STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)))	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Gates School, Plaintiff, vs. Erskine College, The Charter Institute at Erskine, Defendants.	)))))))))))	C.A. No. 2022CP4002390 **ORDER OF DISMISSAL**

Heard: January 9, 2023 via Webex Virtual Courtroom
Plaintiff's Attorney: Margaret O. Dullanty
Defendants' Attorneys: Sarah A. Timmons and John M. Reagle
Court Reporter: None – Webex Recording Platform Procedure by Consent

Defendants Erskine College ("Erskine College") and the Charter Institute at Erskine (the "Institute") move to dismiss this declaratory judgment action pursuant to Rules 12(b)(1) and 12(b)(6), SCRCP. The motion is granted.

LEGAL STANDARD

"In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on the allegations set forth in the complaint." *Doe v. Marion*, 645 S.E. 2d 245, 247 (S.C. 2007) (citation omitted). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved on his behalf, the complaint states any valid claim for relief." *Id.* at 247-48 (quoting *Gentry v. Yonce*, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999)).

The proper procedure for raising lack of jurisdiction under Rule 12(b)(1) is to file a motion to dismiss. *Woodward v. Westvaco Corp.*, 450 S.E.2d 329 (S.C. 1995). In some circumstances,

affidavits and other evidence outside the pleadings may be considered in support of a motion to dismiss based on lack of jurisdiction. *Swicegood v. Thompson*, 847 S.E.2d 104 (S.C. Ct. App. 2020).

DISCUSSION

Gates School is a public charter school. The Charter Institute at Erskine College was created and delegated authority by the college to serve as a charter school sponsor, approved by the South Carolina Department of Education under the South Carolina Charter Schools Act ("Act"), S.C. Code Ann. §§ 59-40-10 et seq. The Act requires the sponsor to monitor and oversee operations of the charter school for compliance with the Act and with other state and federal laws. The sponsor must notify the charter school of noncompliance, require corrective actions, issue sanctions, or revoke the School's charter in certain situations. S.C. Code Ann. § 59-40-55.

The Complaint alleges that in March 2022, the Institute's administration recommended to the Institute's Board of Directors that the Plaintiff's charter be revoked. The Institute's administration began proceedings to revoke the charter. Plaintiff then filed this civil action challenging the Institute's Board of Directors' authority to conduct the charter revocation proceedings and issue a final decision. The Plaintiff argues that the Board of Trustees of Erskine College, as the governing body of the "sponsor," must decide whether to revoke the charter.

The only charter issued to Gates School was obtained through an application that Gates School submitted, with the Institute, that resulted in the execution of a charter contract with the Institute. If the court were to accept the Plaintiff's position that the Institute is not its sponsor, it is difficult to understand how Gates School could be considered as having obtained proper authorization to form a charter school. The Act requires that, when a sponsor approves a charter application, the "approved charter application constitutes an agreement between the charter school and the sponsor." S.C. Code § 59-40-60(A).

There are three causes of action raised. The first cause of action claims that Erskine

College, and not the Institute, should be declared to be the Plaintiff's sponsor under the Act. The second seeks a declaration that any action by the Institute to revoke the Plaintiff's charter is not a final action to revoke the charter. The third seeks a declaration that Plaintiff is entitled to a hearing before the governing body of Erskine College in connection with any charter revocation decision.

Gates School's primary contention is that Erskine College – not the Institute created by Erskine College - is the only entity authorized to serve as its sponsor under the Act due to the statutory language in S.C. Code Ann. § 59-40-40, which defines "sponsor." It reads:

> (4) "Sponsor" means the South Carolina Public Charter School District Board of Trustees, the local school board of trustees in which the charter school is to be located, as provided by law, a public institution of higher learning as defined in Section 59-103-5, or an independent institution of higher learning as defined in Section 59-113-50, from which the charter school applicant requested its charter and which granted approval for the charter school's existence. Only those public or independent institutions of higher learning, as defined in this subsection, who register with the South Carolina Department of Education may serve as charter school sponsors, and the department shall maintain a directory of those institutions. The sponsor of a charter school is the charter school's Local Education Agency (LEA) and a charter school is a school within that LEA. The sponsor retains responsibility for special education and shall ensure that students enrolled in its charter schools are served in a manner consistent with LEA obligations under applicable federal, state, and local law.

The Local Education Agency (LEA) was created pursuant to the Plaintiff's application. The Institute approved the Plaintiff's charter school application and agreed to serve as its sponsor. The LEA has been recognized and is operating with approval of the South Carolina Department of Education.

