

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Jennifer McCoy, Circuit Court Judge

Appellate Case No. 2018-001784

Charleston County School District Board of Trustees,
Dr. Gerrita Postlewait, in Her Capacity as Superintendent of Charleston
County School District, Kim Jackson, in Her Capacity as Principal of
Mt. Pleasant Academy Appellants,

v.

Travis J. McCory and Alicia S. McCory Respondents.

RECORD ON APPEAL

HALLIGAN MAHONEY WILLIAMS SMITH
FAWLEY & REAGLE, PA

John M. Reagle, S.C. Bar No. 14185
jreagle@hmwlegal.com
Thomas K. Barlow, S.C. Bar No. 8995
tbarlow@hmwlegal.com
Dwayne T. Mazyck, S.C. Bar No. 70240
dmazyck@hmwlegal.com
1301 Gervais Street, Suite 1400
P.O. Box 11367
Columbia, SC 29211
(803) 254-4035
Attorneys for Appellants

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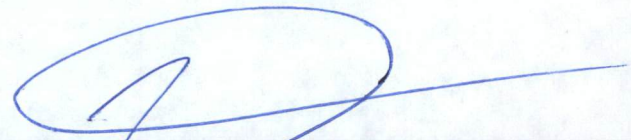
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HALLIGAN MAHONEY WILLIAMS
SMITH FAWLEY & REAGLE, PA

John M. Reagle, S.C. Bar No. 14185
jreagle@hmwlegal.com

Thomas K. Barlow, S.C. Bar No. 8995
tbarlow@hmwlegal.com

Dwayne T. Mazyck, S.C. Bar No. 70240
dmazyck@hmwlegal.com

1301 Gervais Street, Suite 1400
P.O. Box 11367
Columbia, SC 29211
(803) 254-4035

Attorneys for Appellants

February 6, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

TRAVIS J. McCORY and ALICIA S. McCORY,)

Plaintiffs,)

VS.)

CHARLESTON COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES,)
DR. GERRITA POSTLEWAIT, in her)
Capacity as Superintendent of Charleston)
County School District and)
KIM JACKSON, in her capacity as)
Principal of Mt. Pleasant Academy)

Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2018-CP-10-4127

ORDER

(DECLARATORY JUDGMENT)

RECEIVED

OCT 03 2018

SC Court of Appeals

2018 SEP -7 PM 12:06
JULIE A. COOK
CLERK OF COURT

FILED

This matter came before this court on the August 27, 2018, to hear a Declaratory Judgment action filed by the Plaintiffs, Travis J. McCory and Alicia S. McCory. Present at the hearing were the Plaintiffs Travis J. McCory and Alicia S. McCory represented by Randolph W. Cooper, Esquire; and Thomas K. Barlow, Esquire and Dwayne T. Mazyck, Esquire of the law firm of Halligan, Mahoney & Williams, P.A. representing the Defendants, as well as Natalie Ham, Esquire, General Counsel to Charleston County School District.

INTRODUCTION

This case is brought pursuant to S.C. Code § 15-53-10 *et seq.* (1976) as amended to declare the Plaintiffs legal rights under S.C. § 59-63-30 (1976) as amended. Specifically, Plaintiffs are requesting this court determine whether the minor child of the Plaintiffs, Aubrey Lyla McCory, should be admitted as a student to Mt. Pleasant Academy in compliance with S.C. § 59-63-30.

JBM/11

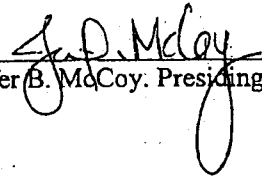
ORDER

After considering arguments from both sides and evidence submitted to the Court, Plaintiff's requested relief for Declaratory Judgment is granted. Therefore, it is hereby ordered that the Charleston County School Board admit Aubrey Lyla McCory as a student of Mt. Pleasant Academy immediately.

Additionally, the Court has received the Defendants' Suggestion of Mootness as to this matter. The Court, however, ruled on the matter at the conclusion of the hearing on August 27, 2018. Therefore, the matter was ruled upon prior to the subsequent actions taken by Defendants and, as such, any argument as to Mootness is precluded.

Finally, pursuant to S.C. § 15-77-300 (2010), a prevailing party in an action against the State may recover reasonable attorney's fees to be taxed as court costs against the appropriate agency if: (1) the court finds the government agency acted without substantial justification, and (2) the court finds there are no special circumstances that would make the award of attorney's fees unjust. Here, the issue of attorney's fees was neither included in the parties' written motions nor addressed at the hearing. While there are no special circumstances that would make the award of attorney's fees in this case unjust, the Court finds the Charleston County School Board did not act without substantial justification. Therefore, the Court finds attorney's fees and costs are not appropriate in this matter.

AND IT IS SO ORDERED!


Jennifer B. McCoy, Presiding Judge

September 7, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

TRAVIS J. McCORY AND ALICIA S. McCORY

Plaintiff(s)

vs.

CHARLESTON COUNTY SCHOOL DISTRICT
BOARD OF TRUSTEES, DR. GERRITA
POSTLEWAIT, in her Capacity as Superintendent of
Charleston County School District and KIM
JACKSON, in her capacity as Principal of Mt. Pleasant
Academy

Defendant(s)

Submitted By: Randolph W. Cooper

Address: 109 River Landing, Suite 100-B

Daniel Island, South Carolina 29492

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2018-CP - 10- 4107

SC Bar #: 1388

Telephone #: (843) 881-5413

Fax #: (843) 881-8366

Other:

E-mail: randy@rcooperlaw.org

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/
Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20__-__-__-NI_____
☐ Notice/File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured
Settlement Payment Rights
Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers
Compensation Settlement
Approval (780)
☐ Incapacitated Adult Settlement
(790) | 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 Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex/Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of-State Depositions (650)
☐ Motion to Quash Subpoena in
an Out-of-County Action (660) | | |

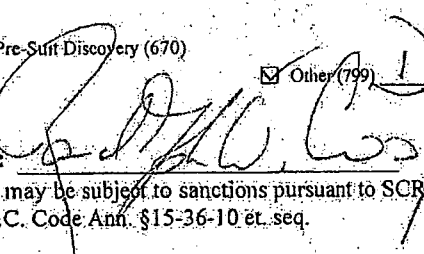
SCCA / 234 (02/2018)

Page 1 of 2

☐ Sexual Predator (510) ☐ Pre-Suit Discovery (670)

☐ Permanent Restraining Order (680)
☐ Interpleader (690)

☒ Other (799)

Submitting Party Signature: 

Date: August 20, 2018

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

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals;
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

TRAVIS J. McCORY and ALICIA S.
McCORY,

Plaintiffs,

VS.

CHARLESTON COUNTY SCHOOL
DISTRICT BOARD OF TRUSTEES;
DR. GERRITA POSTLEWAIT, in her
Capacity as Superintendent of Charleston
County School District and
KIM JACKSON, in her capacity as
Principal of Mt. Pleasant Academy
Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2017-CP-10-_____

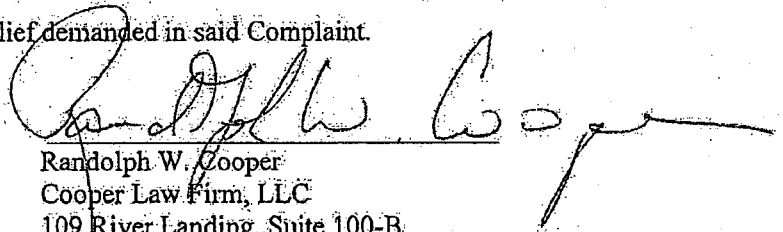
SUMMONS
(Declaratory Judgment)

SCRP 57
Immediate Advancement of
Calendar Requested

FILED
2018 AUG 21 PM 1:07
JULIE J. GIBBS, CLERK OF COURT
BY _____

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to this said Complaint on the Plaintiff's attorney, Randolph W. Cooper, at his office at 109 River Landing, Suite 100-B, Daniel Island, SC 29492, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer, appear and defend the Complaint within the time aforesaid, judgment by default will be rendered against you and the Plaintiff will apply to the Court for the relief demanded in said Complaint.


Randolph W. Cooper
Cooper Law Firm, LLC
109 River Landing, Suite 100-B
Charleston, SC 29492
(843) 881-5413
randy@rcooperlaw.org
ATTORNEY FOR PLAINTIFFS

August 20, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

TRAVIS J. McCORY and ALICIA S.
McCORY,

Plaintiffs,

VS.

CHARLESTON COUNTY SCHOOL
DISTRICT BOARD OF TRUSTEES,
DR. GERRITA POSTLEWAIT, in her
Capacity as Superintendent of Charleston
County School District and
KIM JACKSON, in her capacity as
Principal of Mt. Pleasant Academy

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2017-CP-10-_____

DECLARATORY JUDGMENT
(NON-JURY)

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2018 AUG 21 PM 1:07

FILED

The Plaintiff, Travis J. McCory and Alicia S. McCory ("Plaintiffs"), complaining of the Defendant herein, alleges and states as follows:

1. Plaintiffs are residents of Charleston County, State of South Carolina, whose address is 8 Trumbo Street, Charleston, South Carolina 29401.
2. Certain Defendants are the Board of Trustees for Charleston County School District is a body politic created by virtue of the laws of the State of South Carolina. Dr. Gerrita Postlewait serves as the Superintendent of the Charleston County School District and all conduct its business at 75 Calhoun Street, Charleston, South Carolina, 29401. The Defendant Kim Jackson serves as principal of Mt. Pleasant Academy, whose business address is 605 Center Street, Mt. Pleasant, South Carolina.

VENUE

3. The action for which the Plaintiffs bring this Declaratory Judgment involves the refusal Charleston County School District to admit the Plaintiffs' minor child Aubrey Lyla McCory to Mt. Pleasant, Academy, a public school located in the Second District for Charleston County in the kindergarten class for the school year 2018-2019. Venue, therefore is proper in the Circuit Court of Charleston County.

NATURE OF ACTION

4. The minor child Aubrey Lyla McCory, though Randolph W. Cooper as Trustee acquired an interest in and to that certain parcel of land located in Charleston County, together with the improvements thereon, having an address of 511 McCants Street, in the town of Mt. Pleasant, Charleston County, State of South Carolina, TMS #532-09-00-148, a copy of the deed of conveyance being attached hereto as Plaintiffs' Exhibit "A".
5. The minor child Aubrey Lyla McCory has attained the age of five years old, her birthday occurring on June 10, 2018, a copy of the Birth Certificate being attached hereto as Plaintiff's Exhibit "B".
6. On behalf of the minor child Aubrey Lyla McCory, Travis J. McCory and Alicia P. McCory, on or about August 15, 2018, filed an application with the Charleston County School District seeking admittance of Aubrey Lyla McCory to Mt. Pleasant Academy in the kindergarten class for the school year 2018-2019, the proper school for that property owner.
7. On or about August 16, 2018, the Travis J. McCory delivered to Kim Jackson, principal of Mt. Pleasant Academy an affidavit as required under Section 59-63-32

of the South Carolina Code of Laws, 1976 as amended (the "Affidavit"), which asserts the qualifications as required by Section 59-63-10 to attend the appropriate public school, a complete copy of the executed Affidavit being attached hereto as Plaintiffs' Exhibit "C".

8. On or about August 17, 2018, the Plaintiffs received a writing from Kate Darby, in her role as Chairperson of the Board of Trustees for Charleston County School District, in which Charleston County School District denied the application of Plaintiffs' request for the admittance of Aubrey Lyla McCory to Mt. Pleasant Academy for the academic year 2018-2019, a copy said writing is being attached as Plaintiffs Exhibit "D".

UNDERLYING ACTION

9. State Statute Section 59-63-30 establishes the requirements for a student to attend the public schools of any school district, a copy of which is attached hereto as Plaintiffs Exhibit "E".
10. Per Section 59-63-30 (C), the Plaintiffs have established the appropriate public school that their minor child should attend as it is the school in the district in which the minor child owns an interest in real estate and which value is in excess of Three Hundred and 00/100 Dollars (\$300.00).
11. In accordance with the provisions of Section 59-63-32, specifically Subsection (c), it states that upon the receipt of an affidavit, the child must be admitted to the appropriate school, a copy of which statute is attached hereto as Exhibit "F".
12. On or about August 16, 2018, Natalie Ham, Esquire, in her capacity of General Counsel to the Charleston County School District, sent an email to Randolph W.

Cooper, attorney representing the Plaintiffs and minor child, explaining the position of the Charleston County School District, specifically that the statute does not govern attendance zones, a copy of said email is attached as Plaintiff's Exhibit "G".

13. The Charleston County School District has also provided Plaintiffs a copy of its written policy as it relates to the students who own property, a copy of which is attached "Exhibit "H".
14. It is the recognized law of the State of South Carolina that where a local ordinance is not preempted by State law, the ordinance is considered valid if such ordinance does not conflict with statutes of the State of South Carolina. McKeown v. Charleston County Board of Zoning Appeal 347 S.C. 203, 553 S.E. 2d 484 (2001); Bugy's, Inc. v. Greenville County, 325 S.C. 718, 480 S.E.2d 718 (1997).
15. In the present action, the only way that an ordinance, rule or policy adopted by a county or an agency or political body of such county is valid is if there is no conflict with State law. It is the position of the Plaintiffs that the posture of the Charleston County School District that Section 59-63-30 (C) does not dictate the school or attendance area in which the student will attend is in direct conflict with said statute and therefore the policy(ies) adopted by the Charleston County School District should be ruled by this Court as in violation of State law and completely unenforceable.

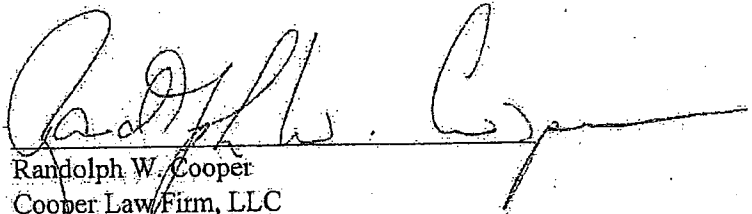
DECLARATORY JUDGMENT

16. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 15 as if fully set forth herein.

17. An actual controversy exists between Plaintiffs and the Defendant as to whether Plaintiffs' minor daughter is entitled to be admitted as a student to Mt. Pleasant Academy in the grade of kindergarten for the school year 2018 to 2019.
18. To protect the rights and interests of the minor child, Aubrey Lyla McCorry, Plaintiffs require a declaration that the Defendant, in accordance with the provisions of the State of South Carolina, specifically Sections 59-63-30 (c) and 59-63-32 (c) be immediately admitted to the kindergarten class at Mt. Pleasant Academy for the school year 2018-2019.

WHEREFORE, Plaintiffs request judgment as follows:

1. That this Court determine and declare that the Defendant is, its promulgation of the application of its policy towards students that own real estate, in violation of Sections 59-63-30 (c) and 59-63-32 (C) of the South Carolina Code of Laws, 1976 as amended as such policy is in conflict with the State statutes;
2. That this Court direct Kate Darby, as Chairperson of the Board of Trustees for Charleston County School District and Kim Jackson, principal of Mt. Pleasant Academy, admit the minor child Aubrey Lyla McCorry as a student in the kindergarten class of Mt. Pleasant Academy for the school year 2018-2019;
3. That this Court grant to Plaintiffs its costs and attorney's fees incurred herein; and
4. That this Court Grant such other and further relief as may be just and proper.



Randolph W. Cooper
Cooper Law Firm, LLC
109 River Landing, Suite 100-B
Charleston, SC 29492
(843) 881-5413
randy@rcooperlaw.org

ATTORNEY FOR PLAINTIFFS

August ____, 2018
Charleston, South Carolina

PLAINTIFFS' EXHIBIT "A"
DEED OF CONVEYANCE



BP0622515

PGS:

6

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

LIMITED WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS,

THAT Travis J. McCory (the "Grantor"),

for and in consideration of One and 00/100 Dollar (\$1.00), to his in hand paid at and before the sealing of these presents, by Randolph W. Cooper, as Trustee of the Aubrey Lyla McCory Trust, dated March 9, 2017 (the "Grantee"), in the State and County aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto Randolph W. Cooper, as Trustee of the Aubrey Lyla McCory Trust, his successors and assigns forever, a One (1%) Percent Interest in and to the following described property, to-wit:

See Exhibit "A"

TMS No. 532-09-00-148

Grantee's Address: 49 Jane Jacobs Street
Mount Pleasant, SC 29464

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, in and to the said Premises before mentioned, unto the said Grantee, his successors and assigns forever.

