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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
Administrative Law Court Judge

23-ALJ-30-0163-AP

Appellate Case No. 2023-001047

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

v.

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

RESPONDENT'S RESPONSE IN OPPOSITION TO THE STAY AND TO THE APPEALABILITY OF THE ISSUE RAISED BY APPELLANT IN THEIR EMERGENCY MOTION

Respondent hereby provides this response pursuant to the court's order requesting briefing on appealability of Appellant's issues raised in its Emergency Motion for Temporary Restraining Order, Preliminary Injunction, and in opposition to the motion for a stay.

INTRODUCTION

This is Appellant's second "emergency" motion to stop revocation of its charter.[1] The first

[1] This is the third emergency injunction motion filed by CAA against the District. The first one was in 2019, and it was denied for lack of jurisdiction by the Court of Common Pleas. *See CAA v SCPCSD*, Order Denying Plaintiff's Motion for TRO and Preliminary Injunction, Civ. No. 2019-CP-10-6592 (Chas. Cty. Comm. Pleas, Feb. 26, 2020) (Price, B.) CAA has two other appeals pending before the Court of Appeals for two other lawsuits it filed against the District, both of which were dismissed at the trial court level. App. Case Nos. 2021-001414 and 2022-000289.

emergency motion was denied in federal district court, in part, because it was premature. *See Charleston Advancement Academy v. SC Public District*, Civ. No. 23-cv-00964, Dkt. 23 (Text Order April 26, 2023). Similarly, Appellant's current emergency motion is not properly before this court because the Administrative Law Court's ("ALC") order denying Appellant's motion to stay the revocation of its charter is interlocutory and the decision on the merits of the appeal is still properly pending before the ALC.

Appellant is a charter school, Charleston Advancement Academy, formerly known as Charleston Acceleration Academy and Pathways in Education-South Carolina ("CAA"). Respondent is the sponsor of the charter school, the South Carolina Public Charter School District, ("District"). The relationship of School and District is governed by the South Carolina Public Charter Schools Act of 1996, S.C. Code Ann. §§ 59-40-10 to -240 ("Charter Act").

CAA is an Alternative Education Campus ("AEC") under the Charter Act with a mission of serving at-risk students. However, it only had a graduation rate of 8% for school year 2021-2022 according to South Carolina Department of Education data. (Exhibit A – Final Decision, p. 6 ¶ 32; Ex. J to CAA Mot. to Stay; Order Denying Motion p. 4). CAA has been plagued by management problems from its opening in 2017. (Exhibit A. pp. 2-5, ¶ ¶ 4-29) It has had two different management companies, one of which it paid an almost $1 million judgment for wrongful termination, and at least six different school leaders. (*Id*.) In December 2022, the CAA board faced a staff revolt when two board members were not re-elected but then orchestrated their appointment to vacant seats over the objections of staff members and families. (*Id*.) CAA once again separated from its school leader. (*Id*.)

On January 19, 2023, the District voted to provide notice of revocation to CAA. (Exhibit A, p. 7, ¶ ¶ 35-40.) On April 26, 2023, Appellant filed substantially the same *emergency* motion to

what is currently pending before this court in the South Carolina Federal District Court. The emergency motion was heard by the Honorable Bruce Hendricks, who denied Appellant's emergency motion for a temporary restraining order and preliminary injunction, providing a text order that stated, "the Court denies Plaintiffs' emergency motion for a temporary restraining order and preliminary injunction, as the Court finds that Plaintiffs have failed to make the requisite clear showing of any of the factors necessary to obtain such extraordinary relief." *See Charleston Advancement Academy v. SC Public District*, Civ. No. 23-cv-00964, Dkt. 23 (Text Order April 26, 2023).

After the notice of revocation, the District filed a petition for an injunction with the ALC seeking to preserve CAA's assets, almost exclusively public state funds, and to require participation from CAA in the statutorily mandated closure protocol within the Charter School Act while revocation was pending. *See SCPCSD v CAA,* No. 23-ALJ-30-0027-IJ (January 24, 2023, SC Admin. Law Ct.). On April 24, 2023, the parties reached an agreement on the record at a hearing scheduled on the motion for injunction. However, while the agreement was being reduced to an order, the District received bank records that revealed CAA had transferred $1 million to its lawyers' IOLTA accounts during and immediately preceding the hearing. On May 8, 2023, the ALC granted the injunction and the order provided CAA was enjoined from expending funds from certain accounts during the revocation process, which expired June 30, 2023. Additionally, the ALC ordered CAA to transfer $600,000 from their attorney's IOLTA accounts back to the appropriate school accounts. The District had to file another Motion to Enforce the Agreement on May 25, 2023, as CAA failed to participate in the statutorily mandated closure protocol as agreed to in the ALC's Injunction Order. The Motion to Enforce the Agreement was granted by the ALC on June 12, 2023.

On May 11, 2023, the District conducted a hearing at the request of CAA regarding the revocation pursuant to the Charter School Act. *See* S.C. Code Ann. § 59-40-110(H). At the close of the hearing, the District voted to revoke the charter of CAA effective as of June 30, 2023. On May 12, 2023, CAA filed a Notice of Appeal, Motion to Stay and Motion for Expedited Assignment with the ALC pursuant to section 59-40-110(J) of the Charter School Act. This appeal is currently still pending before the ALC.

CAA requested an expedited hearing, **not on the merits of its appeal but on its motion to stay the revocation**, and the District consented to the expedited hearing. The ALC granted the motion for an expedited hearing and the hearing took place on June 21, 2023. CAA provided a sixty-five (65) page brief in support of its motion to stay, and the hearing for the motion lasted approximately three hours.

On June 29, 2023, the ALC issued its detailed order denying CAA's Motion for a Stay ("Order Denying Stay"). (Exhibit B). The ALC found that CAA failed to show it would suffer an "unusual hardship" as required for a stay under the Charter School Act. Immediately following the ALC's order on June 29, CAA filed a Notice of Appeal to this Court appealing the Order Denying Stay and also filed an Emergency Motion for Temporary Restraining Order, Preliminary Injunction, and/or Stay. CAA's Emergency Motion sought an order seeking to "maintain the status quo." CAA represented to this Court that students risked "dropping out of school permanently as of the end of the day on June 30, 2023." This Court granted a temporary stay on June 30, 2023 prior to any response from the District. However, CAA failed to inform this court that CAA would be closed from at least July 1 through July 9, 2023 for its summer break based on its 2023-2024 academic calendar, which may have allowed the District to respond prior to this Court issuing a temporary ruling. CAA also failed to inform this Court that it was subject to compliance with the

ALC's Second Injunction Order on that same date. Instead, CAA sought a stay from this Court on an emergency basis (without initially copying the ALC) and refused to comply with the ALC Injunction Order. The District has filed a motion to enforce the Second Injunction Order in the ALC and respectfully submits this brief as to appealability of the Order Denying Stay as requested by the Court. The District also requests the Court immediately lift the temporary stay to allow the procedures of the Charter School Act as designed by the General Assembly to proceed as designed to protect students and taxpayers from further harm by the mismanagement of CAA's board of directors.

ARGUMENT

The ALC order denying the stay is not appealable because it is interlocutory and does not meet any of specific statutory circumstances allowing the appeal of an interlocutory order. Moreover, the stay should be lifted because the appeal remains pending before the ALC.

I. The ALC order denying CAA's motion to stay under the Charter Act is not appealable.

The Order Denying Stay is an interlocutory order and therefore not immediately appealable unless section 14-3-330 of the South Carolina Code applies.[2] As a general rule in South Carolina "only final judgments are appealable." *Culberston v. Clemens*, 322 S.C. 20, 23, 471 S.E.2d 163, 164 (1996). The Supreme Court of South Carolina has held that '"[a]ny judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory [and not final]."' *Id*. (quoting *Mid-State Distribs. Inc. v. Century Importers, Inc*., 310 S.C. 330, 426 S.E.2d 777 (1993)). "[A]n interlocutory order that affects a substantial right and in effect determines the action and prevents a judgment from which an appeal may be taken

[2] The ALC website classifies the order as "interlocutory," and it does not appear CAA contests that the Order is interlocutory because it cites section 14-3-330 in its Notice of Appeal.

or an order that discontinues the action may be reviewed by [an appellate court]." *Duncan v. Gov't Employees Ins. Co.*, 331 S.C. 484, 485, 449 S.E.2d 580 (1994). "An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed." *Hagood v. Sommerville*, 362 S.C. 191, 195, 607 S.E.2d 707, 709 (2005). Absent some specialized statute, the immediate appealability of an interlocutory or intermediate order depends on whether the order falls within section 14–3–330 of the South Carolina Code. *Ex parte Wilson*, 367 S.C. 7, 13, 625 S.E.2d 205, 208 (2005).

