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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM THE ADMINISTRATIVE LAW COURT

**THE HONORABLE RALPH KING ANDERSON, III,
CHIEF ADMINISTRATIVE LAW JUDGE**

Appellate Case No. 2022-000289

Charleston Advancement Academy High School.....Appellant,

V.

South Carolina Public Charter School District..... Respondent.

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December 5, 2022
Charleston, South Carolina

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE ADMINISTRATIVE LAW COURT ERR IN DETERMINING THAT IT LACKS SUBJECT MATTER JURISDICTION OVER THIS ACTION?**

STATEMENT OF THE CASE

This is an appeal to the Administrative Law Court (hereinafter referred to as the “ALC”) from a decision, or more aptly stated, the lack of a decision of Respondent, Public Charter School District (hereinafter referred to as the “District”). *Order Granting Motion to Dismiss; Notice of Intent to Appeal* dated and filed December 3, 2021. In this action, Appellant, Charleston Advancement Academy High School hereinafter referred to as “CAA”), seeks damages for the District’s breach of its charter contract with CAA, a determination that CAA’s due process rights granted by the Constitution of the State of South Carolina were violated and a declaratory judgment regarding the rights of a charter school granted by the South Carolina Charter Schools Act of 1996, as amended (hereinafter referred to as the “Act”)¹, and the South Carolina Nonprofit Corporation Act, as amended (hereinafter referred to as the “NP Act”)². *Order Granting Motion to Dismiss*, p.1; *Notice of Intent to Appeal* dated and filed December 3, 2021, pp. 1-2.

On January 18, 2020, the District moved to dismiss pursuant to Rule 38, Rules of Procedure for the Administrative Law Court on the grounds that the ALC does not have jurisdiction to hear an appeal from an order of the Circuit Court³ and that the appeal is untimely because it was filed more than two years after the District’s “decision” at issue. *Order Granting Motion to Dismiss*, p.1; *Motion to Dismiss*, pp. 4-5. CAA responded on January 28, 2022, in which it sought to have

¹ Sections 59-40-10 through 240, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended.

² Section 33-31-101 through 1708, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended.

³ The Circuit Court Order referenced throughout the documents in this action is the Circuit Court Order of November 3, 2021, dismissing CAA’s Circuit Court action against the District on the basis that it, the Circuit Court, lacked subject matter jurisdiction over the matter. *Order Granting Motion to Dismiss*, p.3; *Motion to Dismiss*, p. 1; *Appellant’s Response in Opposition to Respondent’s Motion to Dismiss*, p. 4 and Exhibit Two. The Circuit Court’s November 3, 2022, Order is currently on appeal to this Court: Appellate Case No. 2021-001414. Reference to the appeal of the Circuit’s Court’s Order is hereby craved.

the motion to dismiss stayed until its appeal of the Circuit Court's Order is decided by this Court⁴. *Order Granting Motion to Dismiss*, p. 1; *Appellant's Response in Opposition to Respondent's Motion to Dismiss*, pp. 5-7. The District thereafter replied withdrawing its motion dismiss in part with respect to the ground that ALC does not have jurisdiction to hear an appeal from an order of the Circuit Court on the basis that CAA had clarified that it was not appealing the Circuit Court's Order to the ALC. *Order Granting Motion to Dismiss*, p. 1; *Reply in Support of Motion to Dismiss*, pp. 1-2.

The ACL granted the District's motion to dismiss on February 10, 2022, on the basis of untimeliness. *Order Granting Motion to Dismiss*, pp. 1-6. This appeal followed. *Notice of Appeal* dated March 7, 2022, and filed March 10, 2022.

⁴ The Circuit Court erroneously held that the ALC has exclusive jurisdiction over the issues to be decided in this matter which are essentially identical to the issues before the Circuit Court. Appellate Case No. 2021-001414.

