THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

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S.C. Supreme Court

Appellate Case No.: 2014-002740

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.

RESPONDENT'S RETURN TO PETITION FOR WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED

1. Do the factors set forth in SCACR 242(b) support a writ of certiorari?
2. Did the Court of Appeals properly apply prior precedent in holding that Petitioners did not present a justiciable case where they did not make any showing of bad faith, corruption, or clear abuse of power?
3. Did the Court of Appeals properly reject Petitioners' estoppel claim where they did not make a showing of bad faith, corruption, or a clear abuse of power and could not show reliance or prejudice as a result of Respondent's actions?
4. Is this appeal moot now that L.P. and student amici have graduated from high school?

II. STATEMENT OF THE CASE

Petitioner, L.P., graduated from Southside High School ("SHS") in the School District of Greenville County ("School District") on June 4, 2014, and he and student amici have now presumably completed their first semesters of college. SHS operates under the direction and control of the School District. (Compl. ¶ 2 at App. 12.)

L.P. completed his first two years of high school at Riverside Military Academy ("RMA") in Gainesville, Georgia and transferred to SHS at the beginning of his junior year (the 2012-2013 school year). (Compl. ¶ 3 at App. 12.) L.P.'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. (App. 80; Compl. ¶¶ 4-5 at App. 12-13.) SHS's guidance department did not originally observe that L.P.'s RMA transcript showed enhanced numerical grades in Advanced Placement ("AP") and honors courses. (App. 126.)

Soon thereafter, the School District learned that L.P.'s final grades in honors and AP classes taken at RMA included extra points that students at SHS and the School District's other high schools do not receive for directly comparable classes. (App. 68, line 17 – App. 72, line 23.) RMA's grading policy for honors and AP classes, as shown on the face of L.P.'s transcript, is to award five extra points to the student's numerical grade average for each honors or AP class. (App. 79.) In addition, during the 2010-2011 school year only, RMA awarded ten extra points for AP classes (five points for honors classes). (App. 79.) For example, L.P.'s final numerical grade average for Fall 2010 in AP World History at RMA was 93. (App. 132-133.) Pursuant to its grading policy, RMA awarded L.P. 10 extra points for the AP course, making his RMA transcript grade 100 for AP World History. (App. 79.)

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. (App. 107-111.) 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." (App. 107.) 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. (App. 110.)

Accordingly, when the School District initially calculated L.P.'s GPA and class rank in October 2012, L.P. had inadvertently received a "double bump." (App. 128-129.) Specifically, as denoted by an asterisk and explanation on L.P.'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, L.P. received a second bump when his RMA

final transcript grades were converted to grade points via the UGP chart. (App. 126, 128-129.) 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, as L.P. did. (App. 126.) Likewise, RMA students received only the 5 to 10 point final course grade bump, as described above, and not the second GPA bump that L.P. received upon transfer to SHS. Thus, L.P. was initially placed in a better position than his new peers at SHS and his old peers at RMA by virtue of the "double bump."

The following illustrates the mechanics of the "double bump" to L.P.'s advantage:

- L.P.'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 L.P.'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

(App. 79, 132-133.)

When the School District realized that L.P. received a double bump for honors and AP courses he took at RMA, the School District communicated with RMA's guidance office to determine L.P.'s actual numerical course averages prior to the five to ten point weighting. (App. 132-133.) The School District then recalculated L.P.'s grades and class rank under South Carolina's UGP using grade averages without the RMA honors/AP weighting. (App. 128.) From the School District's perspective, this change placed L.P. in equal standing with all other students at SHS. (App. 68, line 17 – App. 72, line 25.) The recalculation changed L.P.'s class rank at SHS from first to sixth. (App.

127.) Counsel for L.P. and counsel for the School District were unable to resolve the matter. (App. 128-129.) Petitioners then filed this action in Circuit Court.

