THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Edward W. Miller, Circuit Court Judge

C.A. No.: 2013-002232

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

v.

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

FINAL REPLY BRIEF OF APPELLANT

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I. ARGUMENT

A. Respondents' Personal Attacks On Parents Of Other Students And Conspiracy Theories Were Properly Rejected By The Circuit Court And Are Irrelevant To The School District's Appeal Of The Circuit Court's Writ Of Mandamus.

While the Circuit Court erred in exercising jurisdiction and issuing its writ of mandamus, the Circuit Court properly viewed the controversy as a narrow legal issue involving interpretation of the Uniform Grading Policy ("UGP") mandated by S.C. Code Ann § 59-5-68. At the conclusion of the hearing, Judge Miller noted,

> I don't assign blame anywhere. But I'm going to grant his writ just based on the fact that the clear language of the regulations and the law is that it must accept it. And I guess my finding would be that the – without assigning fault, and I'm really not, or blame, or anything of that nature that the law is clear. And that it would be my finding that the school district's well intention efforts at fairness and equality which led them to – and I'm going to define it as interpreting – to interpret the transcript to reduce the numerical number was wrong.

(Am. R. p. 73, lines 10-20) The Order echoes this language (Am. R p 3)

Contrary to Respondents' arguments, there is simply nothing sinister or unusual about an employee and her supervisor within a particular school or other governmental agency having different opinions about the interpretation and application of a broad, legally untested policy to a unique situation. Similarly, it is not unusual for school employees to follow up on concerns raised by parents, and there is absolutely no evidence in the record to support Respondents' imagined conspiracy to cause L P harm between school officials and parents.

More than a year after SHS reviewed the four corners of L.P.'s RMA transcript, saw that his grades had been bumped 5-10 points, and instead applied his final RMA course averages, and almost six months after the Circuit Court's writ of mandamus directing otherwise, L.P. is still currently ranked first in his class. (Respondents' Brief, p. 18, fn. 5.) This is clear evidence refuting Respondents' unsupported claim that L.P was somehow singled out and given lower grades to satisfy the alleged wishes of others outside SHS L P. has been properly and fairly

judged on the merits of his academic record and, as the Circuit Court found, the School District's decision was motivated only by the need to reconcile his nonconforming RMA grades with those of other SHS students under the UGP. Respondents' efforts to shift this Court's attention beyond the narrow legal issue decided by the Circuit Court should be rejected.

B. Subject Matter Jurisdiction Cannot Be Premised Upon An Order Denying Business Court Jurisdiction And Respondents Made No Showing Of Corruption, Bad Faith, Or Clear Abuse Of Power By The School District.

Respondents attempt to rely on Justice Toal's Order of September 9, 2013, denying Business Court jurisdiction and assigning the case to Judge Miller for the proceedings, as a legal ruling on the School District's subject matter jurisdiction defense However, that issue was not before the Supreme Court and the September 9 Order does not address the School District's jurisdictional argument in any way, shape, or form Respondents have never contended that the School District has somehow waived its jurisdictional defense Accordingly, Respondents cannot rely on the denial of business court jurisdiction and assignment to Judge Miller as tacit approval of L.P 's future subject matter jurisdiction arguments.

As analyzed in the School District's Initial Brief, courts in this state will not intervene in matters committed to the discretion of school districts absent a showing of "clear evidence of corruption, bad faith, or a clear abuse of power " *Davis v Greenwood Sch Dist 50*, 365 S C. 629, 635, 620 S.E.2d 65, 68 (2005). Respondents incorrectly seek to limit this discretion to employment matters, but student academic and discipline matters are quintessential topics within the oversight, management, and discretion of school districts, not the courts. See *Byrd v Irmo High Sch* , 321 S.C 426, 435-36, 468 S.E.2d 861, 866-67 (1996) In addition, the legislature has provided a vehicle for Circuit Courts to review claims involving the employment and dismissal of teachers, see S C Code Ann. § 59-25-480, but not for student suspensions or grade disputes.

The evidence showed, and the Circuit Court found, that the School District's efforts were a well-intended attempt to deal with a unique situation in a manner equitable to all students at

SHS. Contrary to Respondents' argument, the School District does not contend that it has unfettered discretion to assign transfer students whatever grades it sees fit, or to give L.P. "all Cs." Such grades would have no rational basis to L.P.'s RMA transcript and assigning L P. "all Cs" would have been arbitrary, capricious, and an abuse of power.