LACK OF SUBJECT MATTER JURISDICTION – RULE 12(b)(1)

Erskine College and the Institute contend Plaintiff's Complaint should be dismissed for lack of jurisdiction under Rule 12(b)(1). Defendants maintain that the General Assembly has established a detailed administrative supervisory and review procedure, which requires a final order through administrative channels that may then be appealed exclusively to the Administrative Law Court pursuant to S.C. Code Ann. §§ 59-40-70(E), -90, and -110(H). This Court finds that

proper jurisdiction is before the Administrative Law Court.

The Act establishes that disputes between a charter school and its sponsor are subject to adjudication by the Administrative Law Court and the State Department of Education – not the Circuit Court. S.C. Code § 59-40-90. *See also* S.C. Code § 59-40-110(J). Significantly, the General Assembly amended the Act in 2008 to remove from the Circuit Court jurisdiction of appeals under the Act and provided for mandatory jurisdiction in the Administrative Law Court. 2008 Act 239; *see also* 2014 Act 288. Likewise, the Act, § 59-40-140, grants the Department of Education the authority through its administrative processes to determine if a sponsor improperly withholds funds from a charter school and to fine the sponsor if necessary to obtain improperly withheld funds on behalf of a charter school.

The Act establishes an exclusive and mandatory administrative procedure regarding charter school nonrenewal and revocation proceedings. Section 59-40-110 requires that each "sponsor annually shall evaluate the conditions outlined in subsection (C) of this Section [and] [t]he annual evaluation results must be used in making a determination for nonrenewal or revocation." S.C. Code § 59-40-110(A). Section 59-40-110(C) requires that a sponsor must revoke or not renew a charter if certain determinations are made regarding a charter school's performance or compliance with the law and its charter. Section 59-40-110(F) then specifies that "[a]t least sixty days before not renewing or terminating a charter school, the sponsor shall notify in writing the charter school's governing body of the proposed action." Section 59-40-110(F) mandates that "[t]ermination must follow the procedure provided for in this Section."

This mandatory procedure provides for a charter school to request a hearing before the sponsor, and the sponsor shall give reasonable notice to the charter school of the hearing date, as well as conduct a hearing before taking final action. S.C. Code § 59-40-110(H). Finally, the Act mandates that a final decision by the sponsor to revoke a charter may be appealed to the Administrative Law Court pursuant to the provisions of Section 59-40-90, and that, upon appeal

to the Administrative Law Court, there is no automatic stay of the revocation decision. S.C. Code § 59-40-110(J).

Section 59-40-40(4) provides that "[o]nly those public or independent institutions of higher learning, as defined in this subsection, who register with the South Carolina Department of Education may serve as charter school sponsors, and the Department shall maintain a directory of those institutions." Further, the State Board of Education is expressly authorized to develop guidelines to implement the provisions of the Act, including the application process and Administrative Law Court appeal. S.C. Code § 59-40-180.

Plaintiff bears the burden of properly alleging and making a prima facie showing of jurisdiction. *Brown v. Investment Management and Research, Inc.*, 475 S.E. 2d 754, 756 (S.C. 1996). Plaintiff cannot meet this requirement, as jurisdiction over Plaintiff's claims is not proper in the Circuit Court.

The General Assembly has mandated a specific administrative procedure for monitoring Plaintiff's compliance with its charter, consideration of revocation of its charter, and adjudication of resulting disputes. Under the statutory and factual circumstances alleged, our Courts have repeatedly held that the Circuit Court should not exercise jurisdiction. "Where a statute expressly enumerates the requirements on which it is to operate, additional requirements are not to be implied." *Byrd v. Irmo High School*, 468 S.E. 2d 861, 865 (S.C. 1996) (finding no right to appeal to the courts will be implied where statute expressly enumerates the requirements on which it is to operate); *see also Davis v. School District of Greenville County*, 647 S.E. 2d 219, 222 (S.C. 2007) (holding that, consistent with the plain language of the statute, the circuit court lacked subject matter jurisdiction); *Sabb v. South Carolina State University*, 567 S.E. 2d 231, 234 (S.C. 2002) (noting that "certain cases may be taken from the trial court's original jurisdiction by the General Assembly"); *Unisys v. South Carolina Budget and Control Board*, 551 S.E. 2d 263, 273 (S.C. 2001) (stating "exhaustion of remedies will preclude original resort to courts where statute by

express terms gives exclusive jurisdiction to administrative agency").

In addition to the mandatory administrative hearing and appeal procedure in § 59-40-110, § 59-40-90 states that a charter school is permitted to challenge any final decision of its sponsor in the Administrative Law Court as provided in §§ 1-23-380(B) and 1-23-600(D).