The order denying CAA's motion to stay is interlocutory because it did not end the matter. The merits of the appeal, which CAA filed on May 12, 2023, are still pending before the ALC. Thus, the only question is whether the order falls within section 14-3-330 of the South Carolina Code, and it does not.

In the Amended Notice of Appeal served on July 5, 2023, CAA states that it is appealing pursuant to section 14-3-330(2)(a) and (4) of the South Carolina Code. Section 14-3-330(2)(a) of the South Carolina Code allows appeals of "[a]n order affecting a substantial right made in an action when such order in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action." Section 14-3-330(4) of the South Carolina Code allows an appeal from "[a]n interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction…" However, neither of these subsections apply in this case.

A. The order denying the stay does not affect a substantial right.

Under subsection 14-3-330(2)(a) of the South Carolina Code, "[o]rders affecting a substantial right discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out

an action or defense." *Edwards v. SunCom*, 369 S.C. 91, 94, 631 S.E.2d 529, 530 (2006). Here, none of these elements are present. In fact, CAA's appeal on the merits of the revocation remains pending before the ALC. The decision of the ALC on the merits of CAA's appeal regarding whether the revocation meets the standards required by the Charter School Act still can be appealed to this Court. The action at the ALC has not been discontinued, no action or defense has been stricken, and no request for a new trial granted or refused. Therefore, the Order Denying Stay does not affect a substantial right for purposes of subsection 14-3-330(2)(a) and is not appealable pursuant to this subsection.

B. CAA's request for injunction was not properly before the ALC and the issue of whether an injunction should have been granted by the ALC was not preserved for appeal.[3]

In South Carolina, courts have held "[i]t is axiomatic that an issue cannot be raised for the first time on appeal but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). The ALC did not rule upon CAA's last-minute amendment to add injunctive relief to its motion to stay, and therefore it is not appealable. Further, CAA did not properly seek injunctive relief, instead only recasting the statutory request for a stay as an injunction in a thinly veiled attempt to create an appealable issue where none exists.

This matter is before the ALC on appeal from a decision to revoke the charter of CAA by the District Board of Trustees pursuant to section 59-40-110(J) of the South Carolina Code, which provides that "a decision to revoke or not renew a charter school may be appealed to the

[3] The issue of the injunction was thoroughly briefed in the District's Memorandum in Opposition to the Stay, attached here as Exhibit D.

Administrative Law Court pursuant to the provisions of Section 59-40-90."[4] Section 59-40-110(J) goes on to state as follows:

> Upon appeal to the Administrative Law Court, there is no automatic stay of the revocation or nonrenewal decision. Pending 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.

On June 15, 2023, CAA filed a motion to stay pursuant to the Charter School Act. Then, on the day of the hearing, CAA filed a document titled "Amended Motion for Temporary Injunction and/or Preliminary Injunction and/or a Stay" purporting to seek a stay under both the Charter School Act and Rule 65 of the South Carolina Rules of Civil Procedure. The Order states "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." (Exhibit B, p. 5). The ALC therefore never considered in the Order whether to grant an injunction, only whether it should consider granting the stay pursuant to the specific standard set forth in the section 59-40-110(J) of the Charter School Act or the more general standards referenced in Section 59-40-90. (*Id*.) The Order characterizes the dispute as follows: "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." The court goes on to note that subsection 1-23-380(2) "directs a party to move for a stay under Rule 65…"

The ALC rightly analyzed the motion to stay under basic principles of statutory construction to determine the more specific provisions in subsection 59-40-110(J) should apply. (Exhibit B, p. 6). The ALC expressly declined to evaluate CAA's motion under section 1-23-

[4] Section 59-40-90 provides that any final decision of the sponsor may be appealed to the ALC pursuant to former subsection 1-23-380(B).

380(2) and Rule 65. (Order p. 7). In the end, the ALC ruled as follows on page 9 of the Order:

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

Importantly, then, the ALC did not rule on any of the requests for injunctive relief, only on the motion to stay. CAA also did not seek reconsideration on the issue to obtain a ruling on the injunction requests. Moreover, CAA could not have sought injunctive relief without notice pursuant to Rule 65, SCRCP, which it did not provide by attempting to amend its motion at the hearing. Therefore, CAA did not preserve the argument regarding any last-minute request for an injunction for appeal.

II. The Temporary Stay Should Be Lifted.

Regardless of the ALC's Order's appealability, the temporary stay should be lifted. The General Assembly crafted the Charter School Act to determine the applicable standard and timing for when a charter school should be permitted to operate while subject to revocation. There is no good time to close a school, but summer is the best time if it has to be done. Opening or closing a school in the middle of an academic year poses a host of logistical and educational problems for students, parents, and educators. As the ALC has ruled in other revocation cases, the timeframe of the revocation matters to ensure the least amount of disruption to students and faculty at the school. *See Quest Leadership Academy v. SC Pub. Ch. Sch. Dist*., No. 19-ALJ-30-0190-AP (SCALC, July 25, 2019). Specifically, in *Quest*, the ALC found that the summer months, prior to the start of the new academic year, are the ideal timeframe for a revocation to occur. Currently, according to CAA's 2023-2024 academic calendar, attached here as Exhibit C, CAA is just beginning a short summer session before it begins its new academic year on August 23, 2023. CAA staff and students will not be irreparably harmed by missing a summer school session while the ALC hears the merits of the appeal. Lifting the stay also would protect students from further confusion

regarding inaccurate student records, and taxpayers would be protected from further risk of waste, fraud, and abuse of public funds while the ALC hears the merits of the appeal. All of these issues, which address the merits of the appeal, are pending before the ALC, and the ALC is capable of issuing a timely decision on the merits before the beginning of CAA's next academic year on August 23.

Moreover, the procedural timing of this matter is a result of CAA's strategic decisions. CAA has chosen to litigate the stay rather than the merits of the appeal, which could have been resolved by now. The ALC and the District have agreed to proceed with the appeal on an expedited basis, which already has included over 100 pages of briefing and more than 5 hours of hearings since April. If CAA had chosen to expedite litigation of the merits rather than the stay, this appeal likely could have been heard and ruled upon at the ALC by now.

As of June 30, 2023, CAA should have stopped operating based on the procedures in the Charter School Act and the Order Denying Stay. CAA has not shown any unusual hardship, just mismanagement and poor academic performance. This was documented in the Final Decision and the ALC has had substantial briefing and hearings to determine there is no evidence of an unusual hardship. The General Assembly wisely chose not to allow schools to operate at this point in revocation proceedings in order to protect students and taxpayer funds, all of which are vulnerable. CAA seniors are in doubt about graduation status because their transcripts cannot be verified due to what CAA's own expert called "tremendous deficiencies" in the student records. (Exhibit A, p. 9, ¶ 51). CAA holds somewhere between $3 million and $4 million in taxpayer money, which the last information provided to the District showed was controlled by the CAA Board chair on her mobile phone through her personal banking app. (*Id*. ¶ 57). The stay should be lifted to mitigate the risk that students will be harmed further or taxpayer funds are wasted or misappropriated. This

is solely within control of this Court.

Simply put, the merits of this case are still pending, there has not been a final judgment and the ALC should not be divested of jurisdiction, even in part, while an appeal is pending before it. The ALC should be allowed to manage the case pursuant to the statutorily provided provisions in the Charter School Act as long as the appeal remains pending before it, and the temporary stay should be lifted.

CONCLUSION

Based on the foregoing, the District respectfully requests this court dismiss CAA's Notice of Appeal and Emergency Motion as interlocutory and lift the stay.

