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**SC Court of Appeals**

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

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**APPEAL FROM THE ADMINISTRATIVE LAW COURT**

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

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**Appellate Case No. 2023-001047**

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

v.

South Carolina Public Charter School District Board of Trustees ..... Respondents.

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**MEMORANDUM OF APPEALABILITY**

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**STATEMENT OF THE CASE**

This matter arises out of an appeal of the May 11, 2023, decision by the South Carolina Public Charter School District (the "District") to uphold its January 19, 2023, revocation of the charter of Appellant, Charleston Advancement Academy High School, ("CAA" or "the School") effective June 30, 2023. On June 2, 2023, CAA filed an appeal with the South Carolina Administrative Law Court ("ALC") seeking to have the District's decision to revoke its charter<sup>1</sup>. On June 15, 2023, CAA filed a Motion for a Stay together with a memorandum in support thereof. A hearing on the Motion was held by the ALC on June 21, 2023. On June 21, 2023, prior to the hearing CAA filed an Amended Motion for a Temporary Injunction and/or Preliminary Injunction and/or a Stay together with a memorandum in support of thereof seeking to enjoin and/or to stay

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<sup>1</sup> Concurrent with the filing of its appeal CAA filed a Motion for an Expedited Hearing for a Stay.

the “District” from revoking CAA’s charter.

By Order dated June 29, 2023, the ALC denied CAA’s Amended Motion for a Temporary Injunction and/or Preliminary Injunction and/or a Stay. *Order Denying Motion* dated June 29, 2023. On June 29, 2023, CAA appealed to this Court and concurrent with the filing of the Notice of Appeal CAA filed an Emergency Motion for Temporary Restraining Order, Preliminary Injunction, and/or Stay. *Notice of Appeal and Emergency Motion* dated June 29, 2023. By order dated June 30, 2023, this Court stayed the revocation of CAA’s charter and instructed CAA and the District to file memoranda within ten (10) dys of the date of the order addressing appealability. Order dated June 30, 2023. CAA hereby submits this memorandum as directed by this Court in its June 30, 2023, order. For the reasons set forth hereinbelow, the ALC’s order denying CAA’s Amended Motion for a Temporary Injunction and/or Preliminary Injunction and/or a Stay is clearly immediately appealable.

### **Facts**

CAA is a South Carolina nonprofit corporation and a public charter school<sup>2</sup>. (CAA Exh. 01; CAA Exh. 02.). CAA is an Alternative Education Campus (“AEC”) as defined by S.C. Code Ann. § 59-40-111 of the Charter Schools Act (hereinafter referred to as the “Act”) (CAA Exh. 05, pp. 2, 11, 13, 42; Payne Tr. 97.). CAA serves a unique group of high school students who have either previously dropped out of school or are at risk of dropping out of school. (CAA Exh. 05, pp. 3, 13; Payne Tr. 97; Combs Tr. 206.). Because of CAA’s unique purpose, CAA’s student population is completely different from almost every other high school in South Carolina. (CAA Exh. 05, pp. 3, 13; Payne Tr. 105-06.). CAA serves a student population which includes students who have their own children, who have suffered physical and emotional abuse, who have been affiliated with gangs, who are homeless, who have substance abuse issues, who have full-time jobs, and who have been out of school for several months or years and enroll at CAA several

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<sup>2</sup> For a further discussion of the facts see the Final Briefs filed in Appeal No. 2021- 001414 and 2022 – 000289.

academic years behind their peers. (Tr. 23; Tucker Tr. 183; Combs Tr. 206-207.). To serve CAA's unique at-risk students, CAA offers a year-round schedule, offers continuous enrollment throughout the year, has two campuses, has extended school hours to accommodate students' work and family responsibilities, offers three different instructional platforms, employs 100% certified teachers, and has a team of student advocates who support students' social and academic growth. (CAA Exh. 05, pp. 2, 24, 28, 53, Payne Tr. 92-93; Combs Tr. 207.). Most of CAA's students are minorities and come from impoverished households. (District Exh. 10, pp 1-2; Payne Tr. 97.).

CAA's mission is to provide a comprehensive education to its at-risk students which leads to students' attainment of a diploma, acceptance to college, or pursuit of a career, and culminates in each student having a positive impact in their community. (CAA Exh. 05, pp. 2, 4; District Exh. 10, p. 1; Payne Tr. 101; Tucker Tr. 184.). CAA has completed four school years and has led approximately two hundred at-risk students to the attainment of a high school diploma, thereby fulfilling its mission as an AEC charter school under the Act. (CAA Exh. 05, pp. 2, 4; CAA Exh. 37; Tucker Tr. 184; Combs Tr. 208.). CAA currently enrolls approximately four hundred at-risk students who have either previously dropped out of school or are at-risk of dropping out of school, many of whom are now on track to attain a high school diploma before reaching the age of twenty-one. (Thom Tr. 137; Combs Tr. 208.). CAA anticipates that twenty (20) or more at-risk students will graduate from CAA in June 2023

The District was established by the Act, S.C. Code Ann. § 59-40-220(A), as a public body and a statewide sponsor of charter schools. (CAA Exh. 01.) The District Board members are appointed by the Governor, the Speaker of the House of Representatives, and the President of the Senate of the State of South Carolina. (CAA Exh. 01.) The District may contract, sue, and be sued. (CAA Exh. 01.)

The Act includes requirements regarding the District's evaluation of AEC's (S.C. Code Ann. § 59-40-111(F)), the District's duty to utilize corrective actions, sanctions short of revocation,

and corrective action plans (S.C. Code Ann. § 59-40-55(B)(8)), the District's obligation to offer charter schools procedures set forth in District policies (S.C. Code Ann. § 59-40-60)(B)), the District's duty to comply with the South Carolina Freedom of Information Act (S.C. Code Ann. § 59-40-230(E)(11)), and the South Carolina Constitution's applicability to the Act and the District (S.C. Code Ann. § 59-40-240). (CAA Exh. 01.). Erik T. Norton, Esq., has served as the District's outside general legal counsel since 2013. (CAA Exh. 25, p. 3; CAA Exh. 28; Thom Tr. 148.)

CAA submitted a charter application to the District, which the District approved on May 20, 2017. (CAA Exh. 05; CAA Exh. 06; p. 1.). CAA opened its school at the beginning of the 2018-2019 school year. (CAA Exh. 06, p. 2.). When CAA opened, AA served as CAA's Educational Management Organization ("EMO"). (Combs Tr. 210.). CAA contracted with AA to provide management services to CAA, and AA charged CAA eighty-five percent (85%) of CAA's revenue, which the District approved. (Combs Tr. 210.). When CAA opened and worked with AA, CAA had a good relationship with both the District and AA. (Combs Tr. 211.).

In 2019, CAA began "questioning the 85 percent share with Acceleration Academies" and where the money was going. (Combs Tr. 211.). The CAA Board began requesting information and receipts from AA, but never got the information requested. (Combs Tr. 211.).

On October 30, 2019, CAA received a letter from Dr. Mary Thornley, the President of Trident Technical College ("TTC"), CAA's landlord, which alerted CAA to two dozen safety violations that occurred on CAA's campus, including many crimes and arrests. (CAA Exh. 20 pp. 53-55; Combs Tr. 212-214.). In her letter, Dr. Thornley expressed her support of CAA's mission, but explained that if a significant change did not occur, TTC would have to cancel CAA's lease at TTC. (CAA Exh. 20 pp. 53-55; Combs Tr. 212-214.). AA was responsible for managing CAA's on-campus operations at that time, and AA failed to report the safety violations to the CAA Board. (Combs Tr. 212-214.). Because of the student safety issues and AA's failure to report them to the CAA Board, on November 1, 2019, CAA terminated its contract with AA immediately. (Combs

Tr. 212-214.). On November 4, 2019, AA filed an arbitration claim against CAA claiming that CAA had no right to terminate the agreement immediately and that AA was entitled to payment from CAA through April 22, 2020, which amounted to approximately one million additional dollars that AA, and its founders Joseph Wise and David Sundstrom, were seeking from CAA. (CAA Exh. 29; Combs Tr. 219-220.).

Section 4.6(O) of CAA's charter contract with the District allows CAA to terminate its EMO for nonperformance immediately when student safety and health are a concern. (CAA Exh. 06; p. 8; Combs Tr. 214.). In addition to notifying AA of CAA's intent to immediately terminate the contract between them, CAA submitted a charter amendment request to the District seeking to remove AA from its charter. (Combs Tr. 217-218.). The District scheduled CAA's request to remove AA from its charter application to be heard by the District Board at its November 14, 2019, meeting. (CAA Exh. 25, pp. 1-2; Combs Tr. 217-218.). CAA's termination of AA and proposed removal of AA from CAA's charter would have immediately cut off the flow of CAA's public funds to AA and in turn its founders and principals, Wise and Sundstrom. (Combs Tr. 218-220.).

Unbeknownst to CAA at the time and for several years thereafter, in the days leading up to the District Board's meeting on November 14, 2019, Wise and Sundstrom, the District's then-Superintendent, Elliott Smalley, and Norton, were secretly conspiring to enrich AA via the District and a new AA charter school and to destroy CAA. (CAA Exh. 20, pp. 57-58; Combs Tr. 220-222, 228-229, 238.). In an email between Wise, Sundstrom, Smalley, and Norton dated November 12, 2019, with the subject "Attorney-Client Privileged – CAA," Wise immediately made clear to Smalley, Sundstrom, and Norton that the email should be protected from disclosure to others.<sup>3</sup> (CAA Exh. 20, p. 57.). Wise then confirmed that he had been speaking with Smalley on the

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<sup>3</sup> This, of course, begs an important question: why would Wise and Sundstrom believe that an email between them, the founders, and principals of AA, and the Superintendent and General Counsel of the District be subject to attorney-client privilege? Is there an attorney-client relationship between them? If so, what for and does that relationship present a conflict of interest? Sundstrom is an attorney and should know when the attorney-client privilege applies. These questions are likely never to be answered if this Court's motion stay does not remain in place.

telephone about their plans. (CAA Exh. 20, p. 57.). Next, Wise laid out a plan for AA to continue being paid by CAA and issued a directive for Sundstrom to confer with Norton to “add[] another proposal to present to you and your board on Thursday” November 14, 2019, that would involve AA continuing to work at and be paid by CAA after November 14, 2019. (CAA Exh. 20, p. 58.) Wise then presented their ultimate goal: “*We will get well-prepared to present a proposal to be considered for a fast-track charter approval consideration so we can get ready to receive kids and staff when the CAA plan implodes.*” (CAA Exh. 20, p. 58; Combs Tr. 221.).