AND the Grantor does hereby bind himself, his heirs and assigns, to warrant and forever defend, all and singular, the said Premises unto the said Grantee, his successors and assigns, against the claims of all persons claiming by, through or under Grantor only.

WITNESS Grantor's hand and seal, this 9th day of March, in the year of our Lord two thousand seventeen (2017) and in the two hundred and forty-first year of the Sovereignty and Independence of the United States of America.

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:**

WITNESSES:

Stephanie Riskey
Kristi H. Veltre

Travis J. McCory

STATE OF SOUTH CAROLINA)

PROBATE

COUNTY OF CHARLESTON)

PERSONALLY appeared before me Stephanie Lindsey and made oath that (s)he saw the within named Travis J. McCorry sign, seal and as his act and deed, deliver the within written Limited Warranty Deed and that (s)he with Kristi H. Talbott witnessed the execution thereof.

Stephanie Lindsey

SWORN to before me this
9th day of March, 2017.

Kristi H. Talbott

Notary Public for South Carolina

My Commission Expires: 3/31/21

K. H. TALBOTT

Notary Public, State of South Carolina
My Commission Expires 3/31/2021

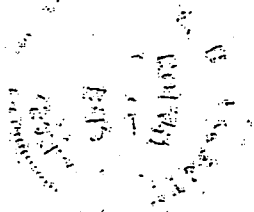


Exhibit "A"

All that certain lot, piece or parcel of land, with the buildings and improvements thereon situate, lying and being in Christ Church Parish, Charleston County, South Carolina, being known and designated as Lot 3, Block B, on a plat of Mt. Pleasant Homes, Inc., Subdivision, made by S.V. Sottile, registered Civil Engineer and Land Surveyor, which plat is recorded in the RMC Office for Charleston County in Plat Book G, at Page 84; said lot being bounded and having such size, shape and dimensions, more or less, as will be shown on said plat.

BEING a portion of the same property conveyed to Travis J. McCory by deed of Thomas Biggers Curtis and Lori Gibson Curtis dated December 13, 2002, and recorded in Book M-429, Page 121 in the RMC Office for Charleston County, South Carolina.

SUBJECT, to any and all applicable Covenants, Restrictions and Easements of record.

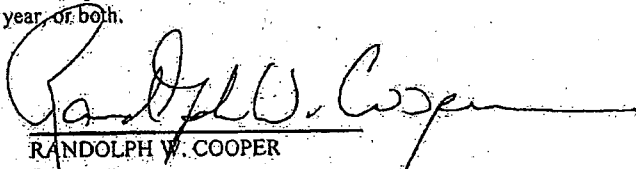
TMS# 532-09-00-148

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

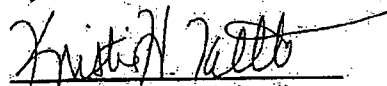
AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred BY TRAVIS J. MCCORY on March 9, 2017.
3. Check one of the following: The DEED is
 - (a) Subject to the Deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) Subject to the Deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) ☒ EXEMPT from the Deed recording fee because (exemptions 1-12)
(If exempt, please skip items 4-6, and go to item 7 of this affidavit.) #1
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
 - (a) The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____
 - (b) The fee is computed on the fair market value of the realty which is \$ _____
 - (c) The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____
5. Check YES or NO to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty, tenement, or realty after the transfer. If YES, the amount of the outstanding balance of this lien or encumbrance is \$ _____
6. The DEED recording Fee is computed as follows:
 - (a) \$ _____ The amount listed in item 4 above.
 - (b) \$ _____ The amount listed in item 5 above (no amount place zero)
 - (c) \$ _____ Subtract Line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney for Grantee
8. Check if Property other than Real Property is being transferred on this Deed. (A) Mobile Home,
(B) Other
9. DEED OF DISTRIBUTION - ATTORNEY'S AFFIDAVIT: Estate of _____
Personally appeared before me the undersigned attorney who, being duly sworn, certified that he is licensed to practice law in the State of South Carolina; that he has prepared the Deed of Distribution for the Representative in the Estate of _____, deceased, and that the grantee(s) therein are correct and conform to the estate file for the above-named decedent.
10. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.


RANDOLPH W. COOPER
Attorney

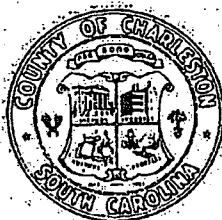
Sworn to before me this 9
day MARCH, 2017,


Notary Public for South Carolina
My Commission Expires:

K. H. TALBOTT
Notary Public, State of South Carolina
My Commission Expires 3/31/2021

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



Filed By:

COOPER LAW FIRM
109 RIVER LANDING DRIVE
SUITE 100-B
DANIEL ISLAND, SC 29492 (COURIER)

MAKER:

MCCORY TRAVIS J

RECIPIENT:

COOPER RANDOLPH W TR AL

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RECEIVED
from RMC

MAR 10 2017

Peter J. Tecklenberg
Charleston County Auditor

PID VERIFIED BY ASSESSOR

REP

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Date: March 9, 2017

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Charlie Lybrand, Registrar
Charleston County, SC

of Pages: 6

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Extra Pages \$ 1.00

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PLAINTIFFS EXHIBIT "B"
BIRTH CERTIFICATE

STATE OF SOUTH CAROLINA
CERTIFICATION OF VITAL RECORD

BIRTH CERTIFICATION

STATE FILE NUMBER: 139-43-023011

NAME OF REGISTRANT: *AUBREY LYLA MCCORY*

DATE OF BIRTH: JUNE 10, 2013

SEX: FEMALE

PLACE OF BIRTH: CHARLESTON, SOUTH CAROLINA

COUNTY OF BIRTH: CHARLESTON

MOTHER'S MARRIAGE NAME: CECILIA ROBERTSON SMITH

MOTHER'S PLACE OF BIRTH: SOUTH CAROLINA

FATHER'S NAME: TRAVIS JAMES MCCORY

FATHER'S PLACE OF BIRTH: COLORADO

DATE RECORD FILED: JUNE 14, 2013

DATE ISSUED: JULY 16, 2013

SPECIAL INSTRUCTIONS:

NA

SC03037729

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

Catherine Templeton
Catherine Templeton
Director and State Registrar

Guang Zhao
Guang Zhao
Assistant State Registrar

This copy is not valid unless prepared on an engraved border displaying the state seal and issuing agency logo.

PLAINTIFFS EXHIBIT "C"
AFFIDAVIT

Charleston
County SCHOOL DISTRICT

RESIDENCY VERIFICATION/LEGAL RESIDENCE ASSESSMENT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

AFFIDAVIT OF A STUDENT'S DOMICILE

PENALTIES FOR PROVIDING FALSE INFORMATION

This affidavit is made under penalty of perjury. I acknowledge that if I provide false information about where a student lives, I can be prosecuted for perjury.

In addition, S.C. Code 59-63-32 states (emphasis added):

- A. If it is found that information contained in the affidavit is false, the child must be removed from the school after notice and an opportunity to appeal the removal pursuant to the appropriate district grievance policy.
- B. If it is found that a person willfully and knowingly has provided false information in the affidavit to enroll a child in a school district for which the child is not eligible, the maker of the false affidavit is guilty of a misdemeanor and, upon conviction, must be fined an amount not to exceed two hundred dollars or imprisoned for not more than 30 days and must also be required to pay to the school district an amount equal to the cost to the district of educating the child during the period of enrollment. Repayment does not include funds paid by the state.

1. I am Travis J. McCory PARENT and it is my signature that appears below.
(Parent Name)

2. I make this affidavit based upon my own personal knowledge, and if called upon, I believe I would be deemed competent to testify to the facts and beliefs set forth in this affidavit.

3. I am aware of the penalties to myself and to the student for providing false information in this affidavit.

4. I am an adult responsible for the care and well being of the following student(s):
Aubrey Lyla McCory.

5. As of the date, my daughter owns real estate in the Mount Pleasant Academy ES District having an assessed value of Three Hundred and 00/100 Dollars (\$300.00) or more.

6. I acknowledge that if a challenge is made to the truthfulness of information I provide that additional information may be required of me.

7. Further, affiant sayeth not,

Signature of affiant

Printed name of affiant

Signature of affiant

Printed name of affiant

SWORN to and subscribed before me this 16th day of August, 2018.

Notary Public for South Carolina

My commission expires: 9/17/2020

RAIDOLPH W. COOPER

PLAINTIFFS EXHIBIT "D"
LETTER OF KATE DARBY

Randy Cooper

From: KATE DARBY <kate_darby@charleston.k12.sc.us>
Sent: Friday, August 17, 2018 4:23 PM
To: Randy Cooper
Cc: Kim Jackson; Natalie Ham; Eric_Mack@charleston.k12.sc.us; cindy_bohn-coats@charleston.k12.sc.us; chris_collins@charleston.k12.sc.us; todd_garrett@charleston.k12.sc.us; michael_miller@charleston.k12.sc.us; chris_staubes@charleston.k12.sc.us; travis@mccoryconstruction.com; Alicia.McCory@regions.com; priscilla_jeffery@charleston.k12.sc.us; KEVIN.HOLLINSHEAD; gerrita_postlewait@charleston.k12.sc.us; Jeff Borowy
Subject: Re: Application of enrollment of Aubrey Lyla McCory to Mt. Pleasant Academy

Mr. Cooper,

I have been made aware of the information you provided and was copied on all correspondence between you and Mrs. Ham. In response to your bolded statement that **"the child must be admitted to an appropriate school"** it is my understanding that we are not denying you enrollment in your client's home attendance zone school, which indeed is an appropriate school in our district.

Additionally as of today's date, we have confirmed with the principal at Mt. Pleasant Academy that her school is beyond capacity and there are waiting lists in place. The school was built for 500 students and there are more than 620 enrolled. Although I am aware of your position, I agree with Mrs. Ham's assessment. Your clients should enroll their child in their home school. MPA will not accept her enrollment on Monday.

Sincerely,

Kate Darby
Charleston County School Board of Trustees
Sent from my iPad

On Aug 17, 2018, at 3:22 PM, Randy Cooper <randy@rcooperlaw.org> wrote:

Ms. Darby,

I have attached a letter that requires your immediate attention.

Your considerations in this matter are greatly appreciated.

Sincerely,

Randy Cooper

Randolph W. Cooper
Cooper Law Firm, LLC
109 River Landing Drive, Suite 100-B
Daniel Island, SC 29492
Phone: (843) 881-5413
Fax: (843) 881-8366

<mime-attachment>

<Letter Darby 081718.pdf>



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PLAINTIFFS' EXHIBIT "E"
COPY OF STATUTE SECTION 59-63-30

South Carolina Legislature

South Carolina Law > Code of Laws > Title 59

South Carolina Code of Laws Unannotated

Title 59 - Education

CHAPTER 63

Pupils Generally

ARTICLE 1

General Provisions

SECTION 59-63-20. Age of attendance.

It is not lawful for any person who is less than five or more than twenty-one years of age to attend any of the public schools of this State, including kindergarten, except that:

- (1) Persons over twenty-one years of age may attend night schools;
- (2) When a pupil is in the graduating class and becomes twenty-one years of age before graduation, he is permitted to complete the term if otherwise qualified to do so;
- (3) Students may enter kindergarten in the public schools of this State if they will attain the age of five on or before September first of the applicable school year or have substantially initiated a public school kindergarten program in another state that has a different attendance age requirement from South Carolina;
- (4) Students may not enter the first grade in the public schools of this State unless they will attain the age of six on or before September first of the applicable school year or have substantially initiated a first grade program in another state that has a different attendance age requirement from South Carolina or have attended a public school kindergarten program for one full school year;
- (5) The restrictions in this section may be waived by the local board of school trustees in any proper case. However, that if the provisions of items (3) and (4) of this section are not complied with, the school district is not entitled to receive any state aid for any students who fail to meet these requirements;
- (6) Four-year-olds may attend optional child development programs and all three-year-old, four-year-old, and five-year-old children with disabilities in accordance with their individual education program, may participate in any public education preschool program, including optional child development programs. Children with disabilities served in four-year-old optional child development programs may be counted for funding under both funding sources.

HISTORY: 1962 Code Section 21-752; 1952 Code Section 21-752; 1942 Code Section 5375; 1932 Code Section 5404; Civ. C. '22 Section 2646; Civ. C. '12 Section 1778; Civ. C. '02 Section 1229; 1896 (22) 170; 1917 (30) 51; 1935 (39) 427; 1945 (44) 188; 1978 Act No. 633, Section 4; 1984 Act No. 512, Part II, Section 9, Division II, Subdivision A, SubPart 3, Sections 2(B), 3; 1988 Act No. 407, Section 1; 1989 Act No. 169, Part II, Section 52B; 1990 Act No. 322, Section 7; 1993 Act No. 164, Part II, Section 29B; 1993 Act No. 86, Section 3.

SECTION 59-63-30. Qualifications for attendance.

Children within the ages prescribed by Section 59-63-20 shall be entitled to attend the public schools of any school district, without charge, only if qualified under the following provisions of this section:

- (a) Such child resides with its parent or legal guardian;
- (b) The parent or legal guardian, with whom the child resides, is a resident of such school district; or
- (c) The child owns real estate in the district having an assessed value of three hundred dollars or more; and
- (d) The child has maintained a satisfactory scholastic record in accordance with scholastic standards of achievement prescribed by the trustees pursuant to Section 59-18-90; and
- (e) The child has not been guilty of infraction of the rules of conduct promulgated by the trustees of such school district pursuant to Section 59-18-90.

HISTORY: 1962 Code Section 21-752.1; 1964 (53) 2171.

SECTION 59-63-31. Additional qualifications for attendance at public school or particular public school.

(A) Children within the ages prescribed in Section 59-63-20 also are entitled to attend the public schools of a school district, without charge, if:

- (1) the child resides with one of the following who is a resident of the school district:
 - (a) a person who is not the child's parent or legal guardian to whom the child's custody has been awarded by a court of competent jurisdiction;
 - (b) a foster parent or in a residential community-based care facility licensed by the Department of Social Services or operated by the Department of Social Services or the Department of Juvenile Justice; or
 - (c) the child resides with an adult resident of the school district as a result of the:
 - (i) death, serious illness, or incarceration of a parent or legal guardian;

PLAINTIFFS EXHIBIT "F"
COPY OF CODE SECTION 59-63-32

(ii) relinquishment by a parent or legal guardian of the complete control of the child as evidenced by the failure to provide substantial financial support and parental guidance;

(iii) abuse or neglect by a parent or legal guardian;

(iv) physical or mental condition of a parent or legal guardian is such that he cannot provide adequate care and supervision of the child;

(v) parent's or legal guardian's homelessness, as that term is defined by Public Law 100-77; or

(vi) parent's or legal guardian's military deployment or call to active duty more than seventy miles from his residence for a period greater than sixty days; provided, however, that if the child's parent or legal guardian returns from such military deployment or active duty prior to the end of the school year, the child may finish that school year in the school he attends without charge even if the child resides in another school district for the remainder of the school year due to his parent or legal guardian returning home;

(2) the child is emancipated and resides in the school district;

(3) the child is homeless or is a child of a homeless individual, as defined in Public Law 100-77, as amended; or

(4) the child resides in an emergency shelter located in the district.

In addition to the above requirements of this subsection, the child shall also satisfy the requirements of Section 59-63-30(d) and (e).

(B) A child between five and twenty-one years of age is entitled to continue attending a particular public school or a successor school in the same school district without charge if:

(1) the child has been attending the school or a predecessor school in the same district prior to being taken into custody by the Department of Social Services or prior to being moved from one placement to another by the department;

(2) the Department of Social Services places the child outside the school district or school attendance zone in a foster home or residential community-based facility licensed or operated by the department; and

(3) the Department of Social Services has determined that it is in the child's best interests for the child to continue attending the school, and that transportation for the child to and from the school is reasonably available.

In addition to the requirements of this subsection, the child also shall satisfy the requirements of Section 59-63-30(d) and (e).

HISTORY: 1991 Act No. 163, Section 1; 1999 Act No. 104, Section 25; 2003 Act No. 92, Section 10, eff. January 1, 2004; 2008 Act No. 323, Section 1, eff. June 16, 2008.

Effect of Amendment

The 2003 amendment added subsection (A)(4) relating to children in emergency shelters.

The 2008 amendment added subparagraph (A)(1)(c)(iv) relating to a child in a school district as a result of a parent's or legal guardian's military deployment.