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July 10, 2023

Exhibit A

Final Decision

STATE OF SOUTH CAROLINA
BEFORE THE BOARD OF TRUSTEES FOR THE
SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT

IN RE: CHARLESTON ADVANCEMENT ACADEMY	)	**FINAL DECISION**

This matter is before the Board of Trustees of the South Carolina Public Charter School District ("District Board") upon request for a hearing by Charleston Advancement Academy ("School" or "CAA") pursuant to S.C. Code Ann. § 59-40-110(H). A public hearing was held on May 11, 2023, with a quorum of the board present and both parties represented by legal counsel. The Parties stipulated as to certain documents that should be entered into evidence and, upon proper motion, the documents consented to as evidence by both parties was submitted into evidence. After considering the testimony, arguments of counsel, evidence, exhibits and all other materials and information submitted by the School and the staff of the South Carolina Public Charter School District ("District"), the Board hereby concludes that the School's Charter is revoked as of June 30, 2023, pursuant to Section 59-40-110, for the reasons set forth below.

FINDINGS OF FACT

1. School is a charter school with campuses in North Charleston, South Carolina, and James Island, South Carolina. The School serves grades 9 through 12.

2. The School was granted a Charter by the Board on May 20, 2017, and began operating in August 2018, pursuant to the South Carolina Public Charter Schools Act of 1996, S.C. Code Ann. §§ 59-40-10 to -240 ("the Act").

3. The School is designated as an Alternative Education Campus ("AEC") under the Act because it serves students that have dropped out of high school or are at-risk for dropping out

of high school based on specific statutory criteria.

4. The Charter required the School to use an Education Management Organization ("EMO") called Pathways in Education, Inc. ("Pathways") to provide certain services.

5. Prior to the School opening in August 2018, the contract between the School and Pathways was terminated.

6. The School selected a different EMO, Acceleration Academies, Inc. ("Acceleration Academies"), to replace Pathways in the Charter.

7. The District Board approved an amendment of the Charter to allow Acceleration Academies to replace Pathways in the Charter.

8. On October 31, 2019, the School Board terminated its contract with Acceleration Academies effective immediately and demanded Acceleration Academies to stop providing services under the management contract with the School.

9. On November 11, 2019, the School Board submitted a request to amend its Charter to remove Acceleration Academies from the Charter.

10. On November 14, 2019, the District Board denied the amendment request because it determined the amendment lacked sufficient detail regarding how the services of Acceleration Academies would be replaced.

11. On December 2, 2019, the District issued sanctions short of revocation requiring, among other things, the School Board to resubmit the charter amendment adequately detailing the services of Acceleration Academies to be approved by the District Board.

12. Acceleration Academies filed an arbitration claim against the School alleging damages for wrongful termination of contract.

13. On April 23, 2020, the United States District Court for the Western District of North

Carolina, Civ. No. 3:20-cv-00062-MOC-DSC (aff'd *Acceleration Academies v. Charleston Acceleration Academy, Inc.*, 858 Fed. Appx. 606 (4th Cir. 2021)), confirmed the arbitration award ("Award") for Acceleration Academies against School in the amount of $859,142.41.

14. The Award provided, in relevant part, that (a) the arbitrator previously required the parties to return to the status quo regarding services to be provided as of October 31, 2019; (b) School failed to meet its obligation to terminate its contract with Acceleration Academies in a "manner least disruptive to students"; and (c) there was "no credible evidence of a threat to public health and safety which was proximately caused by [Acceleration Academies] to justify immediate termination of the contract, given the affirmative obligation of the parties to terminate the contract in a manner least disruptive to the students."

15. On November 12, 2020, after the School added sufficient details to describe how the services of the management company were being replaced, the District Board approved the School's request to amend the Charter.

16. The Charter on pages 42-48 was amended to include revised academic goals and performance standards submitted by the School and approved by both the School Board and the District Board.

17. The Charter was amended to identify "two critical goals and objectives" to "help monitor and measure CAA's success towards achieving its mission." The two critical goals identified were:

a. "a target graduation rate of 65% or a goal of 80% or greater;" and

b. "a target of 40% of the School's students earning at least 6.0 credits per academic year to be on track to achieve graduation within 4 years."

18. The Charter also was amended to identify 14 "Achievement Indicators" the Charter

identifies as "goals."

19. The Charter states that the School will use the PowerSchool student information system to "enable the smooth transfer of student information between [the School], [the District], and South Carolina's Department of Education and ensure that all three entities are working from a common data source." The Charter further states, "CAA's director will be responsible for the efficient and accurate distribution of student assessment and progress information to parents or guardians, CAA's Board of Directors, the authorizer and the South Carolina Department of Education."

20. On December 7, 2021, the School Board requested to transfer its Charter to Limestone University and the Limestone Charter Association for the 2022-2023 school year. However, transfer requests were due on or before October 31, 2021, and the District Board denied the request because it was untimely.

21. On or about December 31, 2021, the School submitted the Annual Report required by the Act, which requires the School to report on its academic performance over the past year. The data submitted by the School in its Annual Report did not include any data from the revised goals in the Amended Charter.

22. On June 14, 2022, the District formally responded to the Annual Report submitted on or about December 31, 2021 by stating, in relevant part: "The school did not provide data for its goals in 2020-2021 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."

23. On August 17, 2022, the School Board again submitted a request to transfer its Charter to Limestone University and the Limestone Charter Association for school year 2023-

2024.

24. In Fall 2022, the South Carolina Department of Education resumed report card ratings. CAA received a rating of unsatisfactory overall and unsatisfactory for multiple indicators on the state/federal accountability level, for which they must comply as outlined in South Carolina Code section 59-40-111(F).

25. In accordance with District policy, the District Board provided notice to the School Board on November 4, 2023, that its request to transfer its Charter to Limestone University and the Limestone Charter Association would be placed on the agenda for an upcoming regularly scheduled District Board meeting on December 15, January 19, or February 9.

26. On December 6-8, 2022, School held School Board elections. The School Board Chair, Nadine Dief, and School Board Secretary, Traci Combs, were not re-elected. Chair Dief only received 7 out of 139 votes. Secretary Combs only received 9 out of 139 votes.

27. On December 13, 2022, before newly elected board members were sworn in, the School Board reappointed Chair Dief and Secretary Combs to vacant board seats at a special called board meeting.

28. Also on December 13, 2022, the School Board announced to School staff that the School leader, Wayne Stevens, had resigned.

29. On December 14, 2022, approximately half of the School's 31 staff members did not report to work in protest of the School Board's actions.

30. On January 4, 2023, the District Board notified the School Board that it would consider the School Board's request to transfer the Charter at the District Board's regularly scheduled public board meeting on January 19, 2023. The January 4, 2023, correspondence stated, "The [District] Board reserves the right to take any action related to CAA's charter that it deems

appropriate after considering the information available to it."

31. On January 12, 2023, the District provided School the Transfer Request Report, which summarized information the District Board may consider when evaluating a transfer request.

32. After noting multiple concerns with the validity of data provided by the School, the Transfer Request Report noted the following regarding the School's academic performance for Measures 1-4 for academic year 2021-2022 based on the available data:

Goal Number	Goal	Performance	Goal Met?
Critical Goal 1	target graduation rate of 65% or a goal of 80% or greater	8.8% 4-year cohort graduation rate	Goal not met
Critical Goal 2	40% of students earn 6 credits per year	2.2% of students earn 6 credits/year	Goal not met
Measure 1	Percent of students that are enrolled on the 45th day of the school year and enrolled on the first day of testing, with no break in enrollment, who score at least 70 percent on the English II EOCEP[1] assessment.	52.38% of 21 students scored 70% or higher	Goal not met
Measure 2	Percent of students that are enrolled on the 45th day of the school year and enrolled on the first day of testing, with no break in enrollment, who score at least 70 percent on the Algebra I assessment.	0% of 42 students scored 70% or higher	Goal not met
Measure 3	Percent of students that are enrolled on the 45th day of the school year and enrolled on the first day of testing, with no break in enrollment, who score at least 70 percent on the Biology I assessment.	10.34% of 41 students scored 70% or higher	Goal not met
Measure 4	Percent of students enrolled on the 45th day of the school year and enrolled on the first day of testing, with no break in enrollment, who score at least 70 percent in the U.S. History and Constitution EOCEP assessment.	4.88% of 29 students scored 70% or higher	Goal not met

[1] EOCEP refers to End of Course Examination Program. Measures 1-4 all refer to EOCEP assessments.