Thus, two days before CAA’s request to have the District Board remove AA from CAA’s charter, Wise, Sundstrom, Smalley, and Norton were secretly planning for AA to continue being paid by CAA against CAA’s will beyond November 14, 2019, while AA simultaneously fast-track opened a new AA charter school under the District’s sponsorship to steal CAA’s students and staff. (CAA Exh. 20, pp. 57-58; Combs Tr. 220-222, 238.). The implicit significance of their plan is that public dollars would follow CAA’s students from CAA to AA’s new charter school. (Thom Tr. 136.). Based on the State funding formula and the number and weightings of CAA’s students, CAA currently receives over five million dollars (\$5,000,000.00) annually in revenue, which could be redirected to AA’s new school. (Thom Tr. 136-137.). Therefore, over the term of a 10-year charter, CAA’s current student population could generate over fifty million dollars (\$50,000,000.00) in revenue for AA’s new school. (Thom Tr. 138.). As explained more fully below, AA, founded by Wise and Sundstrom, would be entitled to eighty-five percent (85%) of the revenue generated at AA’s new school, designed by Wise, Sundstrom, Smalley, and Norton to steal CAA’s students. (CAA Exh. 31, p. 56; CAA Exh. 20, p. 58; Thom Tr. 148; Combs Tr. 234.)

CAA knew nothing about the secret relationship and conspiracy between Wise, Sundstrom, Smalley, and Norton when CAA arrived to present its charter amendment request to the District Board on November 14, 2019. (CAA Exh. 20, pp. 57-58; CAA Exh. 25 pp 1-2; Combs Tr. 220-221; 228-229.). During the meeting on November 14, 2019, Smalley sat with the District Board as

the District Superintendent, and Norton served as the District Board's legal counsel. (CAA Exh. 25, pp. 3-6.). When it was CAA's turn to present its charter amendment request to remove AA, CAA was surprised to see the District give representatives of AA, including Sundstrom, an equal opportunity to present a proposal to the District Board, even though the District had no formal relationship with AA, a private, for-profit, out-of-state, Chicago-based EMO, and CAA was even more shocked when the District ordered CAA to "maintain the status quo," which meant that CAA could not remove AA from its charter and that CAA was required to continue paying AA to manage its campus against its will. (CAA Exh. 25, p. 3-6; Thom Tr. 139; Combs Tr. 218-220.). During the meeting, the District expressed no concerns about the two dozen safety violations and crimes described in Dr. Mary Thornley's letter or TTC's threat to cancel CAA's lease, all of which occurred while AA was managing CAA's operations. (CAA Exh. 20, pp. 53-55; Combs Tr. 212-214.). CAA has since learned that the District Board meeting on November 14, 2019, went exactly as Wise, Sundstrom, Smalley, and Norton planned two days prior. (CAA Exh. 20, p. 58.).

In AA's North Carolina arbitration claim against CAA, AA sought approximately One Million Dollars (\$1,000,000.00) from CAA in connection with CAA's attempt to immediately terminate AA. (CAA Exh. 29; Combs Tr. 219-220.). The arbitration was scheduled to be heard in early 2020. (CAA Exh. 29.) In December 2019, Norton, perhaps in coordination with Smalley, informed CAA that the District would be withholding CAA's monthly funding so that it would be available to pay AA at the upcoming arbitration. (CAA Exh. 24; Combs Tr. 238.). Norton's withholding of CAA's state funding violated S.C. Code Ann. § 59-40-140(D), which requires a sponsor to distribute funding to a charter school within ten business days of the sponsor's receipt of such funds. (CAA Exh. 01; CAA Exh. 24; Combs Tr. 238.). CAA contacted the State Department of Education ("SDE") to report Norton's illegal withholding of CAA's funding for AA's benefit, and the SDE threatened to fine the District for withholding CAA's. (CAA Exh. 01; CAA Exh. 24.) Only after the SDE threatened to fine the District did Norton relent and release

CAA's funding as required by law. (CAA Exh. 01; CAA Exh. 24.).

In March 2020, a North Carolina arbitrator ordered CAA to pay AA \$859,142.41 in South Carolina taxpayer funds for the time AA continued working at CAA against CAA's will based on the District Board's November 14, 2019 "maintain the status quo" directive. (CAA Exh. 29; Combs Tr. 218-220.). The District's "maintain the status quo" directive was based on a proposal presented by AA on November 14, 2019, as secretly planned in writing by Wise, Sundstrom, Smalley, and Norton on November 12, 2019. (CAA Exh. 20, p. 58; Combs Tr. 218-220.). CAA filed legal action against the District related to its "maintain the status quo" directive. (CAA Exh. 22.). CAA's lawsuit against the District is currently pending before this Court<sup>4</sup>. (CAA Exh. 22.)

In early 2020, Amy Mims submitted a charter application to the District to fast track open a new AA charter school in the fall of 2020, as planned by Wise, Sundstrom, Smalley, and Norton. (CAA Exh. 31, pp. 1-3, 42; CAA Exh. 20, p. 58; Thom Tr. 144; Combs Tr. 220-221, 231.). Mims represented in LAA's charter application that she served in the capacity of "Founding Committee Chairperson" of LAA. (CAA Exh. 31, p. 2-3; Thom Tr. 144; Combs Tr. 231.). Pursuant to § 59-40-40(7) and § 59-40-60(E) of the Act, the LAA charter committee that Ms. Mims chaired was "the governing body" of LAA and had the power to establish LAA's budget and "contract for services" with entities, such as LAA's EMO, AA. (CAA Exh. 01.). LAA's charter application states that "[t]he Chairperson of the Founding Committee became aware of Acceleration Academies through their national presence and successful programming for disengaged youth." (CAA Exh. 31, p. 56.). Mims, however, had a pre-existing financial relationship with Wise and Sundstrom in Chicago and was previously employed by Atlantic Research Partners, another Wise and Sundstrom entity, before she became the LAA Founding Committee Chair, as raised by District Trustee Mosteller. (Tr. 247.). The new AA charter school was initially named "Acceleration Education Academy," but subsequently changed its name to "Lowcountry

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<sup>4</sup> Appeal No. 2021- 001414 and 2022 – 000289.

Acceleration Academy” (“LAA.”) (CAA Exh. 31; Thom Tr. 143.).

LAA’s charter application stated that LAA would be an AEC located in North Charleston serving “students who have dropped out or who are at risk of dropping out of school” in grades 9-12. (CAA Exh. 31, pp. 3, 6, 8; Thom Tr. 145; Combs Tr. 233.). In other words, LAA was proposing to do exactly what CAA does in the same location as CAA, perfectly positioned to steal CAA’s students and the public funds that follow them, just as secretly planned by Wise, Sundstrom, Smalley, and Norton. (CAA Exh. 31, pp. 3, 6, 8; CAA Exh. 20, p. 58; Combs Tr. 220-221; 230-233; 238.). However, there was one significant difference between LAA’s and CAA’s operational plans moving forward: LAA’s charter application stated that “85% [of LAA’s revenue] will go to Acceleration Academies.” (CAA Exh. 31, p. 56; Thom Tr. 148; Combs Tr. 234.). Meanwhile, CAA was seeking to terminate AA immediately and cut off the flow of public funds to it. (CAA Exh. 25, p. 1-6.).

The District Board approved LAA’s fast track charter application in the spring of 2020. (CAA Exh. 31; Combs Tr. 231.) Soon thereafter, the SDE prohibited the District from allowing the unprecedented fast track opening of LAA in the fall of 2020, and as a result, LAA’s opening was pushed back to the fall of 2021. (CAA Exh. 31, p. 103.). A few months after the District approved LAA’s charter application, Mims left her position as “Founding Committee Chairperson” of the LAA Board and accepted employment directly with AA as its “Executive Director of Product Development and Partner Success,” likely in violation of the South Carolina Ethics Reform Act, S.C. Code Ann. § 8-13-700 et seq. (CAA Exh. 20, p. 92; Combs Tr. 232-233; Tr. 247.). In sum, Mims was being paid by Wise, Sundstrom, and/or their entities, at a minimum, both before and after Mims submitted LAA’s charter application. (CAA Exh. 20, p. 92; Combs Tr. 232-233.)

In March 2020, AA was still haphazardly managing CAA’s campus against CAA’s will pursuant to the District’s November 14, 2019, “maintain the status quo” directive. (CAA Exh. 20,

p. 58; CAA Exh. 31; Combs Tr. 220-221; 238.). When COVID arrived in March 2020, AA shut down CAA's technology programs completely so that CAA could not operate its educational programs. (CAA Exh. 28; Combs Tr. 234-235.).

CAA filed legal claims against AA seeking, among other things, injunctive relief so that CAA could utilize its technology programs to educate its students during the pandemic.<sup>5</sup> In response, AA filed counterclaims against CAA seeking more public funds from CAA. (CAA Exh. 28.). The dispute between CAA and AA resulted in a second North Carolina arbitration which took place in March 2022. (CAA Exh. 28.) During the North Carolina arbitration, Sundstrom, who served as legal counsel for AA, called the Norton, as a witness for AA. (CAA Exh. 28; Combs Tr. 235.). Norton appeared and testified in support of AA, a private, for-profit, out-of-state EMO, whose founders he was conspiring with to set up a new AA school to steal CAA's staff, students, and funds, against a public school which the District sponsors<sup>6</sup>. (CAA Exh. 28; CAA Exh. 20, pp. 57-58; Combs Tr. 220-221, 238).

