STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charleston Advancement Academy High School, Appellant, v. South Carolina Public Charter School District Board of Trustees, Respondent.	Docket No. 23-ALJ-30-0163-AP **ORDER DENYING MOTION**

This matter is before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to a notice of appeal filed by the Charleston Advancement Academy High School (CAA or Appellant) on June 2, 2023, after the South Carolina Public Charter School District Board of Trustees (Respondent) revoked CAA's charter, effective June 30, 2023.[1] The Court has jurisdiction over this appeal pursuant to section 59-40-90 of the South Carolina Code (2020); section 59-40-110(J) of the South Carolina Code (2020), and section 1-23-600(D) of the South Carolina Code (Supp. 2022). On June 15, 2023, Appellant filed a Motion for a Stay (Motion) along with a memorandum in support of the Motion. A hearing was held on the Motion on June 21, 2023, at the ALC. At the hearing, Respondent filed a memorandum in opposition to the Motion and Appellant filed an Amended Motion for a Temporary Injunction and/or Preliminary Injunction and/or a Stay (Amended Motion) along with a memorandum in support of the Amended Motion.

BACKGROUND

CAA received its charter from the South Carolina Public Charter School District (the District) in 2017 and began operating in the 2018-2019 school year. CAA is designated as an Alternative Education Campus (AEC) under the South Carolina Public Charter Schools Act of 1996, S.C. Code Ann. §§ 59-40-10 to -240 (2020 & Supp. 2022) (the Act) because it primarily serves a unique group of at-risk high school students who have previously dropped out of school or are at-risk of dropping out of school.

[1] Along with its notice of appeal, CAA filed a Motion for an Expedited Hearing for a Stay (Motion). The Court held a conference call on June 9, 2023, and during the call, the parties consented to expediting the hearing and established the hearing date of June 21, 2023.

During the time it has been open, CAA has been involved in multiple contractual disputes, arbitrations, and litigations with the District and CAA's former Education Management Organization (EMO) company, Acceleration Academies. Acceleration Academies (AA) is a private for-profit organization, whose job was, in part, to develop and implement a security plan to ensure the safety of all students and personnel at CAA. In October 2019, it was brought to the attention of CAA by the landlord of one of its campuses, Trident Technical Collage (TTC), that there had been numerous criminal incidents on CAA's TTC campus during the immediately preceding weeks. CAA believed that AA was not implementing proper security on its campus; thus, CAA confronted AA over the situation. Consequently, CAA terminated the EMO contract between AA and CAA which resulted in an arbitration action in which CAA paid AA an additional $859,142.41.[2]

In August 2020, the District hired a new Superintendent, Mr. Neeley, with whom CAA has a great relationship. CAA and the District reached an agreement on an amended charter in November 2020, and it appeared that CAA and the District were on a path toward working together. Nonetheless, in late 2021, CAA requested to transfer its charter from the District to the Limestone Charter Association (Limestone) for the 2023-2024 school year. The reason stated for the transfer request was an alleged conspiracy between the District and AA to destroy CAA and steal CAA's students for enrollment at a competing school managed by AA. Then, in June 2022, Mr. Neeley completed the annual evaluation of CAA. In that evaluation, Neeley concluded CAA had met some of its goals but specifically found, "[t]he school did not provide data for its goals in its 2020-21 Annual Report. The only summative academic data available to the District from the school is graduation rate. It does not appear the graduation rate is increasing or near levels required by the charter based on the available data." In September 2022, CAA again requested to transfer its charter to Limestone.

Thereafter, towards the end of 2022, CAA's Board held elections in which two board members were removed; however, the Board reappointed them back on the Board. As a result, the school leader resigned, and half of CAA's staff walked out in protest on December 14, 2022. On January 4, 2023, Respondent notified CAA that it would consider the transfer request at its January 19, 2023 meeting. This correspondence notified CAA that Respondent could take any

[2] Because CAA is a public charter school, the money paid out in the arbitration agreement constituted public funds.

action related to CAA's charter that it deemed appropriate after considering the information available to it. At the January 19 meeting, the District provided CAA a copy of its performance evaluation, and CAA had an opportunity to provide rebuttal information to the District Board. CAA representatives also appeared at the meeting and presented to the District Board.

After considering the information provided at the January 19 meeting, Respondent voted to deny the transfer request and issue a notice of revocation. Respondent found that CAA had not met any of its amended charter goals (Critical Goal 1 and 2; Measures 1-4) that the parties agreed on in 2020 and also had not established benchmarks for Measures 5-14, which was required in the amended charter. On January 25, 2023, Respondent issued CAA a Notice of Charter Revocation effective June 30, 2023, subject to CAA's right to request a hearing before the District Board pursuant to section 59-40-110(H) of the South Carolina Code. CAA timely requested a hearing.