33. The Charter required the School to set benchmarks for Measures 5-14, but the School never set the benchmarks as required.

34. On January 18, 2023, School provided the District Board its rebuttal to the Transfer Request Report. The rebuttal did not provide any information to refute the failure of the School to meet the goals reflected in Measures 1-14.

35. The Agenda posted for the January 19, 2023 District Board meeting included an action item for "Action on Charleston Advancement Academy's Charter."

36. At the regularly scheduled January 19, 2023, District Board meeting, District staff presented the Transfer Request Report to the District Board, and the School presented additional information in support of its request to transfer its Charter. Both the District and School were represented by counsel at the Board meeting.

37. The School's rebuttal to the Transfer Request Report and presentation to the District Board contended that the graduation rate should have been 12.64% instead of 8.8%, still falling far short of the target graduation rate of 65% or a goal of 80% or greater.

38. The School's rebuttal to the Transfer Request Report and presentation to the District Board included data related to the number of courses completed in a software program called Edgenuity, not PowerSchool data reflecting courses taken for credit toward graduation. PowerSchool is the records system required by the Charter, the State Department of Education, and the District for official records.

39. The School did not rebut data provided for EOCEP assessments.

40. The District Board voted to deny the transfer request and voted to issue Notice of Revocation of the Charter effective June 30, 2023.

41. The District sent Notice of Revocation to the School on January 23, 2023.

42. The School requested a hearing in writing pursuant to the Act on January 30, 2023.

43. The hearing was held on May 11, 2023, in a public meeting before the District Board.

44. At the hearing, Deputy Superintendent John R. Payne[2] testified to verify that the information in the Transfer Request Report remained valid.

45. Dep. Supt. Payne further testified that his analysis showed no students that were enrolled in CAA as a senior in the academic year 2020-2021 earned a diploma from the School within twelve months.

46. Dep. Supt. Payne further testified that he confirmed his analysis regarding graduation and credit attainment by review of individual high school transcripts from CAA students and information from the South Carolina Department of Education "DOTS" diploma ordering system.

47. Dep. Supt. Payne testified the School's graduation rate was lower than the graduation rates of other AEC's, including charter AEC's, based on nationally reported data.

48. Dep. Supt. Payne testified that his review of individual student data revealed multiple students showing passing grades in PowerSchool but could not ear credit for the course due to excessive absences. In some cases, student records showed students with more than 50 absences from one course.

49. Dep. Supt. Payne also testified that his review of individual student data revealed the School failed to have adequate contact with students. For example, Dep. Supt. Payne testified that a student had passed away without the School knowing for several months.

50. The School's data consultant, Curtis Askew of DataNgine, testified at the hearing

[2] Dep. Supt. Payne is not related to District Board Chairman John S. Payne.

that the DOTS system was the most reliable data source for determining the number of actual graduates from the School.

51. Askew testified that the School's data in PowerSchool had "tremendous deficiencies," specifically detailing that there were duplicate records in PowerSchool.

52. Askew testified that his analysis would show that the four-year adjusted graduation rate should be approximately 32%.

53. Askew further testified that he believed the School was being treated differently than another charter school sponsored by the District, NEXT High School. However, Askew was not aware that the District already had closed NEXT.

54. The School called Dr. Carrie Tucker, Assistant Director at the School's Trident Technical College Campus, as a witness. Like Askew, Tucker testified the School's data was deficient. Tucker testified that the 2021-2022 graduation rate should be 21.86% by counting students outside of cohort.

55. The District offered testimony from Michael Thom, Deputy Superintendent for Finance and the Chief Financial Officer of the District. Thom testified that the School spent the least amount of money per student of any school in the District based on a South Carolina State Department of Education reporting tool.

56. Thom also testified that the School had almost $4 million of State funds in its accounts based on banking information it submitted to the District.

57. Thom further testified that screenshots provided to the District by School Board Chair Nadine Dief indicated that Chair Dief had access to the School's bank accounts from her personal mobile phone, where it appeared she could readily transfer funds from the School's account to her own accounts or third-party accounts without any safeguards.

58. The School submitted into evidence a letter from Ken Martin of Martin Smith & Co., the independent auditor that audited the School for fiscal year 2022, to Chair Dief alone stating, "[o]ur assessment is that online access by you does not violate generally accepted auditing standards, GAAP, or SCDOE standards, particularly given the control exercised by [Prestige School Solutions]."[3]

59. Following the close of evidence, and upon proper motion, the District Board publicly voted to proceed with revocation of CAA's Charter effective June 30, 2023.

CONCLUSIONS OF LAW

60. South Carolina Code section 59-40-110(C) requires a sponsoring school district to revoke the charter of a school that "(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; (2) failed to meet the academic performance standards and expectations as defined in the charter application or charter school contract, or both; (3) failed to maintain its books and records according to generally accepted accounting principles or failed to create an appropriate system of internal control, or both; or (4) violated any provision of law from which the charter school was not specifically exempted."

61. The evidence at the hearing shows that the School (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.

[3] Prestige School Solutions, according to Martin, "provides comprehensive financial and back-office support" to the School.

62. The evidence shows the School failed to meet the goals in its Charter, including but not limited to those goals the School itself identified as "critical goals" to its mission. No calculation of graduation rate offered by the School, or the District meets the first critical goal of a 65% graduation rate stated in the CAA charter. The District provided credible evidence that the credit attainment goal of 6 credits per year was not met, and the School did not provide any alternative calculation evidencing the goal was met. Further, the School did not dispute the EOCEP data showing the School did not meet Measures 1-4, and CAA did not dispute that it had not set benchmarks for Measures 5-14 as required.

63. The Charter requires the School to maintain accurate data and transmit accurate data in PowerSchool to the District and State Department of Education. However, both District and School witnesses agreed that the School's PowerSchool data was deficient and unreliable. The School has failed to meet performance standards or procedures in the Charter regarding data management, record keeping, and academic progress reporting.

64. The Charter requires the School to allocate its funding to prioritize the delivery of CAA's educational and experiential learning activities. Pursuant to the Charter, the CAA Board is responsible for ensuring the effectiveness of the School's academic program and fiscal performance. The CAA Board has failed to meet the governance performance standards under the Charter by hoarding cash reserves instead of allocating funds to improving academic achievement.

65. The School Board also has failed to meet the governance performance standards under the Charter by failing to maintain consistent and effective leadership at the School, which has had two EMO's and at least six school leaders since the School began serving students in 2018, and by reappointing two board members that lost in the board election before new board members could be installed, resulting in a staff revolt.

66. The School Board failed to exercise proper internal controls over public money by allowing circumstances to exist where the School Board Chair could unilaterally exercise control over school funds by transferring money from the school account without any limitation on amount or secondary approval authority, relying solely on post-transaction means to prevent fraud or improper spending of State money.

67. Each of the grounds stated above provides an independent basis requiring revocation of the School's charter.

68. The School received adequate notice and the right to a hearing, which it voluntarily requested and participated in with the assistance of legal counsel, thereby satisfying the elements of the Charter Act and constitutional due process. Moreover, the District complied with its notice obligations under the Freedom of Information Act by providing timely public notice of its January 19, 2023 meeting, in which it specified that the District Board would consider "Action on Charleston Advancement Academy's Charter." S.C. Code Ann. § 30-4-80(A). A quorum of the Board was present for that meeting, and it publicly voted to take action to revoke the charter. The District Board denies any suggestion that it did not fully comply with its obligations under FOIA.

69. Pursuant to Section 59-40-55(B)(7) of the South Carolina Code, no corrective action or sanction short of revocation is required when circumstances warranting revocation exist. The Act clearly states that revocation timelines apply when circumstances warrant revocation. However, in this case, the District issued the School sanctions short of revocation in December 2019 and provided the School the opportunity to cure any defects by amending its Charter, which it did in November 2020. It further provided notice of the deficiencies in academic performance and the Charter in 2021-2022 by letter dated June 14, 2022. The School has had more notice, and more opportunities to correct deficiencies, than is required by the Act.