The District's current Superintendent, Chris Neeley, and CAA have enjoyed a cordial and professional relationship. (CAA Exh. 07; CAA Exh. 08; District Exh. 10, p. 40-41; Payne Tr. 91-92, 106; Combs Tr. 246.). Neeley performed the District's most recent annual evaluation of CAA in June 2022 wherein he correctly noted that CAA was compliant with teacher certification requirements, demographic requirements, sustainable fund balance and cash on hand standards, and special education requirements. (CAA Exh. 07; Payne Tr. 90-92.). It appeared to CAA that some of the information included in the annual evaluation was incomplete or inaccurate. (CAA. Exh. 08; Payne Tr. 91-92.) For example, the annual evaluation did not mention that CAA is an AEC, Neeley did not evaluate CAA's performance as set forth in § 59-40-111(F), and some of the

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<sup>5</sup> The Circuit Court granted CAA's request for a TRO against AA and required that AA "Turn all of the school programs back on, so that the students can access them." Case No. 2020-CP-1001762, Order filed April 9, 2020.

<sup>6</sup> Norton claims to have been subpoenaed. It is not known whether the subpoena was validly issued, enforceable or properly domesticated in South Carolina.

graduation data, academic data, and student expenditure data in the evaluation was inaccurate. (CAA Exh. 07; CAA Exh. 08; Payne Tr. 91-92; Askew Tr. 165-167; Tucker Tr. 188.). Nevertheless, Neeley concluded the June 2022 annual evaluation of CAA with the following positive words about CAA's work:

Together, the District and your school have accomplished a great deal and are confident in more accomplishments next year by working cooperatively and collaboratively. The District looks forward to continuing the communications regarding the areas of improvement for both the school and District and hope to hear from you if you believe there are other areas of growth or improvement for your school or the District that we should add to this agenda. Thank you for putting kids first and for all the work you do for South Carolina families every day!

(CAA Exh. 07.) Neeley's most recent annual evaluation of CAA did not issue sanctions against CAA or require CAA to develop and execute a corrective action plan, and Neeley's most recent evaluation of CAA made no mention of any potential revocation of CAA's charter. (CAA Exh. 07; Tucker Tr. 182.). Neeley has never discussed the revocation of CAA's charter with CAA or made any recommendation to revoke CAA's charter. (CAA Exh. 10; Payne Tr. 87, 106; Thom Tr. 149-150; Combs Tr. 238.).

CAA responded to Neeley's June 2022 evaluation on August 22, 2022. (CAA Exh. 08; Payne Tr. 91; Thom Tr. 123.). Initially, CAA thanked Neeley for recognizing that CAA was following teacher certification requirements, demographic requirements, sustainable fund balance and cash on hand standards, and special education requirements. (CAA Exh. 08; Payne Tr. 91-92.). Additionally, CAA commented on information in Neeley's evaluation that was incomplete or inaccurate. (CAA Exh. 08; Payne Tr 91.) For example, CAA clarified that its graduation rate had increased every year and approximately tripled since CAA terminated AA. (CAA Exh. 08; Payne Tr. 91.). CAA also explained that it had increased spending on student services, specifically with money that was no longer being paid to AA. (CAA Exh. 08; Payne Tr. 91.). CAA addressed

why its audit was submitted 8 days late: because CAA Board Chair's father passed away in Egypt the day before CAA's auditor sent her the audit report, and she traveled to Egypt immediately and was unable to review and submit the audit until she returned to the United States. (CAA Exh. 08; Thom Tr. 129-130.). Importantly, CAA's letter also explained the purpose of CAA's fund balance, stating that CAA was saving for "long-term initiatives, such as the development of a permanent school facility to serve our students." (CAA Exh. 08; Thom Tr. 123-124.). Neeley did not express any disagreement with CAA's August 22, 2022, letter. (Payne Tr. 92; Thom Tr. 123-124.).

In 2021, CAA uncovered the secret plot between Wise, Sundstrom, Smalley, and Norton to redirect CAA's staff, students, and funds to AA and to destroy CAA. (CAA Exh. 20, pp. 57-58; Combs Tr. 220-221.). Because of the conspiracy between Norton, Wise and Sundstrom, and Norton's continuous adverse treatment of CAA since CAA's termination of AA, amongst other things, CAA requested a charter transfer from the District to Limestone University and the Limestone Charter Association (collectively "Limestone") in December 2021, after Limestone was established and hired a Superintendent, and again on September 30, 2022. (District Exh. 10, p. 42.) On November 4, 2022, Neeley responded in writing to CAA to schedule the District Board's hearing of CAA's transfer request and to describe the procedures for the hearing. (District Exh. 10, pp. 40-41; Payne Tr. 95.). Neeley provided CAA with a copy of the District's Transfer Policy, as approved and adopted by the District Board. (District Exh. 10, pp. 40-41, 47; Payne Tr. 94.). Significantly, the District's Transfer Policy states that "Schools under revocation review or occupying the lowest performance level rating as defined by the [District's] performance framework are not eligible to request a transfer out of the District." (District Exh. 10, p. 47; Payne Tr. 94-96.). Neeley's November 4, 2022, letter made no mention of CAA being in "revocation review" or otherwise being ineligible to request a transfer out of the District. (District Exh. 10, pp.

40-41; Payne Tr. 95-96.). The District later scheduled CAA's transfer request for January 19, 2023, further indicating that CAA was not in a revocation review process or otherwise ineligible to request a transfer out of the District. (CAA Exh. 09; Payne Tr. 94-95.).

A charter school's revenue is based on the number of students enrolled at the charter school. (CAA Exh. 01; Thom Tr. 136; Combs Tr. 221-222.). Accordingly, LAA's revenue is generated based on the number of students enrolled at LAA. (Thom Tr. 136.). Pursuant to LAA's charter AA receives eighty-five percent (85%) of LAA's funding. (CAA Exh. 31, p. 56; Thom Tr. 148; Combs Tr. 234.). Therefore, the gross amount of money that AA receives from LAA is based on the number of students enrolled at LAA. (CAA Exh. 31, p. 56; Thom Tr. 136.).

LAA's charter application projected that LAA will serve five hundred students in grades 9-12 during the 2022-2023 school year. (CAA Exh. 31, p. 103; Thom Tr. 146; Tucker Tr. 193; Combs Tr. 233.). However, LAA's most recent State Report Card states that LAA serves only 170 students. (Tucker Tr. 193; Combs Tr. 233.). Therefore, AA's revenue from LAA is drastically less than anticipated by the individuals with AA who prepared and submitted AA's charter application to the District, Mims and likely Wise and Sundstrom. (CAA Exh. 31, pp. 2-3, 17, 56, 60, 103; Tucker Tr. 193; Combs Tr. 233.).

Conversely, CAA serves approximately four hundred students in grades 9-12. (Thom Tr. 137; Combs Tr. 208.). According to the District's Deputy Superintendent of Finance and Operations, who has never made a recommendation to revoke CAA's charter, CAA receives over five million dollars annually in funding which is based on the number of students it serves. (Thom Tr. 136-137.). Therefore, over the span of a 10-year charter, CAA may receive fifty million dollars in funding, none of which is currently paid to AA. (CAA Exh. 05, p. 4; Thom Tr. 138.).

Wise, Sundstrom, Smalley, and Norton secretly conspired establish LAA's campus near CAA's campus, and for LAA to serve the same grade levels and at-risk students as CAA, so that LAA could steal CAA's staff and students and the public funds that follow them for AA's benefit,

as expressly laid out in the purported “attorney-client privileged” email between them on November 12, 2019. (CAA Exh. 20, pp. 57-58; CAA Exh. 31 pp. 1-3, 6, 56; Combs Tr. 220-222, 238.). As of the fall of 2022, AA, Wise, Sundstrom, Smalley, and/or Norton had redirected \$859,142.41 of CAA’s money to AA, withheld CAA’s state funding in violation of State law for AA’s benefit, wrongfully and illegally shut down CAA’s technology programs during the pandemic without justification, asserted legal claims against CAA seeking additional public funds, and, in Norton’s case, testified as a witness for AA and against CAA in a North Carolina arbitration at Sundstrom’s request. (CAA Exh. 20, pp. 57-58; CAA Exh. 25 p. 5; CAA Exh. 29; CAA Exh. 24; CAA Exh. 28; Combs Tr. 219-221, 234-235, 238.). As a result of Norton’s adverse actions, CAA was seeking a transfer away from the District. (CAA Exh. 20, p. 58; District Exh. 10, p. 42.). Yet despite their many efforts, Wise, Sundstrom, Smalley, and Norton have not accomplished their goal of redirecting CAA’s students and funds to AA. If CAA’s transfer request had been granted, Norton would have lost control of the efforts to destroy CAA. (CAA Exh. 31, p. 103; Thom Tr. 137; Tucker Tr. 193; Combs Tr. 208, 233.). If CAA is closed, however, CAA’s students and the funding they generate could be potentially redirected to LAA<sup>7</sup>. (CAA Exh. 20, p. 58; Combs Tr. 220-221.). Obviously, AA and its founders, Wise and Sundstrom, have an enormous financial interest in CAA being closed by the District. (CAA Exh. 20, p. 58.). Wise and Sundstrom, acting alone, bring about CAA’s closure; they need Norton. (CAA Exh. 01; Tr. 37, 257.).

Prior to January 19, 2023, the District staff created a Transfer Request Report related to CAA for the District Board’s consideration during its January 19, 2023, meeting. (District Exh. 10; Payne Tr. 88-89.). According to the District Deputy Superintendent John R. Payne, Norton edited the Transfer Request Report before it was sent to the District Board for consideration. (Payne Tr. 89.). The edited Transfer Request Report was filled with inaccurate and inapplicable information. (Payne Tr. 98-106; Askew Tr. 157-161, 165-167, 176; Tucker Tr. 187-188, 194.).

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<sup>7</sup> That said, the reality is that if CAA is closed, most of its students will drop out of high school for good.

