THE STATE OF SOUTH CAROLINA

In The Court Of Appeals

APPEAL FROM THE CHARLESTON COUNTY COURT OF COMMON PLEAS

The Honorable Roger M. Young, Circuit Court Judge

Appellate Case No. 2021-001414

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

v.

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

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

Appellant is a charter school, Charleston Advancement Academy, formerly known as Charleston Acceleration Academy and Pathways in Education-South Carolina ("CAA" or "School"). 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 ("the Act").

The School initiated the proceedings in this matter by requesting to amend its charter. (Not. App. 1, R. p. 419). The School's request to amend its charter followed the School's termination of an education management contract that was part of its charter. (*Id.*, p. 422). The District denied the charter amendment request on November 14, 2019, issued sanctions short of revocation because the School terminated the contract forming part of its charter prior to seeking an amendment, and provided steps for the School to complete for the amendment to be approved. (Nov. 21, 2019 Smalley Ltr. to Moffley, R. pp. 47 - 49).

At the School's request, the District Board called a special meeting on December 13, 2019 to address the School's actions and the Superintendent's correspondence. (Am. Compl. ¶ 29, R. p. 85). The District Board, by oral and written statement, declined to grant the relief requested by the School and ratified its prior actions as well as those by the Superintendent. (Am. Compl. ¶ 32, R. p. 90).

Following the Board meeting, the School filed its Complaint in the Court of Common Pleas on December 20, 2019 asserting causes of action for Breach of Contract, Violation of Due Process, and Declaratory Judgment. (Compl., R. pp. 18-65). The School subsequently filed an Amended Complaint and Amended Motion for TRO on January 23 asserting substantially the same claims. (R. pp. 78-266). The Amended Complaint alleges the District "failed to recognize the CAA

Board's statutory and contractual authority to govern and manage CAA." (Am. Compl. ¶ 38, R. p. 91). The District moved to dismiss the Amended Complaint (Mot. Dis., R. pp. 304-305).

Following a hearing on October 26, 2021, the District's Motion to Dismiss was granted by Circuit Court Judge Roger M. Young by Order dated November 3, 2021 ("Order") based the lack of subject matter jurisdiction in the Court of Common Pleas due to exclusive jurisdiction in the Administrative Law Court. (R. pp. 421- 425). The Order therefore did not reach the other arguments for dismissal asserted by the District in its Motion to Dismiss. (*Id.*) The School then filed the instant Notice of Appeal. (R. p. 419).

FACTS

This matter arises from the statutory relationship between the School and the District under the Act. The District awarded the School a charter to become a public charter school on May 20, 2017. (Am. Compl. ¶ 1, R. p. 80). CAA thereby became a charter school and District its sponsor, responsible for oversight and monitoring the performance of the School. S.C. Code Ann. § 59-40-55.

As part of CAA's charter, it contracted with a management company, Acceleration Academies, Inc. ("Acceleration Academies") to provide certain services specified both in the management contract and in the charter. (Arb. Awd. 1, R. p. 409). On April 1, 2018, the School entered the contract with the District required by the Act. (Arb. Awd. 1, R. p. 409; *see also* S.C. Code Ann. § 59-40-60(B)("A contract between the charter school and the sponsor must be executed…The Department of Education shall develop a contract template to be used by charter schools and the sponsor. The template must serve as a foundation for the development of a contract between the charter school and the sponsor."). On April 2, 2018, the School executed the management contract with Acceleration Academies. (Arb Award 1, R. p. 409). The contract between the School and Acceleration Academies was incorporated into and part of both the charter

and contract between the District and School. (Am. Compl. Ex. A, Contract § 4.6, R. p. 206; Charter p. 74, R. p. 176). The School began operating on July 1, 2018. (*Id.*).

However, a little over a year after it began operating, the School decided to terminate its contract with Acceleration Academies as of November 1, 2019, effective immediately, without seeking an amendment to its charter. (Arb. Awd. 2, R. 410). The stated reason for immediate termination was alleged security issues at the School. (*Id.*) Acceleration Academies initiated arbitration against the School alleging wrongful termination of the management contract on November 4, 2019. (*Id.*).