SECTION 59-63-32. Requirements to enroll child in public school; affidavit; penalties for providing false information.

(A) The school district may require an adult seeking to enroll a child who resides with the adult pursuant to Section 59-63-31(1)(c) to accept responsibility for making educational decisions concerning the child. These educational decisions may include, but not be limited to, receiving notices of discipline pursuant to Sections 59-63-230 and 59-63-240, attending conferences with school staff, and granting permission for athletic activities, field trips, and other activities as required.

(B) The school district also must require an adult to complete and sign an affidavit:

(1) confirming the qualifications set out in Section 59-63-31(1)(c) establishing residency of the child in the school district;

(2) attesting that the child's claim of residency in the district is not primarily related to attendance at a particular school within the district; and

(3) accepting responsibility for educational decisions for the child.

(C) Upon receipt of the affidavit provided for in subsection (B), the child must be admitted to an appropriate school pending the results of any further procedures for determining eligibility for attendance within the school district.

(D) If it is found that information contained in the affidavit provided for in subsection (B) is false, the child must be removed from the school after notice of an opportunity to appeal the removal pursuant to the appropriate district grievance policy.

(E) If it is found that a person wilfully and knowingly has provided false information in the affidavit provided for in subsection (B) to enroll a child in a school district for which the child is not eligible, the maker of the false affidavit is guilty of a misdemeanor and, upon conviction, must be fined an amount not to exceed two hundred dollars or imprisoned for not more than thirty days and also must be required to pay to the school district an amount equal to the cost to the district of educating the child during the period of enrollment. Repayment does not include funds paid by the State.

(F) The affidavit which is required by school districts under this section must include, in large print, the penalty for providing false information on the affidavit.

HISTORY: 1991 Act No. 163, Section 2.

SECTION 59-63-35. Nonresident military enrollment in South Carolina high school diploma program.

Nonresident military personnel may enroll in a program designed to award a South Carolina high school diploma. However, neither the State nor local districts shall be required to bear the cost for any nonresident military personnel enrolled in these programs.

HISTORY: 2008 Act No. 323, Section 2, eff. June 16, 2008.

Editor's Note:

PLAINTIFFS' EXHIBIT "G"
RESPONSE OF NATALIE HAM

Randy Cooper

From: Natalie Ham <natalie_ham@charleston.k12.sc.us>
Sent: Thursday, August 16, 2018 4:03 PM
To: randy@rcooperlaw.org
Cc: SHERRON BRIGHTHARP; KATE DARBY; Kim Jackson; travis@mccoryconstruction.com; Alicia.McCory@regions.com
Subject: Re: Application for enrollment of Aubrey Lyla McCory to Mt. Pleasant Academy for the year 2018-2019

Mr. Cooper,

I apologize for indicating that I would "tell" you something instead of listening to you and discussing the matter fully. I have reviewed the statute as you have asked me to do prior to making a decision on this matter. My office worked with the McCory family last year and advised them of district policies, which is why I am assuming they have now reached out to your office. We are happy to try and work through whatever questions you may have. Just to be clear I have included a copy of the statute...I excluded sections (d) and (e) since neither of those are in play here.

SECTION 59-63-30. Qualifications for attendance.

Children within the ages prescribed by Section 59-63-20 shall be entitled to attend the public schools of any school district, without charge, only if qualified under the following provisions of this section:

- (a) Such child resides with its parent or legal guardian;
- (b) The parent or legal guardian, with whom the child resides, is a resident of such school district; or
- (c) The child owns real estate in the district having an assessed value of three hundred dollars or more; and

You are correct in that this statute governs attendance at a school in a school district. It does not however govern attendance zones. You have indicated that the family resides in Charleston County and because of that, they are able to attend the school for which they are zoned within this district. Since the children live with their parents and their parents are residents of this district, their children's enrollment will be governed by sections (a) and (b). Naturally section (c) would only apply if the parent/guardian does not live within the district. This statute does not give residents the right to choose any school within the district they would like to attend. Imagine the mess that would cause for districts across the state. If that is your interpretation, I doubt that any judge would agree that was the legislative intent. We are not denying your clients the right to attend school within this district, which is what this statute prescribes. While I understand your argument excluding subsection (a) and (b) and only relying on (c), that is not the interpretation we have relied on in the past.

Based on the information you have provided, the McCory children are not authorized to enroll in MPA. They can ask the constituent district for a transfer from their home school pursuant to the transfer policies of the district.

Additionally, Sherron in my office is authorized directly by me to discuss residency concerns and policies with anyone with questions regarding such, whether or not it is an attorney. If desired, she can take notes of your issues and pass them along to me, but it is likely that a response will not be as timely. I am the only attorney for the district so as you can imagine I am unavailable much of the time. Luckily I had just returned from a meeting when she was calling you regarding the email I copied her on earlier today.

I appreciate your advocacy for this family and should you desire to file a court action, please provide my office with a courtesy copy.

Natalie A. Ham
General Counsel
Charleston County School District
75 Calhoun Street
Charleston, South Carolina 29401
Voice: 843-937-6515
Facsimile: 843-937-6546
natalie.ham@charleston.k12.sc.us

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All e-mail correspondence to and from this address may be subject to public disclosure under the South Carolina Freedom of Information Act (FOIA). This correspondence is intended exclusively for the individual or entity to which it is addressed and may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you received this correspondence in error please inform the sender immediately and delete the email and any attachments.

On Thu, Aug 16, 2018 at 3:02 PM Randy Cooper <randy@rcooperlaw.org> wrote:

Ms. Ham,

Please accept my apologies for sending you the unsigned version of the affidavit. I have attached for your records a copy of the signed affidavit. I would very much appreciate the opportunity to discuss the matter with you via phone call. I am available all morning Friday from 10:00 a.m. until 1:00 p.m. Please let me know a time that is convenient for you.

Your prompt attention to this matter is greatly appreciated. With kind regards,

Randy Cooper

Randolph W. Cooper

Cooper Law Firm, LLC

109 River Landing Drive, Suite 100-B

Daniel Island, SC 29492

Phone: (843) 881-5413

Fax: (843) 881-8366

From: Natalie Ham [mailto:natalie_ham@charleston.k12.sc.us]
Sent: Thursday, August 16, 2018 2:17 PM
To: randy@rcooperlaw.org; SHERRON BRIGHTHARP <sherron_brightharp@charleston.k12.sc.us>
Cc: KATE DARBY <kate_Darby@charleston.k12.sc.us>; Kim Jackson <Kim_Jackson@charleston.k12.sc.us>;
travis@mccoryconstruction.com; Alicia.McCory@regions.com
Subject: Re: Application for enrollment of Aubrey Lyla McCory to Mt. Pleasant Academy for the year 2018-2019

Mr. Cooper without further background information on why this is being submitted, we cannot process this request as we don't understand the issues. Additionally an unsigned affidavit was submitted. Can you contact my office that we may further discuss? If I am not available please speak with my paralegal, Sherron as she is extremely knowledgeable and advise our schools on enrollment procedures daily. Please copy her on any further correspondence.

Thank you,

Natalie A. Ham
General Counsel
Charleston County School District
75 Calhoun Street
Charleston, South Carolina 29401
Voice: 843-937-6515
Facsimile: 843-937-6546
natalie_ham@charleston.k12.sc.us

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On Thu, Aug 16, 2018 at 1:24 PM Randy Cooper <randy@rcooperlaw.org> wrote:

Ms. Darby and Ms. Ham:

I have attached a copy of a letter that I am submitting to Ms. Jackson, including an affidavit.

If you should any questions regarding this submittal, please do not hesitate to contact me. Your prompt attention to this matter is greatly appreciated. With kind regards,

Randy Cooper

Randolph W. Cooper

Cooper Law Firm, LLC

109 River Landing Drive, Suite 100-B

Daniel Island, SC 29492

Phone: (843) 881-5413

Fax: (843) 881-8366



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PLAINTIFFS EXHIBIT "H"
COPY OF POLICY STATEMENT

NONRESIDENT STUDENTS

Code **JFAB** Issued **6/16**

Purpose: To establish guidelines for admitting to Charleston County School District schools those students who do not reside in the district.

The superintendent shall make recommendations to the board when students residing outside of Charleston County request to be admitted to district schools. These recommendations shall follow applicable state law. No out-of-district student may be admitted unless the parent/legal guardian assumes responsibility for transportation. Behavioral and academic requirements set out in policy JFAA, Admission of Resident Students, apply to non-resident students.

Tuition

The district shall charge tuition to certain non-resident students.

Examples of students who must pay tuition include the following:

- a student in one county who resides closer to schools in an adjacent county (59-63-480)
- a student so situated as to be better accommodated by a school of an adjoining district (59-63-490)
- a student who qualifies for attendance only by virtue of owning real property with an assessed value of \$300.00 or more, pursuant to S.C. Code Ann. §59-63-30

The finance office shall collect the tuition as specified in S.C. Code Ann. §59-63-480. In accordance therewith, the district shall determine the yearly per-student cost of all overhead expenses of the school, which shall include all expenses of the school not paid by the state, less the property tax assessed for the benefit of CCSD, and shall require that the parent/legal guardian make those payments in two equal installments prior to the beginning of the first and second semesters.

Student Planning to Move into the District

The superintendent shall not charge tuition for a student planning to move into the district, provided the parent/legal guardian provides a release from the district in which the student resides and demonstrates by a statement from a builder, buyer, or lessor that the student and his/her parent/legal guardian will establish residency in the district by the end of that school year. If residency is not established by the end of the school year in which the student has been admitted, the student must be withdrawn from the district school and may not use this provision for enrollment until residency has been established.

Students Who Own Real Property

The location of real property owned by a student who is attending school in the district pursuant to S.C. Code Ann. §59-63-30(c) does not dictate the school or attendance area in which the student will attend. Such student may apply through the relevant constituent district board for enrollment at a specific school; however, for each such student, the district reserves the right to designate a "home school" or "home attendance zone" based on school capacity and other criteria.

PAGE 2 - JFAB - NONRESIDENT STUDENTS

Magnet Schools/Programs

To attend a magnet school or program, a nonresident student must be authorized to attend in the attendance area, if any, served by that magnet school or program.

Student Who Move during the School Year

Students who move out of the district at any time during the school year shall withdraw from the district school. Such students may appeal to the county board for permission to continue enrollment for the remainder of that school year. Pending any such appeal, the student may remain enrolled in the school. If the student moves outside of the district before the 135th day of school, and is given board permission to remain at the school, the student's parent/legal guardian will be required to pay a pro-rated amount of tuition for the remainder of the school year. If the student moves outside of the district after the 135th day of school, and is given board permission to remain at the school, tuition will be waived for the remainder of that school year. If the student is granted permission to return to the school in the fall and in subsequent years, tuition will be charged as established by policy.

Foreign Exchange Students

The district shall admit students from foreign countries who are age eligible and who are participating in a foreign student exchange program based on space availability in the requested school.

Charleston County School District shall not deny admission to any student on the basis of race, religion, color, creed, sex, gender preference, immigrant status, English-speaking status, national origin, or disabling condition.

See policy JRA and administrative regulations for information pertaining to the transfer of student records.

Adopted 10/25/76; Revised 1/23/06, 2/11/08, 9/27/10, 1/13/14, 4/28/14, 6/27/16

Legal references:

A. Federal Law:

1. McKinney-Vento Homeless Education Assistance Improvements Act of 2001, 42 U.S.C.A. Section 11431, *et seq.*
2. Every Student Succeeds Act of 2015, Pub. L. No. 114-95, 129 Stat. 1802.
3. Title IV of the Civil Rights Act of 1964, 42 U.S.C.A. Section 2000c, *et seq.* - Prohibits discrimination on the basis of race, color, or national origin, among other factors, by public elementary and secondary schools.
4. Title VI of the Civil Rights Act of 1964, 42 U.S.C.A. Section 2000d - Prohibits discrimination on the basis of race, color, national origin, or immigration status, among other factors, in programs receiving federal financial assistance.

B. S. C. Code, 1976, as amended:

1. Section 44-29-180 - Students must show immunization prior to admission.
2. Section 59-19-90(10) - Power of board to transfer and assign pupils.
3. Section 59-38-10 - South Carolina Education Bill of Rights for Children in Foster Care.
4. Section 59-63-30 - Qualifications for attendance.
5. Section 59-63-45 - Reimbursement for attending another school district.
6. Section 59-63-480 & 490 - Attendance of non-resident students.

PAGE 3 - JFAB - NONRESIDENT STUDENTS

C. Federal Cases:

1. *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007).
2. *Plyler v. Doe*, 457 U.S. 202 (1982).

D. S.C. Cases:

1. *Storm ex rel. McSwain v. Charleston County Board of Trustees*, 400 S.C. 478, 735 S.E.2d 492 (2012).

E. State Board of Education Regulations:

1. R43-272 - School admission.
2. R43-273 - Transfers and withdrawals.

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Travis J. McCory and Alicia S. McCory,)

Plaintiffs,)

v.)

Charleston County School District Board
of Trustees, Dr. Gerrita Postlewait, in her
Capacity as Superintendent of Charleston
County School District, Kim Jackson, in
her capacity as Principal of Mt. Pleasant
Academy)

Defendants.)

IN THE COURT OF COMMON PLEAS

C.A. No. 2018-CP-10-04127

**DEFENDANTS' RULE 12(b) MOTION
TO DISMISS AND MEMORANDUM
OF LAW**

The Defendants hereby respectfully move the Court to dismiss the Plaintiffs' Complaint pursuant to Rule 12(b)(1) and (6), SCRCP. The Plaintiffs have brought this action seeking a declaratory judgment interpreting S.C. Code §§ 59-63-30 and -32 so as to require the Defendants to admit their child to Mt. Pleasant Academy Elementary School ("MPA"). The Defendants contend there is neither a justiciable dispute as to the meaning and application of §§ 59-63-30 and -32, nor does the Complaint state a proper claim for relief, and as a matter of law, Plaintiffs' child is not legally entitled to attend MPA, at this time.

I. BACKGROUND

According to the Complaint, the Plaintiffs reside with their child at 8 Trumbo Street, Charleston, South Carolina. (Complaint, ¶ 1.) Plaintiffs reside within the Charleston County School District ("District") in the attendance zone of Memminger Elementary School. Under District policy JFAA (Admission of Resident Students), Plaintiffs' child is entitled to attend Memminger Elementary School or apply to attend one of several magnet schools.

Apparently, Plaintiffs do not wish their child to attend Memminger Elementary School. Consequently, Plaintiffs transferred to a trust for the benefit of their child a certain interest in a parcel of land having an address of 511 McCants Street, Mt. Pleasant, South Carolina, which is located in the attendance zone for MPA. (Complaint, ¶¶ 4 and 6.) Thereafter, Plaintiffs sought to enroll their child in MPA, asserting it to be the proper school for their child to attend. (Complaint, ¶ 7.)

Meanwhile, Plaintiffs also sought a transfer of their child from Memminger Elementary School to MPA by application to the relevant constituent boards of the District. The constituent boards generally control admission to the District's non-magnet schools. *See Stewart v. Charleston County School District*, 688 S.E.2d 579 (Ct. App. 2009). The transfer request was granted, but because of over-enrollment at MPA, Plaintiffs' child was placed on an enrollment waiting list. She is currently number four on the waiting list and may ultimately be enrolled from the waiting list if space becomes available.

Plaintiffs argue that their child must be enrolled at MPA based on the location of the real estate in which the child has a beneficial interest. The District responded that the Plaintiffs' child is entitled to attend Memminger Elementary School based on her residence at 8 Trumbo Street and could attend MPA based on her position on the waiting list under the transfer approved by the constituent board, but the location of any real estate owned by the child is not determinative of the child's school attendance zone, which is controlled by state law and District policy as explained below.

II. STANDARD OF REVIEW

Plaintiffs seek a declaratory judgment interpreting various statutory provisions of S.C. Code § 59-19-90 and §§ 59-63-30, -31, and -32. There are no material factual disputes for purposes of this motion, as interpreting a statute is a question of law. *See Jones v. State Farm Mutual Automobile Insurance Co.*, 612 S.E.2d 719 (Ct. App. 2005). Further, "[w]here the

statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and a court has no right to impose another meaning." *Hodges v. Rainey*, 533 S.E.2d 578, 581 (2000).

III. ARGUMENT

The statutes establishing a student's right to attend a school district, rather than a specific school in a school district, are unambiguous and clear, and declaratory judgment in Plaintiffs' favor is not appropriate.