For example, the edited Transfer Request Report did not include any evaluation of CAA pursuant to the Alternative Education Campus statute, S.C. Code Ann. § 59-40-111(F). (CAA Exh. 1; District Exh. 10; Payne Tr. 102-103, 105; Askew Tr. 165-167; Tucker Tr. 188.). The AEC statute, § 59-40-111(F), requires that CAA, as an AEC, be evaluated (1) according to academic performance standards and expectations established by written agreement between the sponsor and the school (i.e. the goals in CAA’s charter) that take into account the school’s specialized mission and student population, (2) with comparisons to nationally normed data with similar subsets of students (i.e., in this case, comparisons with AECs serving high school students who have dropped out of school or are at risk of dropping out of school). (CAA Exh. 01.). Rather, the edited Transfer Request Report focused on a 4-year cohort graduation rate, a metric which does not align with CAA’s mission of serving students who have dropped out of school, often for several months or years prior to enrolling at CAA. (Dist. Exh. 10 p. 3; Payne Tr. 98-101; Askew Tr. 162, 165-166, 176; Tucker Tr. 194.). Further, the District miscalculated CAA’s 4-year cohort graduation rate because the District did not remove transfer students, as required by the Every Student Succeeds Act (ESSA). (Askew Tr. 157-161.). The edited District Transfer Request Report omitted any calculation of the following graduation rate goals that are included in CAA’s charter and that are closer to being aligned with CAA’s mission:

“Measure 10: Percent of students that enrolled in CAA prior to their senior year (as measured by credits attained) that are in the four-year adjusted cohort to either graduate or re-enroll the following year.”

Measure 11: Percent of students that enrolled in CAA prior to their senior year (as measured by credits attained) that are in the five-year adjusted cohort to either graduate or re-enroll the following year.”

(CAA Exh. 05, p. 43; District Exh. 10; Payne Tr. 101-104; Tucker Tr. 187-188.). The edited Transfer Request Report contains no calculation of students who re-enrolled at CAA the following year and no calculation of the five-year cohort graduation rate. (District Exh. 10; pp. 8-9; Payne 103-104.). Instead, the edited Transfer Request Report inaccurately calculated a four-year cohort

graduation rate, which is not aligned with CAA's mission of serving at-risk students who have dropped out of school, often for several months or years prior to enrollment. (District Exh. 10, p. 3; CAA Exh. 37; CAA Exh. 38-42; Payne 98-101; Askew Tr. 162, 165-166, 176; Tucker Tr. 194.).

Additionally, the edited Transfer Request Report lacks any comparison of CAA to AECs serving similar subsets of at-risk, drop-out, high school students. (District Exh. 10; Payne Tr. 105; Askew Tr. 167; Tucker Tr. 187-188.). At the revocation hearing on May 11, 2023, Norton attempted to question Payne about national comparison data to overcome this significant deficiency and noncompliance, but Payne's testimony was not tailored to AECs focused on serving at-risk, drop out students in grades 9-12, and Payne neglected to name a single comparison school. (Payne Tr. 61-65; Payne 105-106; Askew Tr. 165, 167.). Moreover, the District has never provided any documentation to CAA comparing CAA's performance with other AECs serving high school students who have previously dropped out of school or were at-risk of dropping out of school. (District Exh. 10; Tucker Tr. 188; Combs Tr. 239.). In summary, the District has never compared CAA to schools that serve similar subsets of students (in this case, students in grades 9-12 who have dropped out of school), as required by § 59-40-111(F). (CAA Exh. 01; Payne Tr. 105-106; Askew Tr. 165, 167; Tucker Tr. 187-188; Combs Tr. 239.).

The edited Transfer Request Report also omitted extremely relevant information CAA previously provided to the District in a manner that was highly prejudicial to CAA. (District Exh. 10; CAA Exh. 08.). For instance, the edited Transfer Request Report included Neeley's June 2022 annual evaluation of CAA, which as discussed contained refuted incomplete and inaccurate statements regarding CAA's graduation rate and CAA's expenditures on student services. (District Exh. 10, pp. 16-19; Payne Tr. 91-92.). None of the information contained in CAA's August 22, 2022, uncontested response to Neeley is contained in the edited Transfer Request Report. (District Exh. 10; CAA Exh. 08; Payne Tr. 91-92.).

Further, the edited Transfer Request Report states that CAA "**did not meet** the submission

of a timely audit” with no further explanation. (District Exh. 10, p. 2; Thom Tr. 129.) CAA’s August 22, 2022, letter to Neeley explained that CAA’s audit was submitted eight days late because the CAA Board Chair’s father passed away in Egypt, and the CAA Board Chair was traveling to Egypt when CAA’s auditor sent her the audit. (CAA Exh. 08; Tr. 129-130.). Upon the Chair’s return to the United States, she immediately reviewed and submitted CAA’s audit. (CAA Exh. 08; Thom Tr. 129-130.). However, that information was completely omitted from the edited Transfer Request Report. (District Exh. 10; Thom Tr. 128-131.).

Moreover, the edited Transfer Request Report states that CAA had a cash balance and a fund balance of over three million dollars as of June 30, 2022, but omits information CAA previously communicated to the District about how CAA intended to use those funds, specifically that CAA was saving for “long-term initiatives, such as the development of a permanent school facility to serve our students.” (District Exh. 10, pp. 10-11; CAA Exh. 08; Thom Tr. 122 - 123.). The omission of such information from the Transfer Request Report was highly prejudicial to CAA, as discussed in more detail below. (CAA Exh. 08; CAA Exh. 10; Thom Tr. 127-128.).

Most significantly, the edited Transfer Request Report specifically omitted CAA’s December 7, 2021, letter to the District setting forth the reasons for CAA’s transfer request, including the collusive secret plot and scheme between Wise, Sundstrom, Smalley, and Norton to steal CAA’s staff, students, and public funds for AA’s benefit. (District Exh. 10, p. 42.). The December 7, 2021, letter from CAA to the District outlining the collusive scheme between Wise, Sundstrom, Smalley, and Norton was attached to and expressly incorporated in CAA’s September 30, 2022, transfer request letter. (District Exh. 10, p. 42.). Nowhere does the edited fifty-four page Transfer Request Report mention (i) the names Wise, Sundstrom, Smalley, or Acceleration Academies, (ii) Norton’s secret relationship with them, or (iii) the covert scheme between Wise, Sundstrom, Smalley, and Norton to redirect CAA’s resources to AA, **despite that being the primary basis of CAA’s transfer request**, as stated in CAA’s, December 7, 2021, transfer request

letter attached to and expressly incorporated in CAA’s September 30, 2022, transfer letter. (District Exh. 10, p. 42.).

The District Board posted an agenda for its meeting on January 19, 2023, which included requests from two charter schools to transfer from the District to another sponsor. (CAA Exh. 09, p. 2, Sec. IX (C) & (D)). The District previously confirmed with both schools, one of which was CAA, that their transfer requests would be heard on January 19, 2023. (District Exh. 10, p. 40-41; CAA Exh. 09, p. 2.). The District Board’s agenda items for both schools’ transfer requests were “Action on [school’s name] charter.” (CAA Exh. 09, p. 2.). The District Board’s posted meeting agenda did not include the word “revocation” or any variation thereof anywhere. (CAA Exh. 09; Combs Tr. 236.).

When the meeting began, the District Board approved the meeting agenda. (CAA Exh. 25, p. 9; CAA Exh. 10.). No motion to amend the agenda to include revocation of any school’s charter was made. (CAA Exh. 03; CAA Exh. 10.). Accordingly, “revocation” did not appear anywhere on the District Board’s January 19, 2023, meeting agenda as originally posted or as approved by the District Board on January 19, 2023. (CAA Exh. 09; CAA Exh. 10; Combs Tr. 236.).

After approving the meeting agenda, the District Board and Norton went into executive session for fifty-seven minutes to discuss CAA<sup>8</sup>. (CAA Exh. 09; CAA Exh. 10, 00:11:20 – 01:08:10; Payne Tr. 87-88.). The District Board and Norton did not invite any representatives of CAA or any member of the public into the executive session. (CAA Exh. 10, 01:08:00 – 01:08:10; Payne Tr. 87-88.) Fifty-seven minutes later, the District Board and Norton reemerged to open session and took up the action items on the meeting agenda<sup>9</sup>. (CAA Exh. 10.)

After approving a charter amendment for a second new AA school and then denying

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<sup>8</sup> No representative of Smith Robinson law attended the District Board meeting on January 19, 2023; the District was represented only by Norton at the January 19, 2023, meeting. (CAA Exh. 25, p. 9.).

<sup>9</sup> Norton admitted discussing CAA during the executive session at the June 21, 2023, hearing before the ALC. CAA has requested a copy of the June 21, 2023, and shall provide it to this Court upon receipt.

another charter school's transfer request, the District Board addressed CAA's transfer request. (CAA Exh. 09; CAA Exh. 10). First, Payne presented to the District Board the inaccurate and misleading edited Transfer Request Report<sup>10</sup>. (CAA Exh. 10; Payne Tr. 49.) Next the District Board heard a brief presentation from CAA. (CAA Exh. 10.) During deliberations related to CAA's transfer request, the District Board never stated that CAA was in a revocation review process or otherwise ineligible to request a transfer under the District's Transfer Policy. (CAA Exh. 10; District Exh. 10, p. 47; Payne Tr. 84, 94-97; Tucker Tr. 183.). Rather, the District heard CAA's transfer request and then voted to deny it, based on inaccurate and inapplicable information presented in the edited Transfer Request Report and information they received from Norton in executive session or otherwise. (CAA Exh. 10; District Exh. 10.).

After the District Board voted on CAA's transfer request, as CAA representatives prepared to leave the meeting, District Board Chairman Payne unexpectedly asked, "is there any other action that needs to be taken on CAA?" (CAA Exh. 10, 2:02:57.). District Board member Jonathan Butcher, at times reading from a piece of paper in front of him and looking in the direction of Norton for reassurance, stated that he was "very concerned with the reports that were provided today" and then made a surprise motion to revoke CAA's charter. (CAA Exh. 10, 02:03:01 – 02:04:00; Combs Tr. 237.). Mr. Butcher read the reasons for his motion from the sheet of paper in front of him as "the failure to meet the goals in the charter," and "failing to use taxpayer funds for student instruction," while at times looking in the direction of Mr. Norton for assurance. (CAA Exh. 10, 02:03:01 – 02:04:00; CAA Exh. 25, p. 10; Combs Tr. 237.). District Board Chair John Payne seconded the motion and opened the motion for discussion of the District Board. (CAA Exh. 10, 02:04:00 – 02:04:12; CAA Exh. 25, p. 10.).