Meanwhile, after it terminated the management contract, School presented a Request for Charter Amendment to the District Board of Trustees on November 14, 2019. (Am. Compl. ¶ 18, R. 84). The Act requires that any "material revision" to the terms of the contract between the charter school and sponsor be made only with approval of both parties. S.C. Code Ann. § 59-40-60(C). The District Board of Trustees denied the School's request to amend the charter until it presented an amendment that (1) addressed each of the services being provided by the management company in the charter and (2) submitted a security plan approved by Trident Tech or made other security arrangements. (Am. Compl. Ex. C, Nov. 21, 2019 Smalley Ltr. to Moffley, R. pp. 228 - 230). The District also issued sanctions short of revocation requiring the School to maintain the status quo regarding school operations until it could present a plan showing the ability to implement all the activities in the charter previously conducted by or with the assistance of the management company. (*Id.*).

On November 15, 2019, the School terminated its Director. (Am. Compl. Ex. C, Dec. 2, 2019 Smalley Ltr. to Moffley, R. pp. 231 - 233). The District Superintendent subsequently sent correspondence to the School objecting to this action as well as other actions the District deemed

to be a failure to maintain the status quo, such as implementing a new administrative structure, new policies and procedures, adopting a news school name, new bylaws, and the like. (*Id.*) The District issued additional sanctions short of revocation based on the School's failure to comply with the Board order to maintain the status quo. (*Id.*) By letter dated December 6, 2019, the School objected to the District's decision to deny the amendment and issue sanctions short of revocation. (Am. Compl. Ex. C, Dec. 6, 2019 Deif Ltr. to Payne, R. pp. 236 - 239). The School requested that the District "hold a special called meeting as soon as possible to allow CAA to discuss with you the actions that we are taking and resolve the confusion stemming from SCPCSD letters that contradict your Board's actions and are outside the scope of giving operational directives to CAA whereby acknowledging AA as a third-party benefactor to either CAA or SCPCSD." (*Id.*). While the School's request itself is confusing, the School clearly does not ask for a hearing or a contested case. It only asks for a public meeting to discuss the actions and confusion. (*Id.*).

The District Board called the special meeting on December 13, 2019 as requested. The District Board, by oral and written statement, declined to grant the relief requested by the School and ratified its prior actions as well as those by the Superintendent. (Am. Compl. Ex. D, Payne Statement, R. p. 243). However, the decision by the Board, as stated by Chairman Payne, made it clear that the School could resubmit the charter amendment again on Monday for further review and decision. The statement further makes it clear that all school funds are available to the school for school operations. (*Id.*).

However, the School next filed the lawsuit that is the subject of this appeal. The School filed its Complaint in the Court of Common Pleas on December 20, 2019 asserting causes of action for Breach of Contract, Violation of Due Process, and Declaratory Judgment. On the same day, the School also file a Motion for Temporary Restraining Order and Preliminary Injunction ("Motion

for TRO"). The School subsequently filed an Amended Complaint and Amended Motion for TRO on January 23 asserting substantially the same claims. The District moved to dismiss the Amended Complaint and opposed the Motion for TRO on substantially the same grounds. (Mot. Dis., R. pp. 473-490; Opp. TRO, R. pp. 306-321).

On January 4, 2020, the arbitrator in the case between Acceleration Academies and School, the Hon. Robert N. Hunter, Jr., considered a motion for injunctive relief by Acceleration Academies. Like the District Board, Judge Hunter ruled the parties should maintain the status quo and also awarded Acceleration Academies $57,875.91 in fees the School had refused to pay despite there being no dispute. (Arb. Aw. 2, R. p. 410). Following hearings conducted on February 20 and 21, 2020, the arbitrator found the School breached the management contract with Acceleration Academies and awarded Acceleration Academies $859,142.41, for a total award against the School in the total gross amount of $1,050,726.44.[1] The arbitrator also found that the manner CAA terminated the contract with CAA was not in "the manner least disruptive to students" as required by the management contract and no credible evidence supported CAA's claim of a public health and safety threat, which CAA relied on to immediately terminate the contract. (*Id.*) In short, the arbitrator determined the School's reasons for immediately terminating the management contract were pretextual. The arbitration award was affirmed by the District Court of South Carolina and the Fourth Circuit. *Acceleration Academies, LLC v. Charleston Acceleration Academy, Inc.*, 858 Fed. Appx. 606 (4th Cir. May 28, 2021) (Unpublished Mem. Op.) (affirming District Court judgment confirming arbitration award).