A. S.C. Code Ann. § 59-19-90(9)

First, S.C. Code § 59-19-90(9) gives the School District the authority to determine which schools students will attend within the District. It provides: "The board of trustees shall also: (9)... determine the school within its district in which any pupil shall enroll." Echoing this general provision, the local legislation applying to the District provides: "Section 7. Power of trustees in constituent districts. The trustees in each of the constituent districts shall have the power in their respective districts, subject to the appeal to the Board of Trustees of the Charleston County School District... (1) To... determine the school within such constituent district in which any pupil shall enroll." *Act No. 340*, § 7(1), 1967 S.C. Acts 470. Accordingly, the statutes make clear that school boards of trustees have the responsibility and authority to determine in which specific school a pupil is eligible to enroll.

B. S.C. Code Ann. § 59-63-30

Second, S.C. Code § 59-63-30 sets forth the conditions under which a student is "entitled to attend the public schools of any school district, without charge..." and it does not create any entitlement for a student to attend any specific school. S.C. Code § 59-63-30 provides two ways a student may establish an entitlement to attend a school district without charge:

- (a) Such child resides with its parent or legal guardian;

- (b) The parent or legal guardian, with whom the child resides, is a resident of such school district; or
- (c) The child owns real estate in the district having an assessed value of three hundred dollars or more.

S.C. Code § 59-63-30(a), (b), (c).

Additionally, a child who does not reside with a parent or legal guardian and is homeless, emancipated, or in foster care or its equivalent, may be entitled to attend a school district without charge as provided for in §§ 59-63-31 and -32.

Here, the Plaintiffs' child is entitled to attend the *Charleston County School District* without charge under § 59-63-30(a) and (b). Plaintiffs base their current claim on their enrollment of their child under § 59-63-30(c), which only applies when a student lives with parents or guardians who are not residents of the school district. However, even in this instance, nothing in § 30(c) compels a child's enrollment or assignment to a *specific school* within the District. Indeed, the South Carolina Attorney General has repeatedly addressed this precise issue concerning the harmonization and interplay of S.C. Code § 59-19-90(9) and § 59-63-30(c). Recently, in an opinion requested by James N. Epps, Jr., Ph.D., Superintendent of Fort Mill School District 4 of York County, the Attorney General's office stated:

Section 59-63-30 does not expressly address the question, but § 59-19-90(9) empowers Boards of Trustees to "...determine the school within [the] district in which any pupil shall enroll..." Giving § 59-19-90(9) its plain meaning... requires the conclusion that the power of school districts to determine pupil assignments is not altered by the provisions of school attendance based upon property ownership under § 59-63-30. *Sutherland Statutory Construction*, Vol. 2A §51.02; *see also Lewis v. Gaddy*, 254 S.C. 66, 173 S.E.2d 376 (1970). Therefore, property ownership within a district does not, itself, entitle a student to demand attendance at a particular school within that district.

South Carolina Attorney General Opinion 11-646, dated May 20, 2011, quoting South Carolina Attorney General Opinion 88-48, June 3, 1988, 1988 WL 383531.

Likewise, in *Wharton v. Abbeville Sch. Dist. No. 60*, 608 F.Supp. 70 (D.S.C. 1984), Judge G. Ross Anderson, Jr. discussed a school board's authority under § 59-19-90 to assign students to specific schools:

South Carolina law grants a child of school age the right to a free education but does not confer a right upon pupils to attend a specific school. In fact, South Carolina law gives the Board of Trustees exclusive authority to operate or not operate any public school or schools. The Federal Court should not interpose and substitute its judgment and authority for that of local and state school authorities unless and until such actions by the Federal Court are clearly warranted to safeguard and protect rights guaranteed by the Constitution.

Id. at 75, citing *Bradford v. Sch. Dist. No. 20, Charleston, S.C.*, 244 F. Supp. 768 (D.S.C. 1965).

Judge Anderson went on to conclude that:

Pursuant to the provisions of S.C. Code Ann. § 59-19-90 (1976), as amended, the authority to manage and control local educational institutions of this district and the sole and exclusive authority to operate any public school or schools within the district rests with the local school board, no statutory or property right is granted to anyone... to select the school which they will attend.

Id. at 77.

Moreover, the District's policy JFAB specifically addresses this issue, stating:

Students Who Own Real Property:

The location of real property owned by a student who is attending school in the district pursuant to S.C. Code Ann § 59-63-30(c) does not dictate the school or attendance area in which the student will attend.

Whether or not Plaintiffs seek to enroll their child in the District under § 59-63-30(a), (b) (residence in the District) or § -30(c) (child owns property in the District), the District assigns a student to a particular non-magnet school based on the residence of the student's parents or legal guardian, with whom the student resides, when applicable. Accordingly, because the Plaintiffs' child resides with them, the Plaintiffs' child is assigned to a specific school under policy JFAA.

Plaintiffs' child was assigned to Memminger Elementary School pursuant to policy JFAA before her transfer request was granted by the constituent board.

C. S.C. Code Ann. § 59-63-32 is not applicable

Plaintiffs now contend the affidavit they submitted attesting to their child's ownership of real estate (Complaint, ¶ 11 and Exhibit F) brings their child's desired school enrollment under § 59-63-32. This argument is entirely misplaced; § 59-63-32 only relates to requirements for a child to enroll in a school district under § 59-63-31. See § 59-63-32(B) ("The school district must also require an adult to complete and sign an affidavit: (1) confirming the qualifications set out in Section 59-63-31(1)(c) establishing residency of the child in the school district."). As discussed above, § 59-63-31 addresses qualifications for children who do not qualify to attend a school district under § 59-63-30 and who are emancipated, homeless, or otherwise do not reside with a parent or legal guardian- none of which qualifications apply to Plaintiffs' child. Accordingly, Plaintiffs' reliance on S.C. Code, §§ 59-63-31 and -32, is entirely without merit.

As discussed in *TNS Mills, Inc. v. S.C. Department of Revenue*, 503 S.E.2d 471, 478 (1988), "[s]tatutes, as a whole, must receive practical, reasonable, and fair interpretation, consonant with the purpose, design, and policy of lawmakers." Here, a practical and fair interpretation of § 59-63-30(c) would not include adding additional terms allowing parents to jump to the front of a waiting list to compel enrollment in a specific school, inconsistent with § 59-19-90(9). "We are not at liberty, under the guise of construction, to alter the plain language of [a] statute by adding words which the Legislature saw fit not to include." *Shelley Construction Co. v. Sea Garden Homes, Inc.* 336 S.E.2d 488, 489 (Ct. App. 1985).

Consequently, there is no statutory conflict or ambiguity requiring statutory interpretation or declaratory judgment for Plaintiffs. Instead, the statutory scheme is unambiguous. Defendants have clear statutory authority under § 59-19-90(9) to apply District policies JFAA and JFAB to assign Plaintiffs' child to Memminger Elementary School, or permit a transfer to

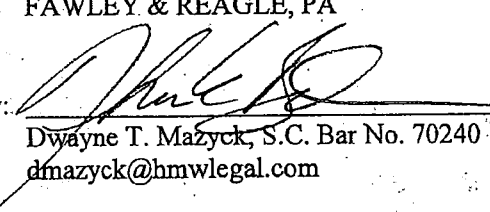
MPA. Likewise, it is clear that Plaintiffs' child is entitled to attend school in the District without charge under § 59-63-30. To hold otherwise would require improper consideration of a non-justiciable matter statutorily assigned to school officials under *Palms v. Greenville County Sch. Dist.*, 408 S.C. 576, 758 S.E.2d 919 (Ct. App. 2014) and *Redmond v. Lexington County Sch. Dist. No. Four*, 445 S.E.2d 441 (S.C. 1994) (under § 59-19-90 school board's discretion can only be challenged upon clear abuse of discretion). Plaintiffs' claim for declaratory relief, therefore, should be dismissed.

I. CONCLUSION

For the foregoing reasons, Plaintiffs' Complaint should be dismissed.

Respectfully submitted,

HALLIGAN MAHONEY WILLIAMS SMITH
FAWLEY & REAGLE, PA

By: 

Dwayne T. Mazyck, S.C. Bar No. 70240
dmazyck@hmwlegal.com

Thomas K. Barlow, S.C. Bar No. 8995
tbarlow@hmwlegal.com

P.O. Box 11367
Columbia, South Carolina 29211
(803) 254-4035

Attorneys for Defendant

August ²⁹1, 2018

Columbia, South Carolina

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ATTORNEY GENERAL OPINIONS

Fred L. Day, 1988 S.C. Op. Atty. Gen. 145 (1988)

1988 S.C. Op. Atty. Gen. 145 (S.C.A.G.), 1988 S.C. Op. Atty. Gen. No. 88-48, 1988 WL 383531

Office of the Attorney General

State of South Carolina

Opinion No. 88-48

June 3, 1988

*1 Fred L. Day
Representative
South Carolina House of Representatives
Post Office Box 11867
Columbia, South Carolina 29211

Dear Representative Day:

You have requested advice of this Office as to whether a student who meets the eligibility requirements for attending the public schools of a school district free of charge under § 59-63-30(c) of the Code of Laws of South Carolina, 1976, as amended, by owning real estate in the district having an assessed value of \$300.00 or more, has a right to attend any school in that district. Section 59-63-30 does not expressly address the question, but § 59-19-90(9) empowers Boards of Trustees to '... determine the school within [the] district in which any pupil shall enroll ...' Giving § 59-19-90(9) its plain meaning (South Carolina Department of Highways and Public Transportation vs. Dickinson, 341 S.E.2d 134 (S.C. 1986)) requires the conclusion that the power of school districts to determine pupil assignments is not altered by the provisions of school attendance based upon property ownership under § 59-63-30. Sutherland Statutory Construction, Vol. 2A § 51.02; See also Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970). Therefore, property ownership within a district does not, itself, entitle a student to demand attendance at a particular school within that district.

Yours very truly,

J. Emory Smith, Jr.
Assistant Attorney General

1988 S.C. Op. Atty. Gen. 145 (S.C.A.G.), 1988 S.C. Op. Atty. Gen. No. 88-48, 1988 WL 383531

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2011 WL 2214063 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 20, 2011

*1 James N. Epps, Jr., Ph.D.
Superintendent
Fort Mill School District 4 of York County
120 East Elliott Street
Fort Mill, SC 29715

Dear Dr. Epps:

You have requested advice of this office regarding a student in your school district who resides with her parents in an established residence, but who also owns property with a tax-assessed value of at least three hundred dollars located in a different school attendance zone within your school district. You question whether "the student must attend the school located in the attendance zone of her established residence, or could she attend the school in the other attendance zone if they agree to pay the required tuition?"

Law/Analysis

Chapter 63 of Title 59 of the South Carolina Code governs children attending public schools in South Carolina. Generally speaking, it is contemplated that pupils will attend school within the school district in which they reside: See Op. S.C. Atty. Gen., September 1, 1977.

Particular reference was made in your letter to S.C. Code Ann. §59-63-30. This provision presents the qualifications for a child to attend a public school in a particular school district. Section 59-63-30 states as follows:

Children within the ages prescribed by §59-63-20 shall be entitled to attend the public schools of any school district, without charge, only if qualified under the following provisions of this section:

- (a) Such child resides with its parent or legal guardian;
- (b) The parent or legal guardian, with whom the child resides, is a resident of such school district; or
- (c) The child owns real estate in the district having an assessed value of three hundred dollars or more; and
- (d) The child has maintained a satisfactory scholastic record in accordance with scholastic standards of achievement prescribed by the trustees pursuant to §59-19-90; and
- (e) The child has not been guilty of infraction of the rules of conduct promulgated by the trustees of such school district pursuant to §59-19-90.

Also of relevance is §59-63-45 which states

(A) [n]otwithstanding the provisions of this chapter, a nonresident child otherwise meeting the enrollment requirements of this chapter may attend a school in a school district which he is otherwise qualified to attend if the person responsible for educating the child pays an amount equal to the prior year's local revenue per child raised by the millage levied for school district operations and debt service reduced by school taxes on real property owned by the child paid to the school district in which he is enrolled. The district may waive all or a portion of the payment required by this section.

(B) Students attending a school pursuant to this section must be counted in enrollment for purposes of determining state aid to the district.

(C) If the payment to the school district is not made within a reasonable time as determined by the district, the child must be removed from the school after notice is given.

*2 (D) Any nonresident student enrolled in the schools of a district no later than September 9, 1996, shall not be required to meet the conditions of subsection (A) of this section as long as the student is continuously enrolled in the district and as long as the student meets the qualifications provided by law for attending the schools of the district.

Section 59-63-30 is a provision in the same chapter as §59-63-45. In an opinion dated September 7, 2010, we stated that, as set forth by such provision, a nonresident child may attend a school in a school district which he is otherwise qualified to attend if the parent "... pays an amount equal to the prior year's local revenue per child raised by the millage levied for school district operations and debt service reduced by school taxes on real property owned by the child paid to the school district in which he is enrolled." We advised that such requirement must be read in addition to the provisions of §59-63-30. See Op. S.C. Atty. Gen., dated December 8, 2005.

Referencing the above, we concluded in the September 7, 2010, opinion:

... if a child owns real estate in his or her name in the amount of \$300.00 in assessed value within a school district in which the child does not reside but wishes to transfer as authorized by Section 59-63-30(c) and complies with subsections (d) and (e) of the same section of the law, in the opinion of this office there is no requirement that the child obtain a release from the district of residence to transfer to the district of non-residence. Similarly, under the same provisions ..., in the opinion of this office, the district of non-residence into which the child is to be transferred cannot deny the child's enrollment if the land requirement, scholastic achievement, good conduct, and payment of any required tuition are met.

See Ops. S.C. Atty. Gen., December 8, 2005; April 3, 1978; see also Op. S.C. Atty. Gen., July 8, 2009 [noting that "each child must hold in his or her name solely real estate having an assessed value of three hundred dollars or more ... joint ownership would not qualify"].¹

Additionally, we note that §59-19-10 provides that each school district shall be under the management and control of the board of trustees, subject to the supervision of the county board of education. See Ops. S.C. Atty. Gen., January 29, 2007; February 16, 1983. Section 59-19-90, and in particular sub-part (9), provides the general powers and duties of the board of trustees as follows:

(9) Transfer and assign pupils. Transfer any pupil from one school to another so as to promote the best interests of education, and determine the school within its district in which any pupil shall enroll ...

In an opinion dated June 3, 1988, we specifically addressed the issue of whether a student who meets the eligibility requirements for attending public schools of a school district free of charge under §59-63-30 by owning real estate in the district having an assessed value of three hundred dollars or more has a right to attend any school in that district. We concluded that:

*3 Section 59-63-30 does not expressly address the question, but §59-19-90(9) empowers Boards of Trustees to "... determine the school within [the] district in which any pupil shall enroll ...". Giving §59-19-90(9) its plain meaning ... requires the conclusion that the power of school districts to determine pupil assignments is not altered by the provisions of school attendance based upon property ownership under §59-63-30. Sutherland Statutory Construction, Vol. 2A §51.02; See also Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970). Therefore, property ownership within a district does not, itself, entitle a student to demand attendance at a particular school within that district. [Emphasis added].

The reasoning of this opinion was reaffirmed in an opinion of this Office dated August 2, 1993.

We further note that in Redmond v. Lexington County School Dist. No. Four, 314 S.C. 431, 445 S.E.2d 441 (1994), the South Carolina Supreme Court held the standard of review in determining whether a Board properly exercised its discretion under §59-19-90 is whether the action measures up to any fair test of reason, and that a clear abuse of discretion is required to justify judicial interference. Id., 445 S.E.2d at 444 [citing Gamble v. Williamsburg County School District, 305 S.C. 288, 408

S.E.2d 217, 218 (1991)]. At issue in Redmond was whether the Board abused its discretion in entering into a lease-purchase agreement for building a new school, and to compel the making of repairs on existing schools. The Court held this was not an abuse of discretion and was within the Board's power under §59-19-90 to provide for the best interests of the district. Similarly, the South Carolina Court of Appeals stated in Singleton v. Horry County School District, 289 S.C. 223, 345 S.E.2d 751, 753 (Ct. App. 1986), that "[c]ourts 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."