Mosteller who did not vote in favor of revocation, immediately commented that the

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<sup>10</sup> Four months later, Deputy Superintendent Payne admitted that he had never visited CAA's campus. (Payne Tr. 82.).

proposed action seemed “hurried.”<sup>11</sup> (CAA Exh. 10, 02:04:15 - 2:04:25.). Chairman Payne made several comments in response to Mosteller. (CAA Exh. 10.). Initially, Chairman Payne stated, ***“This just didn’t start yesterday, this didn’t start last year, it didn’t start the year before, it didn’t start the year before that, it started 4 years ago, so this has been coming.”*** (CAA Exh. 10, 02:04:56 – 02:05:08.). CAA attempted to terminate AA four years ago, which is when Wise, Sundstrom, Smalley, Norton, and potentially others, began conspiring to redirect CAA’s students and public funds to AA and destroy CAA. (CAA Exh. 10; CAA Exh. 20, p. 58; Combs Tr. 237.). Accordingly, Chairman Payne’s statement was accurate – the planned destruction of CAA did start 4 years ago, for AA’s benefit, as secretly planned by Wise, Sundstrom, Smalley, and Norton. (CAA Exh. 10; CAA Exh. 20, p. 58; Combs Tr. 220-221; 237.). However, Chairman Payne’s statement was inconsistent with the following facts:

- (1) The District never mentioned any potential revocation of CAA’s charter to CAA in the days, weeks, months, and years leading up to January 19, 2023;
- (2) The District never evaluated CAA’s performance as required by § 59-40-111(F);
- (3) The District never required CAA to develop and execute a corrective action plan;
- (4) The District never implemented a revocation review process with CAA, as identified in District Board policy and utilized with other schools;
- (5) The District did not issue any sanctions against CAA or require corrective action in Neeley’s most recent annual evaluation of CAA;
- (6) The District Board did not receive a recommendation from Neeley or District staff to revoke CAA’s charter;
- (7) The District Board did not include revocation on its January 19, 2023, meeting agenda; and

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<sup>11</sup> Which – now that we all know of the conspiracy and scheme between Wise, Sundstrom, Smalley, and Norton and their urgent need to revoke CAA’s charter and divert CAA’s students and funds to LAA due to LAA’s failure to attract students – of course it was.

- (8) The District Board did not amend its meeting agenda to include revocation based on exigent or emergency circumstances.

(CAA Exh. 07; CAA Exh. 08; District Exh. 10, pp. 40-41, 47; CAA Exh. 09; CAA Exh. 10; CAA Exh. 25, p. 9; Payne Tr. 83, 87, 90, 94-97; Tucker Tr. 182-183; Combs Tr. 238.).

Rather, on January 19, 2023, the District Board spent fifty-seven minutes in a closed executive session with Norton, reviewed an unreliable edited Transfer Request Report, and then Butcher read the reasons for a surprise motion to revoke CAA's charter off a piece of paper in front of him, while at times looking in the direction of Norton for reassurance. (CAA Exh. 10; Combs Tr. 237.).

In response to Ms. Mosteller, Chairman Payne stated, "*This school district has bent over backwards to help this school survive, to the point that we went in and helped them rewrite their charter!*" (CAA Exh. 10, 02:05:11 – 02:05:20.). Nothing could be further from the truth. In making that statement, Chairman Payne neglected to mention:

- (1) That Smalley and Norton were secretly conspiring with Wise and Sundstrom to redirect CAA's staff, students, and public funds to AA and to destroy CAA;
- (2) That the District refused to allow CAA to remove AA from its charter and directed CAA to "maintain the status quo," thereby costing CAA an additional \$859,142.41 in taxpayer funds paid to AA, as planned by Wise, Sundstrom, Smalley, and Norton;
- (3) That the District, at Norton's direction, and without District Board approval, twice withheld CAA's monthly funding in violation of § 59-40-140(D), expressly to preserve those funds for AA;
- (4) That the District approved a competitive AA charter school to be established two miles away from CAA, perfectly positioned to steal CAA's students and funding, just as secretly planned by Wise, Sundstrom, Smalley, and Norton;

- (5) That the District initially fast-tracked the approval of the competitive AA charter school, as secretly conspired by Wise, Sundstrom, Smalley, and Norton;
- (6) That the District's legal counsel, Norton, testified for AA against CAA at Sundstrom's request in a North Carolina arbitration action, after AA shut down CAA's technology programs to the detriment of CAA's at-risk students; and
- (7) That the edited Transfer Request Report and before the Board on January 19, 2023, did not evaluate CAA according to § 59-40-111(F), or goals in CAA's charter that Chairman Payne expressly acknowledged the District helped write.

(CAA Exh. 10; CAA Exh. 20, pp. 57-58; CAA Exh. 25, pp. 1-6; CAA Exh. 29; CAA Exh. 24; CAA Exh. 22; CAA Exh. 31; CAA Exh. 28; District Exh. 10; Payne Tr. 83, 87, 101-106; Askew Tr. 165, 167; Tucker Tr. 187-188; Combs Tr. 218-221, 231, 233-235, 238-239.).

Then, in further response to Ms. Mosteller, Chairman Payne commented on CAA's fund balance, stating "*If it's not in the classroom, what is it set aside for, nobody has ever told me that.*" (CAA Exh. 10; 02:05:24 – 02:05:47.). Of course, CAA informed the District of the purpose of its fund balance on several occasions, including in its August 22, 2022, response to Neeley's annual evaluation. (CAA Exh. 08, p. 2; Thom Tr. 123-128.). However, Norton deleted it from the Transfer Request Report which was before the Board on January 19, 2023. (CAA Exh. 08, p. 2; District Exh. 10; Thom Tr. 123-128.). Charter schools commonly borrow tens of millions of dollars to build school facilities, the Charleston real estate market is expensive, interest rates are currently high, and money saved on facility debt service payments can be spent on teachers and curriculum. (Thom Tr. 123-128.). The edited Transfer Request Report hid the purpose of CAA's fund balance from the District Board leading to the motion to revoke CAA's charter for "failing to use taxpayer funds for student instruction" and Chairman Payne claim that CAA's charter should be revoked

because no one ever told him what CAA's fund balance was set aside for.<sup>12</sup> (CAA Exh. 08; District Exh. 10; CAA Exh. 10; Combs Tr. 237.).

With no prior notice to CAA or its community, and after only 4 minutes of public discussion on the surprise motion to revoke CAA's charter, the District Board voted to revoke CAA's charter for the reasons read by Mr. Butcher off a piece of paper after spending fifty-seven minutes in executive session with Norton and reviewing an inaccurate and unreliable Transfer Request Report. (CAA Exh. 09; CAA Exh. 10; CAA Exh. 25, p. 10; Combs Tr. 237.). The District Board received no recommendation from Neeley or District staff to revoke CAA's charter. (CAA Exh. 10; Payne Tr. 87, 106; Thom Tr. 149-150.)

District Board Chairman Payne's hasty and misinformed comments on January 19, 2023, appear to have been driven by false information he received from Norton. (CAA Exh. 10; Payne Tr. 106-107.). CAA representatives who were present asked twice for an opportunity to speak after Butcher made the motion to revoke CAA's charter, and District Board Chairman Payne denied them the opportunity to speak. (CAA Exh. 10, 02:05:52 – 02:06:00, 02:07:29 – 02:07:46.). In the District Board's four-minute public discussion, not a single District Board member mentioned that CAA is an AEC serving at risk students.<sup>13</sup> (CAA Exh. 10, 02:03:00 – 02:06:55.). Not a single District Board member mentioned that CAA has fulfilled its mission and led approximately two hundred students to the attainment of a high school diploma so that they can better themselves and their community. (CAA Exh. 10; 02:03:00 – 02:06:55.). Not a single District Board member contemplated what might happen to CAA's at-risk students if CAA were permanently closed. (CAA Exh. 10, 02:03:00 – 02:06:55.).

On January 24, 2023, a Petition for Injunctive Relief and for Appointment of Receiver was

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<sup>12</sup> At the Appeal Hearing on May 11, 2023, Dr. Combs testified that CAA was able to build its fund balance because it was not paying eighty-five percent (85%) of its revenue to an EMO, such as AA. (Combs Tr. 252.).

<sup>13</sup> On May 11, 2023, four months after voting to revoke CAA's charter, District Board Chairman Payne admitted that he was just then learning the term "AEC." (Tr. 201.).

filed in the ALC, just days after the January 19, 2023, vote to revoke CAA's charter. The alleged purpose of the Petition was to preserve CAA's funds, which the District intended to take as of July 1, 2023, and use for whatever purpose the District sees fit, which could include, such as, redirecting funds to AA via LAA and the second new District-approved AA school, Horry County Acceleration Academy, which on information and belief also sends eight five percent of its funding to AA for Wise and Sundstrom's benefit. (CAA Exh. 09, p. 2.; Combs Tr. 222.). Significantly, the District's Petition was filed in the Administrative Law Court by Norton on January 24, 2023, with no vote of the District Board authorizing the same. (CAA Exh. 25, p. 10.). Michael Thom, the District's Deputy Superintendent of Finance and Operations admitted that CAA's annual audits have been clean, and that a reputable, qualified CPA firm manages CAA's finances and has access to and reconciles CAA's bank accounts. (CAA Exh. 14; CAA Exh. 18; Thom Tr. 131-133.). Mr. Thom also testified that he has never criticized CAA for opening additional bank accounts and that he did not know why CAA's opening of additional accounts to collateralize funds in accordance with an auditor's recommendation would have been characterized as a negative in the January 24, 2023, Petition. (Thom Tr. 135-136.).

On May 11, 2023, the District Board adjudicated its own January 19, 2023, revocation of CAA's charter<sup>14</sup>. (Tr. pp. 2-274.). At the beginning of the appeal hearing, Chairman Payne read from a prepared statement that the revocation action was "brought by the District staff against CAA," which is irrefutably false and directly contradicted Deputy Superintendent Payne's testimony. (CAA Exh. 10; Tr. p. 13; Payne Tr. 87.). Chairman Payne then read from the prepared statement that District Board members would not be questioned as witnesses, despite the District Board moving and voting to revoke CAA's charter on January 19, 2023, without a

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<sup>14</sup> No member of Smith Robinson law firm was present at the Appeal Hearing on May 11, 2023; the District staff was represented solely by Norton. (Tr. 2.).

recommendation to revoke CAA's charter from the District Superintendent or District staff.<sup>15</sup> (Tr. p. 13; Payne Tr. 87.). At the appeal hearing on May 11, 2023, Norton served as legal counsel for the District staff, despite the District Board and Norton meeting *ex parte* in executive session for fifty-seven minutes on January 19, 2023, just before the District Board revoked CAA's charter. (CAA Exh. 10, Tr. 2.).

