IN THE SUPREME COURT OF MISSISSIPPI

NO. 2010-CT-00042-SCT

MARK FAILS AND LAURA FAILS

v.

JEFFERSON DAVIS COUNTY PUBLIC SCHOOL BOARD

ON WRIT OF CERTIORARI

DATE OF JUDGMENT:	12/04/2009
TRIAL JUDGE:	HON. MICHAEL R. EUBANKS
COURT FROM WHICH APPEALED:	JEFFERSON DAVIS COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	ALEXANDER IGNATIEV
ATTORNEYS FOR APPELLEE:	REGINALD ERVIN JONES JAMES A. KEITH JOHN SIMEON HOOKS
NATURE OF THE CASE:	CIVIL - STATE BOARDS AND AGENCIES
DISPOSITION	THE JUDGMENTS OF THE COURT OF APPEALS AND THE CIRCUIT COURT OF JEFFERSON DAVIS COUNTY ARE VACATED. APPEAL DISMISSED AS MOOT - 05/31/2012
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

KITCHENS, JUSTICE, FOR THE COURT:

¶1. A student, the daughter of Mark Fails and Laura Fails, transferred from Jefferson Davis County School District to Lamar County School District, after obtaining consent from the school boards of both districts. Four years later, on or about August 13, 2007, the Jefferson Davis County Public School Board (School Board) passed a resolution that

Jefferson Davis County residents would no longer be permitted to transfer to other school districts. The following year, the Superintendent of Education for the Jefferson Davis County School District published an announcement in the local newspaper informing parents of Jefferson Davis County School District students that all transfers had been revoked. Although three of the School Board members represented to Mark Fails that this did not affect his daughter's transfer status, an interim conservator, appointed by the governor to oversee Jefferson Davis County Schools, represented to Mark Fails that it was the intent of the School Board to revoke all previously granted transfer petitions. Mark Fails attended an October 13, 2008, School Board meeting to appeal the revocation of his daughter Courtney's petition for transfer. However, the conservator prohibited the School Board from voting on Courtney's petition for transfer.

¶2. Prior to the October 2008 School Board meeting, however, the Failses had obtained Lamar County residency, and Courtney had continued to attend Lamar County Schools legally, and without interruption. Despite this fact, the Failses appealed the School Board's decision to the Circuit Court of Jefferson Davis County. The circuit court and the Mississippi Court of Appeals affirmed the School Board's decision. Given that the Failses have represented to the circuit court and this Court that they have since moved into the Lamar County School District, and that fact is not disputed by the appellee, the issue of revocation is now moot. Accordingly, we dismiss the instant appeal and vacate the decisions of the Court of Appeals and the circuit court.

Facts and Procedural History

¶3. In 2003, Mark and Laura Fails, residents of Jefferson Davis County, petitioned the Jefferson Davis County School Board (School Board) to allow their daughter, Courtney, who resided with her parents, to transfer to the Lamar County Public School District. Both districts consented to the student's transfer, and Courtney began attending school in Lamar County.

¶4. In May 2007, after the State Board of Education (State Board) determined the Jefferson County School District to be in serious violation of state accreditation standards, the governor declared a state of emergency in the district, and the State Board appointed Glen Swan as interim conservator. The county school board adopted a policy prohibiting students residing in Jefferson Davis County from transferring to other school districts.

¶5. The following year, Jefferson Davis County Superintendent of Education Ike Haynes published an announcement in the local newspaper stating that the district's student transfer policy not only prohibited future transfers, but revoked all existing transfers as well. When Mark Fails inquired whether the policy actually revoked Courtney's transfer (which had been in effect for four years), three members of the School Board responded that it was not the intent of the policy to revoke past transfers. Mark Fails then asked Superintendent Haynes to clarify the notice in the newspaper. Haynes responded that all existing transfers – including Courtney's – were revoked because "[w]e want the smart kids back in Jefferson Davis County to help raise the test scores."

¶6. Swan reiterated this interpretation of the School Board's resolution via correspondence, namely that Courtney's petition for transfer had been revoked. Swan invited

Mark Fails to attend the next School Board meeting and ask the Board to clarify the policy. Four of the five Board members submitted affidavits stating that they were going to vote that the policy was never intended to revoke past transfers. But, at the meeting, Swan announced to the Board that all transfers, including Courtney's, were revoked, and he refused to allow the Board to address the issue or vote.

¶7. The Circuit Court of Jefferson Davis County affirmed Swan's action, and the Court of Appeals affirmed the circuit court, holding that: (1) Swan had statutory authority to block the Board from voting on the policy; (2) a school board may unilaterally revoke an existing student transfer; and (3) school boards may adopt blanket policies against transfers. The Failses petitioned this Court for a writ of certiorari, which we granted. Given that the Failses have represented in their Petition for Appeal (Complaint) filed in the circuit court, and also in their Supplemental Brief filed with this Court, that they moved into the Lamar County School District in October 2008, prior to filing their complaint in the circuit court in November 2008, the revocation of Courtney's transfer and all alleged errors surrounding it are moot.