Conclusion

We again cite to our previous opinion, and we advise that property ownership within a district does not, in and of itself, entitle a student to demand attendance at a particular school within that district. Op. S.C. Atty. Gen., June 3, 1988. We conclude that, in the absence of any local legislation to the contrary, the determination of which school within the district a student meeting the eligibility requirements for attending public schools of a school district under §59-63-30 would attend is properly addressed to the discretion of the board of trustees of the school district pursuant to §59-19-90(9).² As we previously stated in Op. S.C. Atty. Gen., March 13, 1996, "boards of trustees of the school districts have broad powers over district affairs . . ." See Op. S.C. Atty. Gen., October 5, 1979.

If you have any further questions, please advise.
Very Truly Yours,

*4 N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General

Footnotes

- ¹ In addition to §59-63-30, §59-63-31 provides additional ways in which a child can qualify to attend a particular public school district based on the residence of an adult; if the child is emancipated and resides in the school district; if the child is homeless or is a child of a homeless individual; or if the child resides in an emergency shelter located in the school district. The Legislature has further recognized that, in certain instances, it is appropriate to provide for pupils residing in one county to attend schools in an adjacent county if such schools are closer (§59-63-480), or to attend schools in an adjacent district if the "person is so situated as to be better accommodated at the school of an adjoining school district (§59-63-490).
- ² We note that Fort Mill School District 4 has issued "Policy JCA" concerning "Assignment of Students to Schools," which specifically addresses criteria for allowing transfers within the district.

2011 WL 2214063 (S.C.A.G.)

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SCHOOL POLICIES

Policy JFAA Admission of Resident Students

Issued 3/15

Purpose: To establish the basic structure for the admission of those students who reside in Charleston County School District to the district schools.

Note: Admission of nonresident students is governed by policy JFAB.

Generally, persons of legally defined and mandated school age who reside in Charleston County School District and who have presented certificates or records of immunization and vaccination in accordance with the directions of the State Department of Health and Environmental Control may attend the free public schools.

First-time enrollment

The appropriate associate superintendent shall refer to the appropriate constituent board any student who seeks to enroll in the constituent district for the first time if it appears to the associate superintendent, from non-school records and/or the student's disciplinary records, that the student does not meet the district's standards for conduct and behavior. The constituent board shall consider these records and any adjudication of delinquency in any jurisdiction for violent crimes, unlawful use or possession of weapons or unlawful sale of drugs and render a decision as to whether to allow the student to enroll.

If the constituent board does not allow the student to enroll based on his/her record, the constituent board shall notify the student's parent/legal guardian who shall have the right to request a hearing before the constituent board. The parent/legal guardian may appeal an adverse decision of the constituent board to the county board.

The bar to enrollment applies for a maximum of one year. After the bar is lifted, the student may reapply.

Criteria for admission

Under South Carolina law, a student who lives in the district is eligible for enrollment so long as he/she meets one of the following criteria.

- lives with one or more of his/her parents, legal guardian or foster parent
- is emancipated
- is homeless or is a child of a homeless individual, as defined in Public Law 100-77
- resides in an emergency shelter located within the district
- lives in a residential community-based care facility licensed by the South Carolina Department of Social Services or operated by the South Carolina Department of Social Services or the South Carolina Department of Youth Services

Charleston County School District must admit any student who lives with an adult resident of the district, provided the adult provides an affidavit as required by law to show that the child resides with the adult as a result of any of the following.

- the death, serious illness or incarceration of a parent/legal guardian
- a parent/legal guardian's relinquishing complete control of the child, as evidenced by the failure to provide substantial financial support and parental guidance
- abuse or neglect by a parent/legal guardian
- the physical or mental condition of a parent/legal guardian is such that he/she cannot provide adequate care and supervision of the child
- a parent/legal guardian's homelessness, as that term is defined by Public Law 100-77

In addition, the adult must attest that the child's claim of residency in Charleston County School District is not primarily related to attendance at a particular school. The adult must also accept responsibility for educational

decisions for the child.

In all cases the student must do the following.

- have maintained a satisfactory scholastic record in accordance with scholastic standards of achievement set by the Charleston County School Board
- not have been guilty of violating the rules of conduct and behavior that must be met by all students as a condition to the right to attend the public schools of the district as set by the Charleston County School Board

No student shall be denied admission on the basis of race, religion, color, creed, sex, gender preference, immigrant status or English-speaking status, national origin or disabling condition.

Adopted 10/25/76; Revised 11/28/05, 1/23/06, 1/24/11, 3/9/15

Legal references:

Federal Law:

McKinney-Vento Homeless Education Assistance Improvements Act of 2001, 42 U.S.C.A. Section 11431 et seq.

No Child Left Behind Act of 2001, Pub. L. No 107-110, 115 Stat. 1425, Section 4155.

Title IV of the Civil Rights Act of 1964, 42 U.S.C.A. Section 2000c et seq. - Prohibits discrimination on the basis of race, color or national origin, among other factors, by public elementary and secondary schools.

Title VI of the Civil Rights Act of 1964, 42 U.S.C.A. Section 2000d - Prohibits discrimination on the basis of race, color, national origin or immigration status, among other factors, in programs receiving federal financial assistance.

S.C. Code, 1976, as amended:

Section 44-29-180 - Student must show immunization prior to admission.

Section 59-19-90(10) - Power of board to transfer and assign pupils.

Section 59-38-10 - South Carolina Education Bill of Rights for Children in Foster Care.

Section 59-63-30 - Qualifications for attendance.

Section 59-63-31 - Additional qualifications for attendance at public school.

Section 59-63-32 - Requirements to enroll child in public school; affidavit; penalties for providing false information.

Section 59-63-217 - Board of trustees may consider non-school records and prior school disciplinary records in determining whether a school district may refuse to enroll a student for the first time.

Section 59-63-390 - Ages of attendance.

Section 59-63-480 and 490 - Attendance of non-resident students.

Federal Cases:

Parents Involved in Community Schools v. Seattle School District No. 1, 551 U.S. 701 (2007).

State Board of Education Regulations:

R43-272 - School admission.

South Carolina Department of Health and Environmental Control Regulations:

R61-8 - Immunization of students.

Charleston County School District

Policy JFAB Nonresident Students

Issued 1/18

Purpose: To establish guidelines for admitting to Charleston County School District schools those students who do not reside in the district.

The superintendent shall make recommendations to the board when students residing outside of Charleston County request to be admitted to district schools. These recommendations shall follow applicable state law. No out-of-district student may be admitted unless the parent/legal guardian assumes responsibility for transportation. Behavioral and academic requirements set out in policy JFAA, Admission of Resident Students, apply to non-resident students.

Tuition

The district shall charge tuition to certain non-resident students.

Examples of students who must pay tuition include the following:

- a student in one county who resides closer to schools in an adjacent county (59-63-480)
- a student so situated as to be better accommodated by a school of an adjoining district (59-63-490)
- a student who qualifies for attendance only by virtue of owning real property with a tax assessed value of \$300.00 or more, pursuant to S.C. Code Ann. §59-63-30

The finance office shall collect the tuition as specified in S.C. Code Ann. §59-63-480. In accordance therewith, the district shall determine the yearly per-student cost of all overhead expenses of the school, which shall include all expenses of the school not paid by the state, less the property tax assessed for the benefit of CCSD, and shall require that the parent/legal guardian make those payments in two equal installments prior to the beginning of the first and second semesters.

Student Planning to Move into the District

The superintendent shall not charge tuition for a student planning to move into the district, provided the parent/legal guardian provides a release from the district in which the student resides and demonstrates by a statement from a builder, buyer, or lessor that the student and his/her parent/legal guardian will establish residency in the district by the end of that school year. If residency is not established by the end of the school year in which the student has been admitted, the student must be withdrawn from the district school and may not use this provision for enrollment until residency has been established.

Students Who Own Real Property

The location of real property owned by a student who is attending school in the district pursuant to S.C. Code Ann. §59-63-30(c) does not dictate the school or attendance area in which the student will attend. Such student may apply through the superintendent's office or his/her designee for enrollment at a specific school; however, for each such student, the district reserves the right to designate a "home school" or "home attendance zone" based on school capacity and other criteria.

Magnet Schools/Programs

To attend a magnet school or program, a nonresident student must be authorized to attend in the attendance area, if any, served by that magnet school or program.

Student Who Move during the School Year

Students who move out of the district at any time during the school year shall no longer be eligible to remain in a district school without district approval. Such students may appeal to the county board for permission to continue enrollment for the remainder of that school year. Pending any such appeal, the student may remain enrolled in the school. If the student is not granted board permission to continue enrollment, the student must withdraw from the district school. If the student moves outside of the district **before** the 135th day of school, and is given board permission to remain at the school, the student's parent/legal guardian will be required to pay a pro-rated amount of tuition for the remainder of the school year. If the student moves outside of the district **after** the 135th day of school, and is given board permission to remain at the school, tuition will be waived for the remainder of that school year. If the student is granted permission to return to the school in the fall and in subsequent years, tuition will be charged as established by policy.

Foreign Exchange Students

The district shall admit students from foreign countries who are age eligible and who are participating in a foreign student exchange program based on space availability in the requested school.

Charleston County School District shall not deny admission to any student on the basis of race, religion, color, creed, sex, gender preference, immigrant status, English-speaking status, national origin, or disabling condition.

See administrative regulation for additional implementation information.

See policy JRA and administrative regulations for information pertaining to the transfer of student records.

Adopted 10/25/76; Revised 1/23/06, 2/11/08, 9/27/10, 1/13/14, 4/28/14, 6/27/16, 1/22/18

Legal references:

Federal Law:

McKinney-Vento Homeless Education Assistance Improvements Act of 2001, 42 U.S.C.A. Section 11431, et seq.

Every Student Succeeds Act of 2015, Pub. L. No. 114-95, 129 Stat. 1802.

Title IV of the Civil Rights Act of 1964, 42 U.S.C.A. Section 2000c, et seq. - Prohibits discrimination on the basis of race, color, or national origin, among other factors, by public elementary and secondary schools.

Title VI of the Civil Rights Act of 1964, 42 U.S.C.A. Section 2000d - Prohibits discrimination on the basis of race, color, national origin, or immigration status, among other factors, in programs receiving federal financial assistance.

S. C. Code, 1976, as amended:

Section 44-29-180 - Students must show immunization prior to admission.

Section 59-19-90(10) - Power of board to transfer and assign pupils.

Section 59-38-10 - South Carolina Education Bill of Rights for Children in Foster Care.

Section 59-63-30 - Qualifications for attendance.

Section 59-63-45 - Reimbursement for attending another school district.

Section 59-63-480 & 490 - Attendance of non-resident students.

Federal Cases:

Parents Involved in Community Schools v. Seattle School District No. 1, 551 U.S. 701 (2007).

Plyler v. Doe, 457 U.S. 202 (1982).

S.C. Cases:

Storm ex rel. McSwain v. Charleston County Board of Trustees, 400 S.C. 478, 735 S.E.2d 492 (2012).

State Board of Education Regulations:

R-43-272 - School admission.

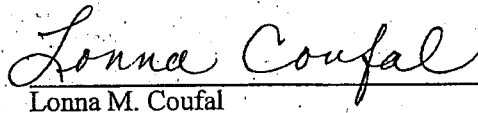
R-43-273 - Transfers and withdrawals.

Charleston County School District

CERTIFICATE OF SERVICE

The undersigned of Halligan Mahoney Williams Smith Fawley & Reagle, PA, hereby certifies that she has served the following counsel of record with the foregoing **DEFENDANTS' RULE 12(b) MOTION TO DISMISS AND MEMORANDUM OF LAW** by mailing a copy of same, postage prepaid and return address clearly indicated, to the following on this 29th day of August, 2018:

Randolph W. Cooper, Esq.
Cooper Law Firm, LLC
109 River Landing, Suite 100-B
Charleston, SC 29492


Lonna M. Coufal

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Jennifer McCoy, Circuit Court Judge

C.A. No.: 2018-CP-10-04127

RECEIVED
OCT 03 2018
SC Court of Appeals

Charleston County School District Board of Trustees,
Dr. Gerrita Postlewait, in Her Capacity as Superintendent of Charleston
County School District, Kim Jackson, in Her Capacity as Principal of
Mt. Pleasant Academy Appellants

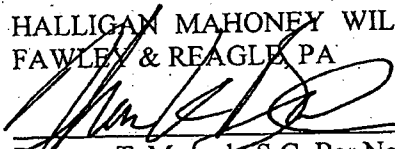
v.

Travis J. McCory and Alicia S. McCory Respondents.

NOTICE OF APPEAL

Appellants, Charleston County School District Board of Trustees, Dr. Gerrita Postlewait, and Kim Jackson, appeal the order of the Honorable Jennifer McCoy dated September 7, 2018 granting Respondents a declaratory judgment.

HALLIGAN MAHONEY WILLIAMS SMITH
FAWLEY & REAGLE, P.A.


Dwayne T. Mazyek, S.C. Bar No. 70240
dmazyek@hmwlegal.com
Thomas K. Barlow, S.C. Bar No. 8995
tbarlow@hmwlegal.com
1301 Gervais Street, Suite 1400
P.O. Box 11367
Columbia, SC 29211
(803) 254-4035

Attorneys for Defendants

October 2, 2018

Other Counsel of Record:

Randolph W. Cooper, Esq.
Cooper Law Firm, LLC
109 River Landing, Suite 100-B
Charleston, SC 29492

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Jennifer McCoy, Circuit Court Judge

C.A. No.: 2018-CP-10-04127

RECEIVED
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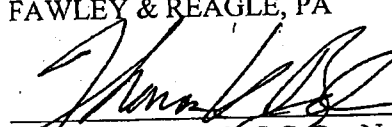
v.

Travis J. McCory and Alicia S. McCory Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondents listed above by depositing a copy of it in the United States Mail, postage prepaid, on October 2, 2018, addressed to their attorney of record listed below.

HALLIGAN MAHONEY WILLIAMS SMITH
FAWLEY & REAGLE, PA


Dwayne T. Mazyck, S.C. Bar No. 70240

dmazyck@hmwlegal.com

Thomas K. Barlow, S.C. Bar No. 8995

tbarlow@hmwlegal.com

1301 Gervais Street, Suite 1400

P.O. Box 11367

Columbia, SC 29211

(803) 254-4035

Attorneys for Defendants

Randolph W. Cooper, Esq.
Cooper Law Firm, LLC
109 River Landing, Suite 100-B
Charleston, SC 29492



HALLIGAN MAHONEY & WILLIAMS

HALLIGAN MAHONEY WILLIAMS
SMITH FAWLEY & REAGLE, PA

THE TOWER AT 1301 GERVAIS STREET, SUITE 1400
PO BOX 11367 | COLUMBIA, SC 29211
PH 803.254.4035

HMWLEGAL.COM

WILLIAM F. [BICK] HALLIGAN
KATHRYN LONG MAHONEY
ALLEN D. SMITH ★
SHIRLEY M. FAWLEY ♦
JOHN M. REAGLE ♦
VERNIE L. WILLIAMS
THOMAS K. BARLOW ♦♦

ALLISON AIKEN HANNA
CONNIE P. JACKSON
KIMBERLY KELLEY BLACKBURN
JASMINE ROGERS DRAIN ◻
DWAYNE T. MAZYCK
SHENEKA S. LODENQUAI ◻

October 2, 2018

Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RECEIVED
OCT 03 2018
SC Court of Appeals

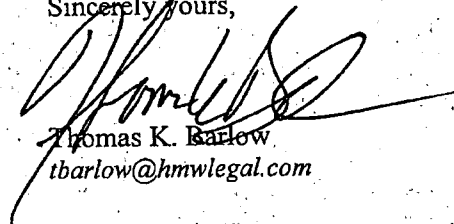
Re: Charleston County School District Board of Trustees, Dr. Gerrita Postlewait, in her Capacity as Superintendent of Charleston County School District, Kim Jackson, in her capacity as Principal of Mt. Pleasant Academy v. Travis J. McCorry and Alicia S. McCorry

Dear Ms. Kitchings:

Our law firm represents the Appellants in the above-referenced litigation. Enclosed for filing are an original and one copy of a Notice of Appeal. Please return the extra clocked-in copy to our office in the enclosed self-addressed envelope provided.

By copy of this letter we are serving Randolph Cooper, counsel for Respondents, with a copy of this filing.

Sincerely yours,



Thomas K. Barlow
tbarlow@hmwlegal.com

/lmc
Enclosures

c: Randolph W. Cooper, Esq.
Dwayne T. Mazyck, Esq.