[1] The arbitrator offset this amount by $133,708.12 in grant funds the management company did not claim for the School when calculating the total award.

Meanwhile, the Motion for TRO was denied for two reasons by Circuit Court Judge Bentley D. Price by Order dated February 26, 2020 ("TRO Order"). (R. pp. 1-7). First, Judge Price found the Circuit Court did not have jurisdiction because the Administrative Law Court had exclusive jurisdiction over School's challenges to final decisions by the District. (*Id.* ¶ 20). Further, Judge Price noted that the School reported the alleged violation related to funding to the South Carolina Department of Education, which in fact exercised jurisdiction over the matter and elected to take no action. (*Id.* ¶ 21). Second, Judge Price found that, even if the Circuit Court did have jurisdiction, the School could not meet the elements required for injunctive relief for a number of reasons. (*Id.* ¶¶ 22 – 34), but most importantly for this appeal it ruled that the School had an adequate remedy at law because:

> 32. Section 59-40-90 of the Act provides that a charter school must appeal any final decision of the District to the Administrative Law Court. The School did not file an appeal to the Administrative Law Court.

Similarly, following a hearing on October 26, 2021, the District's Motion to Dismiss the Amended Complaint was granted by Circuit Court Judge Roger M. Young by Order dated November 3, 2021 ("Order"). Like Judge Price, Judge Young based his decision on the lack of subject matter jurisdiction in the Court of Common Pleas due to exclusive jurisdiction in the Administrative Law Court and the oversight authority of the South Carolina Department of Education. Of note, the Record reflects that the School continued to operate as part of the District as of November 3, 2021. (Trans. of Hearing p. 16, R. p. 442) ("This relationship continues."). The public record reflects the School currently continues to operate as part of the District. *See* https://sccharter.org/schools/ (last accessed March 10, 2023).

STANDARD OF REVIEW

The Order grants Respondent's Motion to Dismiss based on subject matter jurisdiction, finding that it did not need to reach any other grounds asserted. See Order at 1. The Order further notes that it could have considered matters outside the pleadings when ruling on a motion to dismiss based on subject matter jurisdiction, but it did not need to in this case. *Id. citing Swicegood v. Thompson*, 431 S.C. 130, 847 S.E.2d 104 (Ct. App. 2020).

Subject matter jurisdiction is a question of law, and appellate courts may decide matter of law with no deference to the trial court. *See Catawba Indian Tribe of S.C. v. State of South Carolina*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007) However, the appellate court will not disturb findings of fact by the trial court unless there is no evidence to support them. *See Matter of Est. of Moore*, 435 S.C. 706, 715, 869 S.E.2d 868, 872-73 (Ct. App. 2022).

ARGUMENT

I. The Act Grants Jurisdiction Over Contractual Disputes Between Sponsors and Charter Schools Exclusively To The Administrative Law Court.

Both Judge Price and Judge Young concluded in detailed written orders that the Circuit Court did not have jurisdiction over this matter. (Order, R. pp. 421-425; TRO Order, R. pp. 1-7). They both reached the correct conclusion that the dispute between CAA, a charter school, and District, its sponsor, over matters arising under the Charter School Act belongs exclusively in the Administrative Law Court.