Discussion

¶8. The Failses raise the following assignments of error for our review: (1) the circuit court erred as a matter of law when it held that the conservator's authority is congruent with that of the School Board; (2) the circuit court erred as a matter of law when it held the Board and the conservator had the authority to revoke a transfer; (3) the circuit court erred as a matter of law when it specifically ignored express statutory language stating that the grant of a student transfer request under Mississippi Code Section 37-15-31 is final.

¶9. The Failses, in their Petition for Appeal (Complaint), filed in the circuit court November 12, 2008, represented that they had been residents of Jefferson Davis County until October 2008, when they moved to Sumrall, Mississippi, a town located in Lamar County. Moreover, in their complaint, they indicate that, prior to the School Board meeting on October 13, 2008, during which the conservator is said to have blocked the School Board's vote on Courtney's petition, they had already purchased the home in Sumrall. "Because of this relocation," the complaint states, "Courtney still attends the Sumrall schools." Thus, despite the revocation of Courtney's transfer and despite the action taken by the conservator in preventing the School Board from reviewing the transfer revocation, Courtney has never been required to attend Jefferson Davis County Schools again, by virtue of her Lamar County residency. "Except as [otherwise] provided in . . . this section, no minor child may enroll in or attend any school except in the school district of his residence . . . ." Miss. Code Ann. § 37-15-29(1) (Rev. 2007). Thus, the revocation was of no moment as of the day that the Failses obtained Lamar County residency, and it does not affect her statutory right to attend Lamar County Schools. The circuit court erred in its failure to dismiss the complaint, as it had no authority to dispose of the case on its merits.

¶10. "[A] case is moot so long as a judgment on the merits, if rendered, would be of no practical benefit to the plaintiff or detriment to the defendant." ***Gartrell v. Gartrell***, 936 So. 2d 915, 916 (Miss. 2006). This Court has no authority to "entertain an appeal where there is no actual controversy." ***Id.*** (citing ***McDaniel v. Hurt***, 92 Miss. 197, 41 So. 381 (1907)). "Cases in which an actual controversy existed at trial but the controversy has expired at the time of review, become moot. We have held that the review procedure should not be allowed

for the purpose of settling abstract or academic questions, and that we have no power to issue advisory opinions." ***Allred v. Webb***, 641 So. 2d 1218, 1220 (Miss. 1994) (quoting ***Monaghan v. Blue Bell, Inc.***, 393 So. 2d 466, 466-67 (Miss. 1980)).

¶11. In their Supplemental Brief, the Failses concede that they suffered no injury: "If the Failses had not been sufficiently wealthy and skilled to effect their daughter's continued attendance in Lamar County Schools for the pendency of this appeal, the violation of their rights *would have been* substantial, apparent, and costly in terms other than financial." (Emphasis added.) While one interpretation of this statement by the Failses could be that they would resume living in Jefferson Davis County in the event of a favorable outcome of their appeal, they stop short of making that argument explicitly.

¶12. In another portion of their Supplemental Brief, the Failses admit that any constitutional deprivation "admittedly [has] been cured by Laura Fails becoming employed by the Lamar County Schools and Mark and Laura Fails purchasing a residence in Lamar County." Due to the employment of Laura Fails by the Lamar County Schools, Courtney has benefit of an additional statutory right to attend school in Lamar County. "Those children whose parent(s) or legal guardian(s) are instructional personnel or certificated employees of a school district may at such employee's discretion enroll and attend the school or schools of their parent's or legal guardian's employment regardless of the residence of the child." Miss. Code Ann. § 37-15-29(2) (Rev. 2007).

¶13. Accordingly, we dismiss the instant appeal. Moreover, we hold that both the circuit court and the Court of Appeals had before them moot issues and thus, no case or controversy, given that the issues raised by the Failses were moot upon their obtaining Lamar County

residency, prior to the filing of their complaint in circuit court. As such, the lower courts had no authority to decide the substantive merits of the issues presented. *See* ***Allred***, 641 So. 2d at 1220. Therefore, we vacate the decisions of the circuit court and the Court of Appeals. Moreover, the Court of Appeals mistakenly said in its opinion that the Failses reside in the Jefferson Davis County Public School District. ***Fails v. Jefferson Davis County Public School Bd.***, 2011 WL 1992010, *1 (Miss. Ct. App. May 24, 2011).

¶14. Given that this Court does not adjudicate moot questions, dismissal is the only appropriate disposition of the instant case.