Following the Notice of Charter Revocation, the District petitioned this Court for an injunction seeking to preserve CAA's assets and require participation in the statutorily mandated Closure Protocol while revocation was pending. A hearing was held on the request for injunction on April 24, 2023, at which time the parties reached an agreement on the record which was to be later submitted to the Court. However, the parties could not agree on verbiage for the consent order, and a second hearing was held on May 5, 2023, at which time the parties reached an amended agreement. That agreement was subsequently memorialized in this Court's Order dated May 8, 2023 (Injunction Order). Pursuant to the Injunction Order, CAA was enjoined from expending funds from certain accounts during the revocation hearing process, which expires June 30, 2023. In addition, CAA's lawyers were required to return $600,000 that had been transferred from CAA's bank accounts to the lawyer's IOLTA accounts prior to and during the April 24, 2023 hearing. Then, on May 25, 2023, the District filed a motion to enforce the Agreement, in which the District asserted that CAA did not participate in the Closure Protocol as required. The motion was granted by the Court on June 12, 2023.

On May 11, 2023, Respondent held a hearing on its Notice of Revocation. CAA was represented by Tyler Turner, Esq., and Edward Pritchard, Esq. The District was represented by Erik Norton, Esq. Respondent was represented by separate legal counsel, Todd Carroll. Respondent permitted the District two hours to present its case, and it allowed CAA five hours to

present its case. After hearing the evidence, Respondent voted to revoke CAA's charter effective June 30, 2023.

In its Final Decision, Respondent found the evidence showed CAA failed to meet any of the goals in its Charter, especially two critical goals related to graduation rate and credit attainment. Importantly, Respondent found that no calculation for graduation rates met the 65% graduation rate goal as stated in CAA's charter. In fact, the graduation rates for 2022 were found to be 8% by the District, 12.86% by CAA, and 21% by CAA's data analyst hired for the hearing. The District found that even the most favorable graduation rate was far short of the school's stated goal of what is acceptable.

Respondent also found that CAA did not provide any alternative calculation to refute the evidence showing the credit attainment goal was not met. The Final Decision further found that CAA's Board failed to spend public funds towards the education of CAA students, resulting in CAA holding approximately $4 million of cash on hand. Finally, the Final Decision found that CAA's Board failed to exercise proper internal controls by allowing a single board member, the school's board chair, to make school financial transactions using her personal cell phone linked to her personal bank accounts.

Based upon these findings of fact, and others stated in the Final Decision, Respondent found that that the criteria for revocation was met because CAA: (1) committed a material violation of the conditions, standards, performance expectations, or procedures provided for in the charter application or charter school contract, or both; and (2) failed to meet the academic performance standards and expectations as defined in the charter application or charter school contract, or both. *See* S.C. Code Ann. § 59-40-110(C). Respondent determined each of the grounds identified was independently sufficient to support revocation of CAA's charter. In addition, Respondent determined that procedures for due process and notice obligations under the Freedom of Information Act were met. Finally, Respondent determined the revocation would be effective June 30, 2023.

DISCUSSION

Appellant has requested that this Court stay the revocation of its charter pursuant to section 1-23-380(2) of the South Carolina Code and Rule 65 of the South Carolina Rules of Civil Procedure (SCRCP).

The decision to revoke CAA's charter was made following a contested case held pursuant to the Charter School Act (Act). S.C. Code Ann. §§ 59-40-10 to -240 (2020 & Supp. 2022). Section 1-23-600(E) of the South Carolina Code provides that appellate review of those decisions is made "in the same manner as prescribed in Section 1-23-380 for judicial review of final agency decisions with the presiding administrative law judge exercising the same authority as the court of appeals. . . ." Section 1-23-380 is a general statute governing judicial review upon the exhaustion of administrative remedies, and it discusses stays in subsection (2). Specifically, subsection (2) of 1-23-380 provides: "Except as otherwise provided in this chapter, the serving and filing of the notice of appeal does not itself stay enforcement of the agency decision." § 1-23-380(2). However, it further provides that "[t]he agency may grant, or the reviewing court may order, a stay upon appropriate terms, upon the filing of a petition under Rule 65 of the South Carolina Rules of Civil Procedure." *Id*. Nonetheless, ALC Rule 34 also discusses stays and provides:

> The filing of an appeal from the final decision of an agency shall stay the final decision of that agency unless the effect of filing an appeal is otherwise established by statute, the Administrative Procedures Act notwithstanding; or the administrative law judge has entered an order regarding the effect of the proceedings in the agency. Notwithstanding the foregoing, upon the filing of an appeal from the final decision of an agency, any party may apply to the administrative law judge for an order regarding the effect of the appeal on the agency decision.