A. The Act dictates how disputes between sponsors and charter schools should be resolved.

In its brief, CAA wrongly argues that "[t]here is nothing in the Act which divests the Circuit Court over CAA's breach of contract action." (App. Br. 31). Not only is this factually incorrect, it also turns the correct legal analysis on its head. Because the District and CAA are created by statute, their authority is limited to that granted by the legislature. *Med. Soc. of S.C. v. Med. Univ.*

of S.C., 334 S.C. 270, 275, 513 S.E.2d 352 (1999). Therefore, absent the specific right by the General Assembly for a charter school to bring a claim against its sponsor under the Act or appeal a decision by its sponsor under the Act, the charter school would not have the right to do so. The District is aware of no precedent in South Carolina for a school to sue its own school district in Circuit Court without a statutory right to do so. Similarly, no other branch or part of any public body would have the right to appeal a decision of the public agency of which it is a part without a statutory right to do so. As explained below, the Act describes a charter school system in which charter schools are public schools that are part of their sponsors with processes for the school to challenge the acts of its sponsors through administrative processes, not in Circuit Court.

While the Act was first passed in 1996, the District was not created as a statewide sponsor of charter schools until ten years later in 2006. *See* 2006 Act No. 274, Eff. May 3, 2006 (creating District as a public body). Section 59-40-40(1) of the Act defines a charter school as:

> a public, nonreligious, nonhome-based, nonprofit corporation forming a school that ***operates by sponsorship of a public school district, the South Carolina Public Charter School District***, or a public or independent institution of higher learning, ***but it is accountable to the board of trustees…of the sponsor*** which grants its charter.

(Emphasis added.) Moreover, Section 59-40-40(2)(a) states that a charter school is, "for purposes of state law and the state constitution, considered a public school and ***part of the South Carolina Public Charter School District***, [or other sponsor]." (Emphasis added.)

The contract between charter schools and the sponsor likewise is a statutory invention. Section 59-40-40(9) defines the charter school contract as "a fixed term, renewable contract between a charter school and a sponsor that outlines the roles, powers, responsibilities and performance expectations for each party to the contract." The sponsor and charter school may negotiate some terms to the contract, but Section 59-40-60 of the Act requires the South Carolina

Department of Education to "develop a contract template to be used by charter schools and the sponsor." The template must be the "foundation" to the negotiations. The Parties have no choice but to enter the contract once the charter is awarded. *See* S.C. Code Ann. § 59-40-60(B)("A contract between the charter school and the sponsor must be executed…"). Further, the Parties are significantly restricted as to any contractual terms they can negotiate by the statutory requirements and Department of Education template. Further,

The Act includes many restrictions on the contractual rights of the charter schools and sponsors. For example, the contract must be for a fixed term (10 years), and it is renewable only under certain conditions. S.C. Code Ann. § 59-40-40(9), -110, and -115. The Act also dictates when the contract must be amended, S.C. Code Ann. § 59-40-60(C), and restricts when the charter and contract may be transferred to another sponsor, S.C. Code Ann. § 59-40-115. In fact, a charter school may not even voluntarily terminate the contract with the sponsor unless "all parties under contract with the charter school agree to the dissolution." S.C. Code Ann. § 59-40-115. Similarly, the sponsor can only terminate the contract early under the provisions of Section 59-40-110(C).

Similarly, the Act governs how charter schools and sponsors may resolve breaches of the charter and contract. If the sponsor identifies a breach of contract or charter by the charter school, its obligation is to notify the school of "perceived problems if its performance or legal compliance appears to be unsatisfactory and provide reasonable opportunity for the school to remedy the problem, unless the problem warrants revocation and revocation timelines apply." S.C. Code Ann. § 59-40-55(7). The sponsor also may "take appropriate corrective actions or exercise sanctions short of revocation in response to apparent deficiencies in charter school performance or legal compliance." S.C. Code Ann. § 59-40-55(8). If the breach remains unremedied, the sponsor may

revoke the charter and terminate the contract pursuant to Section 59-40-110(C)(1) and (2) of the Act:

> (C) A charter must be revoked or not renewed by the sponsor if it determines that the charter 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;
>
> (2) failed to meet the academic performance standards and expectations as defined in the charter application or charter school contract, or both;…

Similarly, the Act provides the procedure for charter schools to address breaches of contract by sponsors. Section 59-40-110(J) provides that a charter school may appeal a decision by the sponsor to revoke or not renew the charter to the Administrative Law Court. However, the charter school's access to the Administrative Law Court is much broader than just appealing a decision to revoke or not renew. Section 59-40-90 allows for a charter school to appeal *any* final decision of a sponsor to the Administrative Law Court.

