward W. Miller



South Carolina Court of Appeals
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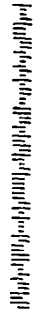


EXHIBIT 2



**OPINIONS
OF
THE SUPREME COURT
AND
COURT OF APPEALS
OF
SOUTH CAROLINA**

ADVANCE SHEET NO. 32
August 13, 2014
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

The South Carolina Court of Appeals

PUBLISHED OPINIONS

None

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2014-UP-320-Ralph Thomas and Nancy Thomas v. Gulf Stream Coach, Inc., et al.

2014-UP-321-In the matter of the care and treatment of Richard Dean Capps

2014-UP-322-Christopher Lee v. Wendy Lee

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5250-Precision Walls v. Liberty Mutual Fire Ins. Pending

2014-UP-200-Branch Banking and Trust v. Luquire Pending

EXHIBIT 3



**OPINIONS
OF
THE SUPREME COURT
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COURT OF APPEALS
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SOUTH CAROLINA**

ADVANCE SHEET NO. 33
August 20, 2014
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

The South Carolina Court of Appeals

PUBLISHED OPINIONS

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5262-Bloody Point Property Owners Assoc. Inc. v. William A. Ashton, Jr.	99
5263-The Milton P. Demetre Family Limited Partnership v. Harry Beckmann, III	107
5264-Prakash and Urmila Solanki v. Wal-Mart Store #2806	123
5265-The State v. Wayne McCombs	134
5266-The State v. Anthony K. Blakney	142

UNPUBLISHED OPINIONS

2014-UP-324-State v. Randy Jarrod Crosby
2014-UP-325-Madeleine R. Arata and Kenneth C. Arata v. Village West Owners' Association, Inc. d/b/a Village West Horizontal Property Regime

PETITIONS FOR REHEARING

5219-Moorhead Construction Inc. et al. v. Pendleton Station et al.	Pending
5229-Coleen Mick-Skaggs v. William Skaggs	Denied 08/01/14
5232-State v. Clarence W. Jenkins	Pending
5237-Palms v. School District of Greenville County	Denied 07/10/14
5241-Richard A. Fisher v. Shipyard Village Council	Pending
5242-Patricia Fore v. Griffco of Wampee, Inc.	Pending
5243-Kerry Levi v. Northern Anderson County EMS	Pending
5244-Clifford Thompson v. State	Pending

EXHIBIT 4

The Supreme Court of South Carolina

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.

Appellate Case No. 2014-001955
Lower Court Case No. 2013-CP-23-03447

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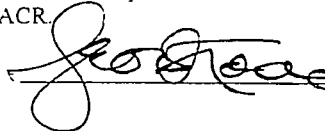
OCT 20 2014

SC Court of Appeals

ORDER

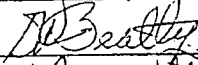
On May 30, 2014, the Court of Appeals issued an opinion in this matter. *Palms v. School Dist. of Greenville Cty.*, 408 S.C. 576, 758 S.E.2d 919 (Ct. App. 2014). Petitioners' petition for rehearing was denied on July 10, 2014. On August 18, 2014, no petition for a writ of certiorari having been filed in this Court within the thirty day period following the issuance of the order denying the petition for rehearing, the remittitur was sent to the lower court. Rule 221(b), SCACR; Rule 242(c), SCACR.

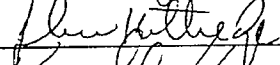
On September 16, 2014, petitioners filed a Petition for Writ of Certiorari and Rescission of Premature Remittitur in this Court. We dismiss the petition without prejudice to petitioners' ability to file a motion to recall the remittitur in the Court of Appeals, which is in the best position to determine if the remittitur was sent down by mistake, error or inadvertence on the part of the appellate court,¹ and following a ruling on the motion, to re-file a petition for a writ of certiorari in this Court pursuant to Rule 242, SCACR.

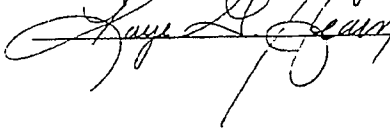
 C.J.