**HALLIGAN MAHONEY
& WILLIAMS**

HALLIGAN MAHONEY WILLIAMS
SMITH FAWLEY & REAGLE, PA
PO BOX 11367 | COLUMBIA, SC 29211
HMWLEGAL.COM

Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RECEIVED
OCT 03 2018
SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
TRAVIS J. McCORY and ALICIA S.
McCORY,

Plaintiffs,

VS.

CHARLESTON COUNTY SCHOOL
DISTRICT BOARD OF TRUSTEES,
DR. GERRITA POSTLEWAIT, in her
Capacity as Superintendent of Charleston
County School District and
KIM JACKSON, in her capacity as
Principal of Mt. Pleasant Academy

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2018-CP-10-4127

ORDER
(DECLARATORY JUDGMENT)

RECEIVED
OCT 03 2018
SC Court of Appeals

FILED
2018 SEP -7 PM 12:06
JULIE S. OF COURT

This matter came before this court on the August 27, 2018, to hear a Declaratory Judgment action filed by the Plaintiffs, Travis J. McCory and Alicia S. McCory. Present at the hearing were the Plaintiffs Travis J. McCory and Alicia S. McCory represented by Randolph W. Cooper, Esquire; and Thomas K. Barlow, Esquire and Dwayne T. Mazyck, Esquire of the law firm of Halligan, Mahoney & Williams, P.A. representing the Defendants, as well as Natalie Ham, Esquire, General Counsel to Charleston County School District.

INTRODUCTION

This case is brought pursuant to S.C. Code § 15-53-10 *et seq.* (1976) as amended to declare the Plaintiffs legal rights under S.C. § 59-63-30 (1976) as amended. Specifically, Plaintiffs are requesting this court determine whether the minor child of the Plaintiffs, Aubrey Lyla McCory, should be admitted as a student to Mt. Pleasant Academy in compliance with S.C. § 59-63-30.

JBM/1

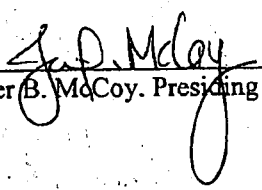
ORDER

After considering arguments from both sides and evidence submitted to the Court, Plaintiff's requested relief for Declaratory Judgment is granted. Therefore, it is hereby ordered that the Charleston County School Board admit Aubrey Lyla McCory as a student of Mt. Pleasant Academy immediately.

Additionally, the Court has received the Defendants' Suggestion of Mootness as to this matter. The Court, however, ruled on the matter at the conclusion of the hearing on August 27, 2018. Therefore, the matter was ruled upon prior to the subsequent actions taken by Defendants and, as such, any argument as to Mootness is precluded.

Finally, pursuant to S.C. § 15-77-300 (2010), a prevailing party in an action against the State may recover reasonable attorney's fees to be taxed as court costs against the appropriate agency if: (1) the court finds the government agency acted without substantial justification, and (2) the court finds there are no special circumstances that would make the award of attorney's fees unjust. Here, the issue of attorney's fees was neither included in the parties' written motions nor addressed at the hearing. While there are no special circumstances that would make the award of attorney's fees in this case unjust, the Court finds the Charleston County School Board did not act without substantial justification. Therefore, the Court finds attorney's fees and costs are not appropriate in this matter.

AND IT IS SO ORDERED!


Jennifer B. McCoy, Presiding Judge

September 7, 2018
Charleston, South Carolina

1 STATE OF SOUTH CAROLINA)
 2) Court of Common Pleas
 2 COUNTY OF CHARLESTON) Case No. 2018-CP-10-04127
 3)
 3 TRAVIS J. MCCORY and)
 4 ALICIA S. MCCORY,)
 5)
 5 Plaintiff,)
 6)
 6 vs.) Transcript of Record
 7)
 7 CHARLESTON COUNTY SCHOOL)
 8 DISTRICT BOARD OF TRUSTEES,)
 8 DR. GERRITA POSTLEWAIT, in her)
 9 capacity as superintendent of)
 9 Charleston County School)
 10 District, KIM JACKSON, in her)
 10 capacity as principal of)
 11 Mount Pleasant Academy)
 11)
 11 Defendant.) DATE: August 30, 2018
 12)

13
 14
 15 B E F O R E:

16 THE HONORABLE JENNIFER B. MCCOY

17
 18 A P P E A R A N C E:

19 RANDOLPH W. COOPER
 Attorney for the Plaintiff

20 THOMAS KENNEDY BARLOW and DWAYNE MAZYCK
 Attorney for the Defendant

21 NATALIE HAM
 22 In-house counsel for the Charleston County School District

23
 24 Karen V. Andersen, RMR, CRR
 25 Circuit Court Reporter

1 THE COURT: Okay. We are here on Case No.
2 2018-CP-10-4127. This is Travis and Alicia McCorry vs. the
3 Charleston County School District; Dr. Gerrita Postelwait, in
4 her capacity as superintendent; Kim Jackson, in her capacity as
5 principal of Mount Pleasant Academy.

6 I reviewed, obviously, the e-mails that were
7 exchanged, as well as the defendant's motion to dismiss and
8 memorandum of law. So I'm somewhat familiar with the facts
9 behind the case, but I'm happy before we get started if the
10 attorneys could just announce their names and the clients they
11 are here to represent. Then we will get started.

12 MR. BARLOW: Tom Barlow and Dwayne Mazyck for the
13 defendants, also Natalie Ham, in-house counsel for the school
14 district.

15 MR. COOPER: Your Honor, Randy Cooper for the
16 plaintiffs. I have as plaintiffs here Travis McCorry, his wife
17 Alicia McCorry, and my nephew, Michael Cooper. He's just
18 hanging around.

19 THE COURT: Okay. Sounds good. All right.
20 Mr. Cooper, I'm happy to hear from you. You brought this
21 action, obviously, I guess in the form of a declaratory
22 judgment action. We are here to interpret statute, it's my
23 understanding, and whether or not the facts that your clients
24 are alleging fit within that statutory requirement of a school
25 admission; is that correct?

1 MR. COOPER: Yes, Your Honor.

2 THE COURT: Okay. If you want to just tell me a
3 little bit more about kind of where it fits in and why it fits
4 in, and then we will switch sides and do it that way. Okay?

5 MR. COOPER: Your Honor, if you want to consider the
6 motion first and I respond to the motion, whichever --

7 THE COURT: Well, if you could just kind of give me a
8 factual basis, and then we will switch it over, that will be
9 helpful, just from your perspective. I want to hear kind of
10 what you are alleging. And then we will switch sides.

11 MR. COOPER: All right. Your Honor, this action is
12 based on Code Section 15-53-20, in which, under the statute,
13 the Court has rights to declare or determine the rights between
14 the parties. And then Section 15-53-30 of the South Carolina
15 Code of Laws says that the judge has a right to ascertain the
16 rights and also determine rights among municipal contracts,
17 franchises or any questions or validity arising under the
18 statute, ordinance or other legal relations. So those are the
19 two statutes that we refer to as providing us jurisdictional
20 authority in this matter.

21 As you mentioned, briefly the facts, in March of 2017,
22 Ms. McCory had a conversation with a Sherron Brightharp. She
23 is a paralegal to Ms. Natalie Ham. Ms. Natalie Ham is general
24 counsel to Charleston County School Board. This conversation
25 was in March of 2017 regarding how Ms. McCory could have her

1 daughter Aubrey McCorry admitted to kindergarten. This
2 conversation, granted, was taken a year in advance so she could
3 plan on being admitted. Mr. Brightharp responded that she
4 would have to apply as a transfer request.

5 So in June of 2018, Ms. McCorry filed a transfer
6 request with the Charleston County School District -- excuse
7 me, in March, March. It's important to get the dates straight,
8 March of 2018.

9 In June 2018, Ms. McCorry received acknowledgement that
10 her daughter was eligible for admittance to Mount Pleasant
11 Academy, but was No. 4 on the waiting list. Ms. McCorry,
12 subsequent to that time, between June and August, made several
13 attempts to inquire as to whether her daughter had moved up the
14 waiting list, to which she received no replies from the
15 Charleston School Board.

16 I met with Ms. McCorry and her husband Travis McCorry to
17 discuss the application. And I recommended to them -- I
18 disagreed with the position as to how she should be admitted.
19 I suggested to them that they file a regular application to be
20 admitted and to file an affidavit. And the affidavit is
21 referenced -- give me one minute -- it's -- I apologize, Your
22 Honor. It's 59-63-32.

23 And, Your Honor, I have a copy of the statute. And I
24 will be happy to provide you and the defense copies of the
25 statute so that we can all be looking at the same statute.

1 THE COURT: Sure. That would be helpful. So is this
2 going to be an application under a separate ground, if you
3 will? This is the application now. This is now applying as an
4 owner of property within that district?

5 MR. COOPER: Yes, ma'am.

6 THE COURT: So we are switching gears now, applying
7 under a new set of rules; am I correct?

8 MR. COOPER: Yes, ma'am.

9 THE COURT: Just so I'm on the same page with
10 everybody. Okay. Happy to look at that.

11 MR. COOPER: Your Honor, this rendition is not -- I've
12 taken it and enlarged the font, because my old eyes need a 14
13 font versus a 12, and sometimes they do it in 9 font.

14 Your Honor, specifically, there are several statutes,
15 Section 59-63-30 talks about the qualifications for a child to
16 be admitted to school, a school district. Then 59-63-31, as
17 it's labeled, has additional qualifications.

18 But the following Statute 59-63-32 has what are some
19 requirements to enroll. And this is more of a procedural
20 statute. And it requires that the parents submit an affidavit
21 that basically asserts the reason for the grounds for the
22 qualification of the student.

23 So we have filed an affidavit -- we filed an
24 application with the school board and we filed the affidavit.
25 We personally delivered the affidavit to Ms. Jackson, who is

1 the principal of Mount Pleasant Academy. Then on August 17th,
2 Ms. Darby, in her capacity as chairperson of the Charleston
3 County School District, sent me an e-mail informing me that the
4 child would not be admitted to the Mount Pleasant Academy.

5 And then on August -- and, Your Honor, I have a copy
6 of Mrs. Darby e-mail. I have a copy for each of you. I would
7 like to provide that as Plaintiff's Exhibit (a).

8 (Plaintiff's Exh. A, E-mail dated August 17th, 2018,
9 was marked for identification.)

10 MR. COOPER: In the letter -- I ask you to read it
11 yourself, Your Honor -- Ms. Darby points that the child must be
12 admitted to the appropriate school. We are in full agreement
13 with that. Then she talks about that Mount Pleasant Academy
14 has too many students. And I will address that later on in my
15 argument. That same point was addressed by the Chief Justice
16 Toal. And then the final point it says, we will not accept her
17 enrollment in the academy.

18 THE COURT: When this affidavit was submitted, you
19 said it was under the section that allows attendance by virtue
20 of owning real property with a tax assessed value of \$300 or
21 more; is that correct?

22 MR. COOPER: Yes, ma'am.

23 THE COURT: Is that in the child's name?

24 MR. COOPER: I'm sorry?

25 THE COURT: Is there any issue as to the qualification

1 of the real property by the child? Is there any issue as to --

2 MR. COOPER: Your Honor, I have a copy of the deed.
3 And I would admit that as Plaintiff's Exhibit (b).

4 (Plaintiff's Exh. B, Deed, was marked for
5 identification.)

6 MR. COOPER: Your Honor, this piece of property
7 address is 511 McCants Street. McCants is kind of the Old
8 Village of Mount Pleasant. The approximate value of the
9 property is around \$400,000. And each child -- McCorys have
10 two children. Both children have an ownership of 1 percent
11 through their trustee. So their interest well exceeds \$300.
12 And I don't think that can be -- is a dispute.

13 THE COURT: All right. And you are seeking a
14 declaratory judgment from this Court that this child meets the
15 criteria outlined in the statute and should be admitted as
16 such, correct?

17 MR. COOPER: Specifically, 59-63-30, subsection (c)
18 which says, a child owns real estate in the district having a
19 value in excess of \$300.

20 THE COURT: All right. And, of course, that
21 subsection says "and" at the end of it.

22 MR. COOPER: At the end of it --

23 THE COURT: Just to be real clear, so that has to
24 encompass D and E, right? No question about that from anybody?
25 I want to make sure we are on the same page.

1 MR. COOPER: I think there's no question about that,
2 Your Honor. The way the statute reads, and for point of
3 clarification, there is a Subsection A and Subsection B, which
4 says that under one, rules of admittance, the child resides
5 with the parent and the parent lives in the district where
6 the -- for the school that they are seeking for attendance.
7 Then very clearly, there is the word "or". And then it says,
8 or the child owns real estate in the district having a value in
9 excess of \$300.

10 Now, those are the facts as presented. And I will be
11 at this time happy to present the law. There is a recent case,
12 a South Carolina Supreme Court case, *McSwain v. the Charleston*
13 *County School Board*. And I have attached a copy of that to my
14 pleadings. But I have also made a copy of the -- the reason I
15 give it to you, I will be referring, I think, frequently to
16 this case.

17 As I mentioned to you, this case is a South Carolina
18 Supreme Court case determined in the year 2000. And our chief
19 justice, Justice Toal, issued the opinion of the court. The
20 facts of this case are not similar to the present facts, but
21 the basis of the foundation for the court's thinking is the
22 same. And it all goes to the application and the
23 interpretation of Section 59-63-30.

24 In there, if you would refer to page 7 in the opinion.
25 And, Judge, I did the unusual thing of highlighting. You know,

1 people cite cases and say, this is the authority. And we are
2 in a short time frame. And everybody is like, you know -- so
3 I've actually highlighted --

4 THE COURT: I skipped right to it, too.

5 MR. COOPER: I highlighted the language so we can be
6 as brief as possible. And it says in there that a school -- by
7 its plain terms, Section 59-63-30, entitles a child to attend
8 the public schools of any school district if the child, one,
9 resides with his or her parent or legal guardian at that school
10 district.

11 And then she, if I may, she used the word "or", it's
12 highlighted. It's emphasized by the judge. The judge is
13 bringing to the court's attention the word "or". And it says,
14 or the child owns real estate in the district having an
15 assessed value of \$300.

16 And then, as you stated, Your Honor, there's two other
17 subsections, the child maintains satisfactory school scholastic
18 record and not have been found guilty of any infraction. And
19 since this child is sought to admission in kindergarten, it's
20 not likely that she is -- this will be her first year in
21 school. We don't see how she could violate those two
22 ordinances.

23 THE COURT: All right. Anything else before we switch
24 sides? In this case, issue of someone being revoked from a
25 school is a little bit different.

1 MR. COOPER: Your Honor, I would like to add one other
2 thing in that that she states that says -- and what we support
3 is, we feel that the county school board has a right to
4 promulgate regulations, provided those regulations are not
5 inconsistent with the statute. So what the Justice further
6 asserts is that -- says: Thus, a child who owns real estate in
7 the district, having an assessed value of \$300 or more, is
8 entitled to attend the district's school just as a resident
9 child.

10 It's clear from the dicta of this case. It's clear
11 from the court dicta that whether you are -- the child is being
12 admitted because her parent lives in this school district or
13 because she owns property in the school district, that they
14 have to be treated in the same fashion. It can't -- you cannot
15 give a preference to one group over the other.

16 THE COURT: Okay.

17 MR. COOPER: Your Honor, if you would give me one
18 second.

19 THE COURT: Take your time.

20 MR. COOPER: Your Honor, I would like to make one
21 final comment but reserve the right to rebuttal matters brought
22 forth that are raised by the defendants.

23 The motion of the defendants cite various cases,
24 federal cases, state cases, but they fail to reference this
25 case. And the question is, why did they not raise this case?

1 And it's my belief, my firm belief, that this case decides
2 issues that are brought forth today, that these issues, all of
3 these issues were raised in this case. And Judge Toal very
4 clearly articulated the issues and ruled in our favor by the
5 interpretation of the application of subsection (c) of
6 59-63-30.

7 And with that, Your Honor, I will turn the matter over
8 to the defendants, or answer or address any questions you may
9 have at this point.

10 THE COURT: You reserve your right to respond as well.

11 Happy to hear from whoever would like to speak on
12 behalf of the school district board, Charleston County School
13 District. Obviously, you are going to raise your defenses at
14 the same time your motion to dismiss which has been filed. So
15 happy to hear from you.

16 MR. BARLOW: Thank you, Your Honor. Tom Barlow for
17 the defendants. First of all, I think, just as a matter of
18 housekeeping, the motion to dismiss memorandum addresses the
19 merits --

20 THE COURT: That's exactly why I went a little out of
21 order, because I wanted him to go ahead and tell me what was
22 going on.