Moreover, charter schools may seek relief from the Department of Education in other circumstances. For example, Section 59-40-140 allows the Department to fine sponsors if they do not distribute funding to charter schools as required – a remedy CAA sought in this case but did not receive prior to filing suit. (TRO Order ¶ 25, R. pp. 1-7). In addition, CAA was asking the District to act in its capacity as an LEA at the December 13, 2019 special called Board meeting. In the statement presented by the School to the District Board, CAA's Board says it is requesting that the District provide the specified relief "as our Local Education Agency." (Am. Compl. Ex. C, December 13, 2019 School Statement, R. p. 220). It is a matter of both state and federal law that the State Educational Agency ("SEA"), the State Department of Education in South Carolina, conducts general supervision and oversight activities of whether the Local Educational Agency ("LEA"), like the District, is fulfilling its obligations. *See, generally,* S.C. Code Ann. § 59-3-30

(State Superintendent of Education oversight and management duties); S.C. Code Ann. § 59-5-60 (State Board of Education oversight and management duties); 20 USC § 7801(30)(A)(definition of local educational agency); 20 USC § 7801(A)(49)(definition of state educational agency). Otherwise, every time a charter school (or maybe every public school) is unhappy with any decision by its oversight body in the administrative process, it could run into the Circuit Court as the charter school did here. *See* S.C. Regs. 43-243; 34 CFR §§ 300.28, 300.41 (LEA responsible for special education under supervision of SEA). The slippery slope could lead to such absurd results as highly technical federal special education issues being litigated as a matter of charter contract law in South Carolina's Circuit Courts.

The possibility of other schools like CAA trying to circumvent the administrative process is not theoretical – it is already occurring in the lower courts. For example, in *Gates School v. Erskine College et al*, No. 2022-CP-40-2390 (Rich. Cty. Ct. Comm. Pleas, Filed March 5, 2022), the charter school filed a Complaint in Circuit Court seeking to challenge the authority of the sponsor to revoke the charter based on failure to comply with special education laws by the sponsor, the Charter Institute at Erskine. On March 10, 2023, the Circuit Court dismissed the action based primarily on subject matter jurisdiction, just like Judge Young and consistent with the ruling of Judge Price. *See Gates School v. Erskine College et al*, App. Case No. 2023-00431 (Ct. App., Filed March 14, 2023) (Dismissed June 21, 2023).

Further, the Act is equally clear a charter school like CAA, a public school operating under sponsorship of the District with funds passed from the General Assembly through the District to CAA, is not permitted to sue its sponsor in Circuit Court to recover monetary damages. The General Assembly was careful to avoid this absurdity by affording the sponsor broad immunity from civil suit "with respect to all activities related to a charter school they sponsor." S.C. Code

Ann. § 59-40-190. It would be particularly absurd to allow CAA to proceed with a lawsuit in this situation, where CAA is attempting to sue for more taxpayer money after it already used taxpayer money to pay a judgment to a private company in excess of $900,000 for its own wrongful acts. Fortunately, the General Assembly had the foresight to provide some protection against this kind of abusive litigation by providing immunity to sponsors.

Finally, to the extent the plain language of the Act contains any ambiguity, the Act's legislative history makes clear the intent of the General Assembly to exclude the Circuit Court from adjudicating disputes between charter schools and sponsors. Prior to 2008, Section 59-40-90 provided that a charter school could appeal any decision related to charter schools by a sponsor to the State Board of Education, and the decision of the State Board of Education could be appealed to the circuit court for the county in which the charter school was located. However, Section 59-40-90 was amended in 2006 to strike all references to the Circuit Court and provide that all final decisions of the sponsor could be appealed to the Administrative Law Court. 2006 Act 387 eff. July 1, 2006.