¶15. **THE JUDGMENTS OF THE COURT OF APPEALS AND THE CIRCUIT COURT OF JEFFERSON DAVIS COUNTY ARE VACATED. APPEAL DISMISSED AS MOOT.**

LAMAR, CHANDLER, PIERCE AND KING, JJ., CONCUR. DICKINSON, P.J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY WALLER, C.J., CARLSON, P.J., AND RANDOLPH, J.

DICKINSON, PRESIDING JUSTICE, DISSENTING:

¶16. I respectfully dissent for three reasons: First, the majority ignores the mootness exception for cases involving wrongs capable of repetition yet evading review.[1] Second, the majority ignores the mootness exception for cases involving the public interest.[2] Third, the majority ignores the fact that the Failses, who lost in the trial court, were ordered to pay costs

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[1] ***Misso v. Oliver***, 666 So. 2d 1366 (Miss. 1996); ***Miss. High Sch. Activities Ass'n, Inc. v. Coleman***, 631 So. 2d 768 (Miss. 1994); ***Bd. of Trs. of Pascagoula Mun. Sch. Dist. v. Doe***, 508 So. 2d 1081 (Miss. 1987); ***Strong v. Bostick***, 420 So. 2d 1356 (Miss. 1982); ***Sartin v. Barlow***, 196 Miss. 159, 16 So. 2d 372 (Miss. 1944).

[2] ***Misso***, 666 So. 2d 1366; ***Strong***, 420 So. 2d 1356; ***Sartin***, 16 So. 2d 372.

there, and they have now been ordered to pay costs here. They would have paid no costs, had they prevailed here – and, in my view, they most certainly would have.

1. This case involves a wrong capable of repetition, but evading review.

The Mootness Doctrine in Federal Court

¶17. Under the United States Constitution, federal courts may decide only actual cases and controversies.[3] If, during an appeal, the actual controversy between the parties ends, the court should dismiss the case as moot.[4] But there are exceptions to this general rule. One exception is cases involving a wrong that is "capable of repetition yet evading review."[5] In order for this exception to apply, two elements must be met. First, the wrong must be an injury reasonably likely to happen to the complaining party again.[6] Second, "the challenged action [must be] in its duration too short to be fully litigated prior to its cessation or expiration."[7]

¶18. Notably, the first element requires – in federal courts – that the injury must be reasonably likely to happen to the *actual complaining plaintiff* again. In some cases, that is not possible – such as when a high-school student alleging school officials violated her constitutional or statutory rights graduates before a decision on the merits. The student will never be in high school again; therefore, it is impossible that the alleged injury will happen to her again. Therefore, her claim becomes moot, and the "capable of repetition" exception does not apply. So how can a high-school student bring

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[3]U.S. Const. art. III, § 2, cl. 1.

[4]***U.S. Parole Comm'n v. Geraghty***, 445 U.S. 388, 396, 100 S. Ct. 1202, 1209, 63 L. Ed. 2d 479 (1980).

[5]***Southern Pac. Terminal Co. v. ICC***, 219 U.S. 498, 514-15, 31 S. Ct. 279, 55 L. Ed. 310 (1911)

[6] ***Weinstein v. Bradford***, 423 U.S. 147, 149, 96 S. Ct. 347, 46 L.Ed.2d 350 (1975)

[7]***Id***.

a claim against school officials in federal court without that claim becoming moot after graduation? In federal court, the answer is simple: certify a class action under Federal Rule of Civil Procedure 23.[8]

¶19. For example, in ***Board of School Commissioners of the City of Indianapolis v. Jacobs***,[9] six Indianapolis high-school students brought First and Fourteenth Amendment claims against a board of school commissioners for actions the board took against the school newspaper. But, by the time the suit reached the Supreme Court of the United States, all six students had graduated. Because the students had graduated, the case was moot: the injury alleged is not reasonably likely to happen to the complaining parties again. The Supreme Court of the United States noted that if the students had brought a class action on behalf of all students currently affected, the claim would have been justiciable.

The Mootness Doctrine Under Mississippi Law

¶20. But in Mississippi, there are no class actions. So, in order to ensure rights are vindicated in cases like ***Jacobs*** – or the case here – this Court has recognized that the "capable of repetition, yet evading review exception" is broader than in federal courts.[10] Indeed, the mootness doctrine itself is more relaxed in Mississippi, because our State Constitution lacks a cases-and-controversies

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[8] ***Bd. of School Comm'rs of City of Indianapolis v. Jacobs***, 420 U.S. 128, 95 S. Ct. 848, 43 L. Ed. 2d 74 (1975).

[9] ***Id***.