23 MR. BARLOW: I don't think there was anything we left
24 out of the motion and memorandum that didn't go to the merits
25 of the case that we would need to argue separately. We think

1 that the memorandum we've submitted comprehensively deals with
2 the issues that were involved and the declaratory judgment and
3 why the Court should deny the declaratory judgment as well.

4 First of all, the standard before the Court is not
5 whether the school would be bettered suited for this family or
6 whether school choice in general is a good idea. The issue
7 before the Court, and the only issue before the Court, is, does
8 Section 59-63-30(c) give a parent the right to choose a school,
9 another school in the school district, if they live somewhere
10 else in the school district and jump to the front of the
11 waiting list for the desired school.

12 And we are not the first people to address this. The
13 attorney general has addressed this very question in two
14 opinions that we've included with our brief and sent up to the
15 Court. The statutory scheme is clear, if you live in the
16 district, the district gets to control your attendance. And
17 that's by policy and by statute as well.

18 Now, it would be a completely unworkable situation if
19 people who lived downtown Charleston could just spend \$300 or
20 get \$300 worth of taxable property somewhere else in the school
21 district and say, we are going to that school and you can't do
22 anything about it in terms of overcrowding and the inability to
23 manage the schools, which is specifically given to the board of
24 trustees in 59-19-90, Subsection 9, which is referenced at
25 length in the attorney general's opinions, that gives school

1 districts the discretion to determine class assignments and
2 school assignments.

3 THE COURT: When were these statutes -- when were
4 these code sections written, just out of curiosity, that \$300
5 threshold, just out of curiosity, y'all deal with it all the
6 time?

7 MR. MAZYCK: They are very old.

8 THE COURT: How old?

9 MR. COOPER: 1966.

10 THE COURT: '60s?

11 MR. BARLOW: Yeah, '60s.

12 THE COURT: Probably needs to be updated.

13 MR. BARLOW: Maybe. But, anyway, as far as the
14 affidavit that he mentioned, under Section 32, 59-63-32, you
15 will note that that section references back to Subsection 31,
16 which basically -- this is the scheme. If you live in the
17 school district, you are a resident of the school district, you
18 can attend free of charge. Okay?

19 If you own property in the school district and you
20 don't live in the school district, like the McSwains, you can
21 attend the school district in the school district free of
22 charge if you satisfy the property threshold.

23 THE COURT: Where is that difference in the code,
24 nonresident different versus resident? Where is that
25 delineated?

1 MR. BARLOW: That's 30. There's -- (a) and (b) apply
2 to residents. Okay?

3 THE COURT: Okay.

4 MR. BARLOW: And C is -- if you don't live in the
5 school district, (a) and (b). Okay? If you and your parents
6 don't live in the school district, you can still attend --

7 THE COURT: Doesn't say that, does it?

8 MR. BARLOW: Says "or". Right? Right?

9 THE COURT: Doesn't say that the parents have to live
10 out of the district, does it, in order for C to apply?

11 MR. BARLOW: I don't guess it says that.

12 THE COURT: Where are you getting that? I'm not
13 doubting you. I'm asking you, where do you get that part?

14 MR. BARLOW: I think that's the only logical reading.

15 THE COURT: That's your contention. I don't know that
16 I agree with that.

17 MR. BARLOW: Fine. But if you have (a) and (b) you
18 don't need C. But if you live in the school district, there is
19 no need for C.

20 THE COURT: I understand that's your interpretation.

21 MR. BARLOW: Unless you are trying to gain the system
22 and get the school you want. Okay? That's the only way C
23 would come in. And that's what's going on here.

24 And in addition to Section 31 here, Subsection 31,
25 deals with people who live in the school district, children who

1 live in the school district but don't live with their parents.
2 So it's filling the gap that 30 doesn't cover. Okay?

3 So, right, under C, tuition can be charged as well.

4 THE COURT: Correct. Yeah. And I did read -- I read
5 the attorney general's opinions. And they would have to be
6 charged the millage rate in the district or the constituency, I
7 guess, that they are seeking to apply.

8 MR. BARLOW: Correct.

9 THE COURT: I don't think there's any challenge on
10 that, is there, Mr. Cooper, that that would apply as well?

11 MR. COOPER: I'm sorry?

12 THE COURT: Potential for your clients to have to pay
13 the property tax value for the property, the millage rate that
14 would go to that school, in other words, they would be
15 responsible for it; is there any contention about that?

16 MR. COOPER: No, Your Honor.

17 THE COURT: Okay.

18 MR. BARLOW: That's the purpose of that, is to offset
19 the taxes.

20 THE COURT: Right.

21 MR. BARLOW: As far as the McSwain case, the McSwain
22 case is completely different than our situation here. McSwains
23 lived in Berkeley County. Okay? They wanted to attend a
24 district-wide magnet school. This is not a magnet school here.
25 This is an area school. It's Mount Pleasant Academy. It's not

1 open to everybody in the district to apply. The district does
2 have a transfer policy which they took advantage of, as you
3 heard, to make their application and apply to the applicable
4 constituent board for a transfer. The transfer has been
5 conditionally granted. She's just on the waiting list and may
6 actually get in to the school.

7 The contention is, though, that they believe that they
8 can compel the school to jump her to the head of the waiting
9 list.

10 THE COURT: Well, this is sort of separate from the
11 waiting list, the way I see it. Waiting list is over here.
12 Then they apply clearly differently under this. To me, it's
13 not exactly we are trying to cut the line over here. They are
14 keeping their place in line over here. But this is sort of an
15 alternative means of admission.

16 MR. BARLOW: Correct, they are not losing their place
17 in line.

18 The other part of McSwain is, you know, this is a
19 district-wide magnet school. And the holding of McSwain is,
20 basically, if somebody qualifies to attend, an out-of-district
21 student qualifies to attend in your district, they can't be
22 excluded just on the basis of domicile or residence from a
23 district-wide magnet school application process. But she had
24 already been admitted.

25 THE COURT: Yeah, I saw that. There was a --

1 MR. BARLOW: Some of that, that's really not relevant
2 at all here. So McSwain is not really even remotely related to
3 the situation here, which the attorney general's opinions have
4 addressed.

5 Now, there is simply no right to determine the school
6 you want to go to just by buying property within district
7 that's not the same as your residence address to get into that
8 school.

9 In addition, I think he brought up the valuation of
10 the property issue. You know, we've had this case for a very
11 short amount of time, Your Honor. But our records show, what
12 we've been indicated, is that the tax-assessed value of the
13 property is \$15,240. So one percent interest in that property
14 of the tax-assessed value the statute requires, is less than
15 \$300. And, plus, it's a trust. It's not really a deed in the
16 child's name or anything like that. So we think -- you don't
17 have to get to that issue, Your Honor, but I think it's
18 relevant to bring up that issue as well.

19 But I think the attorney general's opinions and the
20 way the law is laid out, that there is simply no legal right to
21 compel attendance in a specific school by virtue of
22 59-63-30(c). The way it works, if you are out of district, is
23 you get to attend the district schools. You don't get to pick
24 your school under (c). Nothing in (c) lets you pick your
25 school, whether you are from out of the district. So it really

1 wouldn't matter if you are in district. You still don't get to
2 pick your school by virtue of (c).

3 THE COURT: I guess I keep going back to this
4 fundamental issue that I have with the way the statute is
5 written. And, you know, your phraseology is that, well, if you
6 are already in district, taking advantage of (c) would be
7 gaining the system. And I don't know that -- I don't know that
8 it is. I mean, I don't know that I agree with that assessment,
9 necessarily. If somebody owns property, that's not just
10 something anybody can just go out and do. And I am not saying
11 that those who can't afford it should be, you know, rewarded in
12 some way over those people who could not afford to do something
13 like that. That's not good public policy. But at the same
14 time, there's just nothing in the statute that limits this
15 subsection (c) to those living out of district.

16 I mean, I understand your interpretation. And I'm
17 with you on that. But you are saying that's the only logical
18 conclusion. I don't know that I agree with that. I think if
19 you have a vested real estate interest in a piece of property,
20 whether or not it's in Charleston County or some other county
21 in South Carolina, that's your vested real estate interest.
22 And that's your -- that's your right. And the rights that flow
23 from the responsibilities and that you have in the property,
24 wherever that property lies, to me, naturally flows. You know,
25 this naturally flows from that.

1 MR. BARLOW: Your Honor, assuming the logic, okay, if
2 you qualify under (a) and (b), you do not get to pick your
3 school in Charleston County. You still don't get to pick your
4 school. Okay? So why should (c) give you the right to pick
5 your school in Charleston County? You are essentially getting
6 more rights through (c) than the people who qualify under (a)
7 and (b) under their interpretation of the statute.

8 What it allows you to do is attend school in the
9 school district. So if you brought property in Berkeley
10 County, you could attend a school in Berkeley County School
11 District. Okay? But you might not be able to attend a school
12 in Daniel Island in Berkeley County School District. And
13 that's allowed. The school district has the right to make
14 those decisions under 59-19-90, Subsection 9, and district
15 policy.

16 So that's -- (c) gives you the right to attend school
17 in the school district, okay, a school. It doesn't give you
18 the right to attend a school where the property is located in
19 the school district. And that's clear in the attorney
20 general's opinions and all other law.

21 So I think even with that interpretation, if they can
22 still use (c), it doesn't gain them additional rights to go to
23 school where the property is located. Even assuming that they
24 have enough property in that school zone, it doesn't give you
25 the right to attend school where the property is located.

1 THE COURT: Okay. All right. Anything else?

2 I will switch it back over to you, Mr. Cooper. What
3 do you say about this statutory --

4 MR. COOPER: Let me take them in maybe the minor
5 points and then go to the major points. They talked about the
6 trust. I do a lot of real estate law. Your Honor, the only
7 way that a minor child could own real estate is basically
8 through a trust or an appointment of the guardian. A minor
9 child cannot own property in his own name. That's why it's in
10 trust for the benefit of the child.

11 Secondly, he raises this issue of value. Under the
12 statute, it says that the child owns real estate in district
13 having an assessed value of \$300. Assessed value, that is fair
14 market value. And we are using the term "fair market value".
15 Doesn't say -- and the school board and its attorneys keep
16 adding words to the statute to contort the meaning of the
17 statute. They are now saying it's the tax-assessed value. It
18 doesn't say that. It says "assessed value", which is fair
19 market value, Your Honor. And there's nothing on McCants
20 Boulevard that is 15,000. I guarantee you that, Your Honor.

21 THE COURT: And they are getting this from their
22 policy on line, but where did that come from?

23 MR. MAZYCK: Your Honor, even if you look at
24 Charleston County public records, which is what we looked at,
25 says "assessed value". If somebody used the word "tax", that

1 may be a misnomer.

2 THE COURT: Where does the statute say that?

3 MR. BARLOW: Says "assessed value". Doesn't say "fair
4 market value"; says "assessed value".

5 MR. MAZYCK: If you look on the public records, it
6 says "assessed value", \$15,000.

7 MR. COOPER: Tax-assessed value. Your Honor, my
8 client bought that property a couple of years ago for \$160,000.
9 That is the --

10 THE COURT: We all know that the --

11 MR. COOPER: \$170,000.

12 THE COURT: We are splitting hairs at this point.
13 There's no doubt in my mind that this property is worth well
14 over \$15,000. I'm just trying to go to their point, the tax
15 value versus assessed value. Statute says "assessed".

16 Go ahead, Mr. Cooper.

17 MR. COOPER: They talk about controversy. There
18 really is a controversy, because the only way that you come out
19 with their interpretation or their interpretation makes any
20 sense is by contortion of the state statute. You have to add
21 language to the state statute. In the case of -- I'm not sure
22 if I'm pronouncing it right, McCon (ph), the Court -- the Court
23 has laid down the test or articulated the test about when you
24 can adopt policy and when is policy enforceable. And the
25 thrust of that case is, it says there's two conditions. One is

1 that the state statute doesn't preempt or disqualify their
2 providing regulations, which this doesn't. But then it goes on
3 to say it can't be inconsistent with the statute.

4 And I have a copy of this for both parties. And, Your
5 Honor, I will -- again, I've highlighted the applicable section
6 of that statute, if I can find mine.

7 If you would go to page 3 at the bottom of this
8 opinion, it says: Where an ordinance is not preempted by state
9 law, the ordinance is valid if there is no conflict with state
10 law.

11 Your Honor, so that's the test.

12 Now, I hate to go back to McSwain, who counsel says
13 McSwain is not even applicable. He's just dead wrong on that.
14 And I would -- there are two cites I want to reference in this.
15 If you would then go back to page 7 of that opinion, it says at
16 that first paragraph I've highlighted, it says: However, the
17 board's subsequent attempt to rescind the decision is
18 unavailable because in making its decision, the board relied on
19 the unlawful policy purporting to mandate Charleston County
20 residencies as a requirement for acceptance at HMS.

21 Says: The resident-only criteria runs afoul of
22 Section 59-63-30, because any child meeting the threshold
23 established by this provision -- and this is the word -- either
24 as a resident or property owner of the subject, is entitled to
25 attend the district school.

1 The language of Judge Toal is clear. And Judge Toal
2 is clear that she asserts that any policy that is in
3 contravention of that position is invalid and unlawful.

4 For the school board to come up with their position,
5 they have to rely on adding language to the state statute. And
6 that is not permissible under the laws of our state.

7 Finally, Your Honor, they talk about their theory and
8 their policy and saying, you don't get to (c) if you've got (a)
9 and (b). In this same case of McSwain, the previous general
10 counsel says just the opposite. And I would refer you to page
11 3 of that case. Again, I've highlighted the language that I'm
12 referring to. This is the comment of Mr. Emerson, who
13 previously served as general counsel to the Charleston County
14 School Board. And in it he says, and which Judge Toal quotes
15 him, says: In a subsequent e-mail of May 5th, 2010, parent
16 referenced the prior e-mail exchange and questioned whether she
17 was required to sign an affidavit prior to registration
18 attesting the student was a Charleston County resident.
19 Emerson responded by e-mail stating, once you either buy land
20 in your daughter's name or get consent from both boards, you
21 won't have to sign it. Until then, you do not have the
22 requirements to be admitted without the affidavit. One of
23 those has to happen first.

24 There is a policy that's been articulated in a Supreme
25 Court case that acknowledges that subparagraph (c). And it's

1. treated as an "or" provision.

2. THE COURT: But this is the big difference. In
3. McSwain, those people lived in Berkeley County. Your clients
4. live in Charleston County.

5. MR. COOPER: That's correct.

6. THE COURT: They are already qualified within the
7. school district. There's no question about that. So 59-63-30
8. deals with qualifications for attendance in the Charleston
9. County School District.

10. MR. COOPER: Right.

11. THE COURT: There's no question that the child is
12. qualified to go to school in the Charleston County School
13. District.

14. MR. COOPER: That's correct.

15. THE COURT: Either by virtue of where she resides or
16. this property.

17. MR. COOPER: Right.

18. THE COURT: That's what that code section deals with,
19. is what school district.

20. MR. COOPER: Right.

21. THE COURT: District is the whole Charleston County
22. School District.

23. MR. COOPER: Right.

24. THE COURT: District doesn't mean Mount Pleasant
25. Academy's district; do you understand that?

1 MR. COOPER: Yes.

2 THE COURT: Do you agree with that?

3 MR. COOPER: I agree.

4 THE COURT: So why are we even looking at this code
5 section?

6 MR. COOPER: Why are we looking at --

7 THE COURT: Because they are already qualified to go
8 to Charleston County School District. There's no question
9 about that.

10 MR. COOPER: But statute says --

11 THE COURT: So (a), (b) and (c) all apply to this
12 child, as far as I'm concerned. So how do we get her within
13 this Mount Pleasant Academy district? That's the whole
14 issue.

15 MR. COOPER: Because subparagraph (c) states, if a
16 child has property in that district, the child's entitled to
17 attend school in that district.

18 THE COURT: District. District. It's Charleston
19 County School District. It's not Mount Pleasant Academy.

20 MR. COOPER: Where that school is.

21 THE COURT: Right. Okay.

22 MR. COOPER: So where that school is, you would go to
23 the district school where that piece of property is.

24 THE COURT: That's your contention. There again,
25 that's where the differences, I think, lie. I understand.

1 MR. COOPER: I think that's what the McSwain case
2 says.

3 THE COURT: But, again, McSwain case, that was
4 somebody coming from Berkeley County.

5 MR. COOPER: The purpose that it had -- in order to
6 come to conclusions of law, it had to deal with --

7 THE COURT: I understand.

8 MR. COOPER: -- the state statute.

9 THE COURT: No, I understand that. I understand that
10 Chief Justice Toal gave great deference to subsection (c) in
11 the McSwain case.

