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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas
Honorable W. Jeffrey Young, Circuit Court Judge

RECEIVED

NOV 17 2016

SC Court of Appeals

Appellate Case No: 2016-002221

R.R., by and through his Guardian ad Litem, Roketha Reid, Appellant,

v.

Williamsburg County School District, Superintendent Dr. Yvonne Jefferson-Barnes, Assistant Superintendent Dr. Bernice Davis-Cooper, Delaney K. Frierson, Senitta Swinton, Principal Dr. Janice Gamble, Rose Marie Moore, Williamsburg County School District Board of Trustees, Defendants,

Of which Williamsburg County School District is the Respondent.

MOTION FOR RECONSIDERATION

YOU WILL PLEASE TAKE NOTICE that the Appellant, by and through his undersigned attorney, hereby moves before this Honorable Court for RECONSIDERATION of the ORDER DISMISSING THIS APPEAL based on the following reason(s):

(1) This case **does not** involve the circuit court quashing the Appellant's subpoena for the deposition of a non-party. Rather, this case involves the issuance of a Subpoena *Duces Tecum* issued to the Respondent, the Williamsburg County School District, for documents, student records, and evidence seeking to establish the alleged cause of action of improper and illegal grade changes. The Appellant has alleged that the Respondents have caused or allowed the improper and illegal changing of grades that impacted the Appellant's class ranking and caused harm and

damage to the Appellant. As evidence was developed in the case, certain records of a student, who is a non-party, appears to be relevant and probative to the establishment of this case. A Subpoena was issued to the Respondent, the Williamsburg County School District, for the records of the non-party student. Please see Exhibit A attached.

(2) The Family Educational Rights and Privacy Act, 20 U.S.C. Sec.1232g allow for the objection of the release of student records. Counsel, Mr. Wukela, filed a Motion to Quash the Subpoena on behalf of the non-party student. Please see Exhibit B attached.

(3) This Honorable Court dismissed this appeal asserting that an order refusing to compel the taking of a deposition is not immediately appealable. Rather, this case is about obtaining relevant and probative evidence of grade changing through a Subpoena *Duces Tecum*.

(4) S.C. Code Ann. Section 14-3-330, (1976, as amended), governs the appealability of certain orders. Section (2) of this provision provides an appeal may be taken when “An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or an part thereof of any pleading in any action.”

(5) The challenged Order granting the Motion to Quash the Subpoena affects a substantial right in this case because the Order denies the relevant and probative value of the sought-after documents and thereby makes a determination on the cause of action of improper and illegal grade changes and essentially discontinues the action. The challenged Order makes no finding of whether the sought-after documents are relevant and probative to the cause(s) of action for improper and illegal grade changing. Please see Exhibit C attached.

(6) The challenged Order granting the Motion to Quash the subpoena also affects a substantial right in this case because the Order denies the relevant and probative value of the sought-after documents and thereby strikes out a pleading in the underlining cause of action. The challenged Order makes no finding of whether the sought-after documents are relevant and probative to the cause(s) of action for improper and illegal grade changing. Please see Exhibit C attached.

(7) *Lowndes Products, Inc. v. Brower*, 262 S.C. 431, 205 S.E.2d 184 (1979), is not applicable here because it specifically deals with the lower court refusing to compel discovery of the taking of depositions to determine damages. This instant case involves the seeking of documents, records, and evidence to establish the cause(s) of action for improper and illegal grade changes.

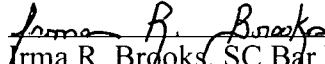
(8) This Honorable Court in *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 705 S.E.2d 475 (Ct. App. 2011), determined that a “narrow construction of section 14-3-330(2)(c) requires us to focus on the effect of the order, not the label given to the motion or to the order granting it.” *Id.* at 705 S.E.2d 475, 478. The court further determined “If the circuit court errs in striking out any material allegations of a good cause of action or good defense, it is impossible to remedy it in the course of the trial, because the evidence and the issues submitted to the jury cannot be extended beyond the issues made by the pleading, and on appeal from the final judgment this court could not say there was error in confining the evidence and charge to the pleadings.” *Id.* at 705 S.E.2d 475, 479. The court also reasoned that “An order affects a substantial right by striking a pleading if the order removes a material issue from the case, thereby preventing the issue from being litigated on the merits, and preventing the party from seeking to correct any errors in the order during or after the trial.” *Id.* at 705 S.E.2d 475, 479.

(9) The Appellant respectfully ask this Honorable Court to reconsider the dismissal of this appeal based on the fact that the circuit court's order granting the Motion to Quash the subpoena affects a substantial right regarding the cause(s) of action for improper and illegal grade changes and the denial of the sought-after documents, records, and evidence cannot be corrected later as it discontinues this action and strikes out the central pleading of the underlining action. As a result, Appellant's rights have been significantly prejudiced in this matter and the appeal should be granted for proper review by this Honorable Court.

(10) A circuit court judge's ruling on discovery matters will not be disturbed on appeal absent a clear abuse of discretion. The burden is upon the party appealing the order to demonstrate the court abused its discretion. An abuse of discretion may be found by this Court where the appellant shows that the conclusion reached by the circuit court was without reasonable factual support, resulted in prejudice to the right of the appellant, and, therefore, amounted to an error of law. Here, the circuit court judge committed a clear abuse of discretion by granting the Motion to Quash without conducting any inquiry into the relevant and probative value of the documents, records, and evidence sought as a part of the major underlining cause(s) of action in this matter for improper and illegal grade changes. As a result, Appellant's rights have been significantly prejudiced in this matter and the appeal should be granted for proper review by this Honorable Court.

(11) Additional information was added to the challenged Order that was not a part of the record of the hearing. Those portions of the challenged Order are requested to be reviewed on appeal as well. As a result, Appellant's rights have been significantly prejudiced in this matter and the appeal should be granted for proper review by this Honorable Court.

Respectfully submitted,


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Attorney for Appellant
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November 17, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
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Honorable W. Jeffrey Young, Circuit Court Judge

Appellate Case No: 2016-002221

R.R., by and through his Guardian ad Litem, Roketha Reid, Appellant,

v.

Williamsburg County School District, Superintendent Dr. Yvonne Jefferson-Barnes, Assistant Superintendent Dr. Bernice Davis-Cooper, Delaney K. Frierson, Senitta Swinton, Principal Dr. Janice Gamble, Rose Marie Moore, Williamsburg County School District Board of Trustees, Defendants,

Of which Williamsburg County School District is the Respondent.

PROOF OF SERVICE

I do hereby certify that I have this 17th day of November 2016, served a copy of the **MOTION FOR RECONSIDERATION**, and a **PROOF OF SERVICE**, by depositing a copy of the same in the United States mail, with first class postage affixed thereto, addressed as follows:

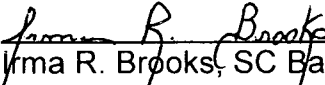
Stephen J. Wukela
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SC Court of Appeals

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November 17, 2016

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SC Court of Appeals

HAND-DELIVERED

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Reid vs. Williamsburg County School District, et al.
Case No.: 2016-002221


Dear Ms. Kitchings:

Enclosed, please find for filing a **Motion to Reconsider**, along with the appropriate copies, as well as the related Proof of Service.

If you need any additional information, please do not hesitate to contact me.

Thank you for your attention to this matter.

Sincerely,



Irma R. Brooks
Attorney for Appellant
THE BROOKS LAW OFFICE, LLC

Enclosures as stated above

cc: Stephen J. Wukela
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