70. The District did not treat the School unfairly as compared to other charter schools as alleged by the School. The only evidence submitted in this regard was through testimony that the School was treated differently than the NEXT Schools in Greenville, South Carolina. However, the School's own data consultant did not even know NEXT had been closed by the District almost a year ago. The School's claim that it was treated differently than NEXT is not credible. Even if the School was treated differently, that treatment would not provide a basis to delay revocation because the evidence clearly shows the School is not meeting performance expectations.

71. Similarly, the School provided testimony from School Board Secretary Combs that the District desired to close the School to benefit another school, Lowcountry Acceleration Academy ("Lowcountry"). However, CAA witnesses could not even agree on how close Lowcountry is located in proximity to CAA, with Dr. Tucker testifying Lowcountry was ten miles away and Secretary Combs testifying it was within two miles. CAA witnesses also could not explain how closure of CAA would benefit Lowcountry as opposed to Learn4Life, another District school with the same mission located in the exact same area. Again, the School's argument is not credible. Even if it were, it would not provide a basis to delay revocation because the evidence clearly shows the School is not meeting performance expectations.

72. The School also argued that the District intended to close the School because of racial discrimination. This argument contradicts the School's position in Paragraph 68, above. Both Learn4Life and Lowcountry enroll more students of color than CAA based on State Department of Education 135-Day Enrollment data. In fact, 13 schools sponsored by the District have higher population of students of color by percentage than CAA. The School's argument that the District's decision to revoke its Charter based on racial discrimination is not credible.

73. The School received the Notice of Revocation on or about January 23, 2023, and the revocation is effective as of June 30, 2023. The School therefore received more than sixty days' notice prior to the revocation and revocation of the Charter is proper.

CONCLUSION

After careful consideration of the entire Record before it, the Board's final decision is that the School's Charter is revoked as of June 30, 2023. In accordance with its Contract, the Act, and the Injunction Order issued by the Administrative Law Court dated May 8, 2023, the School must comply with the District's Closure Protocol. The School is not authorized to expend any further funds on any activities other than completing the Closure Protocol.

The School may appeal this decision to the Administrative Law Court pursuant to S.C. Code Ann. § 59-40-110(J) and 59-40-90 within thirty (30) days of the date set forth below.

AND IT IS SO DECIDED.

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John S. Payne, Chairman

Columbia, South Carolina
May 25, 2023

EXHIBIT B

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.

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[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

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[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

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[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.

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[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

EXHIBIT C

Charleston Advancement Academy High School

Academic Calendar 2023-2024

July 2023

Su	M	Tu	W	Th	F	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

S: 21

August 2023

Su	M	Tu	W	Th	F	Sa
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27	28	29	30	31		

S:23 A: 7

September 2023

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S/A: 20

October 2023

Su	M	Tu	W	Th	F	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

S/A: 22

November 2023

Su	M	Tu	W	Th	F	Sa
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26	27	28	29	30		

S/A:19

December 2023

Su	M	Tu	W	Th	F	Sa
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31						

S/A:13

January 2024

Su	M	Tu	W	Th	F	Sa
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S/A: 21

February 2024

Su	M	Tu	W	Th	F	Sa
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11	12	13	14	15	16	17
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S/A:21

March 2024

Su	M	Tu	W	Th	F	Sa
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31						

S/A: 21

April 2024

Su	M	Tu	W	Th	F	Sa
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14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

S/A:17

May 2024

Su	M	Tu	W	Th	F	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

S/A: 22

June 2024

Su	M	Tu	W	Th	F	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

S: 20

Staff Work Days (S) = 240
Academic Days (A) = 183

- Summer Session Dates
- E-Learning Days for Students; Staff PD
- Start/End of Academic Year
- Progress Reports/Report Cards
- Weather Makeup Day. No School for students or staff/teachers unless needed
- Holiday - School & Offices Closed
- Staff/Teacher Planning - E-Learning for Students
- Graduation - E-Learning for Students
- Open Houses

Phone: (843) 494-5521

Website: www.caahighschool.org

July 10th, 2023: Start of Summer Session
August 17th, 2023: End of Summer Session
August 23rd, 2023: Start of Academic Year
May 31st, 2024: End of Academic Year
June 3rd, 2024: Start of Summer Session One

Q1 dates: 8/23/23 - 10/25/23
Q2 dates: 10/26/23 - 01/18/24
Q3 dates: 1/19/24 - 3/22/24
Q4 dates: 3/25/24 - 5/31/24

6/30/2024: End of 2023-2024 Professional Contracts

EXHIBIT D

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charleston Advancement Academy High Petitioner, v. South Carolina Public Charter School District, Respondent.	)	Docket No. 23-ALJ-30-0027-IJ **MEMORANDUM IN OPPOSITION TO PETITIONER'S MOTION TO STAY**

This matter is before the Administrative Law Court (ALC or the Court) pursuant to a Motion to Stay and Petition filed by Petitioner Charleston Advancement Academy High ("CAA") to stay the revocation proceedings revoking CAA's charter. Respondent South Carolina Public Charter School District ("District") by and through its undersigned counsel, respectfully requests the Court deny the Motion to Stay for the following reasons.

Introduction

CAA's 65-page Memorandum in Support of its Motion to Stay the revocation of its charter effective June 30, 2023, is symbolic of CAA's entire existence as a charter school in South Carolina.[1] During its turbulent history, CAA has refused to accept accountability for its own obvious failures, launched vicious, unsubstantiated personal attacks against private and public individuals, cast blame for their failures on others by misstating and omitting material facts, and

[1] CAA's Memorandum evokes the sentiments best described by Carl Sandburg, "If the facts are against you, argue the law. If the law is against you, argue the facts. If the law and the facts are against you, pound the table and yell like hell."

engaged in litigation and forum shopping maneuvers that have, thus far, been uniformly rejected by both state and federal courts.[2]

CAA's motion must be denied because it fails to show CAA has met its burden of demonstrating an unusual hardship—the applicable standard for a stay. In its 65-page quest to avoid discussing the systemic failures that have led to its revocation, CAA rehashes and embellishes its ongoing tale of conspiracy and intrigue as though writing a fictional novel, . The transparency of these deflective tactics is palpable[3]. The sole issue before the Court is whether CAA meets the statutory standard of unusual hardship which would necessitate a stay. It does not.[4]

As explained below, all revocations are difficult. However, this revocation does not create any *unusual hardship* on the CAA students or families. Rather, to the contrary, the facts demonstrate that allowing CAA to continue operating places CAA students in jeopardy of not being able to graduate as CAA's own data expert was forced to admit—on direct examination—that CAA student records have "tremendous deficiencies." (Exhibit E-Hrg. Trans.,

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[2] *See* Exhibit A: Orders—February 26, 2020 Order Denying CAA's Motion for TRO & Preliminary Injunction; March 16, 2020 Award of Arbitrator in favor of Acceleration Academies; *Acceleration Academies, LLC v. Charleston Acceleration Academy, Inc.*, 858 Fed. Appx. 606 (4th Cir. May 28, 2021) (affirming District Court judgment confirming arbitration award); November 3, 2021 Order Granting South Carolina Public Charter School District's Motion to Dismiss against CAA; and February 10, 2022 Order granting the District's Motion to Dismiss against CAA.

[3] CAA alleges it is vital that they must conduct discovery on these wild allegations. What CAA omits is that they have been in litigation for 4 years with the District and AA with opportunities to conduct discovery and, in fact, cross-examined Attorney Norton nearly 6 hours during the arbitration proceedings which included questions about their "silver bullet" 2019 email which Norton received but did not reply.

[4] To be sure, the terms "unusual" or "hardship" only appear in CAA's motion eight times, but the motion mentions counsel for the District a staggering two hundred thirty-six times. In its continuing endeavor to identify a "boogie-man", CAA has alleged charges of racism, corruption, illegal dealings and the list goes on against an ever-changing list of public and private individuals depending on the narrative at the time. None of these claims have been successful to date. This seems to comprise most of CAA's argument instead of the merits of whether they meet the statutory standard of unusual hardship.