The Circuit Court's October 7, 2013 Order restored L.P.'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 L.P.'s RMA grades to SHS. (App. 6; 76, lines 9-20.)

The Court of Appeals reversed the Circuit Court, holding that it was "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." (App. 230.) The Court of Appeals accepted the finding of the Circuit Court that the School District's actions were well-intentioned and an effort to achieve fairness and equality, and concluded that Petitioners did not show the "bad faith, corruption, or clear abuse of power" that would have permitted the Circuit Court to review the School District's actions. (App. 231.)

III. ARGUMENT

A. Petitioners Have Not Identified Any Special And Important Reasons For This Court To Grant A Writ of Certiorari.

SCACR 242(b), **Considerations Governing Review**, provides as follows:

> A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring the Supreme

> Court's discretion or power to grant review in general, indicate the character of reasons which will be considered:
>
> (1) Where there are novel questions of law.
>
> (2) Where there is a dissent in the decision of the Court of Appeals.
>
> (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
>
> (4) Where substantial constitutional issues are directly involved.
>
> (5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

None of these criteria are met; only the first criterion is even slightly implicated. The Court of Appeals' 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." *See 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). The Court of Appeals further correctly noted that:

> [W]e 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.

(App. 231.) The Court of Appeals' analysis was also consistent with prior decisions of the U.S. Supreme Court counseling restraint in reviewing academic and operational decisions of schools. *See Epperson v. Arkansas*, 393 U.S. 97, 104, 89 S. Ct. 266, 270, 21 L.Ed.2d 228, 234 (1968); *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.")

Thus, while the underlying facts of the case may be novel, the legal question is not. Accordingly, none of the factors set forth in SCACR 242(b) weigh in favor of a writ of certiorari.

B. The Court of Appeals Properly Held That Petitioners Did Not Make A Sufficient Showing Of Corruption, Bad Faith, Or A Clear Abuse Of Power To Warrant Judicial Review Of The School District's Application Of The Uniform Grading Policy.

The Court of Appeals' opinion clearly addresses and resolves Petitioners' first question presented. The Court of Appeals recognizes that school grading decisions are non-justiciable in the absence of evidence of "clear evidence of corruption, bad faith, or a clear abuse of power." The Circuit Court judge specifically rejected the idea of bad faith, and Petitioners did not appeal that determination. (App. 6; 76, lines 10-20.) Had Petitioners been able to show, and had the Circuit Court judge found clear evidence of an intent to harm L.P. rather than a "good-faith desire to place its students on equal footing academically," L.P. would have had a remedy. However, Petitioners did not make the required showing for judicial review of the School District's decision, and there was no evidence of any intent to harm the student. Petitioners' suggestion that the Court of Appeals' decision will allow school districts to willfully violate the UGP is incorrect, as review of bad faith, corrupt actions by school officials is readily available.

Petitioners waited until their motion for reconsideration to the Court of Appeals to argue that the School District's actions in this case rose to the level of corruption, bad faith, or abuse of power. (App. 252.) In its decision, the Court of Appeals 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. (App. 231.) The Court of Appeals 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. (*Id.*)

Significantly, the Circuit Court judge specifically rejected the idea of bad faith, and Petitioners did not appeal that determination. (App. 76, lines 10-20; App. 6.) Contrary to Petitioners' 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 statement of policy to a novel factual 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 Petitioners' 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. Thus, the Court of Appeals properly accepted the Circuit Court's factual findings as they related to the lack of "corruption, bad faith, or clear abuse of power" and certiorari should not be granted to review this finding.

C. Petitioners Did Not Present A Sufficient Case Of Estoppel Against The Government To Warrant Certiorari To The Court of Appeals.