[10] Jeffrey Jackson, 1 *Mississippi Civil Procedure*, § 1:26 (West 2009) ("The Court has recognized that Mississippi's mootness doctrine is more relaxed that that enforced in the federal courts. As before, one reason for this is that Mississippi does not have a Cases or Controversies clause, as does the Federal Constitution. More recently, the court has noted that "Mississippi's expansion of the exception to the mootness doctrine works to fill the gap left by the unavailability of class actions in Mississippi." (quoting ***Miss. High School Activities Ass'n, Inc. v. Coleman***, 631 So. 2d 768 (Miss. 1994)).

requirement.[11] Additionally, Mississippi – as well as forty-two other States[12] – recognizes another mootness exception not available in federal court: that the Court may hear otherwise moot cases if deciding the issue is in the public interest.[13] Two Mississippi school cases illustrate these exceptions.

The Board of Trustees of the Pascagoula Municipal Separate School District v. Doe[14]

¶21. In ***Board of Trustees v. Doe***, school officials attempted to expel a tenth-grade student, John Doe, for having marijuana on campus.[15] Doe's expulsion was to last for the remainder of the 1983-1984 school year.[16] Doe was learning-disabled and therefore subject to the Education for All Handicapped Children Act (EHA) passed by Congress and later adopted in Mississippi.[17] Under the Act, Doe's parents were entitled to appeal the school's decision to an impartial, due-process hearing committee, which they did.[18] At the hearing, the hearing officer determined that expulsion was permitted only where "the child's behavior represents an immediate physical danger to him/herself and others or constitutes a clear emergency within the school such that removal is essential."[19]

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[11]Jackson, *supra* note 10.

[12]Lauren Waite, *The Public Interest Exception to Mootness: A Moot Point in Texas?*, 41 Tex. Tech L. Rev. 681, 690-91 (Winter 2009).

[13]***Misso v. Oliver***, 666 So. 2d 1366, 1369 (Miss. 1996).

[14]***The Bd. of Trs. of the Pascagoula Mun. Separate Sch. Dist. v. Doe***, 508 So. 2d 1081 (Miss. 1987).

[15]***Id***. at 1082.

[16]***Id***. at 1083.

[17]***Id***.

[18]***Id***. at 1083.

[19]***Id***.

Because Doe was not a threat to the students, the officer concluded that expulsion was not warranted.[20] Regardless, the officer held that the issue was moot because Doe already had completed the 1983-1984 school year.[21]

¶22. The school board eventually appealed the case to this Court, and Doe filed a motion to dismiss the appeal as moot.[22] Not only had Doe completed the year when he was supposed to have been expelled, but he had successfully graduated from high school.[23] Despite the fact that the alleged wrong could never happen to *this* student again, this Court held that the wrong was capable of repetition, yet evading review, and decided the issue.[24] Seven years later, Chief Justice Prather relied on this precedent in another school case.

Mississippi High School Activities Association, Inc. v. Coleman[25]

¶23. In ***Coleman***, Kiese Laymon and his mother moved from Maryland to Brandon, Mississippi.[26] Despite the fact that Laymon resided in Brandon, Laymon enrolled in St. Joseph High School, a parochial school located in the Jackson Municipal Separate School District (which was not the district of Laymon's residence).[27] Laymon began practicing with

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[20] ***Id***.

[21] ***Id***. at 1084.

[22] ***Id***.

[23] ***Id***.

[24] ***Id***.

[25] ***Miss. High Sch. Activities Ass'n, Inc. v. Coleman***, 631 So. 2d 768 (Miss. 1994).

[26] ***Id***. at 771.

[27] ***Id***.

the St. Joseph basketball team, but the school told him that he was ineligible to play during the 1990-1991 school year because of the Mississippi High School Athletic Association's Anti-Recruiting Rule. Under that rule, school athletes are eligible to play only for schools located in the "district in which his parents/guardian are bona fide residents."[28] Laymon sued the Athletic Association, claiming that the rule did not apply to parochial schools.[29] The chancery court issued a temporary restraining order (TRO), ordering the Association to let Laymon play.[30] Eventually, the chancellor issued a preliminary injunction and a permanent injunction allowing Laymon to play.[31] The Association appealed.[32]

¶24. Writing for the Court, Chief Justice Prather acknowledged that the issue, while moot, still was justiciable because it was capable of repetition, yet evading review.[33] First, Justice Prather noted that mootness exceptions are broader in Mississippi:

> Mississippi's expansion of the exception to the mootness doctrine works to fill the gap left by the unavailability of class actions in Mississippi. Federal Courts need not employ such an expanded exception to the mootness doctrine because class actions are available to insure that moot cases which are capable of repetition yet evading review are adjudicated as live controversies.[34]

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[28] ***Id***. at 772.

[29] ***Id***.

[30] ***Id***.

[31] ***Id***.

[32] ***Id***.

[33] ***Id***.

[34] ***Id***. at 773 n.2.