12 MR. MICHAEL COOPER: Your Honor, if I may speak out of
13 turn to answer the Court's question, hopefully succinctly. Our
14 position is that the McSwain case, the Supreme Court said that
15 children who are by nature a resident --

16 THE COURT: Versus a property owner.

17 MR. MICHAEL COOPER: -- versus property owner, are the
18 same. And so the court looked at, under the statute, are those
19 children treated the same or different? And the Supreme Court
20 said that those children are treated the same.

21 THE COURT: Right, when you are trying to get in the
22 school district, not necessarily, like, the subdistrict, if you
23 want to call it that.

24 MR. MICHAEL COOPER: The issue, though, is that the
25 school district is treating the child that owns property that

1 is zoned for Mount Pleasant Academy different from folks that
2 have a house on that property and reside there. And the
3 statute and the Supreme Court has determined that those two
4 children should be treated the same. That's our position.

5 THE COURT: Okay. Yeah. I mean, I understand your
6 position. I don't necessarily disagree with it. I'm just
7 trying to really hone it down to what we are arguing. Because
8 I understand you are saying we don't get to that. There's no
9 doubt that she qualifies for Charleston County School District.
10 Nobody argues that she belongs to the school district, just
11 does she qualify for Mount Pleasant Academy.

12 MR. BARLOW: Our position is, you don't get to stack
13 the rights under 59-63-30 by buying property.

14 THE COURT: Choice of schools?

15 MR. BARLOW: Right, even if you buy property in the
16 district where you live.

17 THE COURT: Do you have an opinion precisely on point
18 on this?

19 MR. BARLOW: I think the opinions both address this
20 very issue.

21 THE COURT: This exact issue?

22 MR. BARLOW: I think so.

23 THE COURT: Point -- I've read through -- let's look
24 at this together. I would like to come to a conclusion today.
25 So don't want to waste anybody's time, but I would like to put

1 our heads together on this right now.

2 MS. HAM: If I may really quickly, I have a copy of
3 the tax bill for the property in question that I would be
4 willing to e-mail to your law clerk, if that's sufficient for
5 the Court.

6 THE COURT: I see in the Day opinion, June 3rd,
7 1998 --

8 MR. BARLOW: I'm looking at the Epps opinion. The
9 first paragraph says: You've requested advice of this office
10 regarding a student in your school district who resides with
11 her parents in an established residence, but who also owns
12 property with a tax-assessed value of at least \$300 located in
13 a different school attendance zone than your school district.
14 You question whether the student must attend a school located
15 in attendance zone for established residence or could she
16 attend school in the other attendance zone if they agree to pay
17 the required tuition.

18 THE COURT: What's the answer? I've read through a
19 lot of that. District does not, in and of itself, entitle a
20 student to demand attendance in a particular school within that
21 district, citing that Day case opinion.

22 And in the absence of legal -- local legislation to
23 the contrary, the determination of which school within a
24 district is -- student meeting the eligibility requirement for
25 attending public school would attend as properly addressed to

1 the discretion of board of trustees in the school district.

2 And that means, as we have previously stated in our
3 1996 opinion, the board of trustees of the school districts
4 have broad power -- so pretty clear. AG kicks this right back
5 to the board of trustees.

6 MR. COOPER: Your Honor, I disagree with that. That
7 is the attorney general's opinion. That was a 1988, '89
8 opinion.

9 THE COURT: Robert Cook, he's still there.

10 MR. COOPER: We have more precise guidance than the
11 attorney general's opinion. We have the decision of the South
12 Carolina Supreme Court exactly on this point. And my position
13 is, the Supreme Court, if you read this case, the law
14 articulated by Justice Toal is explicit and directly related to
15 this case. So you don't need to go to an old attorney
16 general's opinion when we have the enlightenment of our chief
17 justice in a 2012 case.

18 And then, Your Honor, for the record, clarification,
19 and I don't know how -- if you go to the website and you look
20 at the property taxes --

21 MR. BARLOW: Can we see it, please?

22 MR. COOPER: I'm sorry. I apologize. I'm aware that
23 the County came up with -- this is the website.

24 MS. HAM: I e-mailed it to the law clerk.

25 MR. COOPER: This is the website of Charleston County.

1 If you pull the tax bill, and in it the tax bill says, what is
2 the market value of the property? What's the land value? And
3 what's the improvement value? And that says, for 2017, land
4 value is \$144,700, improvements \$133,300. So the market value
5 is 278,000. And the property taxes, based upon that value, is
6 \$350,083.02. I think we could provide initial recognition.
7 That is a website --

8 THE COURT: Sure. They sent me something else.
9 Essentially, they just show the taxable value.

10 MR. COOPER: That's the Charleston property tax
11 website that I provided you. Your Honor, we are prepared to
12 rest.

13 THE COURT: When the school district denied -- sent
14 the e-mail Friday afternoon before school was to start, denying
15 the admission, and the reason that the school was overcrowded
16 as a reason, or something like that, in other words, why did
17 they even go into all of that if she was never formally -- I
18 don't understand. Could somebody enlighten me on that? I am
19 not saying it's pertinent to my decision.

20 MS. HAM: I'm sorry, Your Honor? Can you clarify?

21 THE COURT: She's still No. 4?

22 MS. HAM: She's currently still No. 4 as of this
23 morning.

24 THE COURT: If the school is overcrowded, as stated in
25 the e-mail from Ms. Darby, by 120 students, sounds like, what's

1 the reality of being bumped up on the waiting list?

2 MS. HAM: The way that it works is, there's an
3 attendance zone for the school. If you live in that attendance
4 zone, the school doesn't have the option to deny you. If you
5 do not live within that attendance zone, then there's other
6 ways you can position to get in, which is what the McCorys have
7 done by constituent districts. However, the constituent
8 districts don't have the ability to directly place a child into
9 a school. They can allow admission, but if the school is
10 currently at capacity, which this one is, then a waiting list
11 is created, which is how they ended up on the waiting list.

12 THE COURT: How do you get down the wait list?
13 Somebody has to leave, one in, one out?

14 MS. HAM: So the way the school allocations work is,
15 prior to the school year starting, the school looks at the
16 number of teachers it has --

17 THE COURT: I understand all that. I'm trying to
18 figure out what's the reality of bumping up.

19 MS. HAM: Well, the reality is, on the tenth day of
20 school, which is usually the week of Labor Day, the school
21 looks to see how many children it has enrolled, whether or not
22 an additional allocation is needed for that particular grade
23 because of the attendance zone. And if another class is
24 created because there are too many kindergartners, then kids
25 could get pulled up from the waiting list if people drop out or

1 if classes aren't exactly as full as they anticipated.

2 THE COURT: How long have you been with the school
3 district?

4 MS. HAM: A year and a half; well, little less than
5 that.

6 THE COURT: What's your anticipation of No. 4 being
7 allowed in?

8 MS. HAM: I mean --

9 THE COURT: By next week?

10 MS. HAM: I'm not sure.

11 THE COURT: I am not going to hold you to anything.

12 MS. HAM: I've never asked the question whether or not
13 the kindergarten classes were overflowing, which would allow
14 for an additional teacher to be placed there, which would give
15 them a whole new classroom, which is very likely.

16 THE COURT: I am not going to hold you to anything.

17 MS. HAM: I know, but there is a process. There is a
18 process by which there is a review that takes place.

19 THE COURT: Ten-day mark is going to be when, next
20 week?

21 MS. HAM: It is next week.

22 THE COURT: What day? Do you know?

23 MS. HAM: Today is the 7th day.

24 THE COURT: It's got to be Friday, pretty quick.

25 MS. HAM: Well, review can't happen until after --

1 THE COURT: They take the numbers from day 10. And
2 how long does that review take?

3 MS. HAM: Usually pretty quickly, couple of days.

4 THE COURT: They can place them in the school within a
5 couple of days? Again, I am not holding you to it. Ballpark,
6 weeks, months?

7 MS. HAM: No, because we have to stay within the
8 State-regulated mandate. So we try to do it as quickly as
9 possible. Obviously, I can --

10 THE COURT: I am not holding you to it.

11 MR. COOPER: Your Honor, my client has checked into
12 the possibility of -- we are of the opinion after speaking with
13 several people at the school that -- my client has checked with
14 various members of the school board as to this waiting list and
15 whether or not she will be bumped up after this 10 days. And
16 we have been been informed it's not likely.

17 THE COURT: The school board, right?

18 MR. COOPER: Yes.

19 MS. HAM: I have an additional clarification.

20 THE COURT: Go ahead.

21 MS. HAM: When schools send in their allocation
22 formulas, for instance, let's say the State says that you can
23 only have 28 students in a kindergarten class. When the
24 schools do their allocations, they may only allocate 25, which
25 means after 25, we are going to consider this full. Sometimes

1 it's because of states. Sometimes it's because they don't have
2 teacher assistants. It's for various reasons. So when they do
3 that review process after the 10 days, they also look at that.
4 So while you may have been told that it was full, it was, based
5 on what we told the State. But there could be some more room,
6 for all intents and purposes. That may not be the case here.
7 I don't know.

8 THE COURT: Sure. Opinion is right on point,
9 unfortunately, to me. I'm sympathetic with the situation.
10 Sure. No doubt about it. I think the McSwain argument is
11 creative and interesting, but that was really a different set
12 of circumstances. You know, public policy-wise, I guess what
13 the district is afraid of is, if I allow this, it's going to
14 open up floodgates and everybody is going to buy property
15 wherever good schools are.

16 You know, under this argument, I could go in with, you
17 know, 20 of my best friends and go buy a house in Old Village
18 and we all split it and agree we are going to give it to our
19 kids in trust, and they all get to go to Mount Pleasant
20 Academy. And I think that's what the school district is
21 obviously trying to prevent.

22 And, you know, by the same token, I stand by my
23 assertions earlier that I think, you know, the reality, people
24 going out and buying property and doing this is pretty low. I
25 think that when you do have an interest in real property, I

1 think the rights that flow from that are real. And I think,
2 you know, when you are paying taxes on a property, I think that
3 you are, you know, entitled to the rights that flow from your
4 property rights associated with that property.

5 I think the legislative intent and the assessment
6 value of a property is -- putting it at \$300, doesn't say "tax
7 assessment", just says "assessment", what assessment is
8 supposed to be, I don't know, but, to me, ~~it just means the~~
9 ~~market value assessment of a property.~~ So I think that we meet
10 that criteria.

11 I'm going to deny the defendant's motion to dismiss in
12 this case and grant the declaratory judgment in this particular
13 case. ~~I do think that the law that the Supreme Court has~~
14 ~~stated and what Mr. Cooper outlined in terms of property owners~~
15 ~~not having reduced rights of those residents. I think it's~~
16 ~~interesting. I think it's persuasive to me today, at least in~~
17 ~~this situation. So that's my ruling.~~

18 If the plaintiff wants to come up, he can draft an
19 order outlining that, I will sign and file.

20 MR. COOPER: Again, we want to thank you for taking
21 time out of your busy schedule.

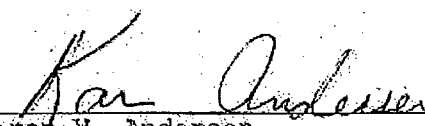
22 THE COURT: Interesting topic.

23 (Whereupon, proceedings are adjourned.)
24
25

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina at
Large, do hereby certify that the foregoing transcript is a
true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in the
events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

11/13/2018

Charleston County, South Carolina

Charleston County, South Carolina

generated on 11/13/2018 4:13:08 PM EST

Parcel

Property ID (PIN)	Alternate ID (AIN)	Parcel Address	Data refreshed as of	Assess Year	Pay Year
5320900148		511 MCCANTS DR, MOUNT PLEASANT	10/25/2018	2018	2017

Owner Information

Owner MCCORY TRAVIS J
 Owner Address PO BOX 21737
 CHARLESTON SC 29413
 Sale Date
 Deed Reference 0622 515

Location Information

Tax District Name	2-1 2-1 TOWN OF MOUNT PLEASANT	Routing No.	
Parcel Address	511 MCCANTS DR, MOUNT PLEASANT	Legal Description	Subdivision Name -MT PLEASANT HOMES Description -LT 3 BLK B PlatSuffix G-84 PolTwp 002
Acreage	.0000		

Assessment Information

Prior Year	2017	Current Year	2018
Appraised Value Land	144,700	Appraised Value Land	144,700
Appraised Value Improvements	133,300	Appraised Value Improvements	133,300
Total Appraised Value	278,000	Total Appraised Value	278,000
Limited (Capped) Appraised Value Total	253,920	Limited (Capped) Appraised Value Total	253,920
Exemption Amount	0	Exemption Amount	0
Taxable Value	15,240	Taxable Value	15,240
Assessment Ratio	6%	Assessment Ratio	6%
Assessed Value	15,240	Assessed Value	15,240

Charleston County, South Carolina

generated on 11/13/2018 4:11:22 PM EST

Property ID (PIN)	Alternate ID (AIN)	Parcel Address	Data refreshed as of	Assess Year	Pay Year
5320900148		511 MCCANTS DR, MOUNT PLEASANT	10/25/2018	2018	2017

Current Parcel Information

Owner	MCCORY TRAVIS J	Property Class Code	101 - RESID-SFR
Owner Address	PO BOX 21737 CHARLESTON SC 29413	Acreage	.0000
Legal Description	Subdivision Name -MT PLEASANT HOMES Description -LT 3 BLK B PlatSuffix G-84 PolTwp 002		

Historic Information

Tax Year	Land	Improvements	Market	Taxes	Payment
2018	\$144,700	\$133,300	\$278,000	\$3,669.38	\$0.00
2017	\$144,700	\$133,300	\$278,000	\$3,583.02	\$3,583.02
2016	\$144,700	\$133,300	\$278,000	\$3,457.54	\$3,457.54
2015	\$144,700	\$133,300	\$278,000	\$3,293.46	\$3,293.46
2014	\$100,000	\$126,000	\$226,000	\$2,827.63	\$2,827.63

Sales Disclosure

Grantor	Book & Page	Date	Deed	Vacant	Sale Price
MCCORY TRAVIS J	0622 515	3/9/2017	Ge		\$1
MCCORY TRAVIS J	0474 789	5/6/2015	Ge		\$0
CURTIS THOMAS BIGGER	M429 121	12/13/2002	Ge		\$170,000
BILLS ALAN M	N353 702	8/18/2000	Ge		\$116,406
RICCIARDONE ELIZABETH B	M223 748	2/10/1993	Ge		\$67,500

Improvements

Building	Type	Use Code Description	Constructed Year	Stories	Bedrooms	Finished Sq. Ft.	Improvement Size
R01	DWELL	Dwelling	1948	1.0	02	1,020	

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Jennifer McCoy, Circuit Court Judge

Appellate Case No. 2018-001784

Charleston County School District Board of Trustees, Dr. Gerrita Postlewait, in
Her Capacity as Superintendent of Charleston County School District, Kim
Jackson, in Her Capacity as Principal of Mt. Pleasant Academy Appellants,

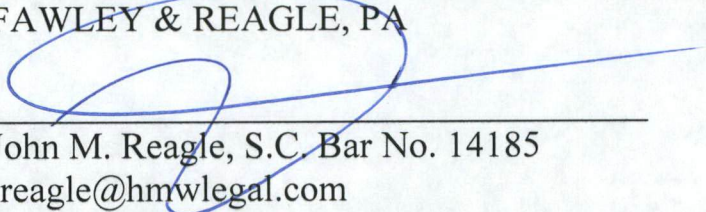
v.

Travis J. McCory and Alicia S. McCory Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record On appeal contains all
material proposed to be included by any of the parties and not any other material.

HALLIGAN MAHONEY WILLIAMS SMITH
FAWLEY & REAGLE, PA



John M. Reagle, S.C. Bar No. 14185
jreagle@hmwlegal.com
Thomas K. Barlow, S.C. Bar No. 8995
tbarlow@hmwlegal.com
Dwayne T. Mazyck, S.C. Bar No. 70240
dmazyck@hmwlegal.com
1301 Gervais Street, Suite 1400
P.O. Box 11367
Columbia, SC 29211
(803) 254-4035
Attorneys for Appellants