FACTS

CAA is a public charter school and a nonprofit corporation organized under the Act and the NP Act. *Order Granting Motion to Dismiss*, p.2; *Appellant's Response in Opposition to Respondent's Motion to Dismiss*, p.2. CAA is governed by an independent and autonomous board of directors (hereinafter referred to as the "Board")⁵. *Appellant's Response in Opposition to Respondent's Motion to Dismiss*, p.2. The District is created by the Act⁶ and is a charter school sponsor as defined by the Act⁷. *Order Granting Motion to Dismiss*, p.2; *Motion to Dismiss*, p. 1; *Appellant's Response in Opposition to Respondent's Motion to Dismiss*, p.2. The Act makes repeatedly clear that the relationship between CAA and the District is almost exclusively contractual in nature within the confines of the Act⁸. *Order Granting Motion to Dismiss*, p.2; *Motion to Dismiss*, p. 1; *Appellant's Response in Opposition to Respondent's Motion to Dismiss*, p.2 and Exhibit One thereto.

CAA entered into an agreement with Acceleration Academies, LLC ("AA") in which AA agreed, among other things, to provide certain educational and operational services to CAA, including developing and implementing a security plan to ensure the safety of all students and personnel (hereinafter referred to as the "Agreement"). *Order Granting Motion to Dismiss*, p.2; *Motion to Dismiss*, p. 1; *Appellant's Response in Opposition to Respondent's Motion to Dismiss*, p.2 and

⁵ See Section 59-40-60, CODE OF LAWS OF SOUTH CAROLINA 1976, as amended.

⁶ Section 59-40-220(A), CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended ("The South Carolina Public Charter School District is created as a public body."

⁷ Section 59-40-40, CODE OF LAWS OF SOUTH CAROLINA 1976, as amended.

⁸ While the Act in large measure may govern the independent operations of the District and CAA, as demonstrated repeatedly herein, the relationship between them is almost exclusively governed by the Contract. That said, to the extent any term or provision of the Contract conflicts with any term or provision of the Act, the conflicting term or condition of the Act is controlling *See, e.g., Auto Owners Ins. Co. v. Rollison*, 663 S.E.2d 484, 378 S.C. 600 (2008).

Exhibit One thereto. The Agreement provides inter alia that “[i]n the event that a danger to student health, safety, or welfare exists,” CAA may, in its sole discretion terminate the Agreement immediately.” *Appellant’s Response in Opposition to Respondent’s Motion to Dismiss*, p.2 and Exhibit One thereto.

In October 2019, the Board learned that AA failed to appropriately address and disclose to the CAA Board two dozen safety violations on CAA's campus, which CAA leased from Trident Technical College. *Appellant’s Response in Opposition to Respondent’s Motion to Dismiss*, p.3. As a result, the Board voted to accept a notice of termination submitted by AA and to immediately terminate the Agreement for just cause. *Order Granting Motion to Dismiss*, p.3; *Appellant’s Response in Opposition to Respondent’s Motion to Dismiss*, p.3.

On November 14, 2019, CAA presented a proposed Charter Amendment Request to the District's Board of Trustees (hereinafter referred to as the “Trustees”) seeking to have AA removed from its Charter and outlining steps CAA had taken to replace the services previously provided by AA. *Order Granting Motion to Dismiss*, p.2; *Motion to Dismiss*, p. 3; *Appellant’s Response in Opposition to Respondent’s Motion to Dismiss*, p.3. At the conclusion of the presentations, the Trustees voted to “[d]eny amendment and to maintain status quo until CAA presents a plan showing [its] ability to immediately implement all activities in the charter with the District contract and EMO.” *Order Granting Motion to Dismiss*, p.2; *Motion to Dismiss*, p. 3; *Appellant’s Response in Opposition to Respondent’s Motion to Dismiss*, p.3. Specifically, the District's insisted that AA continue operating at CAA despite the CAA termination of the Agreement. *Appellant’s Response in Opposition to Respondent’s Motion to Dismiss*, p.3. CAA requested that the District affirm several statements regarding CAA's rights and responsibilities as a charter school. *Notice of Intent to Appeal* dated and filed December 3, 2021, exhibits; *Appellant’s Response in Opposition to Respondent’s*

Motion to Dismiss, p.3. Not only did the District decline to affirm any of CAA statutory and contractual powers and rights, but mandated that AA continue providing services at CAA's campus, affirmed the District's purported authority over CAA's employment and contractual matters, and restated the District's intent to withhold federal and state funding from CAA. *Appellant's Response in Opposition to Respondent's Motion to Dismiss*, p.3.