¹ See *Wise v. S.C. Dep't of Corr.*, 372 S.C. 173, 642 S.E.2d 551 (2007) (when the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter; the only exception is when the remittitur is sent down by mistake, error or inadvertence of the Court).









J.
J.
J.
J.

Columbia, South Carolina

October 8, 2014

cc:

James Theodore Gentry, Esquire
Wade Stackhouse Kolb, III, Esquire
Carl F. Muller, Esquire
Kenneth L. Childs, Esquire
Thomas Kennedy Barlow, Esquire
Rodney Douglas Webb, Esquire
Paul B. Wickensimer
The Honorable Jenny Kitchings

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

v.

The School District of Greenville County Appellant.

Appellate Case No. 2013-002232

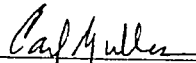
Appeal from Greenville County
Court of Common Pleas
Edward W. Miller, Circuit Court Judge
Case No. 2013-CP-23-03447

RESPONDENTS' REPLY TO APPELLANT'S RETURN TO
PETITION TO RECALL REMITTITUR

The Memorandum in Support of Motion to Recall Remittitur submitted by Respondents Lee C. Palms and Nelle S. Palms clearly shows that the Court of Appeals' advance sheet webpage listed their Petition for Rehearing as "Pending" through the week of August 13, 2014. Then, for the first time, during the week of August 20, 2014, the advance sheet webpage showed the Petition for Rehearing as having been "denied" with a date of "July 10, 2014". Counsel for the Respondents was not notified that the decision had been rendered on the Petition for Rehearing until receipt of a letter from the Clerk of Court of the Court of Appeals transmitting the Remittitur to the Greenville County Clerk of Court. The letter bore a hand-corrected date of August 19, 2014.

Accordingly, the Respondents respectfully request a recall of the Remittitur pursuant to the October 8, 2014 Order of the South Carolina Supreme Court.

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



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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

v.

The School District of Greenville County Appellant.

Appellate Case No. 2013-002232

Appeal from Greenville County
Court of Common Pleas
Edward W. Miller, Circuit Court Judge
Case No. 2013-CP-23-03447

PROOF OF SERVICE

I certify that I have served Respondents' Reply to Appellant's Return To Petition To Recall Remittitur by depositing a copy of it in the U.S. Mail, postage prepaid, on October 30, 2014, addressed to:

Kenneth L. Childs, Esq.
Thomas K. Barlow, Esq.
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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appellate Case No. 2013-002232

Appeal from Greenville County
Court of Common Pleas
Edward W. Miller, Circuit Court Judge
Case No. 2013-CP-23-03447

RECEIVED

OCT 27 2014

SC Court of Appeals

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

v.

The School District of Greenville County, ... Appellant.

APPELLANT'S RETURN TO
PETITION TO RECALL REMITTITUR

CHILDS & HALLIGAN, P.A.

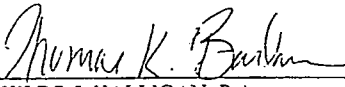
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General Counsel
Greenville County Schools
P.O. Box 2848
Greenville, SC 29602

Attorneys for Appellant

In return to Respondents' Motion to Recall Remittitur, Appellant submits that its counsel received the Court of Appeals' Order denying Respondent's Petition for Rehearing by U.S. Mail on July 14, 2014.

Respectfully submitted,

By: 
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October 27, 2014
Columbia, South Carolina

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Counsel for *Amici Curiae*

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County
Court of Common Pleas
Edward W. Miller, Circuit Court Judge
Case No. 2013-CP-23-03447

RECEIVED

OCT 27 2014

SC Court of Appeals

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, ... Respondents.

v.

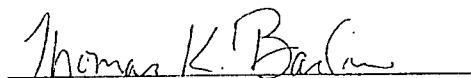
The School District of Greenville County, ... Appellant.

PROOF OF SERVICE

I certify that I have served Respondent's Return to Motion to Recall Remittitur to the South Carolina Court of Appeals, Jenny Abbott Kitchings, Clerk, P.O. Box 11629, Columbia, SC 29211 and by depositing a copy in the U.S. Mail, postage prepaid, on October 27, 2014, addressed to:

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