Askew, 154:4-15). Further, and perhaps even more troubling, CAA student records have been modified by CAA employees a staggering 5,000 times in the last month alone, including changes from prior school years. Based on this testimony and the "Gordian knot" of CAA student records that have been altered, no student transcripts have been able to be verified for graduation for the Spring 2023 semester as of today. Further, this Court is well aware that CAA transferred $1 million dollars of public funds to its attorneys leading up to and during the hearing to enjoin CAA from disposing of its assets during the revocation proceedings. This Court is also aware that the CAA Board Chair transacted School banking activities from her personal mobile phone on a banking app attached to her personal banking accounts. (*See* May 9, 2023 ALC Order Granting Injunctive Relief to District).

Based on CAA's actions, or failure to act in accordance with its charter and in compliance with the District, CAA's charter has been revoked and based on the forthcoming reasons, supported in law, the Motion to Stay must be denied.

Background

CAA's Memorandum in Support of their Motion to Stay includes 45 pages of background in the form of a "Statement of the Case" and "Statement of Facts," with which the District generally disagrees.[5] Much of the memorandum also has very little or nothing to do with the current motion before the Court. For example, CAA speculates what it might find in discovery in the Federal

[5] Throughout the entire brief, CAA makes many untrue statements. One major "theme" CAA alludes to is an alleged conspiracy in 2019 which involves the District's counsel, a former District Superintendent, and the owners of Acceleration Academies ("AA"), all which are wholly false accusations and have no evidentiary support whatsoever. Another example of a false statement, is CAA's assertion that the District's counsel was called as a witness of AA and that he "testified in support of AA" and that he "testified against CAA." This could not be further from the truth. District counsel was subpoenaed to the arbitration and testified based on his work as legal counsel for the District. Neither party was awarded any damages at that arbitration. (Exhibit B – Subpoena of Norton).

Court litigation between these parties. The Federal Court has already declined to entertain these speculative and manufactured emergencies by finding that CAA failed to meet, not just one, but all of the elements, necessary to justify a TRO. *See Charleston Advancement Academy vs. SC Public District*, Civ. No. 23-cv-00964, Dkt. 23 (Text Order April 26, 2023) ("...the Court denies Plaintiffs' emergency motion for a temporary restraining order and preliminary injunction, as the Court finds that Plaintiffs have failed to make the requisite clear showing of any of the factors necessary to obtain such extraordinary relief.") On January 19, 2023, the District Board voted to provide notice of revocation to CAA. (Exhibit C – Notice of Deny Transfer and Revocation). CAA requested a hearing pursuant to the Charter Act. (Exhibit D – CAA Hearing Request). That hearing was held on May 11, 2023. (Exhibit E – Hrg. Trans.). The hearing proceeded on this date without objection by CAA. The District Board was represented by separate outside counsel, Todd Carroll of Womble Bond Dickinson. District staff was represented by Erik Norton. The District was allowed two hours to present evidence, and CAA was allowed five hours to present evidence. (Exhibit E - Hrg. Trans. 13:21-25). After the close of evidence, the District Board voted to revoke the charter of CAA effective June 30, 2023. (Exhibit E - Hrg. Trans. 272:1 – 273:1). Mr. Carroll requested that counsel for District Staff do the initial draft of the Final Decision and share it with CAA counsel prior to sending the draft to him. Prior to the Final Decision being prepared, CAA filed the Notice of Appeal, Motion for Stay, and Motion for Expedited Assignment in this case on May 12, 2023. The draft of the Final Decision was shared with CAA counsel on May 19, 2023, and they returned it to Mr. Carroll without any requested edits on May 22, 2023. (Exhibit F – Proposed Order Email). The Final Decision was signed by the Board Chair on May 25, 2023. (Exhibit G-Final Decision). CAA filed the instant Amended Notice of Appeal following the written

decision on June 2, 2023. CAA also filed a second Motion to Stay and Memorandum in Support on June 15, 2023 following the written decision.[6]

ARGUMENT

I. No unusual hardship exists to justify a stay.

Even though CAA submits a lengthy brief, only one page of it addresses the question of whether an unusual hardship exists. As explained below, it does not.

Section 59-40-110(J) of the Charter Act states:

> A decision to revoke or not to renew a charter school may be appealed to the Administrative Law Court pursuant to the provisions of Section 59-40-90. Upon appeal to the Administrative Law Court, there is no automatic stay of the revocation or nonrenewal decision. Pending 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.

Therefore, the decision to revoke by the District Board of Trustees becomes effective as of June 30, 2023, unless CAA can show this Court that some unusual hardship will exist from the statutory presumption that the revocation will be implemented while the appeal is pending.

This Court has previously found that, in order for the Court to grant a motion to stay, the charter school "must show a hardship that is distinct from the hardship generally or usually faced

---

[6] Prior to the hearing for the Motion to Stay, the parties conferred via phone conference with Chief Judge Anderson to discuss the need for an expedited hearing and the court's preferences prior to the hearing. The Court requested the parties bring a proposed order to the hearing, and did not require any additional motions and/or briefings; however, CAA filed their memorandum in support of their Motion to Stay and the District felt compelled to provide this response for the record.

by a school that closes due to a revocation of its charter." *See Quest Leadership Academy v. SC Pub. Ch. Sch. Dist.*, No. 19-ALJ-30-0190-AP (SCALC, July 25, 2019) (denying motion to stay revocation); *see also SC Calvert Academy vs. SC Pub. Ch. Sch. Dist.*, No. 17-ALJ-30-00075-AP (SCALC, May 25, 2017) (denying motion to stay revocation and applying definition that unusual hardship must mean something that is "excessive, unwarranted, atypical or unusual under the situation being addressed in the statute); *Lake City College Prep. Acad. v. SC Pub. Ch. Sch. Dist.*, No. 14-ALJ-30-0256-AP (SCALC, August 6, 2014) (denying motion to stay and citing *In re Frushour*, 433 F.3d 393, 399 (4th Cir. 1999).

CAA's argument that any kind of unusual hardship exists falls short. On pages 63-64 of its 65-page Memorandum, CAA finally addresses the unusual hardship standard. CAA admits in its Memorandum that it faces the same hardship of losing the school "[a]s with every charter school revocation..." (*See* CAA's Memo in Supp. p. 63). CAA's only arguments that its revocation is "distinctive" are:

> (1) CAA serves an at-risk population that might not re-enroll
>
> (2) CAA alleges a scheme involving the District's former Superintendent that left the District in August 2020 to redirect students from CAA to a different charter school in the District.

CAA's own court filings demonstrate the fallacy in its first argument. CAA is a school of choice. Specifically, CAA students have many more choices than the average South Carolina student which must attend the high school for which they are zoned. In affidavits submitted by CAA parents in federal court and included in the revocation hearing record as an exhibit by the District, the parents identify no less than six other alternative learning high schools available to CAA students. For example, two parents stated the following in affidavits:

> That I am aware of the existence of other alternative learning high schools in the Charleston County, Berkeley County and Dorchester County, South Carolina Area, which my child is eligible to attend based on residency specifically: Learn4Life Charleston, Lowcountry Acceleration Academy, Daniel Jenkins Academy, Septima P. Clark Corporate Academy, Greg Mathis Charter High School, and Turning Point Academy.

(Exhibit H –Aff. Lisa A. Keleher-Otto ¶ 12, Aff. Junelle Van Hanegeyn ¶ 10). After these affidavits were submitted, additional resources for CAA students also became available. For example, a local paper published an article in which, yet another charter school advised CAA parents it would be an option for CAA students to enroll after CAA closed. (Exhibit I – Newspaper Article). And these are just the specific alternative learning high schools available. This does not include other programming available within the traditional public schools that may not be considered an alternative learning high school. It is plain from the record that CAA students have more choices than most students in South Carolina for which high school they would like to attend, thus, losing CAA as a choice is not an unusual hardship.