Thereafter, CAA received three letters, one dated November 21, 2019, one dated December 2, 2019, and one dated December 5, 2019, threatening to impose sanctions short of revocation on CAA. *Order Granting Motion to Dismiss*, p.2; *Motion to Dismiss*, p. 3; *Notice of Intent to Appeal* dated and filed December 3, 2021, exhibits; *Appellant's Response in Opposition to Respondent's Motion to Dismiss*, p.3.

The District held a meeting at CAA's request on December 13, 2019. *Appellant's Response in Opposition to Respondent's Motion to Dismiss*, p.3. At the meeting, the CAA requested that the District support the CAA's authority to exercise its statutory, contractual, and fiduciary responsibilities to govern the operation of CAA, avoid substantial disruption, ensure the safety and welfare of CAA's at-risk student population, and comply with the State of South Carolina's Safe Schools Climate Act. *Appellant's Response in Opposition to Respondent's Motion to Dismiss*, pp.3-4. Additionally, CAA asked the District to affirm CAA's rights and responsibilities as a public charter school. *Appellant's Response in Opposition to Respondent's Motion to Dismiss*, p.4. The District decline to do so, and mandated that AA continue providing services to CAA on its campus, affirmed the District's claim of authority over CAA's employment and contractual matters, and restated the District's intent to withhold federal and state funding from CAA. *Appellant's Response in Opposition to Respondent's Motion to Dismiss*, p.4.

CAA initiated an action in the Charleston County Court of Common Pleas on December 20,

2019, which it amended on January 23, 2020, seeking damages for breach of contract, violation of due process under S.C. CONST. art. I § 22, and declaratory judgment⁹ based on the District's illegal conduct previously discussed¹⁰. *Order Granting Motion to Dismiss*, p. 2; *Motion to Dismiss*, p. 3; *Notice of Intent to Appeal* dated and filed December 3, 2021; *Appellant's Response in Opposition to Respondent's Motion to Dismiss*, p. 4 and Exhibit Two. The District moved to dismiss the complaint pursuant to Rules 12(b)(1), (2) and (6). S.C.R.CIV.P. in lieu of an answer on February 13, 2020. *Order Granting Motion to Dismiss*, p. 2; *Appellant's Response in Opposition to Respondent's Motion to Dismiss*, p. 4 and Exhibit Two. The Circuit Court granted the motion to dismiss on the grounds that it lacked subject matter jurisdiction over the matter finding that the ALC has exclusive jurisdiction over the same. *Order Granting Motion to Dismiss*, p. 2; *Motion to Dismiss*, p. 1 and Exhibit A; *Appellant's Response in Opposition to Respondent's Motion to Dismiss*, p. 4 and Exhibit Two.

CAA appealed the Circuit Court's Order to this Court on December 3, 2021. *Appellant's Response in Opposition to Respondent's Motion to Dismiss*, p.4 Simultaneously, CAA filed this action to preserve its claims against the District in the event this Court determined that the ALC has exclusive jurisdiction over CAA's claims against the District¹¹. *Order Granting Motion to Dismiss*, p.3; *Appellant's Response in Opposition to Respondent's Motion to Dismiss*, p.4.

⁹ Sections 15-53-10 through 140, CODE OF LAWS OF SOUTH CAROLINA, 1976.

¹⁰ Specifically, CAA seeks recovery for, among other things, \$859,142.41. judgment entered against it in an arbitration action brought against it by AA for an alleged breach of the agreement which was a direct consequence of the District's wrongful conduct. *Order Granting Motion to Dismiss*, p.3; *Motion to Dismiss*, p. 3.

¹¹ CAA's position is that the Circuit Court has jurisdiction over CAA's claims.