Additionally, the parties acknowledge section 59-40-110(J) of the Charter School Act sets forth the standard for granting a stay when a revocation is appealed to this Court. Subsection 59-40-110(J) provides that "[u]pon appeal to the Administrative Law Court, there is no automatic stay of the revocation or nonrenewal decision." S.C. Code Ann. § 59-40-110(J) (2020). Nevertheless, "[p]ending resolution of the appeal, the charter school also may move before the Administrative Law Court for imposition of a stay of the revocation or nonrenewal on the grounds that an **unusual hardship** to the charter school will result from the execution of the sponsor's decision." *Id.* (emphasis added). Because subsection 59-40-110(J) specifically states that upon appeal to the Administrative Law Court there is no automatic stay of a revocation decision, the appeal is not stayed unless granted by the ALC.

Here, there is no dispute as to whether this matter is initially stayed. Rather, the dispute is whether the Court should evaluate the motion for a stay pursuant to subsection 59-40-110(J) or subsection 1-23-380(2) and Rule 65, SCRCP. CAA argues this Court should review its Motion under the latter standard.

Comparing the standard for imposing a stay under subsection 59-40-110(J) to the standard under Rule 65, they are clearly very different. Rule 65, SCRCP, governs temporary injunctions and restraining orders, and other remedial writs. Our courts have held that "[a] preliminary injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law." *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586–87, 694 S.E.2d 15, 17 (2010). In contrast, subsection 59-40-110(J) requires the movant to show an "unusual hardship" in the specific circumstances of a charter school revocation. Since these standards are different and conflicting, the Court must determine which one is appropriate to apply in this case. Accordingly, I turn to the principles of statutory construction.

One of the principles of statutory construction is that "[w]here there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect." *Spectre, LLC v. S.C. Dep't of Health & Env't Control*, 386 S.C. 357, 372, 688 S.E.2d 844, 852 (2010); *Wooten ex rel. Wooten v. S.C. Dep't of Transp.*, 333 S.C. 464, 468, 511 S.E.2d 355, 357 (1999) ("A specific statutory provision prevails over a more general one."). Additionally, "[s]pecific statutes are not to be considered repealed by a later general statute unless there is a direct reference to the earlier statute or the intent of the legislature to do so is explicitly implied." *Denman v. City of Columbia*, 387 S.C. 131, 138, 691 S.E.2d 465, 469 (2010).

In this case, subsection 1-23-380(2), which directs a party to move for a stay under Rule 65, is a general statute that broadly governs requests for judicial review. In contrast, subsection 59-40-110(J) is a specific statute that governs when a stay may be granted if a charter school contests the revocation of its charter before this Court. Thus, pursuant to the principles of statutory construction, because subsection 59-40-110(J) is the more specific statute, it controls. *See Spectre*, LLC, 386 S.C. at 372, 688 S.E.2d at 852. Moreover, between the two statutes, subsection 59-40-110(J) is the more recently amended statute and subsection 1-23-380(2) does not directly reference subsection 59-40-110(J); therefore, subsection 1-23-380(2) does not repeal or modify subsection 59-40-110(J). *See Denman*, 387 S.C. at 138, 691 S.E.2d at 469. Based upon these principles of

statutory construction, I decline to evaluate Appellant's Motion under subsection 1-23-380(2) and Rule 65.[3]

Turning to the applicable standard, CAA has the unique burden of showing it will suffer an "unusual hardship" if a stay is not granted. § 59-40-110(J). The term "unusual hardship" is not defined in the statute. When faced with an undefined statutory term, the South Carolina courts "must interpret the term in accordance with its usual and customary meaning." *Travelscape, LLC v. S.C. Dep't of Revenue*, 391 S.C. 89, 99, 705 S.E.2d 28, 33 (2011). Furthermore, where a word is not defined in a statute, our courts look to "the usual dictionary meaning to supply its meaning." *Lee v. Thermal Eng'g Corp.*, 352 S.C. 81, 91–92, 572 S.E.2d 298, 303 (Ct. App. 2002). Here, if "unusual" even needs to be defined, it is usually defined as not common or ordinary. THE AMERICAN HERITAGE COLLEGE DICTIONARY 1481 (3rd ed. 1993). Black's Law Dictionary gives further explanation, stating that "unusual" is "[d]ifferent from what is reasonably expected." *Unusual*, BLACK'S LAW DICTIONARY (11th ed. 2019).