District Deputy Superintendent Payne and others testified that the District never offered CAA a corrective action plan or implemented a revocation review process as to CAA. (Payne Tr. 84, 86; Tucker Tr. 182-183.). Payne acknowledges that the District had no communication with CAA about CAA's charter being evaluated for revocation prior to January 19, 2023. (Payne Tr. 82-83.) Deputy Superintendent Payne and Deputy Superintendent Michael Thom, admit they had never made a recommendation to revoke CAA's charter and that they would be willing to continue working with CAA if the school remained open. (Payne Tr. 87, 106, 109; Thom 149.). Nonetheless, Norton, argued vehemently to the District Board on May 11, 2023, both in his opening and closing, that CAA's charter must be revoked, and CAA must be closed immediately on June 30, 2023. (Tr. 2, 37, 257.). Upon the encouragement and direction of the District Staff's counsel, who is also the District Board's general counsel and who is conspiring with Wise, Sundstrom, and Smalley to destroy CAA and redirect CAA's resources to AA, the District Board voted to uphold its own prior January 19, 2023, revocation of CAA's charter. (Tr. 271-273.).

"The District's" written Final Decision was drafted by Norton after the appeal hearing. The District Board did not meet to consider and approve the written Final Decision. The Final Decision completely fails to address the following undeniable established facts:

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<sup>15</sup> CAA named the District Board members as witnesses prior to the appeal hearing on May 11, 2023. The District Board denied CAA's ability to call District Board members as witnesses and greatly limited the amount of time CAA had to present its case at the appeal hearing to a few hours. Given the gravity of potentially closing a public school and eliminating a unique educational option for at-risk students and their families, this is a gross violation of due process.

- (1) The surreptitious conspiracy between Wise, Sundstrom, Smalley, and Norton;
- (2) The “Attorney-Client Privileged” email dated November 12, 2019, between Wise, Sundstrom, Smalley, and Norton in which Wise directed Sundstrom to confer with Norton about a plan to present to the District Board on November 14, 2019, that CAA to continue paying AA against CAA’s will;
- (3) The District allowing AA to present such a plan to the District Board two days later when CAA was seeking to remove AA from its charter immediately;
- (4) The District’s directive to CAA on November 14, 2019, after hearing from AA and Sundstrom, to “maintain the status quo,” which required CAA to continue paying AA against CAA’s will, and which resulted in CAA being required to pay AA \$859,142.41 in a North Carolina Arbitration;
- (5) Norton’s withholding of CAA’s state funding in late 2019, in violation of State law, expressly to preserve funds for AA and with no apparent authorization from the District Board to do so;
- (6) The SDE’s threat to fine the District for Norton’s illegal withholding of CAA’s state funding for AA’s benefit;
- (7) The “Attorney-Client Privileged” email dated November 12, 2019, between Wise, Sundstrom, Smalley, and Norton in which they confirm a clandestine conspiratorial scheme to fast track open a new AA charter school via the District to steal CAA’s staff and students, and the millions of dollars in public funds that follow them, and to destroy CAA;
- (8) The District’s fast-track approval of AA’s new charter school, LAA, to serve the same type of at-risk students as CAA, just two miles from CAA’s campus, and to send eighty-five percent of its revenue to AA, founded by Wise and Sundstrom;
- (9) LAA’s Board Chair having a pre-existing financial relationship with Wise and

Sundstrom and then resigning from her board chair position to go to work directly for AA after the District approved eighty-five percent of LAA's revenue being paid to AA in the charter application she submitted on LAA's behalf;

- (10) AA shutting down CAA's technology programs when COVID arrived, resulting in additional litigation between CAA and AA, in which Norton testified as a witness for AA and against CAA at Sundstrom's request;
- (11) Superintendent Neeley's most recent annual evaluation of CAA including no sanctions or corrective actions related to CAA and concluding with positive remarks about CAA's work;
- (12) CAA's August 22, 2022, response to Neeley's evaluation, which corrected and conveyed important information about CAA's academic data, spending on student services, audit submission, and savings for a school facility;
- (13) LAA's student enrollment being hundreds of students short of projections in LAA's charter application at the beginning of the 2022-2023 school year, which determines AA's revenue from LAA;
- (14) Norton's editing of the Transfer Request Report, which included material errors, misinformation, and omissions of information, prior to the January 19, 2023, District Board meeting;
- (15) The lack of "revocation" of any school's charter on the District Board's January 19, 2023, meeting agenda as originally posted or as approved by the District Board on January 19, 2023;
- (16) Norton spending fifty-seven minutes in executive session with the District Board on January 19, 2023, prior to a District Trustee making a surprise motion to revoke CAA's charter, reading the reasons for the motion off a piece of paper, and looking in the direction of Norton while doing so;

- (17) The District Board having only a four-minute public discussion about the revocation of CAA's charter on January 19, 2023, most of which was Board Chairman John Payne's unsupported statements in response to Trustee Mosteller's concerns, as described herein;
- (18) The District Board voting to revoke CAA's charter on January 19, 2023, with no prior notice to CAA, its community, or the public, and with no recommendation from the District Superintendent or District staff to revoke CAA's charter;
- (19) The District's failure to evaluate CAA pursuant to the AEC evaluation statute, § 59-40-111(F), prior to voting to revoke CAA's charter on January 19, 2023;
- (20) The District's failure to evaluate CAA based on goals in CAA's charter that consider CAA's specialized mission and student population prior to voting to revoke CAA's charter on January 19, 2023;
- (21) The District's failure to compare CAA's performance with the performance of other AECs or schools that serve similar subsets of students (i.e., at-risk high school students that have dropped out of school or are at-risk of dropping out of school) prior to voting to revoke CAA's charter on January 19, 2023;
- (22) The District's failure to require CAA to take corrective action or to develop and execute a corrective action plan prior to voting to revoke CAA's charter on January 19, 2023;
- (23) The District's failure to offer CAA a revocation review process as identified in District Policy, prior to voting to revoke CAA's charter on January 19, 2023;
- (24) The District Board prosecuting the revocation of CAA's charter in four minutes on January 19, 2023, and then adjudicating its own prior motion and vote to revoke CAA's charter on May 11, 2023;
- (25) Norton spending fifty-seven minutes in executive session with the District Board

on January 19, 2023, to discuss CAA *ex parte*, and then Norton representing the District staff on May 11, 2023, before the District Board, for whom he also serves as general counsel;

- (26) On May 11, 2023, District staff witnesses testifying that they had not made any recommendation to revoke CAA's charter and that they would be willing to continue working with CAA if the school were not closed, and Norton nonetheless arguing in his opening and closing that CAA's charter must be revoked and CAA closed immediately on June 30, 2023; and,
- (27) The pre-existing litigation pending before the South Carolina Court of Appeals related to the District's "maintain the status quo" directive for AA's benefit.

Additionally, many statements in the findings of fact and conclusions of law in the Final Decision drafted by Norton are inaccurate, incomplete, or misleading and were not in the edited Transfer Request Report that was before the District Board on January 19, 2023, when the District Board voted to revoke CAA's charter. Statements and suggestions included in the following paragraphs of the "Findings of Fact" in the Final Decision drafted by Norton were not included in the Transfer Request Report or before the District Board on January 19, 2023, and thus could not have been the reason for the District Board's surprise motion and vote to revoke CAA's charter on January 19, 2023: 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 26, 27, 28, 29, 32, 47, 48, 49, and 55. Several of the statements were also unreliable: for example, with respect to paragraph 55, upon cross examination, Mr. Thom admitted that many of the numbers included in District Exhibit 38 regarding school expenditures were inaccurate, which can easily be determined by a cursory review of the exhibit. (District Exh. 38; Thom Tr. 118-119.).

Moreover, the "Conclusions of Law" in District's Final Decision fail to apply the evaluation standard in § 59-40-111(F), to CAA. In fact, the "Conclusions of Law" in the Final Decision makes no reference at all to the AEC charter school statute.

Finally, in the Final Decision, Norton alleges that CAA’s charter should be revoked because of an “unsatisfactory” rating on its State Report Card.<sup>16</sup> However, in 2022, the District approved AA to replicate LAA in Horry County despite LAA receiving a rating of “unsatisfactory” on its only South Carolina State Report Card.<sup>17</sup> Specifically, LAA received an “unsatisfactory” rating on its only State Report Card for Academic Achievement. LAA received an “unsatisfactory” rating on its only State Report Card for Preparing for Success. LAA received an “unsatisfactory” rating on its only State Report Card for Graduation Rate. LAA received an “unsatisfactory” rating on its only State Report Card for College & Career Readiness. Despite LAA’s comprehensive “unsatisfactory” rating on its only State Report Card, the District approved and is overseeing the replication of LAA in other locations, where on information and belief, AA will take eighty-five percent of the revenue from those schools. Norton’s inclusion of CAA’s State Report Card rating as a reason for revoking CAA’s charter and shutting CAA down permanently in “the District’s” Final Written Order that he drafted is clearly a pretext for ulterior motives to benefit AA, and its founders, Wise and Sundstrom, who Norton is conspiring with to redirect CAA’s staff, students, and funds to AA.

In summary, the Final Decision drafted by Norton was not voted on and approved by the District Board, is filled with statements that were not before the District Board on January 19, 2023, when the District revoked CAA’s charter after spending fifty-seven minutes in executive session with Norton, and completely fails to address the covert conspiratorial scheme between Norton, Wise, Sundstrom, and Smalley to redirect CAA’s resources to AA, and Norton’s many actions in furtherance of that scheme, as described herein and as addressed extensively with the District since December 7, 2021, when CAA first requested to transfer its charter.

