IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND SCHOOL DISTRICT TWO BOARD OF TRUSTEES
Circuit Court Decision

Judge James R. Barber III, Circuit Court Judge Presidency

Appellate Case Number 2013-000532

Student #1 John Doe, Plaintiff;
Redacted name of Student
Redacted name of Mother of
Student #1 John Doe, Plaintiff ..... Appellants,

v.

Board of Trustees, Richland School District Two;
Richland School District Two, Superintendent
Dr. Katie Brochu, in her official capacity as School
Superintendant.....Respondents.

MOTION FOR CONTINUED OR SUBSTITUTION OF REPRESENTATION PURSUANT TO RULE 264 (a),SCACR

Mother respectfully submits this Memorandum in support of the Motion for Continued Representation pursuant to Rule 264(a), SCACR.

Respectfully submitted,
Rhonda L. Meisner, Appellant

By: _____

Rhonda Meisner
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MEMORANDUM IN SUPPORT OF MOTION TO CONTINUE REPRESENTATION OF MINOR

I. Introduction

Appellant, Redacted name of Mother of Student #1 John Doe "Mother" respectfully requests the Court of Appeals of South Carolina to consider this motion pursuant to Rule 264(a), SCACR for Mother to continue representation of my son, "Student #1 John Doe"(Student #1). This motion is necessary to ensure that Student #1, a minor, retains representation by an adult as the Appellant Court reviews his and his Mother's Interlocutory appeal of substantive rights as a result of an adverse education decision by the Richland County School District Two Board of Trustees. This Appellate case # 2013-000532 is interlocutory in nature, as the main appeal has yet to be heard by the Circuit Court. The Written order from a Temporary Restraining Order hearing rules on substantive rights of both the Appellant Mother and the Appellant Student #1 and as a result the ruling is immediately appealable. Appellants request a clarification on the law via a ruling from the South Carolina Court of Appeals on these important issues. Central to the argument and appeal, is whether or not parents via the S.C. Gifted and Talented Statute, S. C. Code Ann. §59-29-170 and S.C. Code Ann §59-28-100 and the State Statutory scheme regarding appeals of School Board decisions affords parents the right to continue their appeals by entering the Circuit Court to advocate for their individual rights and the rights of their child/ student as a continuation of the Administrative appeals process without representation by an attorney. Mother plaintiff has represented the interests of her son/Student #1 and herself to the Circuit Court on two occasions, submitted all of the appeals, arguments, memorandums and filings in this appeal with the exception of the TRO hearing. Mother requested the TRO hearing, submitted

memorandum, and hired Glenn Bowens to represent Student #1 during the hearing phase as her testimony would be necessary for facts portion of the hearing. Indeed, Mother has been the main representative of Student #1 during the entire appeal process.

II. Argument

The Gifted and talented statute S. C Code Ann. §59-29-170 sets forth the establishment of a gifted and talented educational system in South Carolina. 2 S.C. Code Regs 43-220 (2011) provides a more detailed framework for the provision of gifted and talented programs in the public school system. S. C. Code Ann. §59-29-170 Provides:

> Not later than August 15, 1987, gifted and talented students at the elementary and secondary levels must be provided programs during the regular school year or during summer school to develop their unique talents in the manner the State Board of Education must specify and to the extent state funds are provided. The Education Oversight Committee shall study the implementation of this section and report its findings to the General Assembly by July 1, 1986. By August 15, 1984, the State Board of Education shall promulgate regulations establishing the criteria for student eligibility in Gifted and Talented Programs. The funds appropriated for Gifted and Talented Programs under the Education Improvement Act of 1984 must be allocated to the school districts of the State on the basis that the number of gifted and talented students served in each district bears to the total of all those students in the State. However, districts unable to identify more than forty students using the selection criteria established by regulations of the State Board of Education shall receive fifteen thousand dollars annually. Provided, further, school districts shall serve gifted and talented students according to the following order of priority: (1) grades 3-12 academically identified gifted and talented students not included in the state-funded Advanced Placement Program for eleventh and twelfth grade students; (2) after all students eligible under priority one are served, students in grades 3-12 identified in one of the following visual and performing arts areas: dance, drama, music, and