The School District obviously is in the best position to determine the proper method to assess and transfer grades when the face of a student's transcript directly references extra points added to final numerical course averages. These extra points were unavailable to SHS students taking the same courses. Resolving that discrepancy by obtaining L P.'s actual, pre-bumped numerical average grades from RMA is inherently rational and reasonable within the letter and spirit of the UGP.

Further, relieving lower courts of the burden of hearing general academic grade and class rank challenges would not leave potentially wronged students without a remedy, provided the allegedly wronged students could show corruption, bad faith, or abuse of power Moreover, the Circuit Court would have had concurrent jurisdiction with the U.S. District Court over a procedural or substantive due process claim under the U.S. Constitution had L.P. pleaded such claims. Respondents cannot retroactively establish jurisdiction by now attempting to raise such claims on appeal. In summary, because Respondents did not establish subject matter jurisdiction, the Circuit Court improperly ruled that it had jurisdiction to hear and decide the case *See Geowey v United States*, 886 F Supp 1268, 1274 (D S.C. 1995), *aff'd sub nom. Goewey By Goewey v United States*, 106 F.3d 390 (4th Cir 1997) (Plaintiff bears the burden of persuasion when subject matter jurisdiction is challenged under Rule 12(b)(l)).

C. Respondents' Incorrect Interpretation Of The Text And Purpose Of The Uniform Grading Policy Does Not Support The Circuit Court's Writ Of Mandamus.

Contrary to Respondents' arguments, the primary purpose of the UGP is not to reward or protect students who transfer from out-of-state public or private schools with grading systems

that are not equivalent to the UGP. S C. Code Ann. § 59-5-68 expresses the direct rationale for the UGP·

> The General Assembly finds that given the fact the State provides substantial financial academic assistance to students of the State based on cumulative grade point averages and districts currently use a variety of grading scales, it is in the best interest of the students of South Carolina for a uniform grading scale to be developed and adopted by the State Board of Education to be implemented in all public schools of the State.

Respondents are not asking this Court to level the playing field. Rather, they seek to exalt grades obtained at an out-of-state, private school that does not comply with the UGP over and above the grades earned by SHS students, in the same courses, pursuant to the same uniform standards as other South Carolina students.

Respondents attempt to equate the School District's further inquiry into a clear RMA transcript notation referencing built-in bonus points for AP and Honors courses to "looking behind L.P.'s grades" to determine whether individual teachers properly assessed his mastery of the subject matter or graded too strictly or leniently. This argument is unsupported and fatally overbroad. The only evidence in the record was that the SHS guidance department requested and obtained L P 's pre-bumped grade averages from the RMA guidance department based upon the transcript notation that L.P.'s final grades included up to 5-10 bonus points for AP and Honors courses This was a normal and proper school-to-school communication under the federal Family Education Rights Privacy Act (FERPA). *See* 34 C.F.R. § 99.31(a)(2), 34 C F R § 99 34(a). Although counsel for Respondents made a vague, unspecific, non-hearsay objection to the admissibility or evidentiary weight of L.P.'s original numerical averages at the hearing, Respondents offered no evidence or argument that the grades provided to SHS by the RMA guidance department were incorrect in any respect (Am. R. p. 42, line 3 – p. 44, line 7) Regardless of L P.'s objection, and most importantly, it was undisputed that without the 5 or 10

point bump added to L.P 's numerical grade averages for each course, most of his transcript grades would have been excellent, but slightly lower.

Likewise, there is no support in the record for Respondents' claim that L.P.'s RMA teachers artificially lowered his grades with an eye toward the 5-10 point transcript bump at the end of the course.[1] In fact, the numerical course averages RMA provided SHS suggest otherwise. In 2011-12, for example, L.P scored 100 in both semesters of Chemistry Honors at RMA without the 5-10 point bump, and 99 and 99.6 in two semesters of Spanish II Honors at RMA without the bump (Am. R. pp. 128-130.)