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<sup>16</sup> State Report Card ratings are not tailored to account for AEC charter schools serving at-risk students or the metrics set forth in § 59-40-111(F). (Tucker Tr. 187-88.). For example, the State Report Card rating system applies the same standards to CAA, an AEC charter school serving at-risk high school students and Academic Magnet, a magnet high school for the most academically gifted students in the low country.

<sup>17</sup> Available at <https://screportcards.com/overview/?q=eT0yMDIyJnQ9SCZzaWQ9NDcwMTA2NA>

Wise and Sundstrom, and the entities they are associated with, reportedly have a long scandalous history of compensating individuals who can influence the expenditure of public education funds in their favor or in favor of their entities, including Educational Research and Development Institute (ERDI) and Atlantic Research Partners (ARP). (CAA Exh. 30; Combs Tr. 222-228.). Wise and Sundstrom’s reported history includes controversial activities and transactions in Beaufort County, South Carolina, related to the former Superintendent of the Beaufort County School District. (CAA Exh. 30; Combs Tr. 223-225.). Wise’s and Sundstrom’s reported history also include controversial activities and transactions in Florida, Tennessee, Ohio, Pennsylvania, Maryland, Louisiana, and Illinois.<sup>18</sup> (CAA Exh. 30.). The *Island Packet* and other publications have reported on Wise and Sundstrom’s history of controversial activities. (CAA Exh. 30; Combs Tr. 222-228.).

Following the District’s May 11, 2023, affirmance of its decision to revoke CAA’s charter on January 19, 2023, CAA filed an appeal with the South Carolina Administrative Law Court (“ALC”) seeking to have the District’s decision to revoke its charter. On June 15, 2023, CAA filed a Motion for a Stay together with a memorandum in support thereof. A hearing on the Motion was held by the ALC on June 21, 2023. On June 21, 2023, prior to the hearing CAA filed an Amended Motion for a Temporary Injunction and/or Preliminary Injunction and/or a Stay together with a memorandum in support of thereof seeking to enjoin and/or to stay the “District” from revoking CAA’s charter.

Despite acknowledging that CAA would suffer irreparable harm and has no adequate remedy at law, the ALC denied CAA’s Amended Motion for a Temporary Injunction and/or Preliminary Injunction and/or a Stay by Order dated June 29, 2023. *Order Denying Motion* dated June 29, 2023. The ALC incorrectly found that since the standard for granting a stay under

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<sup>18</sup> In fact, a former Chicago, Illinois school district Superintendent was convicted and sentenced to five years in federal prison for her involvement with an entity associated with Wise and Sundstrom. (CAA Exh. 30.).

subsection 59-40-110(J) – unusual hardship - is different and conflicting to the standard for granting an injunction under Rule 65, S.C.R.Civ.P., “the Court must determine which one is appropriate to apply in this case. the Court must determine which one is appropriate to apply in this case.” *Order Denying Motion* dated June 29, 2023, p.6. Rather than viewing the motion to stay under subsection 59-40-110(J) and the motion for an injunction under Rule 65 as alternate independent grounds for staying or enjoining the District’s revocation of CAA’s charter, the ALC improperly found that a motion to stay under subsection 59-40-110(J) and a motion for an injunction under Rule 65 are mutually exclusive, found that the undue hardship standard applies and denied both CAA’s motion for a stay and its motion for an injunction.

The District seeks to have CAA immediately closed and CAA’s returned to it. The District seeks to have CAA’s students enroll at LAA. This is evidenced by the District’s hurried closure of CAA with no evaluation of CAA’s performance under § 59-40-111(F), no mention of sanctions or revocation in Superintendent Neeley’s most recent annual evaluation of CAA, no request that CAA develop and execute a corrective action plan, no implementation of a revocation review process as referenced in the District’s Transfer Policy, no recommendation to revoke CAA’s charter from District Superintendent Neeley or District staff, no mention of revocation on the January 19, 2023, board meeting agenda, and no reasonable due process provided to CAA. This is further evidenced by Norton’s repeated attempts, including in Petitions filed in the Administrative Law Court, to prevent CAA from pursuing its legal claims and discovery beyond June 30, 2023.<sup>19</sup> The District’s position may be most succinctly summarized by Norton’s statements to the ALC on May 5, 2023, when Norton prematurely expressed great concern about CAA reserving funds to challenge the District’s presumed revocation (notably, before the appeal hearing took place) beyond June 30, 2023:

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<sup>19</sup> For instance, if, as was requested in the Petition filed in the ALC by Norton, a receiver had been appointed for CAA, there would likely have been no further inquiry into the nefarious conspiracy and activities of Wise, Sundstrom, Smalley, and Norton.

[W]hat they're intending to do is that the school is in fact revoked and we go through the closure protocol, Mr. Turner and Mr. Prichard are gonna [sic] take the position that the school is an independent 501(c)(3), and that million dollars that's in the IOLTA account can be used for the independent 501(c)(3) to continue litigation against the district instead of the funds being returned to the district, even if this Court finds that the revocation order shouldn't be stayed.

If you deny the motion to stay, then the school will have to shut down. And at that point, all this prior existing litigation will be moot.”

Thus, on May 5, 2023, Norton assumed the District Board's Final Decision (albeit, for good reason considering the District's planned denial of due process to CAA) and expressed significant concern about (i) the District Board's decision to revoke CAA's charter being fully appealed, and (ii) the District's actions and Norton's relationships being fully investigated by CAA in pre-existing litigation beyond June 30, 2023. Had CAA's charter been revoked, and CAA permanently closed as of June 30, 2023, as Norton has repeatedly argued must happen, CAA's students will likely drop out of school completely and the clandestine conspiracy to redirect CAA's students and taxpayer funds to AA would have complete and receive no further scrutiny. Norton and the District are well aware that once CAA's charter revocation is effective, CAA is effectively finished.

### **ARGUMENT**

CAA has appealed the ALC's June 29, 2023, order denying its motion to stay and its motion for an injunction on two independent grounds: Sections 14-3-330(2)(a) and (4), CODE OF LAWS OF SOUTH CAROLINA, 1976, in that the Order affects a substantial right which in effect determines the action and prevents a judgment from which an appeal might be taken and in that it refuses an injunction. Either ground is a basis for jurisdiction in this Court, and, therefore, makes the appealability of the order proper.

### **SECTION 14-3-330(2)(A)**

Section 14-3-330(2)(a) provides in relevant part that "[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. . . ." accord *Neeltec Enters., Inc. v. Long*, 397 S.C. 563, 566, 725 S.E.2d 926, 928 (2012). "An interlocutory order which affects a substantial right, and either in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues an action, is immediately appealable under § 14-3-330(2)(a)." *Id.*; accord *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 773 S.E.2d 144 (2015)(order granting bifurcation held immediately appealable under Section 14-3-330(2)); *Hagood v. Sommerville*, 362 S.C. 191, 197, 607 S.E.2d 707, \_\_\_ (2005)("order granting a motion to disqualify a party's attorney in a civil case affects a substantial right and may be immediately appealed under Section 14-3-330(2)"); *Knight Pub. Co. v. Univ. of South Carolina*, 295 S.C. 31, 367 S.E.2d 20 (S.C. 1988)(order allowing discovery of documents that respondents ultimately seek disclosed under FOIA is directly appealable under Section 14-3-330(2)(a) because it in effect determines the action and prevents an appealable judgment); *State v. McKnight*, 287 S.C. 167, 337 S.E.2d 208 (1985) (pretrial order granting the suppression of evidence that significantly impaired the prosecution of the State's case held immediately appealable under section 14-3-330(2)(a)); *Huskins v. Mungo Homes, LLC*, Op. No. 5916 (S.C. App. June 1, 2022) (order granting the motion to dismiss and compelling arbitration is appealable); *US Bank Trust, N.A. v. Hammond*, Case No. 2019-UP-239 (Ct. App. 2019); *Kocaya v. Kocaya*, 552 S.E.2d 765, 347 S.C. 26 (Ct. App. 2001)(denial of a transportation order immediately appealable); *Lakes v. State*, 510 S.E.2d 228, 333 S.C. 382 (Ct. App. 1998)(failure to grant a motion to allow a party to proceed *in forma pauperis* immediately appealable under Section 14-3-330(2)). To appeal an order affecting a substantial right, an order must not only involve a right, but it must also 'prevent[ ] a judgment from which an appeal might be taken.'" *Cobb v. Maccaro*, 423 S.E.2d 156, 310 S.C. 303 (Ct. App. 1992) (quoting *Ex parte Johnson*, 63 S.C. 205, 208, 41 S.E. 308, 309 (1902), renamed in the West Reporter as *Rutledge v. Tunno* )." In essence, to be immediately appealable an

interlocutory order must result in the appellant have arrived at the end of the road and unable to appeal the decision after the trial is concluded. *See Baldwin Constr. Co. v. Graham*, 357 S.C. 227, 230, 593 S.E.2d 146, 147 (2004); *Watson v. Underwood*, 407 S.C. 443, 756 S.E.2d 155 (Ct. App. 2014).

Orders affecting the mode of trial are generally held to affect substantial rights under Section 14-3-330(2) which are required to be appealed immediately. *See Lester v. Dawson*, 327 S.C. 263, 491 S.E.2d 240 (1996). The reasoning behind this is that "failure to timely appeal an order affecting the mode of trial effects a waiver of the right to appeal that issue." *Id.* at 266, 491 S.E.2d at 241. Thus, it appears that the analysis of whether an order affects a substantial right and prevents a judgment from which an appeal might be taken or discontinues an action turns on the ability to effectively challenge the order if not immediately appealed. *See Link v. School Dist. of Pickens County*, 302 S.C. 1, 393 S.E.2d 176 (1990); *see also In re HARBORVIEW DEVELOPMENT 1986 LIMITED PARTNERSHIP*, 149 B.R. 378 (D. S.C. 1993).

In this instance the ALC's denial of CAA's motion to stay and its motion for an injunction affects a substantial right of CAA in that the June 29, 2023, Order of the ALC in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action. Revocation of a charter school's charter is tantamount to a death sentence. Once revoked it is almost impossible for a charter school to recover. Its students, faculty, staff will all be lost and almost impossible to recover. The students in the case of CAA its at risk students will lose their school and likely will drop out of school for good. Even if successful on appeal – which in the absence of a stay or injunction is at best a hollow victory - there is no way to appeal the denial of CAA's motion to stay or injunction; the right to appeal it will essentially be waived and lost forever. Further, the denial of the motion to stay or injunction has the practical effect of discontinuing the action since it will essentially bring CAA to an end, the very result Norton, Smally, Wise and Sundstrom have plotted and planned for the last four years.