of S.C. Code Ann §59-28-100. In the South Carolina Statutory construct S.C. Code Ann. §59-19-560 allows "any aggrieved party" to appeal the decisions of the Richland School District Two Board to the Circuit Court. Consequently, One of the questions asked of the Court of Appeals is that, "In an appeal of School Board decision, do South Carolina parents have the right to represent 1) the interests of their student/child without the representation of an attorney, 2) the parents individual rights as a self-represented appellant and 3) the rights the parents share with their student/child to the Circuit Court as a continuation of the administrative appeals process Winkelman v. Parma City Schools (No 5-983), 2007.

The written order from the TRO hearing did not address these questions which were raised to the Court via pleadings and during arguments at the TRO hearing. Prior to the TRO hearing, the Court addressed concerns of whether a parent could represent their student /child in the Circuit Court at the TRO hearing; however, since the TRO hearing was not a hearing on the merits and Student #1 was represented during the TRO hearing by attorney Glenn Bowens, the Court did not rule on these issues. The written order, however, distinctly separated the rights of the parents from the rights of the child/student. The ruling stated, " [B]ecause Plaintiffs have failed to establish a temporary injunction is necessary to prevent possible irreparable injury, the Court does not reach the issues of whether Plaintiffs have alleged a prima facie claim for relief or whether Plaintiff Mother has stated a claim on her own behalf on which she can properly proceed pro se."

Furthermore, The Court explained that the TRO hearing was **not** a merits hearing; however, the Defendants have interpreted the written ruling by the Court at the TRO

hearing to indicate parents do not have a right to represent their children as a continuation of the administrative appeals process.

Mother has represented her interests and the interests of her son ("Student #1 John Doe) to the Circuit Court in the Motion to dismiss hearing filed by the Defendants before The Honorable Judge Alison Lee and in the Rule 60b, SCRCP motion in front of the Honorable Judge Jason Hood. At both hearings, the minor son was represented by "Mother" alone without employing the services of an attorney. This quite obviously creates conflict and a need for a Court of Appeals decision where two of the Circuit Court judges allowed "Mother" to represent her son/ Student #1 prior to and after the ruling on the Rule 59-e, SCRCP motion by the Honorable Judge James R. Barber had been decided in the Circuit Court of South Carolina.

Defendants argue the appeal should be dismissed via their pleadings in their filed Motion to Dismiss Memorandum because an attorney is not representing Student #1 John Doe. In the Motion to Dismiss, Defendants state "[T]his Court should dismiss the Plaintiffs "Second" Amended Complaint, without prejudice, to the extent that legal counsel licensed to practice law in South Carolina is not representing Plaintiff John Doe or has not adopted the "Second" Amended Complaint, which was prepared and signed by Plaintiff John Doe's " Mother." They further contend "[n]o person may either practice law or solicit the legal cause of another person or entity in this State unless he is enrolled as a member of the South Carolina Bar." S. C. Code Ann. 40-5-310.

While the examples Defendants give in their Motion to Dismiss, give credence to the well accepted notion that one cannot initiate proceedings for or on behalf of another

entity, the examples fail to cite the inherent and due process rights of a party to continue their appeals into the Circuit Courts of South Carolina. The continuation of the Appeals process into the Circuit Court which; with regard to a school board decision necessarily requires continued representation of their minor child. Defendants further refuse to acknowledge Winkelman or the importance of the fact that it was the State Legislature that instituted the appeals process for appeals of school board decisions. The South Carolina Legislature created a process which necessarily requires the residents of South Carolina via State Statute S.C. Code Ann §59-19-560 to enter into the Circuit Court system as the next step in the appeals process. Once the State has conferred a right, the due process clause and the equal protection clause of the United States Constitution protects it. The due process and equal protection rights of Student #1 under the Gifted and Talented Statute is being appealed requiring entry into the Courts system via a State instituted process. The South Carolina Supreme Court in Stinney v. Sumter County School Dist. 17 391 S.C. 547 (2011) explained that:

> "In procedural due process claims, the deprivation by state action of a Constitutionally protected interest in "life, liberty, or property" is not in Itself unconstitutional; what is unconstitutional is the deprivation of such An interest without due process of law. ...Therefore, to discover whether a constitutional violation has occurred, *it is necessary to ask what process the State has provided and whether it was constitutionally adequate. This inquiry would examine the procedural safeguards built into the statutory or administrative procedure of effecting the deprivation, and any remedies for erroneous deprivations provided by statute or tort law."*

Additionally, Defendants forget that unlike other cases, appeals of School Board decisions are unique in that the appeal necessarily involves individual claims with individual circumstances and in this case, requiring Appellants to hire an attorney they cannot afford would foreclose on their rights to continue to pursue their Appeal. This is

an unfair process for those individuals unable to proceed with the appeal unless they are able to pay for an attorney to represent them such as these Appellants.

In this appeal, Mother has been blessed with 4 highly gifted boys according to South Carolina state standards in gifted education, which would create the possibility of future conflicts in their state provided education necessarily requiring parental intervention. A case remains live if "(1) the challenged action [is] in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party [will] be subjected to the same action again." Weinstein *v.* Bradford, 423 U. S. 147,149.

The ability of this parent to advocate for their children in Court as a continuation of the administrative appeals process or alternatively providing a separate forum for Judicial review would "allow for a fair determination of the issues at hand". As it is now, the School Boards have no concern of judicial review in that they are not individually responsible for their decisions and parents directly pay via taxes for the attorneys to represent them in their legal errors. Mother may disagree with the outcome of the School Board Decision but the expense of hiring an attorney as a continuation of the review would require Mother to abandon the appeal unless she is able to pay an attorney for judicial review. In most civil cases, the American plan dissuades people from bringing frivolous claims, here; however. The School Board utilizes the money of the adverse party to fund their position. So technically speaking, Mother, would be required to pay for both the defense and the prosecution of her and her son's claims. Mother cannot possibly fund her voice or Student #1's voice against such a well funded adversary. To

wit, three of the best educational attorney's in South Carolina have been employed in the defense of this case by the School district.

A free public education is provided to all residents of South Carolina via S. C Const. art XI section 3. Additionally, for those students that individually qualify for educational benefits as members of the Gifted and Talented students via S. C. Code Ann. §59-29-170 and 2 S.C. Code Regs 43-220 (2011) referencing the SC Best Practices for Gifted and Talented Education Manual, 2006; the State has conferred additional benefits and rights which are constitutionally protected. The underlying appeal is the appeal of a school board decision pursuant to S. C. Code Ann. §59-19-560. A central question for the Court is in the appeal of a school board decision under S.C. Code Ann. §59-19-560, "can the Mother continue to represent her individual interests, her shared interests and her child's interests as a continuation of the administrative appeals process and enter the Circuit and Appellate Courts of South Carolina."

The South Carolina Legislature has created a system of appeals in which S.C Code Ann. §59-19-560 states, "[A]ny party aggrieved by the order of the county board of education shall have the right to appeal to the Court of Common Pleas of the county by serving a written verified petition upon the chairman of the county board of education and upon the adverse party within ten days from the date upon which copy of the order of the county board of education was mailed to the petitioner. The parties so served shall have twenty days from the date of service, exclusive of the date of service, within which to make return to the petition or to otherwise plead, and the matter in controversy shall be tried by the circuit judge, de novo, with or without reference to a master or special referee. In construing a statute, "[n]o clause, sentence or word shall be construed as

superfluous, void, or insignificant if a construction can be found with will give force to and preserve all the words of the statute," 2A Sutherland Statutory Construction 46:6 (7th ed.).