The School's reliance on *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 674 S.E.2d 524 (2009), to argue its breach of contract claim distinguishes this matter is misplaced. *Capital City* involved a dispute between a worker's compensation insurance company and an employee leasing company, neither of which is a public body. Part of the dispute involved an alleged failure to pay premiums by the employee leasing company, which was not governed by an administrative process, and part of the dispute involved an administrative claim regarding the experience modifier applied to determine the premium. 382 S.C. at 101, 674 S.E.2d at 529. The Court of Appeals ruled that the trial court erred by dismissing the action for lack of subject matter jurisdiction, but for reasons very distinct from this case, holding the "breach of contract and fraud claims are not based

on a statute for which the legislature mandates the pursuit of an administrative remedy; in short, Capital City's claims alleging breach of contract and fraud are not wrongs for which the administrative scheme was designed to redress." *Cap. City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 102–03, 674 S.E.2d 524, 530 (Ct. App. 2009).

In this case, on the other hand, the terms of the charter school contract itself are largely prescribed by the Act and the remedies for breaching the contract, whether by the sponsor or school, are delineated in the Act. As explained above, the Act contains any number of requirements and limitations upon the contractual rights of the charter school and sponsor, including when the contract must be amended and when sanctions may be issued S.C. Code Ann. §§ 59-40-55, -110. These are the very issues the School asks the Circuit Court to weigh when they should be reserved for the District's administrative processes, the Department's administrative processes, and ultimately appeal through the Administrative Law Court after a decision becomes final. *Capital City* is of no moment here because the contract claims in that case were not designed to be addressed by the administrative scheme.

Both the plain language and the legislative history of the Act demonstrate the General Assembly's intent to relieve the Circuit Court of jurisdiction to hear disputes between charter school sponsors and their charter schools. All three Circuit Court Judges to have considered the matter agree. The Order to dismiss for lack of subject matter jurisdiction should be affirmed.

B. The Declaratory Judgment Cause of Action Does Not Create Jurisdiction in the Circuit Court.

The Act does not permit a charter school or sponsor to seek a Declaratory Judgment from Circuit Court (or anywhere else) as it relates to disputes, rights and obligations between charter schools and sponsors. Instead, the General Assembly specifically required the Department of Education to develop regulations and guidelines to implement the Act. *See* S.C. Code Ann. § 59-

40-180; *see also* 59-40-70(A)(2)("The State Department of Education shall provide guidance on compliance [in the application process] to both sponsors and applicants.") The State Department exercises general oversight and supervisory authority over the District and its charter schools both pursuant to the Act and federal law. S.C. Code Ann. § 59-40-40(1), (2), (4); *see generally* 34 CFR § 303.23(b)(3)(i) (LEA is under general supervision of State Education Agency). As such, the Act requires charter schools and sponsors to seek clarity through the Department administrative process on their respective rights or obligations under the Act, a charter or contract as an initial matter. The charter schools and sponsors are public bodies created by the General Assembly, and therefore must operate within the administrative structures created by the General Assembly. The Supreme Court has held that a declaratory judgment action should not be used as a tool to circumvent the administrative process. *Garris v Governing Board of South Carolina Reinsurance Facility*, 319 S.C. 388, 461 S.E.2d 819 (S.C. 1995). The Circuit Court's Order dismissing the Complaint should be affirmed.

C. The Act Requires the Administrative Law Court to Address Procedural Due Process Claims.

CAA argues on page 38 of its Brief that its claims related to violation of due process could not be heard by the Administrative Law Court. This is not true. In fact, while the Administrative Law Court cannot rule on the constitutionality of the Act itself, it is regularly called upon to rule whether sponsors and other public bodies or state agencies comply with due process procedures. For example, in *Mary L. Dinkins Higher Learning Academy v. South Carolina Public Charter School District*, 12-ALJ-30-0281-AP (S.C. Admin. Law Ct. March 1, 2013), the Administrative Law Court declined to rule on the constitutionality of the Act, but found that the procedures utilized by the District Board to revoke a school's charter and terminate its contract did not violate the school's right to due process. *See also Lake City College Preparatory Academy (LCCPA) v. S.C.*

Public Charter Sch. Dist., 14-ALJ-30-0256-AP *aff'd* Op. No. 2016-UP-376 Filed July 19, 2016, 2016 WL 3944731 (declining to rule on constitutionality of Act but finding due process provided to charter school); *South Carolina Calvert Academy v. S.C. Public Charter Sch. Dist.*, 17-ALJ-30-0075-AP (District provided due process in revocation procedures).