The District's argument as to why Section 14-3-330(2)(a) does not provided a basis for appealability of the ALC's June 29, 2023, Order – one paragraph in length – is conclusory and in no way addresses why the ALC's June 29, 2023, Order does not affect a substantial right which "in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action." This Court is not permitted to consider an argument where there is no citation to authority<sup>20</sup> and is so conclusory as to be an abandonment of the issue. *See South Carolina Dept. of Probation, Parole & Pardon Servs. V. Reynolds*, 343 S.C. 465, 540 S.E.2d 480 (Ct. App. 2000). When a party fails to argue an issue, the argument is not preserved. *See Video Gaming Consultants, Inc. v. South Carolina Dept. of Revenue*, 342 S.C. 34, 535 S.E.2d 642 (2000)(an issue not argued is deemed abandoned and precludes consideration); *Bell v. Bennett*, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992)( an issue not argued is deemed abandoned). Having waived and abandoned any argument that this matter is not appealable under Section 14-3-330(2)(a), the District is precluded from contesting appealability under Section 14-3-330(2)(a).

Because the denial of CAA's motion to stay and its motion for injunction in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, the ALC's June 29, 2023, order is immediately appealable pursuant to Section 14-3-330(2).

#### **SECTION 14-3-330(4)**

Section 14-3-330(4) provides inter alia that "[a]n interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction. . . ." Though the court of common pleas is specifically referenced, Section 14-3-330(4) should be construed broadly to include interlocutory orders of courts of inferior jurisdiction granting, continuing, modifying, or refusing an injunction, including interlocutory orders of the ALC. Limiting the applicability of

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<sup>20</sup> The District only cites to one case - *Edwards v. SunCom*, 369 S.C. 91, 94, 631 S.E.2d 529, 530 (2006) – which it quotes simply restating Section 14-3-330(2)(a).

Section 14-3-330(4) solely to interlocutory orders of court of common pleas granting, continuing, modifying, or refusing an injunction is inconsistent with the purpose and intent of Section 14-3-330(4).

The judicial power [in South Carolina is] . . . vested in a unified judicial system, which shall include a . . . Circuit Court. . . .” S.C. CONST. art. V § 1; *accord Davis v. Cty. of Greenville*, 322 S.C. 73, 470 S.E.2d 94 (1995). “The Circuit Court shall be a general trial court with original jurisdiction in civil . . . cases, except those cases in which exclusive jurisdiction shall be given to inferior courts. . . .” S.C. CONST. art. V § 11; *accord Jeter v. S.C. Dept. of Transp.*, 633 S.E.2d 143, 369 S.C. 433 (2006). Thus, jurisdiction over the matter would have been vested in the Court of Common Pleas had it not been transferred to the ALC. Section 14-3-330(4) was enacted long before courts of limited jurisdiction, such as the Administrative Law Court, were created. Thus, not applying Section 14-3-330(4) to interlocutory orders of courts of inferior jurisdiction granting, continuing, modifying, or refusing an injunction is clearly inconsistent with the intent and purpose of Section 14-3-330(4).<sup>21</sup>

The District completely fails to address appealability under Section 14-3-330(4) in its memorandum. Rather, it simply quotes Sections 14-3-330(2)(a) and 14-3-330(4) and in conclusory fashion states that “neither of these subsections apply in this case.” *Respondents Response in Opposition to the Stay and to the Appealability of the Issue Raised by Appellant in Their [sic] Emergency Motion* dated July 10, 2023, p. 6. That is, it. No further mention of Section 14-3-330(4), directly or indirectly in its memorandum.

This Court is not permitted to consider an argument where there is no citation to authority and is so conclusory as to be an abandonment of the issue. *See South Carolina Dept. of Probation, Parole & Pardon Servs. V. Reynolds, supra*. When a party fails to argue an issue, the argument is not preserved. *See Video Gaming Consultants, Inc. v. South Carolina Dept. of Revenue, supra*;

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<sup>21</sup> Further, Section 14-3-330(4) is clear indication that interlocutory orders of courts of inferior jurisdiction granting, continuing, modifying, or refusing an injunction affect a substantial right under affects a substantial right, and either in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues an action under Section 14-3-330(2)(a).

*supra*. Having waived and abandoned any argument that this matter is not appealable under Section 14-3-330(4), the District is precluded from contesting appealability under Section 14-3-330(4).

The June 29, 2023, Order of the ALC unequivocally refuses to enter an injunction. The basis for the denial is irrelevant to the issue of appealability. Accordingly, this matter is, likewise, properly appealable under Section 14-3-330(4).

**UNRELATED ISSUES RAISED BY THE DISTRICT**

Unable to successfully contest the appealability of the June 29, 2023, Order of the ALC, rather than addressing the issue of appealability as directed by this Court in its June 30, 2023, Order, the District spends most of its time and energy on a tangent addressing two unrelated issues. Specifically that "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" and that "The Temporary Stay Should Be Lifted." Aside from being factually and legally without merit, neither issue is relevant to the issue this Court instructs the parties to address and, therefore, are not properly before this Court for consideration. Should the Court wish to hear arguments on these issues, CAA will address them is and when requested.

**CONCLUSION**

For the reasons stated above, the June 29, 2023, Order of the Administrative Law Court is irrefutably an immediately appealable interlocutor Order.

**PRITCHARD LAW GROUP, LLC**



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Edward K. Pritchard, III, Esq.  
South Carolina Bar No. 9710  
E-mail: [epritchard@pritchardlawgroup.com](mailto:epritchard@pritchardlawgroup.com)  
8 Cumberland Street, Suite 200 (29401)  
Post Office Box 630  
Charleston, South Carolina 29402-0630  
Phone: (843) 722-3300

July 10, 2023  
Charleston, South Carolina

**TURNER & CAUDELL, LLC**  
Tyler R. Turner, Esq.  
South Carolina Bar No. 78447  
E-mail: tturner@turnercaudell.com  
Mary Allison Caudell, Esq.  
South Carolina Bar No. 101187  
E-mail: macaudell@turnercaudell.com  
914 Richland Street, Suite A-101  
Columbia, South Carolina 29201  
Phone: (803) 828-9708

July 10, 2023  
Columbia, South Carolina

**RANKIN & RANKIN, PA**  
Luke A. Rankin, Jr., Esq.  
South Carolina Bar No. 10268  
E-mail: luke@rankinandrankin.com  
Post Office Box 919  
Conway, South Carolina 29528-0919  
Phone: (843) 248-2405

July 10, 2023  
Conway, South Carolina

**PENDARVIS LAW, LLC**  
Marvin R. Pendarvis, Esq.  
South Carolina Bar No. 101832  
E-mail: marvin@pendarvislawfirm.com  
8420 Dorchester Road, Suite 202  
North Charleston, South Carolina 29420  
Phone: (843) 330-2540  
*Attorneys for Appellant Charleston Advancement  
Academy High School*

July 10, 2023  
North Charleston, South Carolina

**RECEIVED**

**Jul 10 2023**

**SC Court of Appeals**

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Charleston Advancement Academy High )  
School, )  
 )  
Appellant, )  
 )  
vs. )  
 )  
South Carolina Public Charter School )  
District, )  
 )  
Respondent. )  
\_\_\_\_\_

Docket No. 23-ALJ-30-0163-AP

**PROOF OF SERVICE**

We hereby certify that we have served Appellant, Charleston Advancement Academy High School's, *Memorandum of Appealability* in the above-captioned matter by electronic mail on July 10, 2023, to the below named parties at their e-mail addresses of record:

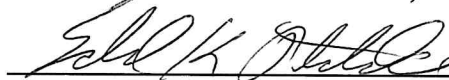
Erik T. Norton, Esq.  
**HARRELL MARTIN & PEACE, PA**  
135 Columbia Avenue  
Chapin, South Carolina 29036  
E-mail: erik@hmp-law.com

G. Murrell Smith, Jr., Esq.  
South Carolina Bar No.: 66263  
E-mail: murrell@smithrobinsonlaw.com  
Jonathan M. Robinson, Esq.  
South Carolina Bar No.: 68285  
E-mail: jon@smithrobinsonlaw.com

Rachel E. Lee, Esq.  
South Carolina Bar No.: 104184  
E-mail: rachel.lee@smithrobinsonlaw.com  
**SMITH ROBINSON HOLLER DUBOSE MORGAN, LLC**  
2530 Devine Street, 3rd Floor  
Columbia, South Carolina 29205

Respectfully submitted,

**PRITCHARD LAW GROUP, LLC**



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Edward K. Pritchard, III, Esq.  
South Carolina Bar No. 9710  
E-mail: Epritchard@pritchardlawgroup.com  
8 Cumberland Street, Suite 200 (29401)  
Post Office Box 630  
Charleston, South Carolina 29402-0630  
Phone: (843) 722-3300

**TURNER & CAUDELL, LLC**

Tyler R. Turner, Esq.  
South Carolina Bar No. 78447  
E-mail: tturner@turnercaudell.com  
Mary Allison Caudell, Esq.  
South Carolina Bar No. 101187  
E-mail: macaudell@turnercaudell.com  
914 Richland Street, Suite A-101  
Columbia, South Carolina 29201  
Phone: (803) 828-9708

**RANKIN & RANKIN, PA**

Luke A. Rankin, Jr., Esq.  
South Carolina Bar No. 10268  
E-mail: luke@rankinandrkin.com  
Post Office Box 919  
Conway, South Carolina 29528-0919  
Phone: (843) 248-2405

**PENDARVIS LAW, LLC**

Marvin R. Pendarvis, Esq.  
South Carolina Bar No. 101832  
E-mail: marvin@pendarvislawfirm.com  
8420 Dorchester Road, Suite 202  
North Charleston, South Carolina 29420  
Phone: (843) 330-2540  
*Attorneys for Appellant Charleston Advancement  
Academy High School*