Petitioners did not directly make an estoppel argument before the Circuit Court. Rather, during argument before the Circuit Court, Respondent likened Petitioners' argument that it was inequitable for the School District to reconsider a guidance counselor's initial application of the UGP to an estoppel claim. They now argue that the School District should have been estopped from using end of course class averages, rather than weighted grades from RMA, in calculating L.P.'s SHS transcript. Petitioners presumably did not argue estoppel before the Circuit Court because such a claim was

clearly foreclosed by Petitioners' lack of any evidence of reliance or prejudicial change of position as a result of the decision to accept actual, rather than inflated grades from RMA.

Under the Court of Appeals justiciability analysis, the vehicle or theory by which Petitioners seek to challenge the School District's decision is irrelevant because they could not show corruption, bad faith, or a clear abuse of power. As such, there was no need for the Court of Appeals to address Petitioners' belated estoppel claim or mandamus request.

Even if Petitioners' claim were justiciable, the evidence presented to the Circuit Court fell well short of what is necessary to prove estoppel against the government. Specifically, to prove estoppel against the School District, Petitioners 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).

First, the petition for certiorari highlights the lack of evidence of reliance, let alone justifiable reliance, on any grade calculation or any prejudicial change of position as a result of the School District's ultimate determination regarding grades. There is no evidence in the record whatsoever that L.P. initially enrolled at SHS in reliance on any particular grade transfer or expected class rank upon arrival. L.P. enrolled and attended SHS for almost two months before his initial GPA and class rank were even calculated and provided to him. 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 to him in October 2012.

Second, Petitioners did not show any prejudicial change of position based on the initial interpretation of Ms. Henderson, a SHS guidance counselor, regarding the application of the UGP to L.P.'s RMA grades. While one would expect that L.P. would have been pleased with his initial ranking as first in his class, Petitioners were clearly aware that SHS had reevaluated his transcript in light of RMA's 5-10 point course bumps by the end of January 2013. (App. 126.) Through his counsel, L.P. attempted to convince the School District to change the decision and was informed in the Spring of 2013 that the School District would apply numerical course averages rather than inflated RMA grades. (App. 128-129.) At that point, L.P. would have had ample time to re-enroll at RMA for his entire senior year if he were displeased with the decision and his class rank. Contrary to his Petition, there is no evidence in the record that L.P. would have been "stuck" with the School District's recalculation of his grades if he desired to return to RMA. Instead, he chose to challenge the School District's interpretation of the UGP in court and remain at SHS for his senior year. As such, Petitioners 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 Court of Appeals' opinion. Accordingly, the Court of Appeals properly rejected Petitioners' belated attempt to recast their prior arguments as an estoppel claim and certiorari on this issue is not warranted.

D. Certiorari Should Be Denied Because This Case Is Now Moot.

Following the Court of Appeals' May 30, 2014 opinion and prior to the filing of the Petition for Certiorari, L.P. and amici graduated from SHS. "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 (2001). In *Byrd v. Irmo*, this 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, which are impossible to fully litigate due to their brief nature. However, there is no basis to extend this exception to the instant case. L.P. had time to fully litigate this case, he will not be subject to the same action by SHS or 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 this Petition moot. Moreover, even if an exception to the mootness doctrine applied, the graduation of L.P. and student amici make any further action in the case merely nominal or academic. This consideration should also weigh against certiorari review of the Court of Appeals' decision.

IV. CONCLUSION

For the foregoing reasons, Respondent respectfully submits that this Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

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PROOF OF SERVICE

I certify that I have served **Respondent's Return to Petition for Writ of Certiorari** on counsel for Petitioners and *Amici Curiae* by depositing a copy in the U.S. Mail, postage prepaid, on January 21, 2015, addressed to:

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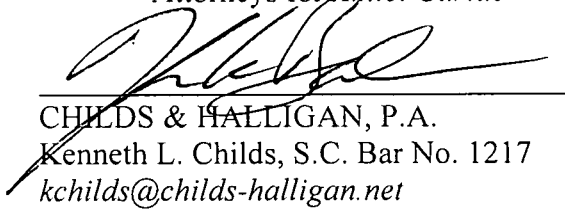

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