Since the rights of the parent to represent and advocate to the school board under S.C. Code Ann §59-19-540 which states that, "[A]t any hearing provided for in Section S. C. Code Ann. §59-19-530, the parties may appear in person or through an attorney licensed to practice in South Carolina and may submit such testimony, under oath, or other evidence as may be pertinent to the matter in controversy." The statute S.C. Code Ann. §59-19-560 does not require hiring an attorney to appeal to the Circuit Court and students cannot, as minors, represent their interests to the School Board. To require Mother to hire an attorney for the Circuit Court phase of the appeal where the South Carolina Legislature has implemented an appeals process in which one of the final stops in the appeals process involves the Circuit Court; would in itself be an equal protection and/or due process violation of the Fourteenth amendment to the Constitution of the United States of America.

Furthermore, student #1 cannot represent, due to his status as a minor, his interests with or without his financial ability to pay for costs and expenses without a parent and or guardian assisting him in the appeal. Indeed, he cannot even hire an attorney alone in the state of South Carolina as a minor without the parent or legal guardian entering into the contract on his behalf. The South Carolina Constitution confers the right to a free public education under S. C. Const. art XI, section 3. Additionally, the State has mandated that services for Gifted and Talented students be provided services under S.C. Code Ann. §59-29-570 which has as a State interest advancing the education

of the State's brightest students. Once the state has conferred a right or service, this right is protected by the United States Constitution. To require parents to pay an attorney to represent their interests along with the interests of their child/student would violate the S. C. Constitution in that both student and parent would be required to pay for a free education. The South Carolina Statutory scheme for school board appeals would be in conflict with the U.S. Constitution's due process clause by creating a process of appeals of the School Board decisions that cannot be utilized by these particular Appellants. As Such, Mother respectfully request to be the representative of Student #1 during the Appeals process. This is necessary to ensure Student #1's interests are represented by an adult pending the order of the Court of Appeals on the Appellant's claims

Respectfully submitted,

Mother of Student #1
Rhonda Meisner
Post Office 689
Blythewood, SC 29016
Cellular phone (803) 960-3696

5/13/2023

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND SCHOOL DISTRICT TWO BOARD OF TRUSTEES
Circuit Court Decision

Judge James R. Barber III, Circuit Court Judge Presidency

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Student #1 John Doe, Plaintiff;
Redacted name of Student
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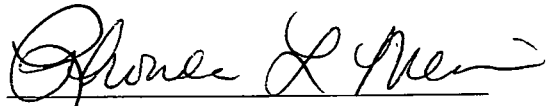
v.

Board of Trustees, Richland School District Two;
Richland School District Two, Superintendent
Dr. Katie Brochu, in her official capacity as School
Superintendant.....Respondents.

AFFIDAVIT FROM MOTHER OF STUDENT #1

Mother respectfully submits this affidavit in support of the Motion for Continued Representation pursuant to Rule 264(a), SCACR.

Respectfully submitted,
Rhonda L. Meisner, Appellant

By: 

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IN THE SOUTH CAROLINA COURT OF APPEALS

Student #1 John Doe, Plaintiff; Redacted name of student; Redacted name of Mother of Student #1 John Doe, Plaintiff v. Board of Trustees, Richland School District Two; Richland School District Two Superintendent, Dr. Katie Brochu, in her official capacity as School Superintendant Defendants	Appeal No. 2013-000532 AFFIDAVIT OF MOTHER

PERSONALLY APPEARED BEFORE ME

_____,

Who after being sworn deposes and says:

1. I am the Mother of the Student #1 in this case and also an Appellant under S.C. Code Ann. §59-19-560 (1962).
2. I am the mother of Student #1 John Doe, a Gifted and Talented Student as identified under the South Carolina state standards for "Gifted Education" and "Highly Gifted" according to the Duke University Talent Identification Program (TIP).
3. I represented my interests and the interests of my son (Student #1) when I applied for transfer of Student #1 from Westwood High School to Blythewood High School based on his status as a Gifted and Talented Student who had lost his support network of classmates with the "re-districting" of high school attendance lines.
4. I represented my interests and the interests of my son (Student #1) when I appealed the decision of the School District denying the transfer of Student #1 to the Richland School

District Two Board who also denied the transfer. Additionally I represented my interests and the interests of my son (Student #1) to the Richland School District Two Board of Trustees pursuant to S.C. Code Ann. § 59-19-540(1962)