Second, Justice Prather stated that – unlike federal courts – the capable-of-repetition exception applied, despite the fact that the same party would not be subject to the same wrong again.[35] Just as in ***Coleman***, the issue was moot as to Laymon – the complaining party – specifically: the basketball season was over, and despite the eligibility rule, he had won an injunction and had played that very season.[36] Regardless, the Court found the issue justiciable.

¶25. In ***Coleman***, Chief Justice Prather set forth the current requirements for the capable-of-repetition exception to apply: "(1) the duration of the challenged action must have been short; and (2) the time required to complete an appeal is lengthy."[37] I find that those requirements are met here. The school board passed the resolution purporting to revoke all existing transfers in August 2007. It is now May 2012 – five full school years have passed. Any affected student from eighth to twelfth grade would have graduated in the time it took this Court to render a decision – and the issue, if brought by one of those students, would be moot, according to the majority. It is possible a seventh-grade student could challenge the board action, and – if successful – return to his or her district of choice for at least part of the final year of school. But, because of the length of delay for many other students, I find the issue in this case is capable of repetition, yet evading review.

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[35] ***Id***. at 773.

[36] ***Id***. at 778.

[37] ***Id***. at 773.

¶26. The majority correctly points out that Courtney's parents bought a home and moved to the school district of her choice, so she also was never forced to return to the transferor school. But the exception still applies.

¶27. In ***Coleman*** and ***Doe***, the students challenged a regulation or action that was never actually applied to them – as here. In ***Coleman***, Laymon still played basketball during the season at issue. In ***Doe***, the student never was actually expelled. And here, Courtney never was forced to return to the transferor district. The real issue is whether the challenged action is likely to happen to *others* again, and whether the length of litigation will moot the issue as to them.

2. This case involves a wrong that involves the public interest.

¶28. In addition to cases capable of repetition, yet evading review, this Court also will hear moot cases "when the question or questions involved are matters affecting the public interest."[38] In ***Sartin v. Barlow***, a candidate for the Board of Supervisors of Walthall County challenged certain votes in a primary election, claiming that some voters had not been residents of the State for two years.[39] Consistent with State law, the candidate demanded examination of the ballots in the presence of the circuit clerk.[40] But the clerk refused, and a district attorney filed – and a circuit judge granted – a petition for writ of mandamus ordering the clerk to examine the ballots.[41] The trial judge erroneously allowed the opponent

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[38] ***Sartin v. Barlow***, 196 Miss. 159, 16 So. 2d 372, 376 (1944).

[39] ***Id***. at 373.

[40] ***Id***. at 374.

[41] ***Id***.

to file a supersedeas appeal, which stayed the writ.[42] And while on appeal, the date of the general election passed; the issue became moot.[43]

¶29. First, the Court adopted the public-interest exception to the mootness doctrine:

> [T]here is an exception to the general rule as respects moot cases, when the question concerns a matter of such a nature that it would be distinctly detrimental to the public interest that there should be a failure by the dismissal to declare and enforce a rule for future conduct.[44]

¶30. Because a decision was necessary to ensure election law was properly enforced, the Court determined that solving the present issue was sufficiently in the public interest to warrant a decision.[45] So, this Court heard the issue and issued the mandamus ordering the clerk to examine the ballots within twelve days from and after the filing of the mandate – despite the fact that the general election was over, and the reexamination would not affect the outcome of that election.[46]

¶31. Relying on ***Sartin***, this Court again held that ballots may be contested despite the passing of the general election on appeal: the "complained of action will certainly recur, however, the appellant Misso will probably not be subject to the same action."[47]

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[42] ***Id***. at 375-76.

[43] ***Id***.

[44] ***Id***. at 376.

[45] ***Id***.

[46] ***Id***. at 377.

[47] ***Misso v. Oliver***, 666 So. 2d 1366, 1369 (Miss. 1996).

¶32. Election matters involving potential corruption are not the only cases involving the public interest. In ***Strong v. Bostick***, this Court held that whether or not the Mississippi Commission on Wildlife Conservation could ban the use of dogs while deer hunting was a matter of "great public interest" preventing dismissal of a moot case.[48]

¶33. In ***Strong***, the Commission adopted a regulation prohibiting the use of dogs while deer hunting during the 1981-1982 deer season.[49] Bostick sued, and the circuit court voided the regulation because the Commission had failed to make sufficient findings of fact.[50] The Department appealed, and because the deer season at issue ended, Bostick (the original challenger of the regulation) argued the case was moot and filed a motion to dismiss.[51]

¶34. This Court responded that, although "an appeal will not be entertained where no actual controversy is involved and a reversal would do no good . . . . ***Such argument finds no sympathy here.***"[52] The Court unanimously held that the issue was "of great public interest" and that "the public [was] entitled to know whether or not the Department and Commission have the authority to promulgate and enforce regulations such as the one now before the Court . . . ."[53]

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[48] ***Strong v. Bostick***, 420 So. 2d 1356 (Miss. 1982).