STANDARD OF REVIEW

Section 1-23-600(D), CODE OF LAWS OF SOUTH CAROLINA, 1976, grants appellate jurisdiction to the ALC over “all appeals from final decisions of contested cases” determined by an administrative agency except appeals from a small number of agencies not germane to this discussion. *See Island Packet v. Kittrell*, 365 S.C. 332, 617 S.E.2d 730 (2005). Section 59-40-90, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended, provides that “A final decision of the school district or a public or independent institution of higher learning sponsor may be appealed by any party to the Administrative Law Court as provided in Sections 1-23-380(B) and 1-23-600(D).” The District is an “agency” under the Administrative Procedures Act. *See Allendale Cty. Sch. Dist. v. S.C. Pub. Charter Sch. Dist.*, Op. No. 2012-UP-429 (Ct. App. 2022). Thus, the jurisdiction of the ALC as it relates to a decision of the District is appellate.

The APA’s standard of review governs appeals from decisions of the District. *See* Sections 1-23-380 and 1-23-600(D), CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended; *see also* *Gibson v. Florence Country Club*, 282 S.C. 384, 318 S.E.2d 365 (1984). The standard to be applied by the ACL when acting as an appellate bodies is as follows:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Section 1-23-380(5), CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended; *see* Section 1-23-600(D) (directing administrative law judges to conduct appellate review in the same manner prescribed in section 1-23-380(5)). A decision is supported by “substantial evidence” when the record as a whole allows reasonable minds to reach the same conclusion as the agency. *See Friends of the Earth v. Pub. Serv. Comm'n of S.C.*, 387 S.C. 360, 692 S.E.2d 910 (2010). The fact the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's findings from being supported by substantial evidence. *See Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 467 S.E.2d 913, 917 (1996). In applying the substantial evidence rule, “a reviewing court will not overturn a finding of fact by an administrative agency ‘unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.’” *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (*quoting Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)).

In reviewing a final decision of an administrative agency under Section 1-23-380, the ALJ essentially sits as an appellate court to review alleged errors committed by the agency. *See Ross v. Medical Univ. of South Carolina*, 317 S.C. 377, 453 S.E.2d 880 (1994) (an administrative appeal must be confined to the record except in cases of alleged irregularities in the procedure before the agency not apparent on the record). As such, the ALJ, like this Court, has a limited scope of review, and cannot ordinarily consider issues that were not raised to and ruled on by the administrative agency. *See Cook v. South Carolina Dept. of Highways and Pub. Transp.*, 309 S.C. 179, 420 S.E.2d

847 (1992) (issues not ruled on by the trial court will not be addressed on appeal).

ARGUMENT

THE ADMINISTRATIVE LAW COURT CLEARLY ERRED IN FINDING THAT IT HAS NO SUBJECT MATTER JURISDICTION OVER THIS MATTER.

The ALC dismissed this action on the basis that the appeal was untimely in that it was not filed within the time proscribed by Rule 33, SCALC. In so doing, the ALC committed clear error in ignoring or disregarding altogether CAA's primary position and its own findings. Accordingly, the ALC's February 10, 2022, order must be reversed and this matter remanded to the ALC for further proceedings.

The ALC begins its analysis by correctly noted that it has subject jurisdiction over this matter. *Order Granting Motion to Dismiss*, p.3. The ALC next explains that an appeal from the District must be filed within thirty days after the "decision is rendered." *Order Granting Motion to Dismiss*, p.3. The ALC then admits "it is unclear what specific timeframe was contravened because the Notice of Appeal does not identify any decision of the District which is the subject of the appeal nor does it identify any date upon which it claims to have received the decision." *Order Granting Motion to Dismiss*, p.3. Nonetheless, completely ignoring or totally disregarding CAA's ground for appeal – it is not clear which – the ALC sua sponte takes it upon itself to determine whether one of the District's three letters- November 21, 2019, December 2, 2019, or December 5, 2019, or all three – are the District(s) decisions CAA intended to appeal. This ignores the express language of *Notice of Intent to Appeal* dated and filed December 3, 2021.