In fact, the record shows CAA's immediate closure is justified both for taxpayers and students. This Court is already aware of the irregularities with CAA's financial practices, including the board chair transacting business for the public school from her personal cell phone and transferring $1,000,000 of public money to their lawyer's IOLTA accounts during the injunction hearing without advising either this Court or opposing counsel. (*See* May 9, 2023 ALC Order Granting Injunctive Relief to District). Further, CAA's own data expert admitted that CAA's PowerSchool records, which are the official student records of South Carolina students, suffers from "serious deficiencies." (Exhibit E – Hrg. Trans. 154:4-15). Maintaining student records is a core function of any charter school, and a material term of the charter. (Exhibit J – CAA Amended Charter). The serious deficiencies in CAA records have resulted in student diplomas and transcripts

being called into question. Currently, the District and State Department of Education do not know when or if any of the 29 students CAA is allowing to participate in the graduation ceremony on June 21 will be determined eligible for graduation by the District and the State Department of Education. PowerSchool records also show that CAA has made more than 5,000 changes to student records since May 2, 2023. Some of the data deficiencies that the District is attempting to verify include students showing more than 100 absences in a single class for which CAA has attempted to award credit, no statutorily required End-of-Course exam scores for some students, and changes in PowerSchool grades from years past and from grades earned in other schools. (Exhibit E – Hrg. Trans. 72:6-75:7). If these are not data deficiencies, then the students have not earned diplomas as CAA has claimed. Either way, CAA has failed its students in this most basic function of running a high school – maintaining a student's academic record and file.

Further, allowing CAA to continue to operate risks the waste, fraud, or abuse of taxpayer funds. CAA has exhibited a callous disregard for the safeguards necessary to protect taxpayer funds. (*See* May 9, 2023 ALC Order Granting Injunctive Relief to District). Moreover, the School has not taken its duties to comply seriously. The School did not timely provide the District access to Edgenuity data, which CAA was ordered to provide on June 12 but did not provide until June 19. CAA also failed to provide evidence that its board chair, Nadine Dief, had removed banking information from her personal phone by June 16. In fact, when the District's counsel asked CAA counsel to provide this evidence on June 19, he responded as follows:

> Additionally, I have emailed Ms. Deif to seek confirmation that she has completed the mobile banking item. Ms. Deif is currently traveling out of the country, so I am not sure when she will respond, but I will confirm as soon as she does.

(Exhibit K – Emails). Incredibly, despite the Order of this Court, CAA allowed Ms. Deif to leave the country without confirmation that she had removed access to almost $2 million in taxpayer

funds from her personal banking app on her mobile phone that she can access virtually anywhere in the world. CAA also has been unwilling to get this information from its own bank despite the request from District's counsel that it do so. (*See* Exhibit K).

As for the second argument, CAA's conspiracy theory that the revocation is motivated by the desire to redirect its students to another charter school, Lowcountry Acceleration Academy, ("LAA") is absurd. Neither the District, employees, nor non-employees of the District, could systematically redirect CAA students to any other alternative high school because each student has the choice of which school to attend available to them. In fact, LAA is not even the only charter school sponsored by the District that would be a choice for CAA students. Learn4Life is named by the CAA parents in their affidavits as a potential school choice for their students, and it is a school that was approved to open by the District in the same year as LAA. CAA omits this salient – and damning – fact from its 65-page briefing. It would be illogical to conspire with LAA while at the same time opening another school to compete with LAA. Moreover, the former Superintendent that supposedly participated in the plot resigned from the District in August 2020, almost three years ago. CAA admits it has a cordial and professional relationship with the current Superintendent, which has led the District since August 2020. (*See* CAA's Memo in Supp. p. 18). Legal counsel for the District does not have the ability to redirect students to another school either in or out of the District, and this is particularly true where the School admits the current Superintendent is not part of any alleged conspiracy. Further, only three current Board members serve on the District Board that also served in 2019, and one of them abstained from voting on the revocation. CAA conjured a conspiracy that could not possibly exist in 2023 by fantasizing about an email written in 2019 without any factual support whatsoever.

In any event, as other schools before it, CAA's arguments fail to provide any support that demonstrates an unusual hardship to the school in order for this Court to grant a motion to stay the revocation process. For example, in the *Quest* case, the school argued that the poverty rates of the school, the alleged racial bias of the District, and timing over the summer made the revocation distinct and created an unusual hardship on the school. Similarly, a federal court civil action was pending at the time of the hearing in the *Quest* case on the motion to stay. This Court properly found that the school in the *Quest* case failed to demonstrate an unusual hardship and denied the motion to stay. Here, the case presents a much stronger case than in *Quest* to close the school and revoke the charter immediately because of the financial irregularities and data deficiencies noted by CAA's own expert at the revocation hearing. Therefore, the Motion to Stay must be denied.

II. Injunction is not the proper standard.

As explained above, the General Assembly expressly provided the proper procedure for staying the execution of a Final Decision for revocation of a school charter pending appeal under the Charter Act, which does not include an injunction. Moreover, even if an injunction was the proper standard, CAA failed to properly move for an injunction in this instance. However, even if the injunction standard did apply and CAA properly moved for an injunction, even a cursory review of the record demonstrates the elements of an injunction are not met. *See AlG Holdings, LLC v. Dunn*, 382 S.C. 43, 50-51, 674 S.E.2d 505, 508 (Ct. App. 2009) (holding that following must be established for an injunction: "(1) [plaintiff] would suffer irreparable harm if the injunction is not granted; (2) [plaintiff] will likely succeed on the merits of the litigation, and (3) there is an inadequate remedy at law.").

First, irreparable harm does not exist here. For students, CAA is one of many choices available to them in South Carolina. For the teachers and administrators, they have been on notice

that revocation was a possibility since January, providing ample time to make contingent plans and find other employment at either another alternative high school or traditional high school. Moreover, the board members of CAA may exercise their rights through the appeal process, leaving them recourse to restart the school if they are successful on the merits, thus any harm that might occur is not irreparable.

Second, CAA is not likely to succeed on the merits. There is no evidence to demonstrate that CAA has complied with its own charter or is meeting the criteria that is required of the school to continue operating. District Deputy Superintendent John R. Payne meticulously testified how CAA had not met any of its charter goals, including its critical goals of a 65 percent twelfth grade graduating cohort and 40 percent of its students earning at least 6 credits per year. (Exhibit J, p. 46.) The 2022 graduation rate achieved by CAA based on District calculations was 8 percent, and CAA's own rebuttal countered that it was 12.64 percent, still far below the required 65 percent. (Exhibit L – CAA Rebuttal, p. 4). CAA's data analyst manipulated the data by removing transfers and making other adjustments, but still could not work out a way to calculate CAA's graduation rate above 21 percent. (Exhibit M – DataNgine Consulting). CAA did not bother to refute testimony that CAA did not meet the credit attainment goal, and it readily admitted the other goals in the charter were never developed as they were supposed to be.

Third, CAA has an adequate remedy at law – the process provided by the Legislature in the Charter Act. The process for a stay requires CAA to show it will suffer an unusual hardship, in order to stay the revocation process, which it has utterly failed to do.

As such, while an injunction is not the proper standard to stay a revocation of a school charter, even if the Court were to consider an injunction CAA has failed to establish the required elements.

CONCLUSION

Based on the foregoing, the District respectfully requests the Court deny CAA's Motion to Stay the revocation and order the closure procedure to be carried out.

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EXHIBIT E

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Reply to: Columbia

July 10, 2023

Stephanie Perez
S.C. Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, SC 29201

RE: South Carolina Public Charter School District vs. Charleston Advancement Academy High School
Docket No. 23-ALJ-30-0027-IJ

Dear Ms. Perez:

Please find enclosed a Petitioner's Motion to Enforce Order and for Sanctions, for filing in the above-referenced matter.

Sincerely,

Rachel E. Lee

REL/dlf
Enclosure

cc: Erik Norton (via email only)
Tyler Turner (via email only)
Edward Pritchard (via email only)
Luke Rankin (via email only)
Marvin R. Pendarvis (via email only)

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

South Carolina Public Charter School District, Petitioner, v. Charleston Advancement Academy High School, Respondent.	)	**MOTION TO ENFORCE ORDER AND FOR SANCTIONS** Docket No. 23-ALJ-30-0027-IJ

Petitioner South Carolina Public Charter School District ("District") hereby moves pursuant to Rule 23, SCALC and S.C. Code Ann. § 1-23-630, for an order compelling Respondent Charleston Advancement Academy High School ("CAA") to comply with this Court's Order dated June 12, 2023 ("Second Injunction Order"), extending the relief provided in this Courts Order dated May 9, 2023 ("Injunction Order"), providing additional injunctive relief to avoid future need for court intervention, and sanctioning CAA and/or its counsel for its repeated failure to comply.