[49] ***Id***. at 1357.

[50] ***Id***. at 1358.

[51] ***Id***.

[52] ***Id***.

[53] ***Id***.

¶35. If a deer hunting regulation is of "great public interest," then surely the issue before us today qualifies. In addition to being capable of repetition and evading review, I would hold that whether or not an interim conservator illegally revoked valid student transfers is sufficiently in the public interest to warrant a decision on the merits.

3. The Conservator had no authority to block the Board from voting, and a valid student transfer cannot be revoked unilaterally.

¶36. After Courtney appealed, the Court of Appeals held that: (1) an interim conservator had the authority to prevent a school board from voting on a student transfer policy; and (2) a valid student transfer may be revoked unilaterally by either the transferee or transferor school board. I disagree.

A. *During a state of emergency, and interim conservator does not have the authority to address a student-transfer issue.*

¶37. The Court of Appeals erroneously held that an interim conservator – appointed when the governor has declared a state of emergency – has authority to block a school board from voting on student transfers.[54] This is because the power over student transfers during a state of emergency is vested in the state Board of Education – not in the conservator.

¶38. When the state Board of Education finds a school district is in serious violation of state and federal accreditation standards, Mississippi Code Section 37-17-6(11)(b) governs.[55] Under the statute, the state Board may request the Governor to declare a state of emergency, and if it does so, the statute sets forth seven actions the state Board may take.[56] One action

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[54] ***Fails***, 2011 WL 1992010, at **2-3.

[55] Miss. Code Ann. § 37-17-6 (Supp. 2011).

[56] Miss. Code Ann. § 37-17-6 (11)(c)(i)-(vii) (Supp. 2011).

is to assign an interim conservator, whose authority is set out under Section 37-17-6 (14).[57] Another is to grant transfers to students.[58] By granting these powers to the state Board, the Legislature specifically has placed the authority over student transfers during states of emergency with the state Board of Education.

¶39. The Court of Appeals erroneously looked to the broad powers given to interim conservators under Section 37-17-6 (14) to support its holding.[59] Under that section, the conservator is "responsible for the administration, management and operation of the school district . . . ."[60] The statute then provides a nonexhaustive list of actions the conservator may take, one of which is that the conservator may "[a]ttend[] all meetings of the district's school board and administrative staff."[61]

¶40. The Court of Appeals majority noted that the statute does not specifically grant the conservator authority to block the school board from voting.[62] Regardless, the majority found that the broad language of the statute grants the conservator "a very high degree of authority," and the conservator essentially "becomes the Board."[63] Therefore, the Court of

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[57]Miss. Code Ann. § 37-17-6 (11)(c)(iii) (Supp. 2011).

[58]Miss. Code Ann. § 37-17-6 (11)(c)(iv) (Supp. 2011).

[59]***Fails***, 2011 WL 1992010, at **2-3.

[60]Miss. Code Ann. § 37-17-6 (14)(a) (Supp. 2011).

[61]Miss. Code Ann. § 37-17-6 (14)(a)(iv) (Supp. 2011).

[62]***Fails***, 2011 WL 1992010, at *2 ("Mark and Laura correctly point out that the statute does not specifically provide Swan with the power to prevent the Board from voting to clarify the policy.").

[63]***Id***. at *3.

Appeals concluded that conservator Swan had the authority to prevent the board from voting and had the power to interpret the transfer policy himself.[64]

¶41. While the Court of Appeals was correct that the statute gives the conservator broad authority, it incorrectly held that the conservator may prevent the school board from voting on the transfer policy. The statute addresses the conservator's authority relating to county school boards; all the statute says is that the conservator may "***attend***[] all meetings."[65] The statute grants the conservator no authority to block the school board from voting. Instead, the statute specifically vests the authority over transfers in the state Board of Education, and it is a rule of statutory construction that specific statutory provisions control over general provisions.[66] Therefore, the *specific* authority granted to the state Board controls over the conservator's *general* authority to *attend* board meetings. Accordingly, I would reverse the Court of Appeals decision.

B. A school board cannot unilaterally revoke a valid student transfer.

¶42. Even if the conservator had the authority to interpret the board policy for himself and block the board from voting, neither he nor the school board had the authority unilaterally to revoke an existing transfer.

¶43. Mississippi Code Section 37-15-31 addresses interdistrict student transfers, and it reads as follows:

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[64] ***Id.***

[65] Miss. Code Ann. § 37-17-6 (14) (a) (iv) (Supp. 2011) (emphasis added).