Accordingly, to show an unusual hardship, CAA must show a hardship that is distinct from the hardship generally or usually faced by a school that closes due to revocation of its charter. Indeed, the closing of a school will always produce a hardship on students, parents, faculty, administrators, and the district because of the logistics of moving students, organizing transportation, finding new jobs, and ending contracts and other business-related obligations of the school. CAA thus must show a hardship above and beyond these usual, reasonably expected hardships.

CAA argues it will suffer unusual hardship mainly for one reason: CAA serves an at-risk population of students who might not re-enroll if CAA closes. More specifically, CAA argues the type of student they serve is unusual even among alternative schools, and these students will therefore have difficulty finding a comparable school in which to enroll. I do not find CAA's argument convincing. First, the Court finds that the students' challenge of enrolling in a new high

[3] In its Motion and Amended Motion as well as during the hearing, CAA primarily argued that "while CAA was in the process of terminating AA for cause, AA's founders and principals, Joseph Wise ("Wise") and David Sundstrom ("Sundstrom"), and the District's Superintendent and legal counsel, Elliot Smalley ("Smalley") and Erik T. Norton ("Norton"), were secretly, surreptitiously, improperly, and illegally conspiring, plotting, and scheming (1) to have the District require CAA continue paying AA to manage CAA's school against CAA's will, despite AA's failure to keep TTC and CAA students and staff safe on CAA's campus, and (2) to assist AA to establish a new charter school in close proximity to CAA's campus for the purpose of stealing CAA's at-risk students and the tens of millions of public dollars that follow them, thereby destroying CAA." This argument will not be addressed by the Court because it supports an argument that CAA may be successful on the merits of the case, which is based on the provisions of Rule 65, SCRCP, and not subsection 59-40-110(J).

school is not unusual when a charter school closes or is revoked. Second, the students of CAA have several options to continue their education, including options that cater to the type of student enrolled at CAA. For example, the high school(s) of residence for CAA students are required to enroll CAA students, as well as provide transportation and free or reduced cost lunch to those who qualify. *See* S.C. Code Ann. § 59-63-710 *et seq*.; S.C. Code Ann. § 59¬67-10 *et seq*. More importantly, the evidence demonstrated that CAA students also have multiple other alternative learning high schools to choose from that can cater to CAA's more unique student population. In fact, in affidavits submitted by CAA parents, the parents identify no less than six other nearby alternative learning high schools available to CAA students. These alternative schools seek to educate a similar subset of students as CAA for which traditional public schools may not address these students' needs, including at least one school within two miles of CAA that specifically serves at-risk high school students who have previously dropped out of school or are at-risk of dropping out of school. Therefore, the evidence does not demonstrate that CAA's more unusual student population will create an unusual hardship if CAA closes.[4]

Lastly, CAA argues that even though its students may have a comparable alternative school to attend, the type of students it serves will not re-enroll at another school if CAA is closed. CAA argues that keeping its school open will thus prevent these students from leaving the educational system, which would be an unusual hardship. In other words, CAA contends a stay should be granted based upon its presupposition of the student's proclivity not to seek further education. However, CAA provided no data to support its argument. Moreover, it is not unusual for students to permanently drop out of public schools or charter schools while the schools remain open. Thus, creating a bright-line rule in which an "unusual hardship" exists every time a student *might* permanently drop out when a school closes would render the "unusual" part of the standard meaningless because there is always a possibility that a student(s) will permanently drop out. Accordingly, I reject this argument.

[4] Although the impact of the revocation of the school's charter upon the teachers and administrators was not discussed, the Court notes that the evidence did not reflect an unusual hardship upon them. Specifically, the teachers and administrators at CAA have been on notice that revocation was a possibility since January, which although certainly not pleasing, that notice has provided ample time to make contingent plans and find other employment at either another alternative high school or traditional high school.

CONCLUSION

Having carefully reviewed the parties' filings and arguments, the Court finds CAA failed to meet its burden to show that without a stay it will suffer an unusual hardship beyond the usual hardships experienced when schools close. CAA was unable to show, with specific evidence, that traditional public schools or other charter schools in the area cannot absorb the children currently enrolled at CAA and provide the same or substantially same services. Moreover, the revocation is effective June 30, 2023, which is the best time to revoke a charter as there is time for persons affected by the revocation to make other arrangements.

The Court therefore finds CAA failed to show it will suffer an unusual hardship if the Board's decision to revoke its charter is not stayed pursuant to § 59-40-110(J).

ORDER

IT IS THEREFORE ORDERED that Appellant's Motion to Stay is **DENIED**.

AND IT IS SO ORDERED.

_____

Ralph King Anderson, III
Chief Administrative Law Judge

June 29, 2023
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Perez, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

Stephanie Perez
Judicial Law Clerk

June 29, 2023
Columbia, South Carolina