5. I represented my interests and the interests of my son (Student #1) when I requested a TRO hearing to move Student #1 from Westwood to the school appropriate for his individual gifts and needs under the Gifted and Talented Statute S. C. Code Ann. §59-29-170, 2 S.C.Regs 43-220 (2011) and the SC Best practices for Gifted Education, 2006. For purposes of the TRO the hearing only, I hired attorney Glenn Bowens to represent Student #1 and to ask questions of me under oath regarding Student #1's academic placement, status and emotional condition. Mr. Bowens has never submitted a brief or argument in this case outside of the TRO hearing. He did submit an affidavit regarding the Rule 59-e, SCRCP, Motion to reconsider, this Motion was also filed by me, the Mother. During the TRO hearing, the district registrar Roger Wiley testified under oath that he never considered Student #1's status in the Gifted and Talented program when he denied the transfer. Fred McDaniel, PhD also testified he did not consider Student #1's Gifted Status prior to denying the transfer and submitting the denial to the Board.
6. The School District filed a motion to dismiss the Appeal prior to the TRO hearing which I responded to via memorandum on behalf of myself and my son. After notifying the Honorable Judge Alison Lee that a Rule 59e, SCRCP Motion to Alter and Amend was pending regarding the ruling from the TRO hearing; I, the Mother Appellant in this case, represented both my interests and my Son's (Student #1) interests in Circuit Court before the Honorable Alison Lee in response to the District's Motion to dismiss the Appeal.

7. When the denial of the Motion to Alter and Amend was received, the order indicated the Rule 59-e SCRCP was not timely filed. Mother Appellant filed a motion pursuant to Rule 60, SCRCP Relief from Judgment to ensure that both Student #1 and Mother retained their rights to appeal. In the Rule 60, SCRCP motion hearing, Mother Appellant represented both Mother's interests and Son's (Student #1) interests in Circuit Court before the Honorable Robert E Hood.
8. This appeal is interlocutory in nature in that the main appeal has not yet been heard and the TRO hearing was not a merits hearing; however, the written order bifurcates the rights of Mother from Student #1 which directly affects two substantial rights which were raised to the Court in Pleadings, Memorandum and Argument and which if answered in the negative would affect the ability of the appeal to proceed per the written order. Mother was present at the TRO hearing when the Honorable Judge James Barber ruled that the TRO hearing was not a "Merits" hearing.
9. The "Mother" hired an attorney, Glenn Bowens to represent Student #1 only to assist in the appeal during the TRO hearing since a major portion of the testimony and evidence would necessarily involve "Mother" giving her testimony under oath.

FURTHER AFFIANT SAYETH NOT.

Sworn to before me this

13 Day of May, 2013.

Jennie S. Sharpe

Notary Public for South Carolina

My Commission Expires 7-23-2017

JENNIE S. SHARPE NOTARY PUBLIC SOUTH CAROLINA

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND SCHOOL DISTRICT TWO BOARD OF TRUSTEES
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The Honorable James R. Barber III, Circuit Court Judge Presidency

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Board of Trustees, Richland School District Two;
Richland School District Two, Superintendent
Dr. Katie Brochu,in her official capacity as School
Superintendant.....Respondents.

CERTIFICATE OF SERVICE

I, Rhonda Meisner, mother of Student #1 John Doe certify that I have served a copy of the Affidavit of Mother of Student #1 regarding Motion for Continued Representation pursuant to Rule 264(a) SCACR:

Glenn Bowens, Esquire
Bowens Law Firm
P.O Box 424
Winnsboro, SC 29080

Tyler R. Turner, Esquire
Kathryn Long Mahoney, Esquire
John M. Reagle, Esquire
Childs and Halligan
Post Office Box 11367
Columbia, SC 29211-1367
803-254-4035

South Carolina Court of Appeals- Hand Delivery
PO Box 11629
Columbia, SC 29211

By depositing the same in the United States Mail, postage prepaid, this the 13 Day of May 2013

Rhonda Meisner,Appellent _____

Date _____