[66] ***Carmona v. Andrews***, 357 F.3d 535, 538 (5th Cir. 2004); ***Yarbrough v. Camphor***, 645 So. 2d 867 (Miss. 1994) (citing 1 Sutherland, *Statutory Construction* § 2022 (3d ed. 1943)).

> [U]pon a petition in writing of a parent or guardian . . . individual students living in one school district . . . may be legally transferred to another school district, by the mutual consent of the school boards of all school districts concerned, which consent must be given in writing and spread upon the minutes of such boards.
>
> If such a transfer is approved by the transferee board, then ***such decision shall be final.*** If such a transfer should be refused by the school board of either school district, ***then such decision shall be final***."[67]

¶44. The first question this Court asks when interpreting a statute is "whether the statute is ambiguous. If it is not ambiguous, the court should simply apply the statute according to its plain meaning and should not use principles of statutory construction."[68] Words not defined in the statute "should be ascribed their ordinary and usual meaning."[69]

¶45. I find no ambiguity in Section 37-15-31. It states in clear terms that the decision to grant or deny a transfer "***shall be final***."[70] According to the Oxford Dictionary of English, the word final is defined as an adjective meaning "allowing no further doubt or dispute: *the decision of the judging panel is final*."[71] Under the plain and unambiguous language of the statute, a decision to deny or grant a student's petition for transfer is permanent as to that petition.[72] Also, the statute does not mention revocation – so neither school board has any

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[67]Miss. Code Ann. § 37-15-31 (1) (a)-(b) (Rev. 2007).

[68]***City of Natchez v. Sullivan***, 612 So. 2d 1087, 1089 (Miss. 1992).

[69]***Pearl River Valley Water Supply Dist. v. Hinds County***, 445 So. 2d 1330, 1334 (Miss. 1984).

[70]Miss. Code Ann. § 37-15-31 (1) (b) (Rev. 2007) (emphasis added).

[71]*Oxford Dictionary of English* 653 (3d ed. 2010).

[72]This is not to say of course that a student whose petition is denied is prevented from repetitioning later. Nor is a student whose petition is granted prevented from repetitioning

statutory authority to revoke. This Court interprets statutes "starting with the premise that [the statute] fully expresses whatever the legislature intended to accomplish."[73]

> [P]resumptions are indulged against . . . inadvertent omissions or oversights, or . . . against legislation by implication . . . . In sum, this Court cannot omit or add to the plain meaning of the statute or presume that the legislature failed to state something other than what was plainly stated.[74]

The Court of Appeals ignored this principle and wrote the authority to revoke a transfer into a statute which is silent on the issue. But the statute does speak to the authority to *grant* transfers, and such decisions are "***final***."[75] I would therefore hold that a school board cannot unilaterally revoke an existing transfer.

¶46. To reach its holding, the Court of Appeals opined that the word "final" did not really mean final, but instead meant "no administrative appeal may be taken." Even assuming the Court of Appeals was correct on this point (which I do not), the result still should be the same. The statute provides ***no*** authority (or even procedure) for revocation. But, as a review of the statutory history reveals, the Court of Appeals was not correct on the point.

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to transfer back to her original district.

[73]Jeffrey Jackson & Mary Miller, *Encyclopedia of Mississippi Law* § 68:63 (West 2001).

[74]***City of Houston v. Tri-Lakes Ltd.***, 681 So. 2d 104, 106 (Miss. 1996).

[75]Miss. Code Ann. § 37-15-31(1)(b) (Rev. 2007) (emphasis added).

¶47. The Court of Appeals noted that earlier versions of Section 37-15-31 provided for administrative appeals,[76] and the current version does not.[77] The Court of Appeals stated that the 1987 version of the statute – which allowed an appeal to the state Board of Education – was amended in 1988 to delete the provision for an administrative appeal and make decisions by the local school board "final." The Court of Appeals then determined that, by amending the statute this way, the Legislature meant the term "final" simply to mean that no administrative appeal may be taken. But the Court of Appeals failed to take into account the whole text of the earlier statute and amendment. Even when the statute allowed an appeal to the State Board of Education, the statute *still* provided that the decision was ***final***.[78]

¶48. In 1962, the statute regarding interdistrict transfers required students to petition the board of trustees of the transferor and transferee school boards.[79] And if the board rejected the petition, the statute allowed an appeal to the county board of education.[80] If the county board also denied the petition, the State Educational Finance Commission could take the appeal, "***whose decision shall be final.***"[81] ***There is no logical way to interpret the word***

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[76]1989 Miss. Laws ch. 508 § 2; 1987 Miss. Laws ch. 307 § 16;1986 Miss. Laws ch. 492 § 96; 1962 Miss. Laws ch. 357 § 1.

[77]Miss. Code Ann. § 37-15-31 (Rev. 2007).

[78]1986 Miss. Laws ch. 492 § 96.

[79]1962 Miss. Laws ch. 357 § 1.