Respondents do not challenge the School District's argument that the UGP's use of the term "numerical averages" invites further scrutiny when a school district receives a transcript that reveals final grades that do not represent the numerical course averages, but instead, expressly include a bump or weighting factor. Nothing in the UGP states that a School District must accept the grades shown on an out-of-state transfer student's transcript when the transcript itself reveals a weighting factor inconsistent with the UGP. Otherwise, the UGP's purpose of fair, uniform grading for scholarship competition would be frustrated. Taken to its logical extreme, the Circuit Court's interpretation would require a South Carolina school district to simply transpose grades of "100" from an out-of-state transcript bearing an explanatory asterisk stating: "Any student transferring to a South Carolina high school shall receive a grade of '100' for any advanced placement, honors, science, or math course."

For those reasons, the UGP does not provide a sufficiently clear, nondiscretionary legal duty to merely transpose grades from an out-of-state transfer student's transcript when the face of the transcript reveals grading practices inconsistent with the UGP. This is not simply a ministerial duty that can be enforced through a writ of mandamus See *Brackenbrook N Charleston, LP v Cnty of Charleston*, 360 S C. 390, 602 S.E.2d 39 (2004); *Pressley v*

[1] Even if Respondents' objections were valid, this factually unsupported assertion opens the door to proof

Lancaster Cnty, 343 S.C. 696, 542 S.E.2d 366 (Ct. App 2001). Accordingly, the Circuit Court erroneously determined otherwise

D. Respondents' Belated Estoppel Argument Is Unsupported By Either The Record Or The Law.

Respondents now attempt to formalize their incorrect, overriding suggestion that once any school employee has spoken, any change in that employee's original interpretation or application of a rule is legally invalid. However, to prove estoppel against the School District, Respondents would have to show:

> (1) the lack of knowledge and of the means of knowledge of the truth of the facts in question; (2) justifiable reliance upon the government's conduct; and (3) a prejudicial change in position.

S Carolina Dep't of Transp v Horry Cnty, 391 S.C. 76, 83, 705 S.E.2d 21, 25 (2011). As a general rule, estoppel does not lie against the government to prevent the due exercise of its police power or to thwart the application of public policy. *Quail Hill, LLC v Cnty of Richland*, 387 S.C 223, 236, 692 S.E.2d 499, 506 (2010).

First, Respondents cannot show any reliance on the October 3, 2012, initial calculation of L.P.'s GPA, let alone "justifiable reliance." L.P. enrolled at SHS and had attended for almost two months before his initial GPA and class rank at SHS were even calculated and provided to him. There is nothing in the record that would remotely suggest that L P chose to transfer from RMA to SHS because of any anticipated class standing at SHS upon arrival. Likewise, there is no evidence in the record that L P would have returned to RMA prior to the end of the 2012-13 school year if his GPA or class rank were lower than initially reported in October 2012.

Second, Respondents did not show any prejudicial change of position based on the initial interpretation of Ms Henderson, the guidance counselor, regarding the application of the UGP to L P.'s RMA grades Respondents were clearly aware that SHS had reevaluated L P.'s transcript

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of L P 's actual, pre-bumped RMA grade averages.

in light of RMA's 5-10 point course bumps by the end of January 2013. (Am. R. p. 122) Through counsel, Respondents attempted to convince the School District to change the decision and were informed in the Spring of 2013 of the School District's final position. (Am. R. pp. 124-125.) L P. would have had ample time to re-enroll at RMA for his entire senior year at that point. Instead, he chose to challenge the School District's interpretation of the UGP via this case and remain at SHS for his senior year. As such, Respondents did not establish any reliance or prejudicial change of position as a result of the School District's ultimate interpretation of the UGP as applied to his bumped RMA grades. Moreover, recognizing an estoppel claim based on these facts would frustrate the public policy expressed in the UGP. Accordingly, Respondents' belated attempt to recast their prior arguments as an estoppel claim also fails.

II. CONCLUSION

For the foregoing reasons and those set forth in Appellant's Final Brief, the Circuit Court's Writ of Mandamus was erroneously granted and should be reversed.

Respectfully submitted,

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PROOF OF SERVICE

I certify that I have served FINAL REPLY BRIEF OF APPELLANT on counsel for Respondents, by depositing a copy of it in the U.S. Mail, postage prepaid, on April 4, 2014, addressed to Carl F. Muller, Esq , 607 Pendleton Street, Suite 201, Greenville, SC 29601.

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