The *Notice of Intent to Appeal* dated and filed December 3, 2021, makes unmistakably clear, what is being appealed is

1. the District's actions which breached the contract between them which "began on or about November 14, 2019, which contributed to CAA being found liable by an arbitrator for \$859,142.41;"

2. The District's actions, taken without allowing CAA a hearing, without a vote of the Trustees, and without the District issuing a final decision as described in § 1-23-350 were a violation of CAA's due process; and,
3. a determination of the rights of a charter school granted by the Act and the NP Act.

The ALC's decision is curious given that CCA states plainly that what it is appealing is the District's failure to follow procedure and issue a decision. However, in direct contradiction to CAA's irrefutable statement to the contrary, the ALC notes that CAA is "appealing actions taken by the District in November 2019 but attaches three letters dated November 21, 2019, December 2, 2019, and December 5, 2019." That is not at all what the *Notice of Intent to Appeal* dated and filed December 3, 2021, says. What it actually says is that what is being appealed are the District's actions which "began on or about November 14, 2019." That in no way establishes that the District's decision became final on November 14, 2019, November 21, 2019, December 2, 2019, or December 5, 2019, which would commence the running for the time to appeal. CAA unmistakably takes the antithetical position that the District failed to follow procedure and rendered no final decision.

CAA reinforced its position in its *Appellant's Response in Opposition to Respondent's Motion to Dismiss* explaining: "[f]irst, the District did not issue a final decision consistent with the requirements of the Administrative Procedures Act, S.C. Code Ann. § 1-23-350, that could be appealed to this Court." CAA, likewise, expounded upon its reason for attaching the District's November 21, 2019, December 2, 2019, and December 5, 2019, letters: "[f]or this reason, CAA attached a series of letters from the District, rather than any document memorializing a final decision to its Notice of Appeal as documentation of the District's actions." *Appellant's Response in Opposition to Respondent's Motion to Dismiss*, p. 6, n. 2. CAA clearly illuminated that the purpose of the three letters was to illustrate that the District failed to follow proper procedure and

render a final decision. It is confounding that the ALC glossed right over all of this and used the three letters as the basis for determining when the time period for appealing began to run when every reason given by CAA for submitting the letters was to the contrary.

What makes the ALC's finding that the appeal was untimely all the more bewildering is its admission that it really has no idea when the time period began to run. Specifically in footnote five on page five of the *Order Granting Motion to Dismiss* states, "The Court notes that it cannot determine whether these are final decisions by the District or if they are interlocutory orders." After concluding that only a final decision can be appealed, the ALC makes the incongruent statement that since it finds that CAA failed to appeal in a timely fashion it in essence is not going to bother figuring out when the time period began to run. If the court does not know when the time period commenced, how can it find that the period has expired? This was clearly reversible error and ignores the relief sought by CAA: having the District adhere to due process and conduct a proper hearing and issue a final decision as required by and consistent with Section 1-23-350, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended, so that, should CAA so desire, appeal the same.

CONCLUSION

The ALC erred in dismissing CAA's appeal as untimely. The proper course of action was for the ALC to have remanded the matter to the District with instructions to conduct a proper hearing adhering to due process requirements and issue a final decision as required by and consistent with Section 1-23-350, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended. Accordingly, this Court must remand this matter to the ALC with instructions that it remand the matter to the District with instructions to conduct a proper hearing adhering to the requirements of due process and issue a final decision as required by and consistent with Section 1-23-350.

Respectfully Submitted,

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Charleston Advancement Academy High School..Appellant,

V.

South Carolina Public Charter School District..... Respondent.

PROOF OF SERVICE

I certify that I have served The *Initial Brief* on Respondent, South Carolina Public Charter School District, by depositing a copy of it in the United States Mail, postage prepaid, to its attorney of record, Erik T. Norton, Esq., addressed to Harrell, Martin & Peace, P.A., Post Office Box 1000, Chapin, South Carolina 29036, e-mail address Erik@hmp-law.com on December 5, 2022.

PRITCHARD LAW GROUP, LLC



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