

20257

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Frank R. Addy, Circuit Court Judge

Case No. 2011-CP-01-242

Danny Hozey and Terry
Richey,

Appellants,

v.

Abbeville County School
Board,

Respondent.

SUPPLEMENTAL RECORD ON APPEAL

RECEIVED

JAN 10 2013

SC Court of Appeals

David T. Duff
Laura Callaway Hart
3700 Forest Drive
Post Office Box 1486
Columbia, South Carolina 29202
(803) 790-0603
Attorneys for Respondent

C. Lance Sheek
1201 Cambridge Avenue East
Greenwood, South Carolina 29646
(864) 538-0549
Attorney for Appellants

INDEX

Record Page

Defendant's Amended Motion to Dismiss or, in the Alternative, for
Summary Judgment, **pages 2 and 3**215

Affidavit of Ivan Randolph, Ph.D. in Reply to Plaintiffs' Memorandum
in Opposition to Defendant's Motion for Summary Judgment, **page 6**217

Falls Charter School ("the Charter School"). Plaintiffs, who do not allege that they have children enrolled either in Abbeville County School District schools or in the Calhoun Falls Charter School, seek injunctive relief, including an order declaring that the actions by the Board about which they object are null and void. They also seek an order directing the Board to reopen Calhoun Falls High School.

The allegations of the Complaint are insufficient to establish that the Plaintiffs have standing or that the closing of a school or the charging of fees to other persons entitles them to relief under any legal theory. In addition, the passage of time and estoppel bar the relief sought by the Plaintiffs – a declaration that the Board's actions in 2007 and 2008 were invalid and are null and void and an order directing the re-opening of a school that was closed in 2008. The Board files herewith the Affidavit by Samuel Ivan Randolph, Jr., Ph.D. containing undisputable facts and matters of public record that establish that Plaintiffs' Complaint cannot support the relief they seek and is barred by law. If the Court declines to dismiss the Complaint on its face pursuant to Rule 12(b)(6) on the grounds of lack of standing or failure to state a cause of action, the Board requests that the Court consider matters outside the pleadings as set forth in the Affidavit and that the Court grant summary judgment in its favor on the additional grounds of untimeliness under the FOIA statute of limitations, laches, and equitable estoppel.

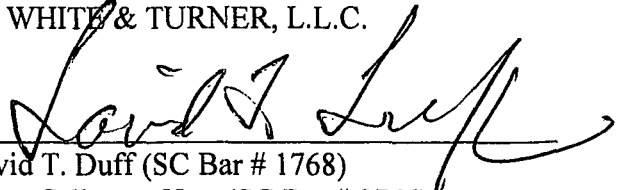
This Motion is based upon the Complaint of Plaintiff and, if necessary, the Affidavit of Samuel Ivan Randolph, Jr., Ph.D., the applicable statutory and case law of South Carolina, and such other pleadings, documents, and evidence as may be presented to the Court.

Accordingly, Defendant seeks an Order dismissing the Complaint or, alternatively, granting summary judgment to Defendant, along with an award of costs and a reasonable attorney's fee according to law, including but not limited to the South Carolina Frivolous civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10, and/or Rule 11, SCRPC.

Respectfully Submitted:

DUFF, WHITE & TURNER, L.L.C.

By:


David T. Duff (SC Bar # 1768)

Laura Callaway Hart (SC Bar # 2766)

P.O. Box 1486

Columbia, SC 29202

Telephone: (803) 790-0603

Facsimile: (803) 790-0605

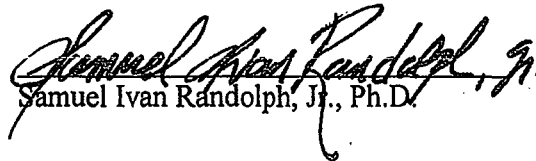
Attorneys for Defendant Abbeville County School
Board

October 31, 2011
Columbia, South Carolina


16. Attached hereto as Exhibit N is a true and correct copy of the Minutes of Regular Meeting of the Abbeville County School District Board of Trustees on September 23, 2008. The matters described in the minutes occurred and were discussed in a meeting open to the public, including a discussion of the Memorandum of Agreement between Calhoun Falls Charter School and Abbeville County School District, "for the purpose of providing a collaborative Career and Technology Program for students." Under the Memorandum of Agreement, Calhoun Falls Charter School District agreed to reimburse Abbeville County School District a stated amount for each of its students who was admitted and participated in the program at Abbeville County Career Center.

FURTHER AFFIANT SAYETH NOT.

Respectfully submitted,


Samuel Ivan Randolph, Jr., Ph.D.

SWORN TO BEFORE ME THIS 20th
DAY OF Feb. 2012


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 2/22/2018

~~My Commission Expires Feb. 22, 2018~~

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Frank R. Addy, Circuit Court Judge

Case No. 2011-CP-01-242

Danny Hozey and Terry
Richey,

Appellants,

v.

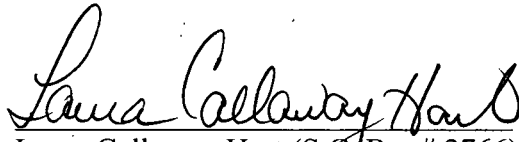
Abbeville County School
Board,

Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Supplemental Record on Appeal complies with Rules 210 and 212, SCACR.

January 10, 2013


Laura Callaway Hart (S.C. Bar # 2766)
DUFF, WHITE & TURNER, LLC
P. O. Box 1486
Columbia, South Carolina 29202
(803) 790-0603
Attorney for Respondent

Other Counsel of Record:
C. Lance Sheek, Esq.
South Carolina Legal Solutions, LLC
1201 Cambridge Ave. E
Greenwood, South Carolina 29646
(864) 538-0549
Attorney for Appellants

RECEIVED
JAN 10 2013
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

RECEIVED

JAN 10 2013

Frank R. Addy, Circuit Court Judge

SC Court of Appeals

Case No. 2011-CP-01-242

Danny Hozey and Terry
Richey,

Appellants,

v.

Abbeville County School
Board,

Respondent.

PROOF OF SERVICE

I certify that I have served the Supplemental Record on Appeal on Danny Hozey and Terry Richey by depositing a copy of it in the United States Mail, postage prepaid, on January 10, 2013, addressed to their attorney of record, C. Lance Sheek, 1201 Cambridge Avenue East, Greenwood, SC 29646.

January 10, 2013



Laura Callaway Hart (S.C. Bar # 2766)

DUFF, WHITE & TURNER, LLC

P. O. Box 1486

Columbia, South Carolina 29202

(803) 790-0603

Attorney for Respondent

Other Counsel of Record:

C. Lance Sheek, Esq.

South Carolina Legal Solutions, LLC

1201 Cambridge Avenue East

Greenwood, South Carolina 29646

(864) 538-0549

Attorney for Appellants