This is the third time the District has had to seek the Court's assistance to enforce compliance with the agreement CAA made on the record on April 24, 2023. The first time the District sought the Court's involvement after it learned through bank records that CAA had transferred $1 million of public state funds to its counsel's IOLTA accounts during and just prior to the April 24 hearing without informing either District counsel or this Court. As a result, on May 9, 2023, this Court entered the Injunction Order granting the District's Petition for Injunction pursuant to the terms of the agreement on the record at hearings on April 24, 2023, and May 5, 2023.

The second time the District sought assistance from the Court occurred when CAA simply failed to provide the information required by the Injunction Order. The Injunction Order required CAA to perform certain tasks in order to prepare for the possibility that the School's charter would be revoked. However, CAA failed to comply with the Injunction Order until after the District filed a motion seeking to enforce it, and this Court entered the Second Injunction Order establishing specific tasks and deadlines to be performed by June 30, 2023.

This time, CAA provided some, but not all, of the required information by June 30. CAA's decision not to provide all the information was purposeful. The information CAA failed to provide, such as student records, banking information, corporate records, contracts and the like, is detailed in Exhibit A, the Affidavit of John R. Payne, Deputy Superintendent for Sponsor Performance of the District. Prior to filing this motion, the District's counsel consulted with counsel for CAA regarding the failure to comply. However, CAA's counsel made clear CAA had chosen not to comply. Specifically, counsel for CAA, Tyler Turner, stated, "Given the current legal status of this matter, further efforts to implement closure protocol are not appropriate at this time." Presumably, CAA counsel was referring to the Emergency Temporary Stay CAA sought and received from the Court of Appeals on June 30, 2023. Of note, however, CAA did not appeal or seek a stay regarding the Second Injunction Order. Instead, it appealed and sought a stay of this Court's Order denying CAA's Motion to Stay. The Temporary Stay specifically noted its intent to maintain the "status quo." Therefore, the Court of Appeals Temporary Stay has no bearing on CAA's requirement to comply with this Court's Second Injunction Order, which was intended to protect student records and taxpayer assets during revocation as well as make preparation for the possibility of CAA's closure.

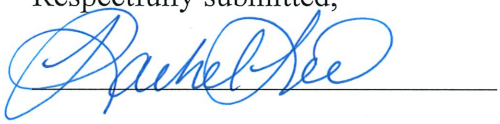
It is past time for CAA's wasteful and frivolous litigation tactics to stop. Not including

employment matters, this is at least the eighth different litigation CAA has been a party to since 2020. CAA has not yet been successful in any of them other than some interim injunctive relief it received against its management company of questionable value and necessity. CAA has appealed four of the decisions, and has litigated all of these matters using taxpayer funds that were supposed to be used to educate at-risk students. It also used taxpayer funds to pay almost $1 million in judgments to its education management company when it wrongfully terminated that contract. Even worse, the arbitrator found that CAA did not terminate the education management contract in the way "least disruptive to students." Since then, CAA has filed four lawsuits, three of which were dismissed at the pleading stage, one by this Court and another by the Court of Common Pleas. Another was dismissed by the United States District Court in an Order based on fraudulent joinder calling one of CAA's arguments "laughable." The latest example was CAA's request for an injunction United States District Court which was denied in a text order finding none of the elements for injunction were met, including no likelihood of success on the merits. At the hearing, the United States District Judge specifically noted that CAA was "playing games" by trying to hold the District in default.

CAA and its lawyers intentionally did not comply with the Second Injunction Order because they unilaterally decided it was "not appropriate." This is yet another example of the contempt that CAA has shown for its legal, fiduciary, and educational duties by playing games with taxpayer money, students' educations, and the courts. The District requests this Court put an end to it by entering an order requiring CAA to fully comply with the Second Injunction Order by July 14, 2023. The District further requests that the order extend the Injunction Order, which expired on June 30, 2023, until the school is required to stop operating or the appeals are resolved in CAA's favor. The District also requests the order require CAA to make any school records

requested by the District to fulfill its statutory duties, including the Closure Protocol, available within five (5) business days of the written request submitted by email to its school leader, Gary Burgess, its Board Chair, Nadine Dief, and its counsel, Tyler Turner and Edward Pritchard. The District requests that the order specifically note that failure to comply with this request may result in punishment of contempt and also provide that the order shall remain in effect as long as the school remains in operation while any appeal of the revocation remains pending. Finally, the District requests that this Court sanction CAA and/or its lawyers and any others for the failed compliance as it deems necessary to ensure future compliance and deter others from similar behavior.

Respectfully submitted,



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Attorneys for Petitioner South Carolina
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Chapin, South Carolina
July 10, 2023.

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

South Carolina Public Charter School District, Petitioner, v. Charleston Advancement Academy High School, Respondent.	)	DOCKET NO. 23-ALJ-30-0027-IJ **AFFIDAVIT OF JOHN R. PAYNE**

The undersigned, John R. Payne, being duly sworn, hereby deposes and says:

1. I am over eighteen years of age, am competent to testify in this matter, have personal and direct knowledge of the facts herein, and if called upon as a witness, could testify completely thereto.

2. I am Deputy Superintendent for Sponsor Performance of the South Carolina Public Charter School District ("SCPCSD").

3. As part of my role with the SCPCSD, I have been identified as the District contact for implementation of the Closure Protocol related to the revocation of Charleston Advancement Academy ("CAA").

4. In my role as the District contact, I requested that CAA provide all information due to the SCPCSD pursuant to the Closure Protocol and the Administrative Law Court Order dated June 12, 2023 ("Order") in a secure Google Drive folder.

5. CAA did not provide any information in the Google folder as requested. However, CAA did provide some of the required information by email to me or others.

6. All the information the Order required CAA to provide to the SCPCSD was due on or before June 30, 2023.

7. As of the execution of this Affidavit, CAA has not provided the following information to me or, to my knowledge, anyone else at the SCPCSD as required by the Order:

a. Line 47: all corporate records related to Loans, bonds mortgages and other financing, Contracts, Leases, Assets and asset distribution, Grants, Governance (minutes, bylaws, policies), Employees (background checks, personnel files), Accounting/Audit, taxes and tax status, Personnel, Employee benefit programs and benefits.

b. Line 57: evidence that CAA has removed access to school bank accounts of any personal devices of board members/administrators and changed mailing address for all bank statements to school address.

c. Line 58: evidence that CAA has maintained all existing insurance coverage and renewed any coverage expiring on or before August 1, 2023.

d. Line 89, 90, 91: hard copy student records and a record of the locked cabinet in which the hard copy student records are kept.

8. Further, CAA has failed to provide direct access to its Edgenuity software program as required by the Order. While CAA has provided access to some functions of Edgenuity, it has not provided access to all Edgenuity functions. Access to the restricted Edgenuity functionality could assist the District in verifying the graduation eligibility for certain CAA students CAA has claimed were eligible to graduate on or before June 30, 2023.

9. The information CAA has not provided would help the SCPCSD prepare for the eventuality that CAA closes in the upcoming school year. The failure of CAA to provide the information required risks the loss or misreporting of student records and the waste, abuse and/or fraudulent spending of taxpayer funds.

I declare that, to the best of my knowledge and belief, the information herein is true, correct, and complete.

Dated: July 10, 2023.

John R. Payne
Deputy Superintendent, Sponsor Performance
South Carolina Public Charter School District

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Subscribed and sworn to me this 10th day of January 2023, by John R. Payne, who personally appeared before me.

Notary Public, State of South Carolina

My Commission Expires 10/15/2024

RECEIVED
Jul 10 2023
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
Administrative Law Court Judge

23-ALJ-30-0163-AP

Appellate Case No. 2023-001047

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

v.

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

PROOF OF SERVICE

I certify that a true copy of the Notice of Appeal in this case has been served on the following, this 10th day of July, 2023, by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System pursuant to Rule 262 of the South Carolina Appellate Court Rules and the May 6, 2022 Order of the South Carolina Supreme Court (Appellate Case No. 2020-000447).

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Respectfully submitted,

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