Further, the Act, § 59-40-40(4) defines sponsors, like the Institute, as "local education agencies," which are subject to the oversight and authority of the South Carolina Department of Education as the "state education agency." *See* 34 C.F.R. 76; 34 C.F.R. 81. The Department of Education also has the explicit authority regarding funding disputes between charter schools and their sponsors. S.C. Code § 59-40-140.

The court finds that the Plaintiff may not use this declaratory judgment action to collaterally attack the Department of Education's designation of the Institute as a sponsor under the Act or as a means around the express administrative review and adjudication procedures of the Act. *Garris v. Governing Board of South Carolina Reinsurance Facility*, 461 S.E. 2d 819 (S.C. 1995) in an analogous situation held that a declaratory judgment action was not appropriate to preempt administrative proceedings. There has been no final order in this case nor any showing that a final agency decision will not provide an adequate remedy." *Id.* at 821.

The Court of Appeals in *Adamson v. Richland County School District One*, 503 S.E. 2d 752 (S.C. Ct. App. 1998) ruled that the plaintiff, Adamson, was seeking a determination of her rights under the Act and the court lacked subject matter jurisdiction because Adamson was required to follow the review route set forth in the Act. There being no order for the circuit court to review, the court lacked subject matter jurisdiction over the case.

S.C. Code §§ 59-40-90, -40(4), -140, and 190(C) preclude jurisdiction in this Court because § 59-40-90 provides exclusive jurisdiction to the Administrative Law Court. Challenges to a sponsor's final decision by a charter school, and actions by sponsors that are subject to federal grants or administrative processes of the State Department of Education are subject to the State Department

of Education adjudicative processes, which is not subject to review by the Circuit Court. The Act's comprehensive mandatory administrative procedures and the Plaintiff's failure to exhaust available administrative remedies preclude this Court from exercising subject matter jurisdiction over Plaintiff's claims purporting to seek a declaration of its rights under the Act, and the Complaint is dismissed pursuant to Rule 12(b)(1), SCRCP.

FAILURE TO STATE A PERMISSIBLE CLAIM - RULE 12(b)(6)

Plaintiff seeks a declaration that any charter revocation proceedings against it be conducted before the Erskine College Board of Trustees. The Act defines a "sponsor." S.C. Code § 59-40-40(4). Significantly, this definition of a sponsor expressly provides that, for the South Carolina Public Charter School District and local school districts, the board of trustees are themselves the "sponsor;" however, for public and independent institutions of higher learning, such as Erskine College, it is the institution and not any governing board that is defined as the "sponsor." This distinction recognizes the complex organizational and governance structures of institutions of higher learning. Additionally, it gives these institutions greater flexibility in supervision and oversight of any charter schools they sponsor.

Section 59-40-110(H) of the Act does not provide that a sponsor's governing board shall conduct a hearing before taking final action, but that "[t]he sponsor shall conduct a hearing before taking final action."

There is no entitlement under the Act for a hearing before the *governing board* of an independent institution of higher learning sponsor. Indeed, the Supreme Court has recognized that Erskine College, as a private institution, has great flexibility in how to conduct its affairs and proceedings. "Under Erskine's structure, the Board of Trustees controls the College. The Board could have chosen to give the President the authority to fire a tenured professor. It chose not to do that." *Crenshaw v. Erskine College*, 850 S.E. 2d 1, 13 (S.C. 2020). Consequently, even if the Court were to determine that Erskine College, and not the Institute, is Plaintiff's proper sponsor

under the Act, this would not give any right for Plaintiff to have a hearing before Erskine College's Board of Trustees, as opposed to an administrator (such as the Erskine College President, who also serves as the Chair of the Institute's Board of Directors) or a designated committee (such as the Institute's board). Erskine College has the authority to designate the Institute to serve for the college as the entity dealing with charter school sponsorships. The President of the college serves as the Chair of the Board of the Institute. The allegations of Plaintiff's Complaint do not state a claim for relief that this Court may grant. The Complaint is dismissed pursuant to Rule 12(b)(6).

CONCLUSION

For all of the foregoing reasons, the Defendant's Motion to Dismiss Plaintiff's Complaint is **GRANTED.**

IT IS SO ORDERED.

[Judge's electronic signature appears on separate page]

Richland Common Pleas

Case Caption: Gates School vs Erskine College , defendant, et al

Case Number: 2022CP4002390

Type: Order/Dismissal

Circuit Judge (Code #2050)

s/ William P. Keesley