[80]*Id*. (emphasis added).

[81]*Id* (emphasis added).

"final" in the 1962 statute to relate to administrative appeals, since all administrative appeals already would have been completed.

¶49. There are other examples of prior statutes that refute the Court of Appeals' interpretation. The statute was amended in 1986 to allow an appeal to the State Board of Education, whose "***decision shall be final***."[82] The statute was amended again in 1987, and it read that "if such a transfer should be refused by the school board of either school district or the county board of education, then an appeal may be had to the State Board of Education and . . . the decision of the hearing officer ***shall be final***."[83] In 1989, the statute was amended to remove administrative appeals and stated that, if the transfer was refused by either school board, "such decision shall be ***final***."[84] ***And when addressing whose decision shall be "final" as used in these statutes, this Court held that the term "does not mean that there can be no appeal to the courts. It means that the matter is final insofar as action of school authorities is concerned***."[85]

¶50. Since 1962, the word ***final*** in the statute could not have meant that "no administrative appeal may be taken." Instead, it has meant – and continues to mean (as this Court has

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[82] 1986 Miss. Laws ch. 492 § 96 (emphasis added).

[83] 1987 Miss. Laws ch. 307 § 16 (emphasis added).

[84] 1989 Miss. Laws ch. 508 § 2 (emphasis added).

[85] ***Bd. of Educ. of Benton County v. State Ed. Fin. Comm'n***, 243 Miss. 782, 794, 138 So. 2d 912, 916 (1962) (emphasis added).

already interpreted it) – that "the matter is final insofar as action of school authorities is concerned."[86]

¶51. Further, the 1986 and 1987 versions of the statute allowed appeals to the state Board of Education (the final authority in school matters), and specifically provided that the state Board's decision was final.[87] In that context, "final" could not possibly mean that no administrative appeal might be taken, because there was no higher administrative authority above the state board. The word "final" has been included in the statute at all times, and it has always meant that the decision to grant or deny a petition for transfer was permanent and irrevocable.

¶52. In reaching its conclusion that one school board unilaterally could revoke a valid transfer, the Court of Appeals relied on ***Humble Oil & Refining Co. v. State***.[88] I fail to see how this case applies to the issue before us. In ***Humble Oil***, the State of Mississippi and the Board of Supervisors of Adams County filed suit to void an oil and gas lease.[89] The lease was entered into by a previous board, but the performance of the lease would not begin until *after* the newly elected board's term began.[90] This Court held that:

> [A] board of county supervisors nor the county superintendent may lawfully make a contract binding on their successors, which begins after the terms of office of the board making it has expired. Our view here is not to be confused

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[86] ***Id***.

[87] 1986 Miss. Laws ch. 492 § 96; 1987 Miss. Laws ch. 307 § 16.

[88] ***Humble Oil & Refining Co. v. State***, 206 Miss. 847, 41 So. 2d 26 (1949).

[89] ***Id***. at 853.

[90] ***Id***. at 853-54.

> with contracts effective during the term of one board, and performance starting during the term of office of said board, but extending over into the terms of office of a successor board. Here the terms of office of the members of the board and of the county superintendent of education expired December 31, 1947, yet they attempted to make a contract to go into effect during the term of their successors, preempting the latter from their right and duty to attend to the matter themselves.[91]

¶53. The ***Humble Oil*** holding is that a board of supervisors cannot enter into a ***contract*** if performance begins during the next board's term.[92] But, so long as the contract begins during the current board term, it is still valid and enforceable – whether or not it binds the successor board.[93] The opinion also dealt only with the validity of leases and contracts. A student transfer is not a lease or contract. And even if it were, a transfer that took place *during* the term of the board that granted it would still be valid even if it continued into the next board's term. Somehow, the Court of Appeals interpreted ***Humble Oil*** to mean that, after both school boards agree to grant a petition to transfer – which according to the statute is ***final*** – one board can revoke consent, thereby voiding the transfer. But ***Humble Oil*** said nothing about revocation of mutual assent, it had nothing to do with student transfers; and I fail to see how it applies here.

CONCLUSION

¶54. I think it is clear that the issue here is capable of repetition, yet evading review, and a decision on the merits is in the public interest. As for the merits, I think the statute at issue is clear and unambiguous: (1) the interim conservator lacked authority to prevent the board

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[91] ***Id***. at 855-56.

[92] ***Id***.

[93] ***Id***.

from voting on the transfer policy; and (2) a decision to grant a student's transfer petition is ***final*** as to that petition, which cannot unilaterally be revoked. I would therefore reverse the judgments of the Court of Appeals and the Circuit Court of Jefferson Davis County and render judgment for the Failses.

WALLER, C.J., CARLSON, P.J., AND RANDOLPH, J., JOIN THIS OPINION.