The Administrative Law Court is certainly capable of, and has the authority to, address procedural due process claims. The Circuit Court's Order dismissing the Complaint for lack of subject matter jurisdiction should be affirmed.

II. Even If Jurisdiction Was Vested In The Circuit Court, The Order Should Be Affirmed Based on Alternate Sustaining Grounds.

Even if the Circuit Court had jurisdiction, it should have dismissed the case pursuant to S.C. R. 12(b)(6) for several reasons. Therefore, alternate sustaining grounds to affirm the dismissal exist. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000) (appellate court may rely on alternate sustaining grounds to affirm lower court decision).

First, as noted above, Section 59-40-190(C) provides immunity from civil and criminal liability to sponsors acting within the scope of their duties "with respect to all activities related to a charter school they sponsor." The Amended Complaint does not allege the District is acting outside of its statutory role as a sponsor. Further, each of the alleged breaches arise from decisions issued by the District Board of Trustees. *See* Am. Compl. ¶ 45, Exs. C and D. The Act does not limit the immunity to third party claims or in any other way. It applies by the plain language of its terms to this case based on the four corners of the pleadings. Therefore, if the Circuit Court had been able to reach the question of immunity, it should have dismissed the Complaint on this ground.

Second, the first party to breach a contract cannot then seek relief in the Court from later breaches of the contract. *Willms. Trucking Co., Inc. v. JW Const. Co., Inc.*, 442 S.E.2d 197, 314

S.C. 170 (Ct. App. 1993). As noted in the TRO Order at ¶ 28, (R. p. 5), CAA was the first to breach the contract with the District by failing to obtain an amendment prior to terminating the management contract. Moreover, the Section 4.6(O) of the Contract between the District and the School requires the management contract to mandate the School and management company to terminate the contract "in a manner that is least disruptive to students and at least 90 days' notice must be provided prior to termination except where the health and safety of students is a concern." (Am. Compl. Ex. A, Charter and Contract, R. p. 206). The Arbitration Award subsequently found that the termination without notice by CAA on October 31, 2019 was wrongful because the safety concerns were pretextual and the School failed to minimize disruption to students. (R. p. 411). Both acts are material breaches of the Charter which the School is judicially estopped from denying based on the final arbitration award. *See Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 684 S.E.2d 779, 782 (Ct. App. 2009). All the alleged acts by the District occurred after these breaches of the charter and contract by CAA. Therefore, if the Circuit Court had been able to reach the question of first to breach, it should have dismissed the Complaint on this ground pursuant to *Willms. Trucking Co.*, 442 S.E.2d at 197, 314 S.C. at 170.

Third, CAA's due process claims should be dismissed because it was afforded the rights it was permitted under the Act. The Act does not provide for an administrative hearing or due process for a charter amendment or prior to sanctions short of revocation. Further, the School did not ask for a hearing or anything other than a special called meeting to discuss the issues prior to filing the lawsuit. The Record is simply devoid of any request or legal authority that would provide the School a right to any more due process than what it received – notice and the right to be heard. (TRO Order ¶ 31, R. p. 5). The Order should be affirmed.

CONCLUSION

This Court should affirm the Circuit Court's Order to dismiss Appellant's Amended Complaint for lack of subject matter jurisdiction. Alternatively, the Circuit Court Order should be affirmed based on alternative sustaining grounds.

Respectfully submitted,

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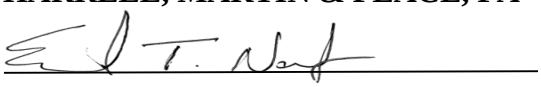

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

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